Torres Rojas, Genara

From:
Sent: Sunday, September 21, 2014 10:53 PM
To: Duffy, Daniel; American, Heavyn-Leigh
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: David
Last Name: Yerushalmi
Company: Law
Mailing Address 1:
Mailing Address

Email Address:
Phone:
Required copies of the records: Yes

List of specific record(s):
All agreements with Kuwait Airways Corporation aka Kuwait Airways, Kuwait Air, Kuwait Airlines

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

October 23, 2014

Mr. David Yerushalmi

Re: Freedom of Information Reference No. 15336

Dear Mr. Yerushalmi:

This is in response to your September 21, /2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for R copies of all "agreements with Kuwait Airways Corporation aka Kuwait Airways, Kuwait Air, Kuwait Airlines."

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/15336-LPA.pdf. Paper copies of the available records are available upon request.

Certain portions of the material responsive to your request are exempt from disclosure pursuant to exemption (1), (2.a.) and (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

Daniel D. Duffy
FOI Administrator

Attachment

225 Park Avenue South, 17th FL
New York, NY 10003
T: 212 435 3642 F: 212 435 7555

Port Authority Agreement No. AYD-409

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

JOHN F. KENNEDY INTERNATIONAL AIRPORT

FLIGHT FEES AGREEMENT

between

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

and

KUWAIT AIRWAYS CORPORATION

Dated as of January 1, 2004

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Exhibit 6A	Accounting Area Map
Exhibit 6B	Initial Port Authority Investment in Air Train
Exhibit 7	Excerpt of Proposed Basic Lease Environmental and Indemnity Provisions

PORT AUTHORITY AGREEMENT NO. AYD-409
Facility: John F. Kennedy International Airport

IN MEMORY AND IN TRIBUTE TO THOSE WHO LOST THEIR LIVES ON SEPTEMBER 11, 2001 IN SERVICE OF THE UNITED STATES, THE CITY OF NEW YORK, THE PORT AUTHORITY AND THE AVIATION COMMUNITY, THE PORT AUTHORITY AND THE AIRLINES DO HEREBY DESIGNATE THIS AGREEMENT AS THE JOHN F. KENNEDY INTERNATIONAL AIRPORT FREEDOM AGREEMENT.

THIS AGREEMENT SHALL NOT BE BINDING UPON THE PORT AUTHORITY OR THE AIRLINE UNTIL DULY EXECUTED BY AN EXECUTIVE OFFICER OF THE PORT AUTHORITY AND AN AUTHORIZED REPRESENTATIVE OF THE AIRLINE, AND DELIVERED TO THE AIRLINE BY AN AUTHORIZED REPRESENTATIVE OF THE PORT AUTHORITY

THIS AGREEMENT, dated as of January 1, 2004 ("Effective Date") by and between **THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY** (hereinafter called the **"Port Authority"**), a body corporate and politic, established by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having an office at 225 Park Avenue South, New York, New York 10003, and **KUWAIT AIRWAYS CORPORATION** (hereinafter called **the "Airline"** or the "**Signatory Airline**"), a corporation of the State of Kuwait and having an office for the transaction of business at 400 Kelby Street, Fort Lee, New Jersey 07024, whose representative is its Chairman & Managing Director,

WITNESSETH, That:

The Port Authority and the Airline, for and in consideration of the promises and mutual agreements hereinafter contained, hereby promise and agree, effective as of the Effective Date, as follows:

Section 1. <u>Definitions</u>

The following terms, when used in this Agreement, shall, unless the context shall require otherwise, have the respective meanings given below:

"2003 Dewey Lease Rate" shall mean the Flight Fee rate of $5.15 per 1,000 pounds of Maximum Weight for Take-off charged by the Port Authority to the Airline pursuant to the Standstill Agreements during the period covered by the Standstill Agreements (January 1, 2004 through no later than September 30, 2004).

"Accounting Area Map" shall have the meaning as defined in Exhibit 1 to this Agreement. A copy of the current Accounting Area Map is attached hereto as Exhibit 6A.

"Agreement" or "JFK Freedom Agreement" shall mean this agreement.

"Aircraft" shall mean airplanes, helicopters and every other contrivance now or hereafter used for the navigation of or flight in air or space.

"Aircraft Operator" shall mean (a) a Person, owning one or more Aircraft which are not leased or chartered to any other person for operation, and (b) a Person to whom one or more Aircraft are leased or chartered for operation whether the Aircraft so owned, leased or chartered are military or non-military or are used for private business, pleasure or governmental business or for carrier or non-carrier operations or for scheduled or non-scheduled operations or otherwise. Said phrase shall not mean the pilot of an Aircraft unless he is also the owner or lessee thereof or a Person to whom it is chartered.

"Airport" or "JFK International Airport" shall mean the land and premises in the City of New York, in the County of Queens and State of New York, which are shown in green upon the exhibit attached to the Basic Lease marked "Map II" and lands contiguous thereto which may have been heretofore or may hereafter be acquired by the Port Authority to use for air terminal purposes.

"Air Terminal Highway" shall mean those portions of the Airport designated and made available temporarily or permanently by the Port Authority to the public for general or limited highway use, as more particularly described in Exhibit 1 to this Agreement.

"AirTrain" shall mean the light rail passenger distribution system known as the "JFK AirTrain" located, or to be located, at the Airport, which system also includes the portion of the JFK AirTrain extending to or connecting the Airport with the Long Island Rail Road station and the New York City Transit Authority Sutphin Boulevard/Archer Avenue Subway Station located in Jamaica, Queens, New York, and extending to or connecting the Airport with the New York City Transit Authority subway station located in Howard Beach, Queens, New York (including all improvements thereon and equipment and materials used in connection therewith), as generally shown on the map included as part of Exhibit 6A.

"Bad Debts" shall have the meaning as defined in Section 34 hereof.

"Basic Lease" shall mean the agreement between the City of New York and the Port Authority dated April 17, 1947, as the same from time to time may have been or may hereafter be supplemented, amended and/or restated. Said agreement dated April 17, 1947, has been recorded in the Office of the Register of The City of New York, County of Queens, on May 22, 1947, in Liber 5402 of Conveyances, at pages 319 et seq.

"Civil Aircraft Operator" shall mean a Person engaged in civil transportation by Aircraft or otherwise operating Aircraft for civilian purposes, whether governmental or private. If any

such Person is also engaged in the operation of Aircraft for military, naval or air force purposes, he shall be deemed to be a Civil Aircraft Operator only to the extent that he engages in the operation of Aircraft for civilian purposes.

"Common Areas" or "Public Areas" shall mean the Public Aircraft Facilities and the other common areas at the Airport the use of which is allowed to the Airline as described in Section 15 of this Agreement.

"EDC" shall mean the New York City Economic Development Corporation, a local development corporation formed pursuant to Section 1411 of the Not for Profit Corporation Law of the State of New York, or such successor entity as may be designated by the City of New York.

"Effective Date" shall mean January 1, 2004 as set forth in the first paragraph hereof.

"Effective Date of the JFK Flight Fees Agreement" shall mean January 1, 2004.

"Environmental Requirement" shall mean in the singular and "Environmental Requirements" shall mean in the plural all applicable common law and all applicable past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all applicable pollution prevention programs, "best management practices plans", and other programs adopted and agreements made by the Port Authority, whether voluntary or not, with any governmental agencies (whether adopted or made with or without consideration and whether or not required by law), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all applicable judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, the foregoing to include without limitation:

(i) All applicable requirements pertaining to reporting, licensing, permitting, investigating, remediating, and mitigating emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist;

(ii) All applicable requirements pertaining to the protection from Hazardous Substances of the health and safety of employees, the public, and the environment;

(iii) All applicable requirements, contained in but not limited to the following laws as they are or may be supplemented and/or amended and their state and local counterparts: The Atomic Energy Act of 1954 , 42 U.S.C. Section 2011 et. seq.; the Clean Water Act also

known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et. seq.; the Clean Air Act, 42 U.S.C. Section 7401 et. seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et. seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et. seq.; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Section 2701 et. seq. ; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et. seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et. seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-11 et. seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof;

"Exhibit" shall mean the correspondingly numbered Exhibit annexed to this Agreement.

"Final Flight Fee Rate" shall mean a fee per 1,000 pounds of Maximum Weight for Take-off, as calculated, applicable to the preceding calendar year established by the Port Authority pursuant to Section 3 hereof.

"Final Flight Fee" and "Final Flight Fees" shall mean the total of all flight fees payable by the Airline to the Port Authority, in lieu of the public landing area charges for the Airport contained in the Schedule of Charges, for each calendar year based upon the application of the Final Flight Fee Rate applicable to such calendar year for all Take-offs of the Airline's Aircraft at the Airport during such calendar year as set forth in the statement thereof furnished by the Port Authority pursuant to Section 3 hereof.

"Flight Fee Rate" shall have the meaning as described in Section 3 of this Agreement and shall include the Initial Flight Fee Rate, Mid-Year Flight Fee Rate, Interim Flight Fee Rate and Final Flight Fee Rate.

"General Manager of the Airport" shall mean the person or persons from time to time designated by the Port Authority to exercise the powers and functions vested in the said General Manager by this Agreement; but until further notice from the Port Authority to the Airline it shall mean the General Manager (or the temporary or acting General Manager) of the Airport for the time being, or his duly designated representative or representatives.

"Governmental Authority", "Governmental Board" and "Governmental Agency" shall each mean federal, state, municipal and other governmental authorities, boards and agencies of any state, nation or government, except that they shall not be construed to include The Port Authority of New York and New Jersey.

"Hazardous Substance" shall mean and include in the singular and "Hazardous Substances" shall mean and include in the plural any pollutant, contaminant, toxic or hazardous

waste, dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls ("PCBs"), chemicals known to cause cancer, microbial contaminant, endocrine disruption or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have or in the future shall be restricted, prohibited, regulated or penalized by any applicable federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations and guidances adopted and publications promulgated pursuant thereto.

"Interim Flight Fee Rate" shall mean either the Initial Flight Fee Rate or Mid-Year Flight Fee Rate.

"Initial Flight Fee Rate" shall mean a fee per 1,000 pounds of Maximum Weight for Take-off established by the Port Authority prior to the commencement of each calendar year.

"Itinerant Aircraft" shall mean air taxi, corporate and private aircraft, military, charter, helicopter, private aircraft and any other Aircraft operations at the Airport, other than by a Signatory Airline, it being understood that, notwithstanding anything to the contrary stated elsewhere in this Agreement, a limited number of the aforesaid aircraft may be entitled to exemptions from the payment of flight fees for military and/or governmental and/or humanitarian and/or charitable medical flights at the Airport and their weight shall then be excluded in the calculation of Flight Fees.

"JFK Flight Fees Agreements" shall mean this Agreement and all other agreements designated therein as a JFK Flight Fees Agreement covering the payment of flight fees and the other matters covered by this Agreement and entered into between the Port Authority and an airline designated therein as a Signatory Airline.

"LaGuardia Airport" shall mean the land and premises in the City of New York, in the County of Queens and State of New York, which are shown in green upon the exhibit attached to the Basic Lease marked "Map I" and lands contiguous thereto which may have been heretofore or may hereafter be acquired by the Port Authority to use for air terminal purposes.

"LGA Flight Fees Agreements" shall mean collectively the agreements designated therein as a LGA Flight Fees Agreement entered into between the Port Authority and various LGA Signatory Airlines covering the payment of flight fees at the LaGuardia Airport and the other matters covered thereby.

"LGA Signatory Airlines" shall mean those airlines that have entered into LGA Flight Fees Agreements with the Port Authority.

"Maximum Weight for Take-off" when used with reference to Aircraft shall mean the maximum gross certified weight in one thousand pound units, as stated in the Airline's weights-and-balance manual, at which each Aircraft is operated at the Airport by the Airline as certified by the Federal Aviation Administration ("FAA") or the Civil Aviation Authority ("CAA")(or any successor or other Governmental Authority to the FAA or CAA with authority and jurisdiction to make such certification), provided, however, that the list of certified weights (or other relevant weight information, if not a list) has been made available to the Port Authority upon its request in accordance with Section 4 of this Agreement in order that the Port Authority shall be able to substantiate the maximum gross certified weight of an Aircraft, as described herein and provided, further, that if the Airline fails to make available such substantiating information as required then at the Port Authority's discretion it will choose a weight based on similar aircraft operated by other airlines.

"Mid-Year Flight Fee Rate" shall mean a fee per 1,000 pounds of Maximum Weight for Take-off established by the Port Authority, which revises the Initial Flight Fee Rate for that calendar year or a previous Mid-Year Flight Fee Rate, and is established pursuant to Section 3.2 of this Agreement.

"Non-signatory Qualified Affiliate" shall mean a Qualified Affiliate whose affiliated Signatory Airline has assumed responsibility for the obligations and duties of said Qualified Affiliate in accordance with the terms and provisions of this Agreement, including but not limited to Section 24(a)(2) hereof.

"Old General Operating Agreements" shall mean all of the separate agreement of leases (also known as "Dewey Leases") at the Airport, dated January 1, 1953 entered into by the Port Authority with the Old Dewey Lessees, as the same have been heretofore supplemented and amended, and as the same have been extended by the Standstill Agreement and the Second Standstill Agreement.

"Old Dewey Lessees" shall mean those airlines named as lessees (also known as "Dewey Lessees") under the Old General Operating Agreements.

"Person" shall mean not only a natural person, corporation or other legal entity, but also two or more natural persons, corporations or other legal entities acting jointly as a firm, partnership, unincorporated association, consortium, joint adventurers or otherwise.

"Port Authority" shall mean the Port Authority of New York and New Jersey, a body corporate and politic, established by Compact between the States of New Jersey and New York with the consent of the Congress of the United States of America.

"Port of New York District" shall mean as such term is defined in the Port Compact of 1921 authorized by C. 154 Laws of N.Y. 1921 and C. 151 Laws of N.J. 1921, approved by Public Resolution No. 17 of the 67th Congress, First Session.

"Public Aircraft Facilities" or "PAF" shall mean the following facilities, as they may from time to time be provided and maintained by the Port Authority at the Airport for public and common use, including use by Civil Aircraft Operators, for the following purposes and which (except by reason of any of the things mentioned in Section 14) are usable for such purposes, regardless of whether or not they are actually used or usable in whole or in part by the Airline:

(a) Public Aircraft Parking and Storage Space—by which is meant space for the purpose of parking and storing Aircraft, for the purpose of servicing of Aircraft with fuel and lubricants and other supplies for use thereon, and for the purpose of making minor or emergency repairs to Aircraft.

(b) Public Ramp and Apron Space—by which is meant space for the purpose of loading and unloading of passengers, baggage, cargo, mail and supplies to or from Aircraft, for the purpose of servicing Aircraft with fuel and lubricants, for the purpose of performing the operations commonly known as "ramp service," and for the purpose of performing inspection, minor maintenance and other services upon or in connection with Aircraft incidental to performing "ramp service," and for the purpose of parking of mobile equipment actively used in connection with such operations.

(c) Runways—by which is meant runways (including aerial approaches) at the Airport for the purpose of the landing and taking-off of Aircraft.

(d) Taxiways—by which is meant taxiways at the Airport for the purpose of the ground movement of Aircraft to, from and between the Runways, the Public Ramp and Apron Space, the Public Aircraft Parking and Storage Space and other portions of the Airport (not including, however, any taxilanes, the exclusive use of which is granted to the Airline or any other Person by lease, permit or otherwise).

(e) Facilities Incidental to the Runways, Public Ramp and Apron Space, Public Aircraft Parking and Storage Space and Taxiways—by which is meant facilities for the purpose of controlling or assisting arrivals, departures and operation of Aircraft using the Airport, such as control towers, signals, beacons, wind indicators, flood lights, landing lights, boundary lights, obstruction lights, navigation lights, radio and electronic aids, or other aids to operation, navigation or ground control of Aircraft, whether or not of a type hereinbefore enumerated, and even though located at sites away from the other Public Aircraft Facilities or outside the Airport.

The designation by the Port Authority, by rules or regulations promulgated pursuant to Section 27, of particular portions of the Public Aircraft Parking and Storage Space or the Public Ramp and Apron Space for use by Aircraft of particular Aircraft Operators or for use by particular types of Aircraft or for use for particular operations shall not affect the status of such space as Public Aircraft Facilities. Space or facilities especially provided for or reserved for the landing and taking off of helicopters or dirigibles or other lighter-than-air Aircraft shall be deemed to be a part of the Public Aircraft Facilities.

"PAF Requirement" shall mean the annual costs to the Port Authority (including, by way of example, construction and financing costs) of providing, maintaining and operating the Public Aircraft Facilities, computed as provided in Section 3.4 hereof and Exhibit 1 attached hereto, and including all costs and credits to be included in the calculation of the Flight Fees hereunder. It is calculated as the sum of all costs and credits delineated in Sections II, III, IV and V of Exhibit 1.

"Qualified Affiliate" shall mean a Scheduled Aircraft Operator that is designated a Qualified Affiliate by the Airline in compliance with this paragraph and that either (1) operates certain flights at the Airport pursuant to a code share agreement with the Airline, on which seats are sold into and/or out of the Airport and are operated under the same airline code designator as the Airline or (2) operates at the Airport and whose outstanding capital stock is at Exemption (2.a.) owned by the Airline or the Airline's parent company, or owns at least Exemption (2.a.) of the outstanding capital stock of the Airline. The Airline shall provide the Port Authority with written notice (the "Designation") immediately prior to the Airline's designation of a Qualified Affiliate, which Designation shall also contain the written consent of the proposed Qualified Affiliate signed by an authorized officer thereof. The Airline shall provide the Port Authority written notice immediately prior to the termination of any designation of a Qualified Affiliate ("Termination"). The Airline may, in its discretion, and with the written consent of the Qualified Affiliate, include the operating statistics for the Airline-affiliated flights operated by the Qualified Affiliate into the Airline's operating statistics for purposes of determining the total aircraft weight for the Airline at the Airport pursuant to Section 31 hereof. Termination of the Designation shall not relieve the Airline from its responsibility, if any, for the obligations and duties of the Qualified Affiliate accruing prior to the effective date of termination. A Qualified Affiliate, once it becomes a Signatory Airline by signing a JFK Flight Fees Agreement, shall have all rights and obligations of a Signatory Airline.

"Scheduled Aircraft Operator" shall mean a Civil Aircraft Operator engaged in transportation by aircraft operated wholly or in part on regular flights to and from the Airport in accordance with published schedules; but so long as the Federal Aviation Act of 1958, or any similar federal statute providing for the issuance of Foreign Air Carrier Permits or Certificates of Public Convenience and Necessity or substantially similar permits or certificates, is in effect, no Person shall be deemed to be a Scheduled Aircraft Operator within the meaning of this Agreement unless it also holds such a permit or certificate.

"Schedule of Charges" shall mean the Schedule of Charges for Air Terminals published by the Port Authority from time to time.

"Second Standstill Agreement" shall mean collectively all of those certain agreements entered into between the Port Authority and each of the Old Dewey Lessees and other Aircraft Operators covering the extension of the Old General Operating Agreements through September 30, 2004, or through such later date as may thereafter be agreed upon by extension, restatement or modification of such agreement, with the extension of the fuel fee provisions of the Old General Operating Agreements extended through December 31, 2004, or through such later date as may thereafter be agreed upon by extension, restatement or modification of such agreement.

"Section" shall, unless otherwise stated, mean the correspondingly numbered section of this Agreement.

"Signatory Airline" shall mean the Airline and each other Airline that is a signatory to a JFK Flight Fees Agreement and designated therein as a Signatory Airline, and a Signatory Airline may be either an Original Signatory Airline or a Subsequent Signatory Airline.

"Standstill Agreement" shall mean collectively all of those certain agreements entered into between the Port Authority and each of the Old Dewey Lessees and other Aircraft Operators covering the extension of the Old General Operating Agreements through March 31, 2004.

"Standstill Agreements" shall mean collectively the Standstill Agreement and the Second Standstill Agreement.

"Subsequent Signatory Airline" shall mean a Signatory Airline whose JFK Flight Fees Agreement has been fully executed on or after October 1, 2004 in accordance with Section 31(a) hereto and which Agreement contains substantially identical terms and conditions to this Agreement.

"Take-off" shall mean each time and "Take-offs" shall mean more than one time an Aircraft leaves the ground from one of the Runways constituting part of the Public Aircraft Facilities and continues in flight, including each time an Aircraft leaves the ground in connection with a familiarization or training or other non-revenue flight as well as each time it does so on a revenue flight, except the following:

(1) Departure of an Aircraft for another destination, which Aircraft, without making a stop at another airport, is forced to return to and land at the Airport because of meteorological conditions, mechanical or operational causes or for any similar emergency or precautionary reason;

(2) Departure of an Aircraft on a non-revenue flight for another airport controlled or operated by, or under the jurisdiction of, the Port Authority, within or in close proximity to the Metropolitan New York area, for the purpose of being repaired, maintained, serviced or inspected at such other airport.

"Unit Terminal Lease", for purposes of Section 29(c), shall mean an agreement of lease entered into between the Port Authority and an airline or other entity covering the leasing of one or more passenger airline terminals at the Airport.

Section 2. <u>Term</u>

The term of this Agreement shall commence on the Effective Date hereof, and unless sooner terminated and except as otherwise specifically provided in this Agreement, shall expire on December 31, 2023, subject to the right of the Port Authority to terminate this

Agreement pursuant to Sections 5, 18, and 19 hereof, and to the right of the Airline to terminate this Agreement pursuant to Section 36 hereof.

Section 3. Flight Fees

3.1 Generally

(a) In connection with each and every Take-off of each and every of the Airline's Aircraft, the Airline shall pay to the Port Authority a fee (hereinafter called a "Flight Fee"), calculated in accordance with this Agreement, including Exhibits 1 through 7.

(b) Said Flight Fee shall be in addition to any other charges authorized or permitted by any other section of this Agreement.

(c) Said Flight Fee shall be based on Maximum Weight for Take-Off prorated to the nearest hundred pounds.

(d) A Non-signatory Qualified Affiliate shall be charged a Flight Fee Rate as follows:

(i) A non-signatory airline which does not seek Signatory Airline status shall be charged the flight fee rates set by the Port Authority for non-signatory airlines unless and until such date as the Port Authority receives from the Airline the Designation required by, and in strict compliance with, the definition of "Qualified Affiliate" set forth in Section 1 hereof, after which date the Flight Fee Rates set for Signatory Airlines in this Agreement will be charged. The Airline will be responsible for the obligations and duties of such Non-signatory Qualified Affiliate, as further set forth in this Agreement, including but not limited to Section 24(a)(2) hereof, during the entire time period that the Designation is in effect and termination of the Designation shall not relieve the Airline from its responsibility for the obligations and duties of the Qualified Affiliate accruing prior to the effective date of termination;

(ii) A Non-signatory Qualified Affiliate which is designated a Qualified Affiliate in strict compliance with Section 1 hereof (as noted above) and which designation is subsequently terminated by the Airline, shall be charged the flight fee rates set by the Port Authority for non-signatory airlines from and after the effective date of termination of the Designation; and

(iii) If a Non-signatory Qualified Affiliate provides written notice to the Port Authority in accordance with the notice provisions of this Agreement that it requests Signatory Airline status and that it agrees to execute the JFK Flight Fees Agreement and the Port Authority has received the Designation from the Airline in accordance with Section 1 hereof (as noted above), the Port Authority shall, within seven (7) business days of receipt of such notice, provide execution copies of the JFK Flight Fees Agreement (if it has not theretofore already provided such an agreement) to such Non-

signatory Qualified Affiliate. Such Non-Signatory Qualified Affiliate shall then be charged the flight fee rates set by the Port Authority for non-signatory airlines, unless and until such date as the Port Authority determines that it has received all documentation required for the Non-signatory Qualified Affiliate to attain status as a Signatory Airline including, by way of example, (1) receipt of the required insurance certificate(s) satisfactory in form and substance to the Port Authority and (2) receipt of the JFK Flight Fees Agreement accurately, fully and properly completed and executed, attested to and notarized by the non-signatory airline requesting Signatory Airline status, after which determination date the Non-signatory Qualified Affiliate shall be charged the Flight Fee Rates set forth for Signatory Airlines in this Agreement; provided, however, that if the Port Authority has not either (x) delivered a fully executed JFK Flight Fees Agreement to the requesting Non-signatory Qualified Affiliate Airline within sixty (60) days after receipt by it of the required documentation hereinabove described or (y) notified the Non-signatory Qualified Affiliate within sixty (60) days after receipt by it of the required documentation as hereinabove described that the received documentation is incomplete and/or defective (stating the purported reason(s) for such incompleteness or defectiveness), and the incompleteness and/or defect is cured (including delivery to the Port Authority of the completed and cured documents, as the case may be) within thirty (30) days after receipt of said Port Authority's notice, then the requesting Non-signatory Qualified Affiliate named in the Designation will be charged the Flight Fee Rates set for Signatory Airlines in this Agreement effective retroactively to the date said Non-signatory Qualified Affiliate provided the complete documentation package to the Port Authority. In the event that a Non-signatory Qualified Affiliate becomes a Signatory Airline by full and proper execution of a JFK Flight Fees Agreement, such document shall be dated effective as of the date of Designation, and said Qualified Affiliate will be charged the Flight Fee Rates set for Signatory Airlines in this Agreement effective retroactively to the date of Designation. The Host Airline shall cause its Non-signatory Qualified Affiliate to agree that the latter will be responsible under its JFK Flight Fees Agreement as of the date of Designation. Accordingly, in connection with the foregoing *proviso*, the Host Airline will be responsible for the obligations and duties of a Non-signatory Qualified Affiliate until the retroactively dated, fully executed JFK Flight Fees Agreement is in force and effect, after which date the Host Airline shall no longer be responsible for the Non-signatory Qualified Affiliate's obligations and duties which accrued from and after the effective date of the Non-signatory Qualified Affiliate's JFK Flight Fees Agreement.

As a matter of clarification, if under the foregoing *proviso* the required documentation is not received by the Port Authority (e.g., the Non-signatory Qualified Affiliate does not execute and deliver to the Port Authority a retroactively dated JFK Flight Fees Agreement), or if under clause (y) of the foregoing *proviso*, within the thirty (30) day period for completion and cure of incomplete and/or defective documentation the Port Authority does not receive complete and cured documentation, then the Host Airline shall remain responsible for the obligations and duties of the Non-signatory Qualified Affiliate from and after the date of Designation until the date that the Designation is terminated and no longer in effect. If under clauses (x) and (y) of the

foregoing *proviso*, respectively, the Port Authority has not delivered a fully executed JFK Flight Fees Agreement to the requesting Non-signatory Qualified Affiliate within the stated sixty (60) day period, or has not notified the Qualified Affiliate within the stated sixty (60) day period of incompleteness and/or deficiencies but thereafter receives the required documentation, then the Host Airline shall be responsible only for the obligations and duties of the Non-signatory Qualified Affiliate which accrued during the sixty (60) day period beginning from the date of receipt by the Port Authority of the complete and properly executed required documentation and shall remain responsible thereafter for all such accrued obligations and duties until such time as the Non-signatory Qualified Affiliate becomes a Signatory Airline and agrees to assume such accrued obligations and duties, but shall not be responsible for obligations and duties which accrue after the expiration of said 60-day period. As used in this Agreement, a reference to the Host Airline being responsible for the obligations and duties of its Qualified Affiliate shall mean the obligations and duties with respect to the Host Airline-affiliated flights only. As used herein, "Host Airline" shall mean the airline making the Designation.

Notices to the Port Authority described in this paragraph (d) shall be directed and addressed to the General Manager of the Airport at the following address: The Port Authority of NY & NJ, JFK International Airport, Building #14, Jamaica, NY 11430.

3.2 Interim Flight Fee

For the calendar year commencing January 1, 2004 the Flight Fee Rate shall be Exemption (2a) per 1,000 pounds of Maximum Weight for Take-off; and on or before the 15th day of December, 2004 and on or before the 15th day of December of each succeeding year up to and including the 15th day of December 2023, the Port Authority shall give written notice to the Airline of the flight fee rate which the Port Authority intends to establish for each Take-off during the year commencing January 1 next following. The Flight Fee Rate set forth above for the calendar year commencing January 1, 2004 shall be the "Initial Flight Fee Rate" for 2004, and the Flight Fee Rate set forth in said notice shall be the "Initial Flight Fee Rate" for such year; provided that the Port Authority may prospectively revise the Flight Fee Rate in any calendar year after calendar year 2004 in accordance with the following:

(a) A Mid-Year Flight Fee Rate, effective either July 1 or September 1 of each calendar year, may be implemented only if the Port Authority estimates in good faith that total Flight Fee billings for the year will differ by more than Exemption (2.a.) (either greater or lesser) from the PAF Requirement.

(b) If at any time during the year, the Port Authority estimates in good faith either (i) that Maximum Weight for Take-off of all Aircraft operated by Signatory Airlines and Non-signatory Qualified Affiliates at the Airport in that calendar year will differ by more than Exemption (2.a.) (either greater or lesser) from the estimates used in calculating the Initial Flight Fee Rate, or (ii) that, because of an emergency or catastrophic event, the full-year PAF Requirement

will differ by more than Exemption (2.a.) (either greater or lesser) from the PAF Requirement used in calculating the Initial Flight Fee Rate, then, after notification and explanation to the airlines, the Port Authority may establish a new Mid-Year Flight Fee rate based on these current estimates. A Mid-Year Flight Fee rate adjustment pursuant to this paragraph (b) may not be made more than once in any calendar year.

(c) Upon written request of the JFK AAAC (as defined in Section 26), the Port Authority will, within a reasonable period of time, consult with the JFK AAAC to further explain and clarify the need for the Mid-Year Flight Fee Rate adjustment pursuant to paragraphs (a) or (b) of this subsection.

3.3 Payment of Interim Flight Fee

(a) Throughout the term of this Agreement, in lieu of the public landing area charges for the Airport contained in the Schedule of Charges, the Airline shall pay to the Port Authority for each Take-off of the Airline's Aircraft at the Airport a flight fee based on the Maximum Weight for Take-off at the Interim Flight Fee Rate.

(b) Commencing no later than the 10th day of the month following the month during which the Effective Date occurs and no later than the 10th day of each and every month thereafter during the term of this Agreement, including the month following the month in which the Agreement ceases to be in effect, the Airline shall furnish, and shall cause its Non-signatory Qualified Affiliate to furnish, to the Port Authority a statement duly certified by a responsible fiscal officer of the Airline certifying to the Port Authority the following information and such other information in connection with its activities at the Airport as may be required from time to time by the Port Authority and in such form as may be designated or supplied from time to time by the Port Authority:

(i) each Take-off of the Airline's Aircraft and Maximum Weight for Take-off applicable thereto during the preceding calendar month, and

(ii) the total monthly flight fees based on the Interim Flight Fee Rate arising from all of the Take-offs of the Airline's Aircraft for the preceding month.

(c) If, during the term of this Agreement, the Airline shall not have previously rendered the aforesaid monthly statements it shall, upon request of the Port Authority, submit a detailed cumulative statement of the foregoing for any such period or periods not previously reported. The Airline shall maintain proper records of such Take-offs and other information which records shall be kept at all times within the continental United States and shall be subject to examination and audit by the officers, employees and representatives of the Port Authority at all times during the term of this Agreement and for one year following the termination thereof, consistent with Section 4 hereof.

(d) (1) The Airline shall pay, and shall cause its Non-signatory Qualified Affiliates to pay, to the Port Authority ten (10) days after the time it is obligated to furnish to the Port Authority the statement referred to in subparagraph (b) above, the flight fee based on the Interim Flight Fee Rate payable by the Airline hereunder for the Take-offs of its Aircraft at the Airport during the preceding calendar month. The flight fee based on the Interim Flight Fee Rate payable by the Airline hereunder shall be in addition to any and all charges and fees imposed upon and payable by the Airline under this Agreement.

(2) It is recognized that the 2003 Dewey Lease Rate (as defined in Section 1 hereof) charged by the Port Authority to the Airline pursuant to the Standstill Agreements during the period covered by the Standstill Agreements is lower than the Interim Flight Fee Rate for the year commencing January 1, 2004 as set forth in paragraph (a) of this Section 3.3. Within twenty (20) days upon the Airline's receipt of a statement from the Port Authority setting forth the amount due to the Port Authority with respect to the excess between the said Interim Flight Fee Rate commencing January 1, 2004 and the 2003 Dewey Lease Rate, the Airline shall pay such excess to the Port Authority with respect to each month covered by said statement.

3.4. Computation and Allocation of Costs

In computing and allocating any revenues or costs of the Port Authority for the purposes of this Agreement, the accounting principles detailed in Exhibit 1 attached hereto and hereby made a part hereof, shall be followed and there shall be included only those elements of cost to the Port Authority which a prudent airport operator would incur under the same or similar circumstances.

The provisions of this Section 3.4 and of Exhibit 1, and any other provisions of this Agreement relating to the methods of computing the revenues or costs of the Port Authority or the methods of keeping its books, are to be followed for the computation and allocation of the costs of the Port Authority in cases where fees or charges are to be paid, or revenues are to be allocated, or other payments made by the Airline based in whole or in part upon such costs, or where such costs are a factor in determining the reasonableness of fees, charges or other payments; and said provisions are not intended as a covenant or agreement as to the manner in which the Port Authority will keep its books, accounts and records for its general purposes.

3.5 Final Flight Fee

(a) On or before April 15 of each calendar year beginning on April 15, 2005 and for each subsequent calendar year, including the year following the expiration of the term of this Agreement, the Port Authority shall prepare and furnish to the Airline a statement showing the Final Flight Fee Rate for the previous calendar year computed as follows: the PAF Requirement divided by the aggregate Maximum Weight of Take-off (in thousands of pounds) of all Aircraft Take-offs of all Signatory Airlines and all Non-Signatory Qualified Affiliates during the preceding calendar year. The result shall be the Final Flight Fee Rate. The statement shall also

set forth the Airline's total Final Flight Fees for said preceding calendar year. If the total Final Flight Fees for the preceding calendar year shall be in excess of the total Interim Flight Fees paid by the Airline for the preceding calendar year, or if said total Final Flight Fees shall be less than the said total Interim Flight Fees paid by the Airline for the preceding calendar year, the amount of such underpayment or overpayment, respectively, shall be taken into account and incorporated, if applicable, by the Port Authority in its calculation of the Initial Flight Fee Rate or Mid-Year Flight Fee Rate, except that with respect to the final year of this Agreement (whether through expiration of this Agreement or termination in accordance with Section 36(a)(5)), if there be an underpayment or overpayment, the Port Authority shall apply such underpayment or overpayment to any flight fees owed to the Port Authority in the next succeeding year or, if no flight fees are owed because the Airline is not operating at the Airport in such succeeding year, then either (i) invoice the Airline for such underpayment, (2) refund such overpayment to the Airline, or (iii) apply such overpayment to other undisputed amounts owed by the Airline to the Port Authority under other Airport agreements to which it is a party with the Port Authority or, alternatively, in the sole discretion of the Port Authority, retain such overpayment until disputed amounts are resolved between the Airline and the Port Authority.

(b) The parties expressly agree and understand that nothing contained in this Section, including without limitation the establishment of the Interim Flight Fee Rate and Final Flight Fee Rate for calendar year periods, shall limit or be construed as limiting the right of the Port Authority to terminate this Agreement pursuant to Section 5 hereof.

(c) The parties hereby agree that upon termination of this Agreement pursuant to Section 5 hereof the Port Authority shall not be obligated to compute the Final Flight Fees applicable to the calendar year in which the termination falls prior to the time it would normally do so under the provisions of paragraph (a) of this Section 3.5.

(d) The Port Authority's notice of the Final Flight Fee Rate pursuant to Section 3.5 (a) hereof shall include a written notice to the Airline of the PAF Requirement for the preceding calendar year. Such notice shall be accompanied by a statement showing separately and in detail (i) the computations upon which the PAF Requirement for the preceding calendar year is based, and (ii) any new capital expenditures settled during the preceding calendar year and the basis of the amortization thereof. The Exhibit attached hereto, hereby made a part hereof and marked as "Exhibit 2" sets forth such a statement showing, by way of example and for purposes of illustration only, the *pro forma* computation of the flight fee for the year 2004, and the *pro forma* PAF Requirement for the calendar year 2004. Future statements, including the statement applicable to calendar year 2004, shall give at least the information given in or contemplated by Exhibit 2 where such information is necessary for a proper determination of the PAF Requirement for the preceding calendar year and which information where appropriate shall be in substantially the same form.

3.6 Governmental Requirements Affecting Port Authority's Expenditures

Upon receipt of notice of an actual or proposed order or requirement by a Governmental Authority which would or might result in increased costs to or expenditures by the Port Authority with respect to the Airport which will or may affect the computation of flight fees or any other fees or charges paid or to be paid by the Airline under this Agreement, the Port Authority shall forthwith notify the Airline in order that the Airline may take such action with respect to such orders or requirements as it may desire. Subject to the provisions of Section 9(b) and 9(c) hereof, the Port Authority shall be free to take such position with respect to such orders or requirements as it desires including, but not limited to, inclusion by the Port Authority of the associated costs and/or expenditures in the computation of flight fees to be paid by the Airline. Nothing in this Section shall limit whatever right the Airline might have under the law to directly challenge the relevant Governmental Authority with respect to the legality or enforceability of an actual or proposed order or requirement described in this paragraph.

Except as set forth above, and except for such as are sponsored or proposed by or at the instance of the Port Authority, the Port Authority shall not be required to give notice to the Airline with respect to any statutes or with respect to any governmental orders, rules, regulations, or requirements of general applicability.

3.7 Additional Fees and Charges for Public Aircraft Facilities

(a) The Port Authority shall make no charges (other than the flight fees and other charges for which specific provision is made elsewhere in this Agreement) to the Airline for the use, or the privilege, of using the Public Aircraft Facilities, except as follows:

(1) The Flight Fee does not constitute payment for the use of as well as the privilege of using the Public Aircraft Parking and Storage Space by and in connection with an Aircraft at any time or times. The Port Authority shall impose a separate fee for such use and privilege in accordance with the Schedule of Charges; with the appropriate credits in accordance with Item III(5) of Exhibit 1. On or before the 10th day of each month, the Airline shall certify to the Port Authority the occasions during the preceding calendar month on which its Aircraft have been parked or stored in the Public Aircraft Parking and Storage Space.

(2) A penalty charge may be assessed by the Port Authority against the Airline in case any of the Airline's Aircraft remains upon the Public Ramp and Apron Space for more than such time as is reasonably necessary in light of the purposes for which such space is provided and is not promptly removed when directed by the Port Authority's representative. Any such penalty charge shall be uniform as to all Aircraft Operators and in such amount as may be reasonably necessary to assure that Aircraft of the Airline and of other Aircraft Operators will be promptly moved from the Public Ramp and Apron Space when directed upon the expiration of a reasonable time.

(b) No Aircraft Operator shall be charged lower flight fee rates or offered more favorable terms and conditions for use of the PAF and Common Areas than the Flight Fee Rates, terms and conditions established by this Agreement, unless such flight fee rates, terms and conditions are offered concurrently to the Airline, provided, however, it is acknowledged and agreed that (i) this may not apply to Flight Fees for calendar 2004, and (ii) with regard to the reference to terms and conditions (other than Flight Fee Rates) for use of the PAF, this shall not apply to (x) to non-Signatory Airlines and itinerants or (y) other agreements for use of non-PAF areas of the Airport to which the Port Authority and another Scheduled Aircraft Operator are parties prior to or as of July 1, 2004. Further, the parties acknowledge and agree that calculation adjustments and internal Port Authority authorization processes may result in reasonable temporary periods where the flight fee rate in the Schedule of Charges is lower. The Schedule of Charges applicable to non-Signatory Airlines shall contain flight fee rates established pursuant to Exhibit 1, paragraph (IV)(i).

3.8 Sightseeing Flights

The Airline shall not be entitled to use the Public Aircraft Facilities to make any sightseeing flights (by which is meant flights on which passengers are carried and which originate and terminate at the Airport with no intermediate landings other than emergency landings) for which a charge is made unless it has first obtained a special permit from the Port Authority authorizing it to do so, and then only upon the terms and conditions, including fees and charges to be paid to the Port Authority by the Airline, as the Port Authority may prescribe in such permit. The Port Authority shall be under no obligation to issue to the Airline any such permit, but if the Port Authority issues a permit to any other Scheduled Aircraft Operator authorizing such other Scheduled Aircraft Operator to operate revenue producing sightseeing flights at the Airport, then the Port Authority shall, upon the request of the Airline, issue a similar permit for such purposes to the Airline, upon similar terms and conditions.

Section 4. Books and Records

(a) The Airline shall keep in an office or offices in the continental United States, appropriate books and records showing (i) the date and hour of each Take-off or departure from the Airport of each Aircraft operated by it, the date and hour of the landing by such Aircraft next preceding each Take-off or departure, and the Maximum Weight for Take-Off of, such Aircraft, which it is required to certify to the Port Authority pursuant to Section 3, and (ii) any other matter concerning the Airline's operations at the Airport with respect to which the Port Authority may reasonably need information to fulfill its obligations or exercise its rights under this Agreement whether or not of the type enumerated above in this Section and whether or not an express obligation to keep books and records with regard thereto is expressly set forth elsewhere in this Agreement. The Airline shall not be obligated to preserve any such records for more than five (5) years unless they are material to a litigation (as to which the Airline has or should have knowledge) initiated within that time, in which event they shall be preserved until the final determination of the controversy. The Port Authority shall have the right to inspect such

books and records during regular business hours and the Airline shall pay to the Port Authority when billed all travel costs and incremental expenses as determined by the Port Authority for Port Authority auditors and other representatives and employees in connection with any audit at locations outside the Port of New York District (including, without limitation, salaries, benefits, travel costs and related expenses, overhead costs and fees and charges of third party auditors retained by the Port Authority if any such books and records are maintained outside the continental United States). In accordance with, and during the time periods set forth in, Section 3.1, the Airline shall cause all of its Non-Signatory Qualified Affiliates to fully comply with the obligations under paragraph (a) of this Section as if each one of them was a signatory to this Agreement, and the Airline shall be responsible for such full compliance.

(b) The Port Authority shall keep in an office or offices within the Port of New York District such books, records and accounts as may be necessary or appropriate to record the items and transactions affecting the computation of fees or charges to be paid or other payments to be made by the Airline under this Agreement. The Airline or its designated representative shall have the right to examine, during normal business hours, the books and records of the Port Authority in connection with or in respect to any cost incurred, charged, allocated or prorated to the construction, operation or maintenance of the Airport or any facility thereon, and in connection with or in respect to any and all revenues, contributions or grants received by the Port Authority in relation thereto to the extent that such costs, revenues, contributions or grants affect the computation of such fees and charges. The Port Authority shall not be obligated to preserve any such records for more than five (5) years unless they are material to a litigation (as to which the Port Authority has or should have knowledge) initiated within that time, in which event they shall be preserved until the final determination of the controversy.

Section 5. <u>Right of Termination by the Port Authority</u>

(a) If any one or more of the following events shall occur, that is to say:

(1) The Airline shall become insolvent or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

(2) By order or decree of a court the Airline shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Airline, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any state law or statute of the United States or of any state thereof; or

(3) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Airline and shall not be dismissed within ninety (90) days after the filing thereof; or

(4) The Airline shall voluntarily abandon, or discontinue its operations at the Airport, or, after exhausting or abandoning any right of further appeal, the Airline shall be prevented for a period of forty-five (45) consecutive days by action of any governmental agency other than the Port Authority having jurisdiction thereof, from conducting its operations at the Airport, regardless of the fault of the Airline; or

(5) The Airline shall fail duly and punctually to pay the fees and charges or to make any other payment required hereunder when due to the Port Authority and such failure shall continue for a period of twenty (20) days after notice to the Airline from the Port Authority of such failure; or

(6) This Agreement or the rights of the Airline under this Agreement shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation without the prior written approval of the Port Authority, except as permitted under Section 7 of this Agreement; or

(7) The Airline shall fail to keep, perform and observe each and every other promise, covenant, condition, term and agreement set forth in this Agreement on its part to be kept, performed or observed, within thirty (30) days after receipt of notice of default thereunder from the Port Authority, except where fulfillment of its obligation requires activity over a period of time (which shall expressly exclude occurrences under subparagraph (5) above), and the Airline shall have commenced expeditiously and in a diligent manner to perform whatever may be required for fulfillment within thirty (30) days after the receipt of notice of default and continues such performance expeditiously and in a diligent manner without interruption,

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the Port Authority may by thirty (30) days' written notice to the Airline terminate this Agreement, such termination to be effective upon the date specified in such notice.

(b) No acceptance by the Port Authority of fees, charges or other payments in whole or in part for any period or periods after a default of any of the promises, conditions, terms and agreements hereof to be performed, kept or observed by the Airline shall be deemed a waiver of any right on the part of the Port Authority to terminate the Agreement.

(c) No failure by the Port Authority to insist upon the strict performance of any agreement, term, covenant or condition of this Agreement or to exercise any right or remedy consequent upon a breach or default thereof, and no extension, supplement or amendment of this Agreement during or after a breach thereof, unless expressly stated to be a waiver, and no acceptance by the Port Authority of fees, charges or other payments in whole or in part after or during the continuance of any such breach or default, shall constitute a waiver of any such

breach or default of such agreement, term, covenant or condition. No agreement, term, covenant or condition of this Agreement to be performed or complied with by the Airline, and no breach or default thereof, shall be waived, altered or modified except by a written instrument executed by the Port Authority. No waiver by the Port Authority of any default on the part of the Airline in performance of any of the promises, conditions, terms or agreements hereof to be performed, kept or observed by the Airline shall be or be construed to be a waiver by the Port Authority of any other or subsequent default in performance of any of the said promises, conditions, terms and agreements. This paragraph (c) shall be subject to the provisions of Section 31(c) hereof.

(d) Subject to the provisions of Section 32 hereof, if applicable, the rights of termination described above shall be in addition to any other right of termination provided to the Port Authority under this Agreement and in addition to any rights and remedies that the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Airline, and the exercise by the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

(e) Termination of this Agreement shall not relieve the Airline of any liability or obligations hereunder which shall have accrued on or prior to the effective date of termination.

Section 6. Remedies to be Non-exclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority or the Airline at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 7. Assignment

(a) The Airline agrees that it will not sell, convey, transfer, mortgage, pledge or assign this Agreement or any part thereof, or any rights created thereby or any part thereof without the prior written consent of the Port Authority, provided, however, that this Agreement may be assigned (without the consent of the Port Authority) to any successor in interest of the Airline which is or is to be a Scheduled Aircraft Operator, and with or into which the Airline may merge or consolidate, or which may succeed to substantially all the assets of the Airline, except that the foregoing *proviso* shall be further subject to the *proviso* that such succeeding entity executes and delivers to the Port Authority at least thirty (30) days prior to commencement of operations at the Airport by the succeeding entity in its capacity as assignee, a fully (signed by both assignor and assignee) and properly executed agreement, in form and substance reasonably satisfactory to the Port Authority, whereby such succeeding entity assumes all of the obligations of the Airline, as of the effective date of the assignment and assumption, as if it were the original Signatory Airline hereunder (together with comparable documentation required of other airlines operating at the Airport which are similarly situated to the Airline, e.g., insurance certificates which comply in all respects with the terms of this Agreement).

(b) The Port Authority agrees that, in any sale, conveyance, transfer, mortgage, pledge or assignment to any third party of its right to function as operator of the Airport, it will use best efforts to require that third party to warrant: (i) that the said third party retain the costs recovery methodology, accounting principles and formula for the calculation of flight fees established under this Agreement including Exhibit 1, that the transaction will not result in an acceleration of any costs being included in the PAF Requirement prior to the time such costs would have been included but for the transaction, and that no portion of the consideration paid for the transfer, or any of the transaction-related costs, shall be included in the PAF Requirement; and (ii) that the Airline's rights granted under this Agreement to use the Public Aircraft Facilities and Common Areas at the Airport will continue in accordance with this Agreement. Notwithstanding any other provision of this Agreement, failure to secure such warranties from the third party shall result in the termination of this Agreement, and no obligations of the Airline shall survive such termination, except for all liabilities and obligations to the Port Authority hereunder which shall have accrued on or prior to the effective date of termination, other than any such liabilities or obligations resulting from acceleration of any costs being included in the PAF Requirement prior to the time such costs would have been included but for the transaction.

(c) The Port Authority agrees that, if it becomes the owner of the Airport, (i) it will not alter the costs recovery methodology, accounting principles and formula for the calculation of flight fees established under this Agreement, including Exhibit 1, (ii) the then-applicable and future flight fees will not be changed as a result of the purchase price of the transaction by which it obtains such ownership and no portion of the transaction-related costs will be included in the PAF Requirement nor will the transaction result in an acceleration of any costs being included in the PAF Requirement prior to the time such costs would have been included but for the transaction, and (iii) this Agreement will continue without any interruption or modification, subject, without limitation, to respective rights of termination hereunder and subject to Section 31 and 32 hereof or unless modified in accordance with the terms of this Agreement.

Section 8. No Joint Venture

Nothing herein contained shall constitute the parties hereto partners or joint venturers nor shall any party hereto be or be deemed to be the agent or representative of any other party hereto by reason of anything herein contained.

Section 9. Effect of Basic Lease

(a) Subject to the provisions of Section 7(b) and (c), and Section 9(b) and (c), this Agreement shall, in any event, terminate with the termination or expiration of the Basic Lease with the City of New York which covers the Airport. The rights of the Port Authority in the Airport are those granted or intended to be granted to it by the Basic Lease, and no greater rights are granted or intended to be granted to the Airline than the Port Authority has power thereunder

to grant. Termination of this Agreement shall not relieve the Airline of any liability or obligations hereunder which shall have accrued on or prior to the effective date of termination.

(b) Nothing herein contained shall prevent the Port Authority from entering into an agreement with the City of New York pursuant to which the Basic Lease is amended, supplemented, surrendered, canceled or terminated, except that the Port Authority shall not take any action, or agree to any action of the City of New York, that would (i) be inconsistent with this Agreement and adversely affect the Airline, or (ii) have the effect of increasing the fees charged to, or obligations of, the Airline hereunder, except to the extent such increased charges or obligations are in exchange for bona fide services or benefits rendered by the City of New York to the Port Authority for the direct benefit of items taken into account in calculating the PAF Requirement.

(c) Without limiting the generality of paragraphs (a) and (b) of this Section, if the Port Authority enters into a supplement or amendment to the Basic Lease, or a substitute new lease agreement, with the City of New York during the term of this Agreement which has the effect of increasing the rent owed by the Port Authority to the said City (as described and defined in Exhibit 1(II)(8) hereto), such agreement shall not (i) supercede the provisions of Section II(8) of Exhibit 1 or (ii) increase fees charged to, or obligations of, the Airline under this Agreement.

Section 10. <u>Brokerage</u>

The Airline and the Port Authority each represent and warrant that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no broker who is or may be entitled to be paid a commission in connection therewith. The Airline and the Port Authority shall each indemnify and save harmless the other party of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to the Airline or the Port Authority, respectively, in connection with the negotiation and execution of this Agreement.

Section 11. <u>Notices</u>

All notices, directions, requests, consents and approvals required to be given to or by either party under this Agreement shall be in writing, and all such notices and requests shall be personally delivered or sent by certified mail, postage prepaid. Until further notice, the parties hereby designate the following officer and address upon and where, respectively, notices and requests must be served.

Notice to the Port Authority will be addressed to:
Executive Director
The Port Authority of New York & New Jersey
225 Park Avenue South
New York, NY 10003

Notice to Airline will be addressed to:
Chairman & Managing Director
Kuwait Airways Corporation
400 Kelby Street
Fort Lee, New Jersey 07024

or to such other addresses as either party may specify for itself in the United States by notice to the other as provided herein. Notices shall be deemed effective upon receipt if personally delivered, or five (5) days after mailing. The Port Authority may for informational purposes only send a copy by regular first class mail of all such notices and requests to the Airline's **[*information not provided*]** at the following address: **[*information not provided*].**

Failure on the part of the Port Authority to send the informational copy shall not however be or be deemed to be a breach of this Agreement, or impair or affect the validity of the notice or request actually given.

Section 12. <u>Place of Payments</u>

All payments required of the Airline by this Agreement from and after June 1, 2004, shall be made to The Port Authority of New York and New Jersey, P.O. Box 95000-1517, Philadelphia, PA 19195-1517, or via the following Wire Transfer Instructions: Bank: Commerce Bank; Bank ABA Number: 026013673; Account No Exemption (1) or to such other address as may be substituted therefor by the Port Authority from time to time, upon written notice given pursuant to Section 11 hereof.

Section 13. <u>Non-liability of Individuals</u>

No Commissioner, director, officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement or because of any breach thereof, or because of its or their execution or attempted execution.

Section 14. <u>Force Majeure</u>

(a) Neither the Authority nor the Airline shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) which is beyond the control of the relevant party or which could not be prevented or remedied by

reasonable effort and at reasonable expense; provided, that this provision shall not apply to failures by the Airline to pay flight fees or other charges or to make other money payments that are due and payable pursuant to this Agreement; and, provided, further, that this provision shall not prevent either party from exercising its right of termination under Sections 5 and 36.

(b) No abatement, diminution or reduction of the fees or other charges payable by the Airline shall be claimed by or allowed to the Airline for any inconvenience, interruption, cessation or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental, or lawful authority other than the Port Authority whatsoever, or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom or by any other causes or cause beyond the control of the Port Authority, nor shall this Agreement be affected by any such causes.

Section 15. Common Use of the Airport

The Port Authority hereby grants to the Airline the right to use at any time during the term of this Agreement, in common with others whom the Port Authority may authorize so to do, the Public Aircraft Facilities for or in connection with aircraft operated by the Airline, for the purposes for which such facilities are provided, and all common and public roads, roadways and other means of access as they may from time to time be provided by the Port Authority to or from the Public Aircraft Facilities and all other existing common and public space, facilities and conveniences and such additional common and public space, facilities and conveniences as may from time to time be provided by the Port Authority at the Airport, at the time and times and for the purpose and purposes for which they are provided and subject to the terms and conditions (including the payment of fees or other charges, as herein in this Agreement provided) upon which they are made available therewith.

Section 16. Use of Public Aircraft Facilities

(a) The Public Aircraft Facilities shall be available for use by the Airline, in common with other Aircraft Operators authorized by the Port Authority to use such facilities, for and in connection with Aircraft permitted to use the Airport pursuant to Port Authority Rules and Regulations.

(b) The Public Aircraft Facilities may, in the sole discretion of the Port Authority, also be made available for use by Aircraft other than that permitted to use the Airport as aforesaid provided such Aircraft, in the Port Authority's sole judgment, will not cause undue wear and tear to and may safely use the Public Aircraft Facilities.

(c) Notwithstanding any of the foregoing, the use of the Public Aircraft Facilities shall be subject to the Rules and Regulations of the Port Authority published in the "Air

Terminal Rules and Regulations" issued or dated March 2002, and such further reasonable rules and regulations as the Port Authority may from time to time promulgate after the Effective Date pursuant to Section 27 of the Agreement, including without limitation thereto, such further rules and regulations as impose other or different restrictions as to the types, weights or characteristics of Aircraft which may use the same, provided, however, that such further rules and regulations shall not violate applicable law or this Agreement, or change the costs recovery methodology, accounting principles and formula for the calculation of flight fees established under this Agreement including Exhibit 1, set forth herein for the calculation of flight fees.

(d) The Port Authority covenants that it will operate the Airport in accordance with the requirements of 14 CFR Part 139 and all other laws applicable to the Port Authority in its operation of the Public Aircraft Facilities at the Airport.

(e) Nothing in this Section shall prevent the Airline from exercising any right it may have to challenge any rules and regulations in the appropriate forum, consistent, if applicable, with the provisions of Section 32 hereof.

Section 17. Affirmative Action

The Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Airline assures that it will require that its covered suborganizations provide assurances to the Airline that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Section 18. Non-Discrimination

(a) Without limiting the generality of any of the provisions of this Agreement, the Airline, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land (1) that no person on the grounds of race, color, creed, national origin or sex shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of any space and the exercise of any rights or privileges under this Agreement, (2) that in the construction of any improvements on, over, or under any space under this Agreement, and the furnishing of services thereon, no person on the grounds of race, color, creed, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Airline shall use any space and the exercise of any rights or privileges under this Agreement in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21,

Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and any other present or future laws, rules, regulations, orders or directions of the United States of America with respect thereto which from time to time may be applicable to the Airline's operations at the Airport whether by reason of agreement between the Port Authority and the United States Government or otherwise.

(b) The Airline shall include the provisions of paragraph (a) of this Section in every agreement or concession it may make pursuant to which any person or persons, other than the Airline, operates any facility at the Airport providing services to the public and shall also include therein a provision granting the Port Authority a right to take such action as the United States may direct to enforce such covenant.

(c) The Airline's non-compliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Airline of any of the above non-discrimination provisions the Port Authority may take any appropriate action to enforce compliance; or in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement with the same force and effect as a termination under the Section of this Agreement providing for termination for default by the Airline in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law; and as to any or all of the foregoing, the Port Authority may take such action as the United States may direct.

(d) The Airline shall indemnify and hold harmless the Port Authority from any claims and demands of third persons including the United States of America resulting from the Airline's non-compliance with any of the provisions of this Section and the Airline shall reimburse the Port Authority for any loss or expense incurred by reason of such non-compliance.

(e) Nothing contained in this Section shall grant or shall be deemed to grant to the Airline the right to transfer or assign this Agreement, to make any agreement or concession of the type mentioned in paragraph (b) hereof, or any right to perform any construction at the Airport.

Section 19. <u>The Airline's On-going Affirmative Action Equal Opportunity Commitment</u>

(a) The Airline shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that minority group persons and women are afforded equal employment opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of

compensation, and selections for training or retraining, including apprenticeship and on-the-job training.

(b) In addition to and without limiting the foregoing, and without limiting any other provisions hereof, it is hereby agreed that the Airline in connection with its continuing operations as provided in this Agreement, and in connection with every award or agreement for concessions or consumer services at the Airport, shall throughout the term of this Agreement commit itself to and use good faith efforts to implement an extensive program of Affirmative Action, including specific affirmative action steps to be taken by the Airline, to ensure maximum opportunities for employment and contracting by minorities and women, and by Minority Business Enterprises and Women-owned Business Enterprises. In meeting the said commitment the Airline agrees to submit its said extensive Affirmative Action program, including the specific affirmative action steps to be taken by the Airline to meet its aforesaid commitment, within six (6) months after the execution of this Agreement by the Airline and the delivery thereof to the Port Authority, to the Port Authority for its review and approval. The Airline shall incorporate in its said program such revisions and changes which the Port Authority initially or from time to time may reasonably require. The Airline throughout the term of this Agreement shall document its efforts in implementing the said program, shall keep the Port Authority fully advised of the Airline's progress in implementing the said program and shall supply to the Port Authority such information, data and documentation with respect thereto as the Port Authority may from time to time and at any time request, including but not limited to, annual reports.

(c) (1) "Minority" as used herein shall have the following meaning:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) "Minority Business Enterprise" (MBE) as used herein shall have the following meaning: any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing.

(3) "Women-owned Business Enterprise" (WBE) as used herein shall have the following meaning: any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business, at least fifty-one percent of the stock of which is owned by women and such ownership is real, substantial and continuing.

(4) Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(i) Dividing the work to be subcontracted into smaller portions where feasible.

(ii) Actively and affirmatively soliciting bids for subcontracts from MBEs and WBEs, including circulation of solicitations to minority and female contractor associations. The Airline shall maintain records detailing the efforts made to provide for meaningful MBE and WBE participation as called for in paragraph (b) above, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision.

(iii) Making plans and specifications for prospective work available to MBEs and WBEs in sufficient time for review.

(iv) Utilizing the list of eligible MBEs and WBEs maintained by the Port Authority or seeking minorities and women from other sources for the purpose of soliciting bids for subcontractors.

(v) Encouraging the formation of joint ventures, partnerships or other similar arrangements among subcontractors, where appropriate, to insure that the Airline will meet its obligations hereunder.

(vi) Insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis.

(vii) Submitting quarterly reports to the Port Authority (Business and Job Opportunity Unit, or such unit as its name may be changed from time to time by the Port Authority) detailing its compliance with the provisions hereof.

(d) The Airline's non-compliance with the provisions of this Section shall constitute a material breach of this Agreement. In the event of the breach by the Airline of any of the above provisions the Port Authority may take any appropriate action to enforce compliance; or in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate this Agreement with the same force and effect as a termination under the Section 5 of this Agreement providing for termination for default by the Airline in the performance or observance of any other term or provision of this Agreement, or may pursue such other remedies as may be provided by law.

(e) In the implementation of this Section, the Port Authority may consider compliance by the Airline with the provisions of any federal, state or local law concerning affirmative action-equal employment opportunity which are at least equal to the requirements of this Section, as effectuating the provisions of this Section. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority may waive the applicability of the provisions of this Section to the extent that such duplication or conflict exists.

(f) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

(g) Nothing in this Section shall grant or be deemed to grant to the Airline the right to make any agreement or award for concessions or consumer services at the Airport.

Section 20. <u>No Interest in Real Property</u>

Nothing contained in this Agreement shall grant or be construed to grant to the Airline any interest or estate in real property, and a landlord-tenant relationship shall not be or be deemed to be created hereunder.

Section 21. <u>Removal of Property</u>

The Airline shall have the right at any time during the term of this Agreement to remove its equipment and other personal property from the Airport. If the Airline shall fail to remove its property on or before the termination of the Agreement, the Port Authority may remove such property to a public warehouse for deposit or retain the same in its own possession, and sell the same at public auction, the proceeds of which shall be applied first to the expense of removal, storage and sale, second to any sums owed by the Airline to the Port Authority, with any balance remaining to be paid to the Airline; if the expenses of such removal, storage and sale shall exceed the proceeds of sale, the Airline shall pay such excess to the Port Authority upon written demand.

Section 22. <u>Additional Fees and Charges</u>

If the Port Authority is required or elects to pay any sum or sums or incurs any obligations or expense by reason of the failure, neglect or refusal of the Airline to perform or fulfill any one or more of the conditions, promises or agreements contained in this Agreement or as a result of any act or omission of the Airline contrary to the said conditions, promises and agreements, the Airline agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any installment of fees thereafter due hereunder, or shall be payable upon demand.

Section 23. General Rights and Privileges

In all cases where provision is made in this Agreement for the use and enjoyment by the Airline of any space or facilities at the Airport, such use and enjoyment is intended to be in connection with the operation of its civil transportation system by Aircraft for the carriage of persons, property, cargo and mail on scheduled or non-scheduled flights, whether as a common carrier, a contract or private carrier, or otherwise, subject always to and in accordance with the purposes, terms, conditions, restrictions and limitations provided with respect to such spaces and facilities in this Agreement. Without limiting any right of termination hereunder, the Port Authority agrees that so long as the Airline performs its obligations as provided for in this Agreement it shall be permitted to use and enjoy the space and facilities of the Airport as provided for in this Agreement.

Section 24. Indemnity and Liability Insurance

(a) (1) The Airline shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal costs and expenses incurred in connection with the defense of) all claims and demands of third persons, including but not limited to claims and demands for death or personal injuries or for property damages, arising out of any default of the Airline in performing or observing any term or provision of this Agreement, or out of the operations of the Airline hereunder, or out of the use by the Airline of the Public Aircraft Facilities, or out of any of the acts or omissions of the Airline, its officers, directors, employees, and agents arising out of or in connection with the activities permitted hereunder, including (to the extent consistent with the foregoing) claims and demands of the City of New York and the EDC against the Port Authority for indemnification arising by operation of law or through agreement of the Port Authority with the said City of New York; provided that this paragraph shall not apply to claims and demands arising from the sole negligence or willful misconduct of the Port Authority. The Port Authority shall give to the Airline prompt written notice of all such claims and demands, and actions received by it, and the Airline shall have the right to investigate, compromise and defend the same to the extent of its own interests.

(2) Consistent with Section 3.1 of this Agreement, the Airline assumes all responsibility for each of its Non-signatory Qualified Affiliate's affiliated operations, including but not limited to the payment of Flight Fees and other charges to the Port Authority. Consistent with Section 3.1 of this Agreement, the Airline shall indemnify and hold harmless the Port Authority, its Commissioners, officers, employees and representatives, from and against (and shall reimburse the Port Authority for the Port Authority's costs and expenses including legal costs and expenses incurred in connection with the defense of) all claims and demands of third persons including but not limited to claims and demands for death or personal injuries, or for property damages, arising out of any non-compliance with obligations and duties of the Non-signatory Qualified Affiliate for which the Airline is responsible under this Agreement, or out of

the operations of the Non-signatory Qualified Affiliate at the Public Aircraft Facilities, or out of the use by the Non-signatory Qualified Affiliate of the Public Aircraft Facilities or Common Areas , or out of any of the acts or omissions of the Non-signatory Qualified Affiliate, its officers, directors, employees, and agents arising out of or in connection with the activities permitted hereunder, including (to the extent consistent with the foregoing) claims and demands of the City of New York and the EDC against the Port Authority for indemnification arising by operation of law or through agreement of the Port Authority with the said City of New York; provided that this paragraph shall not apply to claims and demands arising from the sole negligence or willful misconduct of the Port Authority. The Port Authority shall give to the Airline prompt written notice of all such claims and demands, and actions received by it, and the Airline shall have the right to investigate, compromise and defend the same to the extent of its own interests.

(b) Without limiting any other term or provision hereof, the Airline agrees to indemnify and hold harmless the Port Authority, its Commissioners, officers, employees, agents and representatives of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Airline under or in any wise connected with this Agreement.

(c) Without limiting any other term or provision hereof, the Airline shall indemnify the Port Authority and hold it harmless against all claims and demands of third Persons for damage to any aircraft cargo or baggage or any other property handled or delivered by or on behalf of the Airline pursuant to the permission granted by this Agreement.

(d) If so directed, the Airline shall at its own expense defend any suit based upon any such claim or demand set forth in paragraphs (a), (b) and (c) above (even if such claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(e) The indemnity obligations of the Airline under this Section shall survive the expiration or termination of this Agreement.

(f) The Airline in its own name as insured and with the Port Authority included as an additional insured including but not limited to premises-operations and completed operations shall maintain and pay the premiums on the following described policy of Commercial General Liability Insurance, including premises-operations, products-completed operations, liquor liability and covering bodily injury, including death, and property damage liability, and broadened to include or equivalent separate policies covering aircraft liability, none of the foregoing to contain care, custody or control exclusions, and all of the foregoing to provide for coverage in the minimum limit set forth below (which limits may be changed in the future by the

Port Authority in its reasonable discretion, and after reasonable notice to the Airline), and Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles and covering bodily injury liability, including death, and property damage liability, and providing for coverage in the limit set forth below. All the aforesaid policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the Airline thereunder with respect to any claim or action against the Airline by a third person shall pertain and apply with like effect with respect to any claim or action against the Airline by the Port Authority and shall also provide or contain an endorsement providing that the protections afforded the Port Authority thereunder and with respect to any claim or action against the Port Authority by the Airline shall be the same as the protections afforded the Airline thereunder with respect to any claim or action against the Airline by a third person as if the Port Authority were the named insured thereunder, but such endorsement shall not limit, vary, change or affect the protections afforded the Port Authority thereunder as an additional insured. The said policy or policies of insurance shall also provide or contain a contractual liability endorsement covering the obligations assumed by the Airline under this Agreement.

	Minimum Limit
Commercial General Liability Combined single limit for death, bodily injury and property damage liability for each occurrence:	$300,000,000
Commercial Automobile Liability Combined single limit for death, bodily injury and property damage liability for each occurrence (for vehicles using Public Aircraft Facilities):	$ 25,000,000
Commercial Automobile Liability Combined single limit for death, bodily injury and property damage liability for each occurrence (for vehicles not using Public Aircraft Facilities):	$ 5,000,000
Aircraft Liability:	$300,000,000

Without limiting the provisions hereof, in the event the Airline maintains the foregoing insurance in limits greater than aforesaid, the Port Authority shall be included therein as an additional insured to the full extent of all such insurance in accordance with all terms and provisions hereof.

(g) As to any insurance required by the provisions of this Agreement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, shall be delivered to the Port Authority upon execution and delivery of this Agreement by the Airline to the Port Authority. Each policy, certificate or binder delivered shall bear the

endorsement or be accompanied by evidence of payment of the premium thereon. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate. Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days' advance written notice thereof to the Port Authority. Each such copy or certificate required by this Paragraph shall contain a provision that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. Any renewal certificate or binder shall be delivered to the Port Authority by the effective date of the coverage. The aforesaid insurance shall be written by a company or companies approved by the Port Authority, the Port Authority agreeing not to withhold its approval unreasonably. If at any time any of the insurance policies shall be or become unsatisfactory to the Port Authority as to form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the Port Authority in its reasonable discretion, the Airline shall promptly obtain a new and satisfactory policy in replacement. If the Port Authority at any time so requests, a certified copy of each of the policies shall be delivered to the Port Authority.

(h) (1) The Port Authority shall indemnify and hold harmless the Airline, its officers, directors, employees and representatives, from and against (and shall reimburse the Airline for the Airline's costs and expenses including legal costs and expenses incurred in connection with the defense of) all claims and demands of third persons, including but not limited to claims and demands for death or personal injuries or for property damages, arising out of the sole negligence or willful misconduct of the Port Authority, its Commissioners, officers, employees and agents, in performing or observing any term or provision of this Agreement. The Airline shall give to the Port Authority prompt written notice of all such claims and demands, and actions received by it, and the Port Authority shall have the right to investigate, compromise and defend the same to the extent of its own interests.

(2) The indemnity obligations of the Port Authority under this Section shall survive the expiration or termination of this Agreement.

(i) Nothing in this Section is intended to create an indemnity or other obligation of the Airline to the New York City Industrial Development Agency.

Section 25. <u>Late Charges</u>

If the Airline should fail to pay any amount required under this Agreement when due to the Port Authority, including without limitation any payment of Flight Fees, Interim Flight Fees or Final Flight Fees or other fees or charges, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period

(herein below described) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to Exemption (2.a.) of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of amounts found to have been owing to the Port Authority as the result of Port Authority audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority. No acceptance by the Port Authority of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the Port Authority under this Agreement, including without limitation the Port Authority's rights set forth in the Section 5 of this Agreement or (ii) any obligations of the Airline under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 26. Airline Representative Organizations

The Airline hereby designates the following listed organizations as the airlines' principal representatives to facilitate communication with the Port Authority on matters of common or general airline interest at the Airport, as follows:

(a) The Kennedy Airline Airport Affairs Committees (JFK AAAC) which is comprised of the principal representatives for airport business matters of common or general airline interest, of airlines operating at the Airport, and including subcommittees as exist currently and may be formed in the future. Current subcommittees are the JFK Airline Finance Committee (for airport financial matters, including rates and charges), and JFK Airline Technical Committee (for airport technical and planning matters).

(b) The Kennedy Airport Airline Management Council (KAAMCO) for airport operational matters of common or general airline interest.

(c) The New York Airlines Liaison Office (NYALO) for all issues of general applicability or common or general airline interest at or involving the Airport, or any successor office or representative as the JFK AAAC may designate in the future.

The Airline and the other airlines operating at the Airport shall be solely responsible and liable for any and all costs, expenses, fees and liabilities of or associated with said organizations. The Port Authority shall have no responsibility or liability whatsoever for any costs, expenses or fees associated with any of the said organizations, or otherwise.

Section 27. Rules and Regulations

(a) The Airline covenants and agrees to observe and obey (and to require its Non-signatory Qualified Affiliates, officers, employees, guests, invitees, agents and contractors to observe and obey) the existing Rules and Regulations of the Port Authority as published in the "Air Terminal Rules and Regulations" issued or dated March 2002, and such reasonable future Rules and Regulations of the Port Authority (including amendments and supplements thereto) for the government of the conduct and operations of the Airline and others on the Airport as may from time to time during the term of this Agreement be promulgated by the Port Authority for reasons of safety, health, noise, sanitation, or good order; provided, however, that such further rules and regulations shall not violate applicable law or this Agreement or change the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1, set forth herein for the calculation of Flight Fees. The obligation of the Airline to require such observance and obedience on the part of its guests, invitees, agents and contractors, shall obtain only while such persons are at the Airport. The Port Authority agrees that except in cases of emergency, it will make a good faith effort to consult with the Airline prior to the adoption of any future rule or regulation that it knows will affect the Airline's operations at the Airport, and further agrees that except in case of emergency it will give notice to the Airline of every such future rule and regulation adopted by it at least thirty (30) days before the Airline shall be required to comply therewith.

(b) The use by the Airline and its Non-signatory Qualified Affiliates, officers, employees, guests, invitees, agents and contractors, of the Public Aircraft Facilities and any and all other portions of the Airport which it may be entitled to use under this Agreement shall be subject to the Rules and Regulations of the Port Authority published in the "Air Terminal Rules and Regulations" issued or dated March 2002, and such reasonable future rules and regulations (including amendments and supplements to the existing Rules and Regulations) as the Port Authority may from time to time promulgate in the public interest and in the interest of health, safety, noise, sanitation, good order and the economic and efficient operation of the Airport, including but not limited to, the number and type of aircraft which at any particular time may use the Public Aircraft Facilities and the time or times when such aircraft may use the Public Aircraft Facilities; provided, however, that such further rules and regulations shall not violate applicable law or this Agreement or change the costs recovery methodology, accounting principles and formula for the calculation of flight fees established under this Agreement including Exhibit 1, set forth herein for the calculation of flight fees. In the event the Port Authority promulgates rules and regulations pursuant to this paragraph (b), the Port Authority may devise and implement reasonable procedures including, but not limited to, allocations among Aircraft Operators at the Airport.

(c) If a copy of the Rules and Regulations is not attached, then the Port Authority will notify the Airline thereof either by delivery of a copy, or by making a copy available at the office of the Secretary of the Port Authority.

(d) Nothing in this Section shall prevent the Airline from exercising any right it may have to challenge any rules and regulations in the appropriate forum, consistent, if applicable, with the provisions of Section 32 hereof.

Section 28. Compliance with Governmental Requirements

(a) Consistent with the terms and provisions of this Agreement, the Airline shall promptly comply with, observe and execute all Governmental Authorities' laws and ordinances and governmental rules, regulations, orders, requirements and similar items, including without limitation, all Environmental Requirements, now or at any time during the term of this Agreement which as a matter of law are applicable to and which affect the operations of the Airline under this Agreement.

(b) The Airline shall procure from all Governmental Authorities having jurisdiction over the operations of the Airline hereunder all licenses, certificates, permits or other authorization which may be necessary for the conduct of such operations. "Governmental Authority" shall not be construed as intending to include The Port Authority of New York and New Jersey.

(c) The obligation of the Airline to comply with governmental requirements is provided herein for the purpose of assuring proper safeguards for the protection of persons and property. Such provision is not to be construed as a submission by the Port Authority to the application to itself of such requirements or any of them.

(d) Since the Port Authority has agreed in the Basic Lease to conform to the enactments, ordinances, resolutions and regulations of the City of New York and its various departments, boards and bureaus in regard to the construction and maintenance of buildings and structures and in regard to health and fire protection which would be applicable if the Port Authority were a private corporation to the extent that the Port Authority finds it practicable so to do, the Airline shall comply with all such enactments, ordinances, resolutions and regulations which would be applicable to its operations hereunder if the Port Authority were a private corporation, except in cases where the Port Authority either notifies the Airline that it need not comply with or directs it not to comply with any such enactments, ordinances, resolutions or regulations which are applicable only because of the Port Authority's agreement in the Basic Lease. The Airline shall, for the Port Authority's information, deliver to the Port Authority promptly after receipt of any notice, warning, summons, or other legal process for the enforcement of any such enactment, ordinance, resolution or regulation a true copy of the same. Any direction by the Port Authority to the Airline not to comply with any such enactment, ordinance, resolution or regulation shall be given only pursuant to a resolution duly adopted by the Board of Commissioners of the Port Authority or by an authorized committee of its Board and if any such direction is given by the Port Authority to the Airline, the Port Authority, to the extent that it may lawfully do so, shall indemnify and hold the Airline harmless from and against all claims, actions, damages, liabilities, fines, penalties, costs and expenses suffered or incurred

by the Airline as a result of non-compliance with such enactment, ordinance, resolution or regulation.

(e) The Airline shall have such time within which to comply with the aforesaid laws, ordinances, rules and regulations as the authorities enforcing the same shall allow.

(f) Without limiting the generality of the foregoing or any other term or provision of this Agreement, the Airline shall not dispose of, release or discharge nor permit anyone within the Airline's control to dispose of, release or discharge any Hazardous Substance on the PAF during the term of this Agreement or in connection with or arising out of the Airline's operations under this Agreement (any Hazardous Substance disposed of, released or discharged by the Airline or so permitted by the Airline to be disposed, released, or discharged by anyone within the Airline's control on the PAF during the term of this Agreement or in connection with or arising out of the Airline's operations under this Agreement being hereinafter called a "Released Hazardous Substance"), except, however, that the Airline may release or discharge de-icing fluids or other materials or substances utilized by the Airline in the ordinary course of business so long as such release or discharge is not a violation of any Environmental Requirement, the Basic Lease, or the Port Authority Rules and Regulations (any de-icing fluids and other materials or substances that the Airline utilizes in the ordinary course of business which are released or discharged without violation of any Environmental Requirement, the Basic Lease, or the Port Authority Rules and Regulations being hereinafter called a "Permitted Substance"). The Airline shall (i) remove and remediate any Released Hazardous Substance which is not a Permitted Substance unless otherwise agreed to by the parties and (ii) remediate and remove any Permitted Substance that may be required by any Environmental Requirement, any Port Authority Rule and Regulation or the Basic Lease or which remediation or removal is necessary to prevent or cure a breach of the Basic Lease, or to prevent or remove any related encumbrance of any nature on the Airport, or any portion thereof, such encumbrances to include without limitation the imposition of any engineering or institutional controls or restrictions, limitations or conditions on the use and occupancy of the Airport, the operations and activities that may be conducted thereon or upon any transfer of the Airport.

(g) In the event that any Environmental Requirement provides for more that one standard, the standards that the Airline shall comply with under this Agreement with respect to that Environmental Requirement shall be those standards that when complied with by the Airline would not be or become a breach or default under the Basic Lease, and those standards that would not result in or permit any encumbrance being placed on or with respect to the Airport or any portion thereof, such as but not be limited to, the imposition of engineering or institutional controls or restrictions, limitations or conditions on the use and occupancy of the Airport, the operations and activities that may be conducted thereon or upon any transfer of the Airport.

(h) The Port Authority has advised the Airline that it is the intention of the Port Authority with respect to the application of pollution prevention programs, "best management practices" and other voluntary programs and agreements adopted or made by the

Port Authority with any Governmental Authorities constituting Environmental Requirements that the Port Authority will treat the Airline in a similar nature as similarly situated persons at the Airport.

(i) Attached hereto as Exhibit 7 is an excerpt of draft definitions and provisions set forth in the current version of the proposed amendment to the Basic Lease. The Port Authority and the Airline agree that references in this Section 28 to the Basic Lease shall mean such definitions and provisions, excerpted in Exhibit 7, and that such definitions and provisions shall be applicable to the Airline for purposes of this Agreement, except that nothing in Exhibit 7 is intended by the parties to increase the Airline's liability under Section 24 hereof.

(j) The obligations of the Airline under this Section shall survive the expiration or termination of this Agreement.

Section 29. <u>Expiration and Replacement of Old General Operating Agreements</u>

(a) It is recognized that the Old General Airport Agreements and the terms and provisions thereof (except for the terms and provisions thereof covering the aviation fuel storage and distribution system) expire on September 30, 2004 in accordance with the Second Standstill Agreement.

(b) It is further recognized that the JFK Flight Fees Agreements (including this Agreement) shall formally replace the Old General Airport Agreements as of the Effective Date hereof with respect to the formula, accounting principles and costs recovery methodology for the calculation of flight fees and the other matters covered hereby.

(c) It is recognized that some Unit Terminal Leases contain provisions referencing certain terms of Title XVII of the Old General Airport Agreements. Without limiting any of the foregoing subparagraphs (a) and (b), it is acknowledged that, notwithstanding term or provision in any such Unit Terminal Lease or other lease or agreement at the Airport, the phrases "Associated and Affiliated Companies", "Affiliated Company" and "Associated Company" as set forth and defined in Section 17.01 of Title XVII of the Old General Airport Agreements entitled "Associated and Affiliated Companies" shall no longer pertain or apply to, or be incorporated into, any Unit Terminal Lease or any other lease or agreement at the Airport from and after the Effective Date of the JFK Flight Fees Agreements (including this Agreement) and the terms and provisions and section(s) in any Unit Terminal Lease or any other lease or agreement at the Airport covering "Associated and Affiliated Companies", or "Affiliated Company" or "Associated Company" with reference to said Section 17.01 of Title XVII of the Old General Airport Agreements shall have no further force or effect and shall no longer apply and obtain from and after said Effective Date.

Section 30. Controlling Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law thereof.

Section 31. Effectiveness of the Agreement/Agreements by Certain Percentages of Signatory Airlines

(a) Signatory Airline: eligibility criteria:

This Agreement shall become binding and in force and effect as of the Effective Date only after the execution and delivery of (i) JFK Flight Fees Agreements (including this Agreement) by the Port Authority to the Signatory Airlines (including the Airline) meeting the requirements set forth in paragraph (b) below and (ii) the LGA Flight Fees Agreements to the LGA Signatory Airlines (including the Airline, if applicable) meeting the requirements set forth in Section 31 of the LGA Flight Fees Agreements. An airline which is a party to this Agreement and meets the aforesaid criteria shall be referred to as a Signatory Airline. Upon becoming a Signatory Airline, consistent with Section 3.3(d)(2), the Airline shall promptly pay any invoices for Flight Fees received from the Port Authority retroactive to January 1, 2004. The obligation to pay such retroactive amounts shall apply to the Airline regardless of when during the term of this Agreement the Airline applies for and/or obtains Signatory Airline status. Within thirty (30) days after delivery to the Port Authority of the last of the fully and properly executed LGA Flight Fees Agreements or JFK Flight Fees Agreements that would cause this Agreement to become effective pursuant to this Section, the Port Authority shall execute this Agreement and return it to the Airline. However, in the event the Port Authority received documentation from or on behalf of the Airline that is incomplete and/or defective, the Port Authority shall notify the Airline of same (stating the purported reason(s) for such incompleteness or defectiveness) within thirty (30 days after its receipt and, thereafter, upon receipt by the Port Authority of the fully and properly executed Agreement (including delivery to the Port Authority of the completed and cured documents, as the case may be), the Port Authority shall execute this Agreement and return it to the Airline.

(b) Effectiveness of the JFK Flight Fees Agreements (including this Agreement); required number of Signatory Airlines:

This Agreement shall become binding and in force and effect as of the Effective Date only after the execution and delivery of JFK Flight Fees Agreements (including this Agreement) to the Port Authority by the Signatory Airlines (including the Airline) which, in the aggregate, meet all of the following requirements and the execution and delivery of the same by the Port Authority to said Signatory Airlines (including the Airline):

(i) Signatory Airlines (whether or not cargo, domestic or foreign carriers) which represent collectively at least 50.1% of the Maximum Weight for Take-off of all Aircraft operated by Scheduled Aircraft Operators at the Airport in 2003. In determining

such percentage, the Maximum Weight for Take-off at the Airport during the stated time period of Aircraft of Qualified Affiliates of a Signatory Airline shall be included in the foregoing computation, but only during such time period that the entity constitutes such a Qualified Affiliate; and

(ii) Signatory Airlines that include at least five (5) of the ten (10) largest air passenger carriers, at least three (3) of the ten largest foreign air passenger carriers and at least two (2) of the ten (10) largest cargo carriers (i.e., F.A.R. Part 21 or Part 29 carriers, respectively) in terms of Maximum Weight for Take-off of all Aircraft operated by Scheduled Aircraft Operators at the Airport in 2003. In determining such threshold under this clause (ii) during the stated time period, Aircraft of Qualified Affiliates of the Signatory Airline operating at the Airport during the stated time period shall be included, but only during such time period that the entity constitutes a Qualified Affiliate.

(c) (1) Effectiveness of amendments or supplements to the JFK Flight Fees Agreements (including this Agreement); required number of Signatory Airlines:

Amendments and/or supplements to JFK Flight Fees Agreements (including this Agreement) shall be and be deemed to be effective and binding on all Signatory Airlines (including the Airline) whenever such amendments and/or supplements are entered into with the Port Authority and Signatory Airlines that meet the requirements set forth in clauses (i) and (ii) of above paragraph (b) of this Section 31, except that the weights applicable for determining (i) and (ii) shall be for the calendar year prior to the effective date of such amendment, and except that any amendment or supplement that would result in a change to the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1, set forth herein for the calculation of Flight Fees shall require approval by Signatory Airlines (whether or not cargo, domestic or foreign carriers) that represent (x) at least eighty percent (80%) of the Maximum Weight for Take-off of all Aircraft operated by Signatory Airlines and Non-signatory Qualified Affiliates at the Airport and (y) in terms of Maximum Weight for Take-off of all Aircraft operated by Signatory Airlines and Non-signatory Qualified Affiliates at the Airport for the calendar year prior to the effective date of the amendment or supplement, at least eight (8) of the ten (10) largest passenger carriers, at least four (4) of the ten (10) largest foreign air passenger carriers, and at least two (2) of the ten (10) largest cargo carriers. Accordingly, it shall not be necessary for the Port Authority to obtain signed agreements or other writings from all Signatory Airlines (including the Airline) to effect such amendment and/or supplement once the requirements set forth herein have been met. Notwithstanding this Section, or any other provision of this Agreement, no amendment to extend the term of this Agreement shall be effective and binding until and unless approved by every Signatory Airline.

(2) Notwithstanding the foregoing, a change to the Flight Fee Rate methodology which meets all the following criteria may be made by mutual consent of the Port Authority and the Signatory Airlines:

(i) the change is approved by the Port Authority and Signatory Airlines accounting for at least sixty percent (60%) of the Maximum Weight for Take-off of all Aircraft operated by Signatory Airlines and Non-signatory Qualified Affiliates at the Airport in the calendar year preceding the change; and

(ii) the change does not exceed one percent (1%) of the PAF Requirement of the prior year; and

(iii) the change does not cause the cumulative total of all changes made pursuant to this subsection in any three-year period beginning in 2005 (e.g. 2005 through 2007, 2008 through 2010, etc.) to exceed one percent (1%) of the PAF Requirement of the first year in such three-year period.

Any such change may only be implemented as part of the establishment of the Initial Flight Fee or Mid-Year Flight Fee pursuant to Section 3 hereof.

(d) It is understood and agreed that calendar 2003 shall be the first applicable calendar year to be considered in connection with determining all criteria and requirements described in this Section 31.

(e) If and when the JFK Flight Fees Agreements (including this Agreement) become effective in accordance with subsection (b) of this Section, the Port Authority shall so advise those airlines which are Signatory Airlines as of the effective date in writing. Similarly, if and when a supplement or amendment to the JFK Flight Fees Agreements (including this Agreement) become effective in accordance with subsection (c) of this Section, the Port Authority shall so advise the Signatory Airlines in writing.

Section 32. <u>Survival of Flight Fee Methodology</u>

(a) Once this Agreement becomes effective pursuant to Section 31(b), the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 shall remain in effect at the Airport until December 31, 2023, notwithstanding the exercise of termination rights by Airline, Qualified Affiliate, or the Port Authority. The parties acknowledge that until December 31, 2023, the costs recovery methodology, accounting principles and formula for the calculation of flight fees established under this Agreement including Exhibit 1 are established pursuant to an agreement within the meaning of 49 U.S.C. 47129 and 14 CFR §§302.601 and 302.602 (including any successor statute or regulation).

(b) Whereas the Port Authority and the Airline have reached an agreement as to the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1, considering the unique history and circumstances of the Airport, and whereas nothing in this Agreement shall be considered an admission by the Airline as to the reasonableness of the costs recovery methodology, accounting

principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 or any component thereof, or the Schedule of Charges, the Airline agrees that it will not challenge in any judicial or administrative proceeding or forum and the Port Authority agrees that it will not assert in any judicial or administrative proceeding or forum or promote to other airports as a tool for other airports, the reasonableness of the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 within the meaning of, or the consistency with, any applicable provisions of law and regulation, including, but not limited to, 49 U.S.C. 47129 and 14 CFR Sections 302.601 and 302.602 (as well as successor statutes and regulations) and the Federal Policy Regarding Airport Rates and Charges at 61 FR 31994 et seq. (including successor policy). Additionally, the Airline agrees that it will not challenge, in any judicial or administrative proceeding or forum, and the Port Authority agrees that it will not assert in any judicial or administrative proceeding or forum or promote to other airports as a tool for other airports, the reasonableness of the Schedule of Charges applicable to any Airline which becomes a non-Signatory Airline, to the extent that such Schedule of Charges is in accordance with the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1, or the consistency of the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 on which such Schedule of Charges is based, with any applicable provisions of law and regulation, including, but not limited to, 49 U.S.C. 47129 and 14 CFR Sections 302.601 and 302.602 (as well as successor statutes and regulations) and the Federal Policy Regarding Airport Rates and Charges at 61 FR 31994 et seq.(including successor policy).

(c) The preceding subsection shall not apply to any amendment to the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 if Airline does not agree to said amendment. In the event that any Airline challenges such amendment, nothing in this Section shall be construed as prohibiting the Port Authority, and any other airline that is in agreement with such amendment, from defending against said challenge to the amendment. Neither shall anything in this Section be construed as prohibiting the Port Authority from defending against a challenge by any airline, including a challenge by a non-signatory airline to the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 or to the Schedule of Charges, in accordance with the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1, in any judicial or administrative proceeding or forum, nor shall anything in this Section be construed as affecting the ability of the Airline and the Port Authority to comply with law, subpoena, depositions or any process of a judicial, administrative or other forum or satisfy their obligations relating to public disclosure, including without limitation, disclosure under freedom of information policies and procedures.

(d) Nothing in this Agreement shall be construed as affecting any rights and remedies that the Airline may have at law or in equity in any court or other forum to challenge or contest any act or omission (including, without limitation, any act or omission relating to the setting of any Flight Fee hereunder or the amount or element of individual cost components of the Flight

Fee hereunder) by the Port Authority as being inconsistent with the terms and conditions of this Agreement, including, but not limited to Section 3.4 of this Agreement, or in breach of this Agreement, nor shall anything in this Agreement affect any rights and remedies that the Port Authority may have at law or in equity in any court or other forum to challenge or contest any act or omission (including, without limitation, any act or omission relating to the failure to pay any Flight Fee hereunder) of Airline as being inconsistent with the terms and conditions of this Agreement, or in breach of this Agreement. Neither shall anything in this Agreement prohibit the Airlines or the Port Authority from presenting defenses in actions covered by this subsection.

(e) For the purposes of this Agreement, "the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1" shall refer only to the cost recovery methodology, accounting principles and formulas applicable to the Initial Flight Fee Rate, Interim Flight Fee Rate, Mid-Year Flight Fee Rate, Final Flight Fee Rate or Flight Fees or Flight Fee Rates as set forth in this Agreement and the Exhibits hereto.

(f) The provisions of this Section shall expressly survive any termination of this Agreement in any manner whatsoever, except termination by the Airline as a result of a breach of Sections 7(c), 9(b) or 9(c) hereof, or a termination pursuant to Section 7(b) hereof in which case this Section shall expressly survive with respect to any disputes regarding the costs recovery methodology, accounting principles and formula for the calculation of Flight Fees established under this Agreement including Exhibit 1 which have accrued before, and are unrelated to, the events which have triggered a breach of Sections 7(c), 9(b) or 9(c), or a termination pursuant to 7(b).

Section 33. <u>Section Headings and Sub-headings</u>

The section headings and sub-headings contained, in this Agreement are inserted only as a matter of convenience and ease in reference and in no way define, limit or describe the scope or intent of any provision of this Agreement.

Section 34. <u>Bad Debts</u>

Monetary defaults and other arrearages relating to Flight Fees, and other fees and charges to be paid pursuant to Sections 22 and 25 hereof, to be made by any Signatory Airline, shall be referred to as Bad Debts. In any calendar year of this Agreement, Bad Debts are those which shall be determined by the Port Authority based upon its estimates as of December 5 of the calendar year in question, after application of the Port Authority's normal accounting methodology and principles. Bad Debts shall be part of the "Other Charges" (as indicated in Exhibit 1) under the calculation of the flight fee in the year in which the Bad Debt has been so determined. If and to the extent that, at a future time, the Port Authority recovers revenue in payment of the Bad Debts from or on behalf of the indebted Aircraft Operator, the amount of

such revenue recovery shall be accounted for in the calculation of the flight fee in the year in which recovery occurs.

Section 35. Severability

If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 36. Right of Termination by the Airline

(a) If any one or more of the following events shall occur, that is to say:

(1) The Port Authority shall be prevented from operating the Airport for a period of ninety (90) consecutive days based on the revocation by the Administrator of the Federal Aviation Administration of the Port Authority 's airport operating certificate under 14 CFR Part 139 with respect to the Airport; provided, however, that the foregoing shall not obtain or apply, and such revocation shall be deemed stayed and the said 90 day period tolled, during the time period of all rights to appeal the same and during the pendency of all appeals of the same, including but not limited to all appeals to all courts having jurisdiction thereof; or

(2) The Airline shall be prevented for a period of sixty (60) consecutive days by action of any governmental agency having jurisdiction thereof, from conducting its operations at the Airport, due to no fault of the Airline; or

(3) The Port Authority refuses to permit the Airline or its designated representative to exercise its right to examine the books and records of the Port Authority as specifically set forth in Section 4(b) hereof, unless said books and records have been rendered unavailable through no fault of the Port Authority; or

(4) The Port Authority shall fail to keep, perform and observe each and every other promise, condition, term and agreement set forth in this Agreement on its part to be kept, performed or observed, within thirty (30) days after receipt of notice of default thereunder from the Airline, except where fulfillment of its obligation requires activity over a period of time, and the Port Authority shall have commenced expeditiously and in a diligent manner to perform whatever may be required for fulfillment within thirty (30) days after receipt of notice of default and continues such performance expeditiously and in a diligent manner without interruption; or

(5) The Airline shall voluntarily abandon or discontinue its operations at the Airport and shall not recommence said operations at any time, in whole or in part, within ninety (90) calendar days after such abandonment or discontinuance;

then upon the occurrence of any such event or at any time thereafter during the continuance thereof, and subject to subsection (b) below, the Airline may by thirty (30) days' written notice to the Port Authority terminate this Agreement, such termination to be effective upon the date specified in such notice.

(b) No failure by the Airline to insist upon the strict performance of any agreement, term, covenant or condition of this Agreement or to exercise any right or remedy consequent upon a breach or default thereof, and no extension, supplement or amendment of this Agreement during or after a breach thereof, unless expressly stated to be a waiver, and no acceptance by the Airline of fees, charges or other payments in whole or in part after or during the continuance of any such breach or default, shall constitute a waiver of any such breach or default of such agreement, term, covenant or condition. No agreement, term, covenant or condition of this Agreement to be performed or complied with by the Port Authority, and no breach or default thereof, shall be waived, altered or modified except by a written instrument executed by the Airline. No waiver by the Airline of any default on the part of the Port Authority in performance of any of the promises, conditions, terms or agreements hereof to be performed, kept or observed by the Port Authority shall be or be construed to be a waiver by the Airline of any other or subsequent default in performance of any of the said promises, conditions, terms and agreements. This paragraph (b) shall be subject to the provisions of Section 31(c) hereof.

(c) Subject in all respects to the provisions of Section 32 hereof, the rights of termination described above shall be in addition to any other right of termination provided to the Airline under this Agreement and in addition to any rights and remedies that the Airline would have at law or in equity consequent upon any breach of this Agreement by the Port Authority, and the exercise by the Airline of any right of termination shall be without prejudice to any other such rights and remedies.

(d) Termination of this Agreement shall not relieve the Port Authority of any liability or obligations hereunder which shall have accrued on or prior to the effective date of termination.

Section 37. <u>Entire Agreement</u>

This Agreement consists of the following: Sections 1 through 37 inclusive of this Agreement and Exhibits 1, 2, 3, 4, 5, 6A, 6B, and 7 attached hereto. It constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Port Authority and the required number of Signatory Airlines as specified in Section 31 hereof. The Airline and the Port Authority agree that no representations or warranties shall be binding upon either party unless expressed in writing in this Agreement. Nothing in this Agreement shall constitute a modification or amendment, or supercede the provisions of, any permit or other agreement to

which the Airline is a party with the Port Authority, except to the extent those provisions in permits or other agreements which are in effect as of or after the Effective Date of this Agreement conflict with the provisions of this Agreement concerning rights and obligations as to operations on the PAF at the Airport, in which case the provisions of this Agreement shall control. Except as specifically provided herein to the contrary, the Airline shall not, by virtue of executing this Agreement, be released or discharged from any liabilities or obligations whatsoever under any other Port Authority permit or agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the Effective Date.

ATTEST:

Linda C. Hardie
Asst Secretary

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By Joanne Cuculella
(Title) Manager, Property and Commercial Development
(Seal)

ATTEST:

Esther Orehek
Secretary
ESTHER OREHEK

KUWAIT AIRWAYS CORPORATION

By [signature]
Othman Saleem Othman
SR. REGIONAL DIRECTOR THE AMERICAS
(Title) ~~President~~
(Corporate Seal)

Talal M. A. Al-Ahmed
Chairman / Managing Director

KUWAIT AIRWAYS CORPORATION NEW - YORK

APPROVED	
FORM	TERMS

KENNEDY AIRPORT - EXHIBIT 1

FLIGHT FEE METHODOLOGY AND ACCOUNTING PRINCIPLES

INTRODUCTION

The flight fee calculation will be based on the accounting principles set forth below. If not otherwise stated, the calculation will be performed in accordance with Port Authority historic accounting practices. In the event that there is no Port Authority historic practice for the treatment of a particular cost element, and if not otherwise stated herein, then the item will be accounted for based on generally accepted accounting principles.

The accounting principles below make reference to Cost Center (cc) numbers that are currently used by the Port Authority's accounting system (as shown on Exhibit 5 - Current Cost Center Listings, attached hereto). Cost Centers are used to accumulate operating and maintenance expenses and capital costs for the construction, financing, operation, administration and maintenance of the structures, land areas, buildings, facilities, services, and activities, as well as the revenues credited or otherwise allocable to such cost centers. The Agreement does not restrict future changes in the number and numeration of Cost Centers. The intention is to define the Cost Centers that impact the flight fee calculation. Several of the Cost Centers are shown for accounting purposes only on the most current Accounting Area Map. The Accounting Area Map for a particular year reflects any changes made during the year and is subject to adjustment each year. Allocation of costs and revenues to Cost Centers is determined by location and purpose of cost, not inclusion in the accounting map.

"Accounting Area Map" shall mean a delineation of airport properties and boundaries detailed by certain individually colored cost centers such as, by way of example, the Public Landing Area, the Air Terminal Highway System and the Public Vehicular Parking Area, and such map is revised from time to time.

The "PAF Requirement" shall mean the annual costs to the Port Authority of providing (including, by way of example, the construction and financing costs), maintaining and operating the Public Aircraft Facilities (PAF), as provided in Section 3.4 and this Exhibit 1 of this Agreement. It is calculated as the sum of all costs and credits delineated in Sections II, III, IV, and V below.

I – Cost Groups

A Cost Group is comprised of one or more Cost Centers. The following six Cost Groups are used in the establishment of the PAF Requirement and the calculation of Flight Fee Rates. Costs that are generated in or can be specifically associated with a particular airport location or service shall be directly charged to one or more Cost Centers. "General Costs" are costs that, although incurred for the benefit of the Airport, are not specifically associated with any particular Cost Center and shall be allocated to PAF as described herein. The procedures governing inclusion in the PAF Requirement of costs accumulated in these Cost Groups are set forth in Section II hereof (for O&M Costs) and Section III hereof (for Capital Costs - Fixed Charges). The Port Authority shall maintain books and records in such a manner that the costs applicable to each Cost Center and Cost Group at the Airport may be readily determined, consistent with Section 4 of the Agreement.

1. **Public Aircraft Facilities (PAF) Cost Group** is comprised of the costs of the Public Aircraft Facilities (PAF), which is defined in Section 1 of the Agreement. The costs associated with this Cost Group will be included in the following Cost Centers:

   Public Landing Area (cc211), which is that portion of the PAF (as shown on the most current Accounting Area Map) comprising the area of land, including runways designated and made available to the public for the landing and taking off of aircraft; public ramp and apron space for loading and unloading of passengers, baggage, mail, and/or cargo and for servicing of aircraft; taxiways for ground movement of aircraft to, from and between the runways, the public and leased ramp and apron space and the aircraft parking and storage space (not under the exclusive or preferential use by others); including the area adjacent to or between runways taxiways and for access to and egress from hangars and similar structures. This includes land that is not available for other purposes without infringing upon safety requirements as well as areas reserved for reasonable future expansion. Sound monitoring activities and soundproofing of schools and other structures are also included in this cost center.

   Approach Light Pier (cc213), which are those facilities supporting the PAF that may be on or off the Airport that are used for the purpose of controlling or assisting arrivals, departures and operation of aircraft using the Airport and may include, by way of example, docks, pilings, fenders, bulkheads, dikes, and high intensity lighting equipment.

   Public Aircraft Parking (cc220), which is that portion of the PAF comprising the area of land designated and made available by the Port Authority to the public for the parking of aircraft. It is acknowledged that there are other areas at the Airport on which aircraft can park and are either covered by separate agreements or controlled by the Port Authority, and that these areas shall not be considered part of the PAF.

   Airport Traffic Control Tower (cc231), which is that portion of the PAF comprising the land and buildings designated and made available for aircraft traffic control purposes.

2. **Systems Cost Group,** is comprised of the costs of the following six systems:

   The Communication and Signal System (cc121), which are those installations at the Airport comprising, by way of example, the equipment and installations (ducts, lines, switching apparatus) necessary for PBX, signals, alarms, fire alarm panels, public address units, fiber optics, radio appliances and other communications and signals technologies, up to the point where the system serves a specific area.

   The Electrical Distribution System (cc122), which is that installation at the Airport comprising, by way of example, the electric power feeder lines, ducts and conduits, transformers, switching equipment, instruments, including structures required for housing the equipment, up to the point where electricity is distributed to a particular cost center. It does not include electrical lines or appliances used exclusively within an area.

   The Gas Distribution System (cc123), which is that installation at the Airport comprising the gas pipelines and other equipment provided by the appropriate utility company within the Airport boundaries to individual meters.

The Storm and Sanitary Sewer System (cc124), which is that installation at the Airport comprising, by way of example, the catch basins, underground drainage lines, drainage ditches and tide gates, including all electrical or mechanical auxiliary units for drainage and sewerage disposal at the Airport.

The Water Distribution System (cc125), which is that installation at the Airport comprising the high and low pressure mains, pump house, water lines, and master meters, etc., ending at the point where water is distributed from the principal mains to pipe lines of a specific cost center. It does not include plumbing fixtures or water lines or meters used exclusively by a single airport area.

The Air Terminal Highway System (cc127), which are those portions of the Airport designated and made available temporarily or permanently by the Port Authority to the public for general or limited highway use. It refers to that portion of the Airport (as shown upon the most current Accounting Area Map) comprising the designated roadway right of way land area, including sidewalks and landscaping, designated and made available temporarily or permanently to the public for unrestricted or limited highway use inside the airport boundaries.

3. **Air Train Cost Group**, (cc128) which is comprised of the costs of the light rail passenger distribution system at the Airport. The Air Train system, shown on Exhibit 6A, includes the portions of the Air Train located or to be located at the Airport, and also includes the portions of the Air Train extending to the Long Island Rail Road station located in Jamaica, Queens, New York and to the City subway station located in Howard Beach, Queens, New York, together with AirTrain improvements located thereon, and equipment and materials used in connection therewith.

4. **Port Authority Administration Space Cost Group**, which is comprised of the costs of the buildings, structures and associated land used by the Port Authority for administration, operations, maintenance and policing of the airport. This represents the cost of space used by Port Authority, whether in operational use or under renovation or refurbishment, including but not limited to space used by its agents, representatives, delegates and/or contractors. These include buildings and land or a portion of buildings and land used by Port Authority personnel and for storage of Port Authority vehicles and equipment. By way of example, in 2003, space assigned for Port Authority use included all or a portion of the following Cost Centers:

General Aviation Terminal (cc131)
Police Emergency Satellite Garage (cc136)
Police and Aeronautical Services Building (cc137)
Police and Aeronautical Services Building – Land (cc138)
Landscaped Areas (cc161)
Field Service Roads (cc163)
Building No. 14 (cc406)
Hangar No. 16 (cc407)
Hangar No. 19 (cc408)
Hangar No. 17/Building No. 216 (cc423)
Building No. 80 (cc481)
Paved Land (cc592)

The specific cost centers (buildings or land) and/or the portion of existing cost centers used for Port Authority space may vary from year to year based on changes in space assigned for Port Authority use.

5. **General Costs Cost Group**, which are currently included in cc101, and includes costs for activities charged directly to the Airport and incurred for the benefit of various areas of the Airport. These costs are not specifically associated with any other particular Cost Center. The PAF Requirement will include a portion of these costs based on the ratios set forth in Section II-5 hereof.

6. **Other Revenue Producing Areas Cost Group,** which represents all other airport cost centers. None of the costs charged to these cost centers will be included in the PAF Requirement.

II - Operating and Maintenance Costs (O&Ms)

All O&M costs including salaries and wages, retirement, health insurance and other employee costs and benefits, materials, supplies, contracts, equipment, and all other costs, which are directly attributable to a particular Cost Center, shall be charged directly thereto, as follows:

1. **O&M Costs Charged to Public Aircraft Facilities (PAF) Cost Group.**
The PAF Requirement will include Exemption (2.a.) of O&M costs incurred for the benefit of and charged directly to the PAF Cost Group. In addition this will include the net cost of cargo police, taxi dispatch, the Auto-Link and Exemption (2.a.) of the Inter-terminal and Affinity bus service.

2. **O&M Costs Charged to Systems Cost Group**
The PAF Requirement will include Exemption (2.a.) of O&M costs included in the Systems Cost Group.

3. **O&M Costs Charged to Air Train Cost Group**
The PAF Requirement will include Exemption (2.a.) of all O&M costs incurred for the benefit of and charged directly to the Air Train Cost Group.

4. **O&M Costs Charged to Port Authority Administration Space Cost Group**
Annual O&M costs associated with each building/land area are multiplied by the applicable percentage of the building/land space used by the Port Authority, as of November 1 of the current year. The sum of these O&M costs multiplied by Exemption (2.a.) will be included in the PAF Requirement.

5. **O&M Costs Charged to the General Costs Cost Group** (Currently included in cc 101)
The PAF Requirement will include the portion of these O&M costs produced by applying the following ratios to each of the activities in the General Costs Cost Group:

   a. Policing & Traffic
   b. Police - Emergency Service
   c. Police – Administrative & Clerical and Other
   d. Janitorial
   e. Snow and Ice *
   f. Care of Grounds
   g. Structural Maintenance
   h. Mechanical Maintenance

Exemption (2.a.)

i. Electrical Maintenance
j. Paving
k. Maintenance - Administrative & Clerical and Other
l. Revenue Collections
m. Accounting Exemption (2.a.)
n. Operations - Administrative & Clerical and Other
o. Insurance -Public Liability, Property Damage & Workers Compensation
p. Other Units

* With the exception of material and vehicles used exclusively for snow and ice removal in the PAF area, all snow and ice removal costs will be reflected in the snow and ice activity and charged to the General Costs Cost Group, including the cost for time spent by management and supervisors engaged in this activity.

6. **Direct Prorated Costs** (Currently included in the A1, G2 & CG3 Programs) are comprised of general supervision, promotion, planning and operation performed centrally for the benefit of a group or related facilities. These include the following three categories of costs:

a. Aviation General (A1) - are costs generated by activities performed centrally for the benefit of the various Port Authority airports. They are prorated to each airport based on the cost of direct labor, in proportion to the cost of Airport direct labor divided by the cost of direct labor for all aviation facilities.

b. Operations and Maintenance Services General (G2) - are costs generated by operation and maintenance services provided centrally which otherwise would be performed at the facility level. These costs are divided into two categories and are distributed as follows:

(1) G2 Police - These costs are allocated to each operating facility based on the police units' actual cost of direct labor of each facility in proportion to the cost of the Police direct labor for the Airport divided by the cost of the Police direct labor for all Port Authority facilities.

(2) G2 Other - These costs are allocated to each operating facility based on the total actual cost of direct labor of each facility, in proportion to the cost of direct labor for the Airport divided by the cost of direct labor for all Port Authority facilities.

c. Engineering Department General Charges (CG3) - are costs generated by supervisory activities and other expenditures incurred by the Engineering Department, which are not readily assignable to specific contracts or jobs. These costs are distributed monthly to capital and operating facilities based on the actual cost of direct engineering efforts for the Airport, including, without limitation, direct labor, job shopper and consultant fees, in proportion to the cost of engineering efforts for the Airport divided by the cost of all Port Authority facilities' operating and capital engineering efforts. The amount included in this category reflects the total allocated to the Airport's operations (not including amounts charged to Capital - See III d).

The sum of these costs allocated to the Airport multiplied by Exemption (2.a) will be included in PAF Requirement.

The amounts of the Direct Prorated Costs prorated to the Airport will be consistent with this Agreement, the Port Authority's most current procedures for distributing these costs for the Port Authority's financial statements, and generally accepted accounting principles.

7. **Allocated Costs (Currently included in the G1 & S Programs)**
This includes two categories of costs - General Administrative (G1) and Development Expenses (S programs).

a. General Administrative Costs (G1) are costs generated by providing centralized general management and administrative services (including, but not exclusively, accounting, legal, medical, human resources, purchasing, etc.). These costs are allocated to the various operational and capital business programs on the basis of the actual costs of the direct payroll, in proportion to the costs of the Airport operating and capital direct labor divided by the costs of all Port Authority facilities operating and capital direct labor.

b. Development Costs (S Programs) are general costs of the Port Authority that benefits the Port District. These costs are allocated to facilities on the basis of actual income from operations (net operating revenues less operating expenses and annual depreciation), in the proportion of actual income from operations for the Airport divided by the actual income from operations for all Port Authority facilities that show income.

Exemption (2.a.) of these Allocated Costs that are allocated to the Airport, including the amount of G1 allocated to the Airport's capital program, will be included in the PAF Requirement.

The amount of the Allocated Costs that are allocated to the airport will be consistent with this Agreement, the Port Authority's most current procedures for distributing these costs for the Port Authority's financial statements and generally accepted accounting principles (GAAP).

8. **Rent Payable to the City of New York**
The amount of rent included in the PAF Requirement will be the lesser of:

a. Exemption (2.a.) in 2004 escalated by one percent per annum thereafter (as per the chart below),

Year	Amount	Year	Amount
2004		2014	
2005		2015	
2006		2016	
2007		2017	
2008		2018	Exemption (2.a.)
2009	Exemption (2.a.)	2019	
2010		2020	
2011		2021	
2012		2022	
2013		2023	

or

b. Exemption (2.a.) of the actual minimum annual guaranteed rent payable to the City of New York under the Basic Lease. For purposes of the Agreement, including this Exhibit 1, the term "minimum annual guaranteed rent" shall include any other reference in the Basic Lease to the base rent to be paid by the Port Authority, including by way of example, basic rent and annual rent, and shall exclude items of additional rent (e.g., rent for services or benefits to be rendered by the City).

Except as provided in Section 9(b) of the Agreement, other than the amounts set forth herein, no other portion of rent paid to the City of New York by the Port Authority shall be allocated to any other charges, rents, or fees charged to the Airline at the Airport by the Port Authority.

In the event the Port Authority becomes the owner of the airport in accordance with Section 7(c) of the Agreement, then subparagraph (a) of this sub-section will become part of the PAF Requirement, subparagraph (b) will be deleted; and "the lesser of" in the opening phrase of this sub-section will be deleted.

9. **Other Charges**

The PAF Requirement will include the cost of certain items listed below that were historically included in the calculation based on the ratios indicated:

a. Aviation Development Council (ADC) (1)
b. Council for Airport Opportunity (CAO) (2) Exemption (2.a.)
c. Bad Debts relating to flight fee activity (3)

(1) ADC funding at the three major New York/New Jersey airports is allocated as follows:
   a. Port Authority (not charged to PAF)
   b. LaGuardia
   c. JFK Exemption (2.a.)
   d. Newark Liberty International

   The Exemption (2.a.) allocated to JFK is the Airport's share of total ADC funding. All of this allocation will be included in the PAF Requirement.

   It is the intent of the parties that Exemption (2.a.) the costs associated with the OPSnet System (also known as OPSNet) will be included in the PAF Requirement. To the extent that the OPSNet System may be funded through the ADC Exemption (2.a.) of its costs shall be included in the PAF Requirement.

(2) CAO funding at the three major New York/New Jersey airports is allocated as follows:
   a. Port Authority (not charged to PAF)
   b. LaGuardia
   c. JFK Exemption (2.a.)
   d. Newark Liberty International

   The Exemption (2.a.) allocated to JFK is the Airport's share of total CAO funding. All of this allocation will be included in the PAF Requirement.

(3) The PAF Requirement in a particular year will be reduced by any recovery in that year of Bad Debts previously charged to the PAF Requirement.

If the Port Authority implements other means to recover any of the above costs, these costs will be reduced or eliminated from the PAF Requirement.

III- CAPITAL INVESTMENT – Fixed Charges

Fixed Charges shall mean the sum of (1) amortization and interest on Port Authority investment completed and placed in service subsequent to December 31, 2003 ("New Investment") and (2) amortization and interest on Port Authority investment completed and placed in service on or prior to December 31, 2003 ("Old Investment").

Such charges, for New Investment and Old Investment, will be computed on an equal annual payment method and amortized over the useful life of the asset in accordance with generally accepted accounting principles, with the exception of investment that is taken out of service and still has a remaining unamortized balance. Such investment will not incur an accelerated fixed charge but will instead be recovered over the estimated useful life first established when the asset was placed into service. The interest factor used in determining the fixed charges for all the foregoing shall be the weighted average coupon rate for the 12 months ending November 30, of each year, rounded to the nearest hundredth percent, on all Port Authority long-term bonds and notes outstanding, the proceeds of which were made available for construction at the New York Airports. Such interest factor is applied to all unamortized investment at the Airport and is recalculated each year to reflect the current year interest rate.

For purposes of this section, New Investment shall consist of projects whose costs are the sum of:

a. Construction Costs
   (1) payments to contractors and/or vendors and suppliers;
   (2) premiums or charges for Performance Bonds;
   (3) insurance premiums or charges;
   (4) direct payroll and costs of the Port Authority forces engaged in performance or supervision of the construction work, charged in accordance with Port Authority accounting practice.

b. Engineering Services
   (1) payments to outside consultants and engineering firms;
   (2) direct payroll and costs of Port Authority resources, charged in accordance with Port Authority accounting practice.

c. Land acquisition costs and the cost of acquisition of any interest therein for Airport purposes, including air rights whether by purchase, lease, condemnation or other taking for a purpose, use or otherwise. These costs are allocated to airport cost centers in accordance with Port Authority accounting practice.

d. Other costs charged in accordance with Port Authority accounting practice including Aviation General Capital (CA1) and Engineering General (CG3) but excluding General Administrative Expenses (G1).

e. Financial Expense (interest during construction until asset is put into service) on the foregoing computed in accordance with Port Authority accounting practice.

For purposes of this section, Old Investment shall consist of the investment as defined under the Old General Operating Agreement, and as so recorded on the books and records of the Port Authority.

Port Authority Investment as used for the computation of fixed charges shall be reduced by the amount of any contributions or grants heretofore or hereafter received specific to that project, by the Port Authority from the Federal Government, or the State or City of New York, or from any other entity. Port Authority investment as used for the computation of fixed charges shall also be reduced by the amount of Passenger Facility Charges (PFCs) funds applied to a particular project.

1. **Public Aircraft Facilities**
   100% of all fixed charges on Port Authority investment in the PAF Cost Group are includible in the PAF Requirement.

2. **Systems**
   The PAF Requirement will include the following percentages of fixed charges computed on Port Authority investment in each of the six systems in the Systems Cost Group:

   a. Communication & Signal System
   b. Electrical Distribution System
   c. Gas Distribution System
   d. Storm and Sanitary Sewer System
   e. Water Distribution System
   f. Air Terminal Highway System

   Exemption (2.a.)

3. **Air Train**
   The initial Port Authority investment in the Air Train as of and subsequent to December 31, 2003 shall be deemed to be Exemption (2.a.) ("Initial Port Authority Investment in the Air Train", as detailed in Exhibit 6B) and amortized over 25 years. Additional capital investments and replacements to Initial Port Authority Investment in the Air Train made on or after January 1, 2004, will be amortized over the useful life of the asset in accordance with generally accepted accounting principles. Consistent with other New and Old Investment, any investment in the Air Train taken out of service, and that still has a remaining unamortized balance, will not incur an accelerated fixed charge.

   Exemption (2.a.) of the Fixed Charges on the Initial Port Authority Investment in the AirTrain, and additional capital investments, and replacements to Initial Port Authority Investment in the Air Train will be included in the PAF Requirement.

   The recovery through the flight fee of any capital investment for the extension of the Air Train to points outside the Air Train system, as shown on Exhibit 6A, may be the subject of future negotiation between the parties.

4. **Port Authority Administration Space**
Fixed Charges associated with each building/land area are multiplied by the applicable percentage of the building/land space used by the Port Authority. The sum of these charges multiplied by Exemption (2.a.) will be includible in the PAF Requirement.

5. **Coverage Factor**
A coverage factor shall be computed equal to Exemption (2.a.) the sum of fixed charges for (1) the PAF Cost Group, (2) Systems Cost Group (3) AirTrain Cost Group and (4) Port Authority Administration Space Cost Group, and shall be added to the PAF Requirement.

IV – Credits

1. **Non - Signatory Flight Fee Revenue**
The PAF Requirement will be credited with all flight fee revenue earned from Non-Signatory Airlines. Non-Signatory Airlines will be charged a rate per thousand pounds of maximum gross takeoff weight that is at least Exemption (2.a.) than either the rate charged to Signatory Airlines or the estimated Final Flight Fee. The airlines acknowledge that calculation adjustments and internal Port Authority authorization processes may result in temporary periods where the Schedule of Charges rate paid by Non-Signatory Airlines may be lower than the Signatory Airlines flight fee rate.

2. **Air Train Revenues**
The PAF Requirement will be credited with the sum of (a) and (b) below:

a. Exemption (2.a.) of Air Train Revenues. For purposes of the Agreement, AirTrain Revenues shall include monies received from fares charged for the system, from advertisements located on the AirTrain system, from rental car companies specifically for their contribution to the AirTrain system, and from any other source that pertains solely to the AirTrain system. Revenue derived from air rights or the development thereof shall not be included as a credit under this subsection.

b. Exemption (2.a.) and for each year thereafter.

The total credit in any year shall not exceed Exemption (2.a.) of Air Train O&M costs.

3. **Partial Credit of Coverage Factor**
The PAF Requirement will be credited with Exemption (2.a.) of the Cover amount (as calculated in paragraph III - 5)

4. Exemption (2.a.) **Overhead on fixed charges on Old Investment**

The PAF Requirement will be credited with the following amounts:

Year	Amount	Year	Amount
2004		2014	
2005		2015	
2006		2016	
2007		2017	
2008		2018	
2009	Exemption (2.a.)	2019	Exemption (2.a.)
2010		2020	
2011		2021	
2012		2022	
2013		2023	

5. **Public Aircraft Parking & Storage Fees and Other Credits**
The PAF Requirement will be credited with revenue earned for aircraft parking and storage on areas designated as PAF, plus all other revenues derived from the operation of the PAF.

V - Adjustment for Undercollection or Overcollection of PAF Revenues
The PAF Requirement for a current year will include (as a cost or credit, whichever is applicable) the difference between the total amounts billed for Interim Flight Fees to all Signatory Airlines and Non-Qualified Affiliates for the previous year and the PAF Requirement for the previous year. Commencing with the 2005 calculation, when calculating the Initial Flight Fee Rate and the Mid-Year Flight Fee Rate, as defined in Section 1 and Section 3.2 of the Agreement, the Port Authority will take into account its estimate of this over collection or under collection of PAF revenues.

VI – Calculation of Final Flight Fee Rate
The Final Flight Fee Rate shall be the PAF Requirement divided by the total of Maximum Weight for Take-off per Section 3.5 of the Agreement for all Signatory Airlines and Non-Signatory Qualified Affiliates. The calculation shall be done on a calendar year basis.

John F. Kennedy International Airport
2004 Formula Cost Computation
Exhibit 2
Pro Forma Calculation of 2004 Flight Fee

PLEASE NOTE: THE DOLLARS AMOUNTS AND WEIGHTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS OR WEIGHTS

	Total PAF Requirement A	Total Weight Of All Aircraft Of Signatory Airlines (M Lbs.) B	2004 Flight Fee Per M lbs. (A/B)
Computed cost of Public Aircraft Facilities			
Computed cost of Air Train		Exemption (2.a.)	
Total PAF Requirement			

Computed cost of Public Aircraft Facilities
Divided by total weight of all aircraft of Signatory Airlines
and Non-Signatory Qualified Affiliates — Exemption (2.a.)

2004 Flight Fee Per M lbs.

John F. Kennedy International Airport
2004 Formula Cost Computation
Appendix A
Cost of Operation of The Public Aircraft Facilities
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Total	Ratio	Public Aircraft Facilities	Air Train
Operating & Maintenance Expenses				
Charged Directly to the Airport (Appendix B)				
Specific Cost Centers:				
Public Aircraft Facilities (Per Exh. 1, II -1)				
Systems (Per Exh. 1, II -2)				
Air Train (Per Exh. 1, II - 3)				
Port Authority Administration Space (Per Exh.1, II -4)				
All Other Revenue Producing Areas				
Airport General Costs - CC 101 (Per Exh.1, II -5):				
Policing & Traffic				
Emergency Services				
Police -Administrative & Clerical and Other				
Janitorial				
Snow & Ice				
Care of Grounds				
Structural Maintenance				
Mechanical Maintenance				
Electrical Maintenance				
Paving				
Maintenance - Administrative & Clerical and Other				
Revenue Collections				
Accounting				
Operations - Administrative & Clerical and Other				
Public Liability, Property Damage & Workers Comp.				
Other Units				
Direct Prorated Expenses (Appendix C) (Per Exh.1, II -6)				
Allocated Expenses (Appendix C) (Per Exh.1, II -7)			Exemption (2.a.)	
Rent to the City of New York (Appendix D) (Per Exh.1, II -8)				
Fixed Charges (Appendix E)				
Public Aircraft Facilities (Per Exh.1, III -1)				
Systems (Per Exh.1, III -2)				
Air Train (Per Exh.1, III -3)				
Port Authority Administration Space (Per Exh.1, III -4)				
All Other Revenue Producing Areas				
.3 Fixed Charges Cover (Per Exh.1, III -5)				
Credits				
Non - Signatory Flight Fee Revenue (Per Exh.1, IV -1)				
Air Train Revenues (Per Exh.1, IV - 2)				
Air Train O&M Credit (Per Exh.1, IV -2)				
25% of .3 Fixed Charges Cover (Per Exh.1, IV - 3)				
5% Overhead Included in Investment Prior to 2004 (Per Exh.1, IV -4)				
Parking & Storage Fees and Other Credits (Per Exh.1, IV -5				
Current Year Cost				
Prior Year Carryover Under billing (Over billing) (Per Exh.1, V)				
PAF Requirement				

Kennedy Airport - Exhibit 2

John F. Kennedy International Airport
2004 Formula Cost Computation
Appendix B
Expenses of Police, Maintenance and Operations and Other Sections Charged Directly to the Airport
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Total	General Costs	Public Aircraft Facilities	Systems	Air Train	Port Authority Administration Space	All Other Revenue Producing Areas
Police Section							
Policing and Traffic							
Cargo Police							
Security							
Emergency Services							
Terminal Security							
Administrative & Clerical and Other							
Maintenance Section							
Janitorial							
Snow and Ice							
Utility Purchases							
Care of Grounds							
Structural Maintenance							
Mechanical Maintenance							
Electrical Maintenance							
Paving							
Administrative & Clerical and Other							
Operations Section							
Taxi Dispatch							
Security							
Revenue Collection							
Accounting							
Intramural Transportation Service							
Patron Services							
Sound Monitoring					Exemption (2.a.)		
Administrative & Clerical and Other							
Public Liability, Property Damage & Workers Compensation							
Direct Charges To Airport Areas From Other Units							
Aviation Development Council							
Council for Airport Opportunities							
Engineering Department							
Aviation Department							
Manager's Office							
Planning Section							
Business & Property							
Central Police Section							
Bad Debts							
Special Project Bonds							
Administrative & Clerical & Other							
Revenue Portion of Port Authority Administration Space (Appendix G)							
Total							

John F. Kennedy International Airport
2004 Formula Cost Computation
Appendix C
Direct Prorated and Allocated Expenses
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Port Authority Total	Prorated to the Airport
Direct Prorated Expenses		
Aviation General (A1):		
Public Safety		
Other		
Operation & Maintenance Services General (G2):		
Public Safety		
Other		
Engineering General (CG3)		
Total		
PAF Ratio		
PAF Requirement		
		Exemption (2.a.)
Allocated Expenses		
General & Administrative Expenses (G1):		
Operating		
Capital		
Development (S Programs)		
Total		
PAF Ratio		
PAF Requirement		

John F. Kennedy International Airport
2004 Formula Cost Computation
Appendix D
Rent to the City of New York
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

The amount of rent to be included in the PAF requirement will be the lesser of a or b:

a Maximum amount of Rent to be included in PAF Requirement Per Exhibit I, II-8a

or

b Actual Minimum Annual Rent for NY Airports Limitation Ratio

Kennedy Airport Ratio
Amount Allocated to Kennedy Airport
PAF Ratio
PAF Requirement Per Exhibit I, II-8b (see below)

PAF Requirement

Calculation of Ratio Per Exhibit I, II-8b	
Minimum Annual Rent Limitation	Exemption (2.a.)
Kennedy Airport Ratio	
PAF Ratio Ratio Per Exhibit I, II-8b	
Actual Minimum Annual Rent for NY Airports PAF Requirement Per Exhibit I, II-8b	

John F. Kennedy International Airport
2004 Formula Cost Computation
APPENDIX E
SUMMARY OF FIXED ASSETS AND FIXED CHARGES
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Fixed Assets					
	Dec. 31, 2003	Additions & Adjustments	Dec. 31, 2004	Fixed Charges	PAF Ratio	PAF Requirement
PUBLIC AIRCRAFT FACILITIES						
SYSTEMS						
Communication and Signal System						
Electrical Distribution System						
Gas Distribution System						
Storm and Sanitary Sewer System						
Water Distribution System						
Air Terminal Highway System						
Air Train						
Port Authority Administration Space						
General Aviation Terminal						
Police Emergency Satellite Garage						
Police and Aeronautical Services Building						
Police and Aeronautical Services Building-Land				Exemption (2.a.)		
Landscaped Areas						
Field Service Roads						
Building No. 14						
Hangar No. 16						
Hangar No. 19						
Hangar No. 17/Building No. 216						
Building No. 80						
Revenue Portion of Port Authority Administration Space (Appendix G)						
ALL OTHER REVENUE PRODUCING AREAS						
Revenue Portion of Port Authority Administration Space (Appendix G)						
TOTAL						

Notes:
Fixed assets are carried at cost after deducting contributions, grants or Passenger Facility Charges received from governmental authorities and other entities. Fixed assets do not include work in progress as of December 31, 2004.

Fixed charges are computed only on completed fixed assets; they include interest and amortization calculated on an equal payment method for the period following completed construction.

Fixed Assets are not reduced by Retirements after 2003 and fixed charges will continue on assets retired until such time as when these assets are fully amortized.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
2004 FORMULA COST COMPUTATION
APPENDIX F
ADDITIONS AND ADJUSTMENTS TO FIXED ASSETS CHARGED
TO PUBLIC AIRCRAFT FACILITIES
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

Project Description	Additions & Adjustments	Service Lives (Years)	Fixed Charges 2004	Full Year Fixed Charges	Full Year Rate Impact
REHAB OF RUNWAY 4R-22L					
Paving-Flexible					
Landscaping					
Electric Power Supply					
Lighting-Exterior					
EMAS FOAM ARRESTOR BED AT END R/W 2					
Foam Arrestor Bed					
R/W 4-22 APPROACH LIGHT SYS					
Structure in Water Supply Utilities					
Electric Power Supply					
Steel Frame and Sheeting					
Lighting-Exterior					
REHAB R/W 4L-22R					
Paving-Flexible					
Lighting-Exterior					
REHAB TAXIWAYS J, G, YA & Z					
Paving-concrete					
Paving-Flexible					
Landscaping			Exemption (2.a.)		
Electric Power Supply					
Lighting-Exterior					
REHAB TAXIWAYS P & C					
Paving-Flexible					
Lighting-Exterior					
SCHOOL SOUNDPROOFING					
Contribution to other Gov. Agency					
Rehabilitation Taxiways A & B					
Paving-Flexible					
Landscaping					
Electric Power Supply					
Lighting-Exterior					
Runway 31L-31R Edge light Reloc					
Lighting-Exterior					
Total Public Aircraft Facilities					

* Remainder of Lease

** Rate impact is based on current year's weights and includes the coverage factor and the coverage factor credit.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
2004 FORMULA COST COMPUTATION
APPENDIX F
ADDITIONS AND ADJUSTMENTS TO FIXED ASSETS CHARGED TO SYSTEMS AND AIR TRAIN
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

Project Description	Additions & Adjustments	Service Lives (Years)	Fixed Charges 2004	Full Year Fixed Charges	Full Year Rate Impact
Communication and Signal System					
RENTAL CAR ROADWAY IMPROVEMENT MULTIPLE SYSTEMS					
ROADWAYS AREA 2 MULTIPLE SYSTEMS					
ROADWAYS AREA 4 MULTIPLE SYSTEMS					
Electrical Distribution System					
REPLACE HV SUBSTATION VANWYCK ELECTRIC PWR SUPPLY					
REHAB SCADA SYSTEM ELECTRIC PWR SUPPLY			Exemption (2.a.)		
INSTALL STREET LIGHTING ELECTRIC PWR SUPPLY					
REHAB UTILITY HANGER 8 AND 9 UNDERGROUND DUCTS AND CABLE					
LANDSIDE ACCESS WEST QUADRANT UNDERGROUND DUCTS AND CABLE					
HANGER 11 REPLACE 5KV FEEDER UNDERGROUND DUCTS AND CABLE					
ROADWAYS AREA 2 UNDERGROUND DUCTS AND CABLE					

* Remainder of Lease

** Rate impact is based on current year's weights and includes the coverage factor and the coverage factor credit.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
2004 FORMULA COST COMPUTATION
APPENDIX F
ADDITIONS AND ADJUSTMENTS TO FIXED ASSETS CHARGED TO SYSTEMS AND AIR TRAIN
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

Project Description	Additions & Adjustments	Service Lives (Years)	Fixed Charges 2004	Full Year Fixed Charges	Full Year Rate Impact
Storm and Sanitary Sewer System					
REHAB TAXIWAY PD					
SEWERS					
REHAB JFK EXPRESSWAY SCUPPERS					
SEWERS					
REHAB RUNWAY 4L-22R					
SEWERS					
REHAB TAXIWAY J, G, YA, AND Z					
SEWERS					
REHAB SERVICE ROAD					
SEWERS					
			Exemption (2.a.)		
REHAB TAXIWAY A AND B					
SEWERS					
LANDSIDE ACCESS WEST QUADRANT					
SEWERS					
REHAB JFK EXPRESS/RSR DRAIN IMPROVEMENT					
SEWERS					
ROADWAYS AREA 4					
MANHOLES AND PIPING					

* Remainder of Lease

** Rate impact is based on current year's weights and includes the coverage factor and the coverage factor credit.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
2004 FORMULA COST COMPUTATION
APPENDIX F
ADDITIONS AND ADJUSTMENTS TO FIXED ASSETS CHARGED TO SYSTEMS AND AIR TRAIN
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

Project Description	Additions & Adjustments	Service Lives (Years)	Fixed Charges 2004	Full Year Fixed Charges	Full Year Rate Impact
Water Distribution System					
RENTAL CAR ROADWAY IMPROVEMENT					
MAIN PIPES					
Air Terminal Highway System					
SIGN LEADING TO YELLOW QUADRANT					
SIGNS					
REHAB JFK EXPRESSWAY SCUPPRS					
PAVING - FLEXIBLE					
FENCING					
LIGHTING					
REHAB FEDERAL CIRCLE					
PAVING - FLEXIBLE					
LIGHTING		Exemption (2.a.)			
PRIORITY CUSTOMER PROGRAM					
PAVING - FLEXIBLE					
FENCING					
REHAB SERVICE ROAD					
PAVING - CONCRETE					
PAVING - FLEXIBLE					
SIGNS					
FENCING					
REHAB CARGO SERVICE ROAD					
PAVING - FLEXIBLE					

* Remainder of Lease

** Rate impact is based on current year's weights and includes the coverage factor and the coverage factor credit.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
2004 FORMULA COST COMPUTATION
APPENDIX F
ADDITIONS AND ADJUSTMENTS TO FIXED ASSETS CHARGED TO SYSTEMS AND AIR TRAIN
(In Thousands of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

Project Description	Additions & Adjustments	Service Lives (Years)	Fixed Charges 2004	Full Year Fixed Charges	Full Year Rate Impact
LANDSIDE ACCESS WEST QUADRANT					
PAVING - FLEXIBLE					
PAVING - CONCRETE					
OPEN SHEDS					
SIGNS					
FENCING					
LIGHTING					
COMM & SIGNAL INSTAL					
REHAB JFK EXPRESS/RSR DRAIN IMPROVEMENT					
PAVING - CONCRETE					
PAVING - FLEXIBLE					
MISC NON DEPREC ITEM					
SIGNS					
FENCING					
RENTAL CAR ROADWAY IMPROVEMENT					
PAVING - FLEXIBLE			Exemption (2.a.)		
ROADWAYS AREA 2					
PAVING - FLEXIBLE					
ROADWAYS AREA 4					
PAVING - FLEXIBLE					
AREA ONE ART FENCE					
PAVING - FLEXIBLE					

Total Systems

Air train

* Remainder of Lease

** Rate impact is based on current year's weights and includes the coverage factor and the coverage factor credit.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
2004 FORMULA COST COMPUTATION
APPENDIX G
Operating & Maintenance Expenses and Fixed Charges For Port Authority Administration Space
(In Thousand of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Operating & Maintenance Expenses	Portion of Space Used by PA	Cost of Port Authority Administration Space	All Other Revenue Producing Areas
Operating & Maintenance Expenses		(Note)	(To Appendix B)	
General Aviation Terminal				
Police Emergency Satellite Garage				
Police and Aeronautical Services Building				
Landscaped Areas				
Field Service Roads				
Building No. 12				
Building No. 14				
Hangar No. 15				
Hangar No. 16			Exemption (2.a.)	
Hangar No. 17/Building No. 216				
Hangar No. 19				
Building No. 80				
Building No. 124				
Building No. 214				
Other				
Total				

	Fixed Charges	Portion of Space Used by PA	Cost of Port Authority Administration Space	All Other Revenue Producing Areas
Fixed Charges		(Note)	(To Appendix E)	
General Aviation Terminal				
Police Emergency Satellite Garage				
Police and Aeronautical Services Building				
Police and Aeronautical Services Building-Land				
Landscaped Areas				
Field Service Roads				
Building No. 14				
Hangar No. 16			Exemption (2.a.)	
Hangar No. 19				
Hangar No. 17/Building No. 216				
Building No. 80				
Total				

Note: Percentages reflect the portion of space assigned for Port Authority use including but not limited to space assigned for use by its agents, representatives, delegees and/or contractors.

JOHN F. KENNEDY INTERNATIONAL AIRPORT
)04 FORMULA COST COMPUTATI
APPENDIX H
PAF Requirement For Systems and Air Train
(In Thousand of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Operating Expenses	Fixed Charges	Total
Systems			
Costs			
Communication & Signal			
Electric Distribution			
Gas Distribution			
Storm & Sanitary Sewer			
Water Distribution			
Air Terminal Highways			
Amounts included in PAF Requirement			
Communication & Signal			
Electric Distribution			
Gas Distribution			
Storm & Sanitary Sewer			
Water Distribution			
Air Terminal Highways			
Fixed Charges Cover			
Fixed Charges Cover		Exemption (2.a.)	
% Overhead on Prior Investment			
Air Train			
Costs			
Revenues			
Net			
Amounts included in PAF Requirement			
Costs			
Fixed Charges Cover			
Fixed Charges Cover			
Revenues			
O&M Credit			
Net			

Kennedy Airport - Exhibit 2

JOHN F. KENNEDY INTERNATIONAL AIRPORT
04 FORMULA COST COMPUTATIC
APPENDIX I
Analysis of Police & Security Costs
(In Thousand of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	Total Airport Costs	PAF Requirement
Police Section (Appendix B)		
Policing and Traffic		
Cargo Police		
Security		
Emergency Services		
Administrative & Clerical and Other		
Operations Section - Security (Appendix B) (Contract Security Guards)		
Central Police Costs		
Charged to the Airport (Appendix B)		Exemption (2.a.)
Direct Prorated Expenses (Appendix C):		
Aviation General (A1)		
Operations & Maintenance General (G2)		
Total /PAF Requirement		
Other Police Costs		
Terminal Security *		
Total		

* Recovered through FAR Boarding Gate Security Billing (Passenger Terminal Security)

John F. Kennedy International Airport
Appendix J
Analysis of Airport Cost & PAF Requirement
2004 Formula Cost Computation
(In Thousand of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

		Public Aircraft Facilities Requirement						
	Total Airport Cost	General Costs	Direct PAF	Systems	Air Train	PA Administ Space	Other PA Costs	Total
Police Section								
Policing and Traffic								
Emergency Services								
Other								
Maintenance Section								
Snow & Ice								
Other								
Operations Section								
Security								
Other								
Other Costs Charged to the Airport								
Engineering								
Other Aviation Department Units								
Central Police								
Other								
Other Port Authority Costs								
Direct Prorated Expenses								
Allocated Expenses								
Rent to the City of New York								
Investment Recovery								
Fixed Charges								
Fixed Charges Cover								
Total Costs								
Non - Signatory Flight Fee Revenue								
Air Train Revenues								
Fixed Charges Cover								
Overhead on Prior Investment								
Air Train O&M Credit								
Parking & Storage Fees ,Etc.								
Flight Fee Cost								
Weights								
Rate								

Exemption (2.a.)

Kennedy Airport - Exhibit 2

John F. Kennedy International Airport
Appendix K
Historical Analysis of PAF Requirement
2000 - 2004
(In Thousand of Dollars)

PLEASE NOTE: THE DOLLARS AMOUNTS BELOW ARE FOR ILLUSTRATIVE PURPOSES ONLY. THEY DO NOT REPRESENT ACTUAL OR ESTIMATED COSTS

	2000	2001	2002	2003	2004
			PAF Requirement		Rate
Police Section					
Policing and Traffic					
Emergency Services					
Other					
Maintenance Section					
Snow & Ice					
Other					
Operations Section					
Security					
Other					
Other Costs Charged to the Airport					
Engineering					
Other Aviation Department Units					
Central Police					
Other					
Other Port Authority Costs					
Direct Prorated Expenses					
Allocated Expenses or 15% OH (a)					
Rent to the City of New York					
Investment Recovery					
Fixed Charges					
Fixed Charges Cover					
Total Costs					
Credits					
Non - Signatory Flight Fee Revenue					
Air Train Revenues					
Fixed Charges Cover					
Overhead on Prior Investment					
Air Train O&M Credit					
Parking & Storage Fees , Etc.					
PAF Requirement					
Weights (b)					
Rate					

Exemption (2.a.)

(a) Prior to 2004, there was a overhead factor in-lieu of allocated expenses
(b) Prior to 2004, weight of all aircraft operators were included

KENNEDY AIRPORT - EXHIBIT 3

SCHEDULE OF INFORMATION, MEETINGS AND EFFECTIVE DATES

January	1 *	Effective Date for Initial Flight Fee Rate for the current year
February	15	PA provides Signatory Airlines with prior-year flight fee estimate (Exhibit 2 - preliminary, partial)
April	15	PA provides Signatory Airlines with final prior-year flight fee computation (Exhibit 2 - final)
May	15	PA provides Signatory Airlines with update to the Initial Flight Fee Rate
	15	PA provides Signatory Airlines with detailed variance analysis of prior-year to "prior-prior" year flight fee estimates and prior-year to February 15 flight fee estimates
	15	Signatory Airlines provide PA their updated Maximum Gross Weight estimates for current year
	22	PA provides JFK/LGA Airline Technical Committee with update of current-year Capital Projects and 5-year Capital Plan
June	1	PA and JFK/LGA Airline Finance Committee meet to review prior-year final results and discuss update to the Initial Flight Fee Rate, also any perceived need for a July 1 Mid-Year Flight Fee Rate Adjustment plus supporting justification. Such a Mid-Year Flight Fee Rate adjustment may be implemented only if billings for the full year are projected to be at least two (2) percent less than the amount needed to recover the PAF Requirement.
	15	JFK/LGA Airline Airport Affairs Committee meeting with PA, including outlook on a possible mid-year rate adjustment
	22	PA notifies Signatory Airlines whether a Mid-Year Flight Fee Rate will be implemented effective July 1.
July	1 *	Mid-Year Flight Fee Rate (if applicable) is effective

August	22	If a Mid-Year Flight Fee Rate is not implemented on July 1, the PA notifies Signatory Airlines whether a Mid-Year Flight Fee Rate will be implemented effective September 1.
September	1 *	Mid-Year Flight Fee Rate (if applicable) is effective
October	1	Signatory Airlines provide PA their updated estimated Maximum Gross Weights for current year and their estimates for next year
	15	PA provides JFK/LGA Airline Technical Committee with update of current-year Capital Projects, 5-year Capital Plan and projection of next year Capital Projects
	22	PA provides JFK/LGA Airline Finance Committee with update of current Flight Fee Rate and preliminary estimate of next year Initial Flight Fee Rate along with preliminary Airport budgets for the next year.
November		
	1	Airline Technical Committee and PA meet to review update of current-year Capital Projects, 5-year Capital Plan and projection of next-year Capital Projects
	8	PA and JFK/LGA Airline Finance Committee meet to review update of current Flight Fee Rate and preliminary estimate of next year Initial Flight Fee Rate
December		
	1	PA and JFK/LGA Airline Airport Affairs Committee Meeting on rates & charges plus airport updates, including outlook concerning next-year Initial Flight Fee Rate (1)
	15	PA gives Signatory Airlines official notice of the Initial Flight Fee Rate to be effective January 1 of the next year.

All dates are approximate, except those denoted with an asterisk.

(1) Commencing with the 2005 Flight Fee Rate calculation, in calculating the Initial Flight Fee Rate and the Mid Year Flight Fee Rate, as defined in Section 1 and Section 3.2 of the Agreement, the Port Authority will take into account and incorporate, if applicable, its estimate of this over collection or under collection of PAF revenues.

Note: In addition to the above, a Mid Year Flight Fee Adjustment may occur pursuant to the terms set forth in Section 3.2(b) of the Agreement.

Regularly Recurring Obligations

10th of each month	Airline submits activity report
20th of each month	Airline pays PA Flight Fees for the preceding month and submits statement of Flight Fees owed.

Annual Obligations

Within 30 days of approval by the Board of Commissioners of the PA Annual Budget, PA provides Signatory Airlines with the approved Airport Budget and the approved Budget Year (current year) and 5 Year Capital Plan.

Procedures

The PA and the Signatory Airlines will diligently provide each other with data, projections and calculations, and will meet and consult concerning the establishment of Flight Fee Rates, according to the Schedule of Information, Meetings and Effective Dates set forth in this Exhibit 3. Port Authority shall, give due consideration to the comments and requests of the Signatory Airlines during the consulting process. This Schedule may be modified, with additions or deletions, by mutual agreement of the PA and the JFK AAAC. All data, projections, and calculations to be provided by the Port Authority, with the exception of the prior year Final Flight Fee computation (Exhibit 2) which shall be sent to all Signatory Airlines, shall be sent to the entity or entities that JFK AAAC designates, and may be provided by electronic communication (email).

KENNEDY AIRPORT - EXHIBIT 4

FORMATS AND PROCEDURES FOR PRESENTATION OF PA DATA TO SIGNATORY AIRLINES

FIVE-YEAR CAPITAL PLAN

PA to provide the following information for each Capital Project in the 5-Year Capital Plan which has an impact on the flight fee, The PA will provide annual cost data for the prior year and for each year of the five-year period, to the extent applicable to each individual Project.

- Total Project Costs, including expected non-airline reimbursement
- Amount and Percentage estimated to PAF
- Estimated Service Life
- Annual cost to be amortized
- Year the asset appears in the PAF Requirement
- Estimated Flight Fee Rate impact (based on agreed assumptions as to weights)
- Explanatory comments

For the Capital Plan as a whole:
Anticipated Non-Airline Funding Sources

ANNUAL AIRPORT PAF REQUIREMENT **FOR THE UPCOMING YEAR**

The PA will provide O&M and Fixed Charges projections for the upcoming year. The information will include the following schedules in a similar format to Exhibit 2:
:

The Cost of the Public Aircraft Facilities (see Appendix A)
An analysis of Airport Costs & PAF Requirement (see Appendix J)
An analysis of Police & Security Costs (see Appendix I)
Historical Analysis of PAF Requirement (see Appendix K)

SCHEDULE OF INFORMATION

The PA will provide the information specified above on the dates established in Exhibit 3 of this Agreement.

KENNEDY AIRPORT - EXHIBIT 5

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
	GENERAL OPERATING EXPENSES	
101	General Area	
110	General Area - Fixed Charges	
	Systems and Highways	
121	Communications & Signal System	
122	Electrical Distribution system	85, 98-100, 102-05, 109, 115, 167, 202, 203
123	Illuminating Gas Distribution System	
124	Storm & Sanitary Sewer System	236,238,239
125	Water Distribution System	161,174,177
126	Facility Waterways System	
127	Air Terminal Highway System	
128	Light Rail System (LRS) AirTrain	400-418
	Facility Occupied Buildings	
131	General Aviation Terminal	145
132	Building #141 - Multi-Tenant	32, 141, 149
133	Building #141 - Land	
134	PA Sand Storage	175,177
136	Satellite Rescue Sta. & Train. Ctr. (Police) ARFF- Control Building	254, 255
137	Main Rescue Station (Police)	269
138	Main Rescue Station - Land (Excluding Aircraft Apron)	
	Other	
161	Landscaped Area - CTA	
163	Field Service Roads	
	PUBLIC AIRCRAFT FACILITIES	
	Public Landing Area	
211	Public Landing Area	162-166, 169, 176, 205, 254,255
212	PAF Penalty Fees (For use of Acctg. Div. Only)	
213	Approach Light Pier	
	Environment	
215	Environmental Fees	288,289
220	Public Aircraft Parking	

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
231	New Airport Traffic Control Tower	156 (Part)

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
	PASSENGER TERMINAL FACILITIES & SERVICES	
	PASSENGER TERMINAL SITES	
301	Terminal 3 (Formerly Delta Flight Center)	53, 298
302	Terminal 2 (Formerly Delta Terminal 1A)	54
303	Terminal 1 Terminal One Group Assoc.	55A
304	Terminal 9 (Formerly American Terml 3C-D)	56,56A,56B,56C,56D
305	Terminal 8 (Formerly American Terml 3A-B)	57
306	Terminal 5 -Vacant	60, 295, 296
307	Terminal 6 (JetBlue)	58
308	Terminal 7 - British/United	59, 294
309	Aircraft Boarding Security (FAR 107.4)	Domestic
321	IAT - Terminal 4	50, 50A,50B, 156 (Part),
331	Domestic Terminal (proposed)	64
360	**COGENERATION PLANT**	49, 61, 62, 63
	GROUND TRANSPORTATION	
371	Public Vehicular Parking Lot 9 (includes Delta UT roof top parking)	30, 31, 32, 35, 36, (Job #700.689), 38, 43, 44, 45
373		
375	Ground Transportation	
377	Employee Parking-Parking Lot #8 & Lot #9A	41
378	CTA Intra Mural Bus Service	
379	Central Taxi Hold	185 187 (Job #700.733), 188 (Job #700.734)
	MISCELLANEOUS	
395	Aircraft Boarding Security (FAR 129) - Foreign	
396	Transportation Security Association (TSA)	111
	HANGAR & CARGO FACILITIES	
	Exclusive Hangars - U.S. Flag Carriers	
401	Hangar #6 - Federal Express	6, 129-131
402	Hangar #8 - DEMOLISHED (1999)	
403	Hangar #9 - DEMOLISHED (1998)	
404	Hangar #10 - American Airlines/Sky Chefs	10, 121-123, 168
405	Hangar #12 - Vacant	12, 94-96
406	Building #14 - Port Authority Area	14, (Part)
407	Hangar #16 Evergreen Int'l. Airlines	16
408	Hangar #19 - United Airlines (Bays 2 & 4)	19, 208, 209, 210, 211 212, 266, 267, 268

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
	Exclusive Hangars - Other	
421	Hangar #7	7, 265
422	Hangar #15	15
423	Hangar #17 - Vacant	17, 216
431	Hangar #2 - DEMOLISHED (1999)	
432	Korean Air Cargo Building	9
433	AIRIS - Phase II	21
434	United Airlines	22, 22A
435	AIRIS - Phase I	23, 23A, 23B
436	Northwest Cargo and GSE Facility	73,74
437	Air Express Int'l - Cargo	89
438	Continental New Cargo Facility	71
439	Tramel Crow/AMB (to be developed)	258
441	Hangar #3 - West Lean-To	192
442	Hangar #3	3
443	Hangar #3, 4 - West Center Lean-To	127
444	Hangar #4	4
445	Hangars #4, 5 - East Center Lean-To	128
446	Hangar #5 - Air Express Int'l	5
447	Hangar #5 - East Lean-To	193
	Exclusive Cargo & Cargo Service Bldg.	
461	Cargo Building - British Airways	66
462	Cargo Building - Delta	67
465	Cargo Building - DJ Air Services/ELAL	259, 260
466	Cargo Building - Lufthansa	261
467	Cargo Building - Federal Express	262
468	JetBlue - Complex (to be developed)	81, 81A, 81B
	Multi-Occupancy - Cargo Buildings	
471	Cargo Building #81	81
473	Cargo Building #83	83
474	Cargo Building #84	84
475	Cargo Building #86	86
476	Cargo Building #86 - Land	
477	Cargo Building #87	87
478	Cargo Building #87 - Land	
	Multi-Occupancy - Cargo Service Bldgs.	
481	Cargo Service Building #80	80
482	Cargo Service Building #68	68
483	Cargo Service Building #68 - Land	

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
	Exclusive Cargo & Cargo Service Bldg.	
491	Cargo Building - DHL /Asiana Airlines	263
492	Multi-Tenant Cargo Facility - Sky Chefs	75
493	Multi-Tenant Cargo Facility WorldWide/Continental	78
494	Sky Chefs	77
495	China Airlines	76
496	Nippon Cargo Airlines - Cargo Bldg.	79, 79A
497	JAL Cargo Bldg. - JMC	14 (Part), 151
	OTHER AVIATION FACILITIES	
	Aviation Fuel Facilities	
501	Aircraft Fuel Storage	114, 170, 171, 173, 194, 195, 217-219, 221-234, 240, 243, 246, 270-276, 278-286, 288, 289
502	Aircraft Fuel Distribution System	241, 242
503	Aircraft Fuel Trucks	
504	Fuel Distribution Maintenance Garage	90, 91, 92, 101
505	Garage/Storage Bldg. - Ogden	158
506	Buckeye Pipeline Site Area	154,157
507	Ogden (Fuel Area) - Acctg. Office	159
	Ground Transportation	
511	Building #207	207
512	Building #206 - Tow Impound Lot	206
513	Building #199 DEMOLISHED (2000)	
515	Federal Circle Rent-A-Car Site	300-312, 338-343
	Other Buildings - Exclusive Sites	
521	Commissary - Ogden - Air LaCarte	146
522	Commissary	183
524	Storage Building - Ogden	204
525	Commissary - Ogden Foods	196
526	Animal Shelter - Vetport	189
527	Commissary - Sky Chefs/LSG	137,139
528	Office Bldg. Mtce. Facility - Dynair	150,244
531	Vacant	106

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
	Other Buildings	
534	Building #110 - Multi-Tenant	110
535	Building #124	124
536	Building #125	125
538	Building #153 - Gate Station - Bklyn. Union Gas	153
539	Building #214 - Multi-Tenant	214
541	Building #197	197
544	Building #179 - Tie Aviation	179
545	Building #215	215
546	Building #69 - Hudson General	69,70
547	Building #350 - JFKidsport	350
548	Building #178	178
549	Building #213 - Vacant	213
552	PA Office Building	111
	Government Buildings	
553	Air Mail Facility	250
554	JFK Subway Facility	247
	MISCELLANEOUS	
591	Privilege Permit	
592	Paved Land - General	
593	PAF Paved Land - Used for Other Purposes (For use of Accounting Div. only)	
594	Unpaved land - General	314
595	PAF Unpaved Land - Used for Other Purposes (For use of Accounting Div. only)	
597	Federal Aid Credits	
	INDUSTRIAL AND COMMERCIAL	
	Industrial Sites	
601	Building #143 - LSG Lufthansa/Sky Chefs	143
602	Building #142 - Vacant	142
603	Lefferts Oil Terminal	140
604	New York Racing Association	
605	Aqueduct	
606	Ferry Terminal	318

COST CENTER LISTINGS
JF KENNEDY INT'L AIRPORT
EFFECTIVE : DECEMBER 1, 2003

Cost Center		Building No.
	Other Airport Structures	
611	Ramada Plaza Hotel	144
612	Medical Office Building	198
613	Citibank (North Service Road)	72
614	New York Telephone Company	147
615	Amoco Svc. Sta. - Site #2 - Federal Circle	138
616	Gas Station/Mini Mart (Proposed)	135
617	CNG Station #1	315
690	Electrical Submetering	
	Other	
	Special Cost Center Areas Assigned by Comptroller's Department Upon Request	
700-799	For accumulation of Special Items of Expense	
800-899	For expenses recoverable from Tenants and Others	
900-999	For accumulation of expenses included in Major Work Programs	

JFK FINANCIAL & ACCTG SERVICES/AVIATION
FEBRUARY 29, 2004

Exemption (4)

Exemption (4)

Exemption (4)

KENNEDY AIRPORT - EXHIBIT 6B

INITIAL PORT AUTHORITY INVESTMENT IN AIRTRAIN

Project Description:

- A fully automated light rail system which is providing airport access to and from the LIRR and New York City Transit networks at Jamaica Station and NYC Transit service at Howard Beach.

- Three service routes are included:
  - A 1.8 mile service loop that connects airline terminals and circulates around JFK's Central Terminal Area (CTA)
  - A 3.1 mile service segment that connects the CTA to the Howard Beach Intermodal Terminal, which stops at the Federal Circle airport car rental facilities and employee/long term parking lots.
  - A 3.3 mile extension from the Federal Circle which is elevated in the Van Wyck Expressway median and curves east, where it will connect to a modern, renovated Intermodal Terminal at Jamaica Station.

- The system contains six stations serving 9 airline terminals, two additional stations, two intermodal transfer Stations and an Operations and Maintenance Facility.

- All stations are ADA compliant and fully enclosed and climate controlled with automatic platform screen doors, wide escalators, large glass-enclosed elevators, platform with four car train capability, and moving walkways within the connectors to airline terminals 1, 2/3, 5/6, 7 and 8/9.

Exemption (4)

- The airline terminal stations and terminal connectors are as follows:
  - Terminal 1 – with a connector directly into Terminal 1
  - Terminal 2/3 – connector to Terminal 3 roadway area under canopy.
  - Terminal 4 – the station is within the International Air Terminal
  - Terminal 5/6 – the connector crosses the roadway and has a vertical circulation component that ends on the sidewalk adjacent to terminal 6.
  - Terminal 7 – connector to the vicinity of the upper level roadway in front of the terminal.
  - Terminal 8/9 – the terminal connector was designed for accessing the original terminal and ends in middle of the air. The extension into the new T8/9 is not part of initial project.

- The two additional stations are:
  - Federal Circle – Car Rental Facilities
  - Lefferts Boulevard – Long Term Parking and Employee Parking

- The intermodal transfer stations are defined in detail in an MOU between the MTA & the Port Authority dated December 19, 2000 and include:
  - Howard Beach Intermodal Terminal – Long Term Parking and connections to New York City Transit's A Train
  - Jamaica Station and adjacent intermodal terminal– connections to the Long Island Rail Road rail services, New York City Transit's E, J, and Z subway trains and buses plus air rights, but the project does not and will not include any costs (including, but not limited to O&M costs and costs of construction) associated with the air rights area of the vertical circulation building component, nor will the revenues derived from the air rights or the development thereof be included as a credit. The project includes:
    - Expanded NYCT Subway Mezzanine Lobby.
    - Glass-enclosed elevators and stairway.
    - Wide escalators will lead patrons to the AirTrain Street Lobby and Concourse connecting to the LIRR's five-platform commuter service.
    - New combined multi-functional AirTrain/LIRR Mezzanine Bridge.
    - Patron services include seating, telephones, and directory/train info.
    - The AirTrain Vertical Circulation Building (VCB) will function as the collecting interface for the dual AirTrain concourses with space for airline ticket counters and baggage check-in facilities.
    - New LIRR Central Control facility in same building.

- The contract scope of the AirTrain Terminal at Jamaica Station includes the construction of the AirTrain Intermodal Terminal as well as MTA-funded construction for Long Island Rail Road and New York City Transit facilities, including LIRR platform improvements, a new LIRR central control facility and upgraded finishes for the NYCT Sutphin Boulevard Station mezzanine. The contract provides for the basic terminal; it does not include the flight information display systems, Exemption (4) baggage-handling systems for airline interline use, CUTE terminals and associated infrastructure, nor concessions. Any costs incurred for immediately above mentioned improvements and any additional improvements to accommodate remote baggage handling will not be included in the PAF Requirement.

- The Operations Maintenance Service Facility includes:
  - Exemption (4)
  - 16 tracks
  - maintenance building with vehicle inspection, wheel truing, and car wash facilities

- central control facility for computerized train operations

- The project included the construction of the new terminal stations and connectors as described above but did not cover the modification of signage on terminal frontages or within airline terminals.

Exemption (4)

- The initial project included an emergency passenger communication system with the vehicles that utilized the Port Authority police trunked radio system and additional emergency cellular phones.

Exemption (4)

- The initial system did not include a simulator on site for training operators at the Operations and Maintenance facility.

- AirTrain vehicles will have steel wheels on a steel rail with third-rail power, which is compatible with existing Long Island Rail Road and New York City Transit system trains. Some key points about the new vehicles are:

- A total of 32 AirTrain vehicles in initial fleet.

- Projected passenger demand at startup requires one and two car trains.

- Each car can accommodate passengers with luggage and will provide a quality experience, including climate control and extra-wide doors, luggage racks, the ability to handle luggage carts and aircraft-like finishes.

- The project included an operation, maintenance, and storage facility constructed in the existing employee parking lot but does not include replacement parking lot construction.

- At NY Pennsylvania station, the initial air train project includes:

  - Modification to the LIRR Solari destination boards.
  - Modification to LIRR brochure racks
  - Purchase of two ticket vending machines
  - Way finding signage at NY Penn station

Kennedy Airport Exhibit 6B

Some additional details/facts on the JFK Air train system are:

Exemption (4)

Kennedy Airpor. Exhibit 6B

Howard Beach Segment

Exemption (4)

Jamaica Segment

Revenue Service Track

Operations Maintenance Service Facility Yard

Exemption (4)

Exemption (4)

Exemption (4)

EXHIBIT 7

Excerpt of
Proposed Basic Lease Environmental and Indemnity Provisions

"**Environmental Laws**" shall mean all federal, state, and local laws, statutes, ordinances, rules, regulations, judgments, guidance documents, permits, licenses, authorizations, registrations, plans, directives, agreements, consent orders or consent decrees, and other requirements of governmental authorities, whether now existing or hereafter enacted or promulgated, as the same have been or may be amended from time to time, including common law causes of action and all applicable judicial and administrative decisions, orders, and decrees, arising out of, relating to or imposing liability or standards of conduct concerning protection of human health, safety or the environment or Hazardous Materials including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the National Environmental Policy Act (42 USC § 4321 et seq.), the State Environmental Quality Review Act (SEQRA) (NY ECL § 8-0101 et seq) and any analogous current or future federal, state, municipal, city or local laws.

"**Environmental Liabilities**" shall mean all claims, actions, judgments, obligations, suits, notices, notices of violation, investigations, proceedings, demands, orders, damages (including punitive and consequential damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation, sampling, monitoring, containment, cleanup, removal, restoration, remedial work, or other response action of any kind and defense of any claim, whether or not such is ultimately dismissed, and of any settlement or judgment, in each case of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time in connection with (i) any actual or alleged violation of any Environmental Law, (ii) any Hazardous Materials or any actual or alleged use, manufacture, possession, storage, holding, presence, existence, location, release, threatened release, discharge, placement, generation, transportation, processing, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any investigation, corrective action or response action with respect to any of the foregoing, or (iii) any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Hazardous Materials**" shall mean (i) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (ii) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (iii) petroleum and any by-products, fractions, derivatives and constituents thereof, of any kind and in any form, including,

but not limited to, oil, petroleum, fuel, fuel oil, sludge, crude oil, gasoline, kerosene, and mixtures of, or waste materials containing, any of the foregoing; and (iv) any other gas, material or chemical which is or may hereafter be defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous wastes" or words of similar import under any Environmental Law.

* * *

(j) The Port Authority shall, and shall cause the Demised Premises and all Subtenants and other users of the Demised Premises to, comply with all Environmental Laws;

(k) The Port Authority has complied with, and shall continue to comply in all respects, with [the order on consent with the New York Department of Environmental Conservation issued in 1994 concerning certain soil and groundwater contamination at the John F. Kennedy International Airport]**[NB: NEED DOCKET NUMBER]**;

(l) If at any time any Hazardous Materials are found at, on, under or migrating to or from the Demised Premises, the Port Authority shall, or shall cause responsible Subtenants and other users of the Demised Premises to, (A) promptly commence and diligently prosecute to completion all investigation, sampling, monitoring, containment, cleanup, removal, restoration, remedial work, or other response action of any kind to the extent required by and in compliance with Environmental Laws, and (B) provide **[periodic]** notices or reports to the City in such form and substance as the City may require, specifying the nature and condition of such Hazardous Materials, and such action the Port Authority, any Subtenant or any other Person the Port Authority has knowledge of, has taken, is taking or proposes to take with respect thereto;

* * *

Section 31. <u>Indemnification by the Port Authority</u>

31.1 *General Indemnity.* The Port Authority hereby undertakes and agrees to indemnify and save the City and EDC harmless from any claims, causes of action or judgments, by reason of bodily injuries sustained by any person or persons, including death, and for any claims for damages to property arising out of or occurring at the Demised Premises.

31.2 *Environmental Indemnity.* In addition to the provisions of **Subsection 31.1** and for the avoidance of doubt, the Port Authority shall indemnify and save the City and the EDC harmless from and against any and all Environmental Liabilities, which may be imposed upon or incurred by or asserted against the City or the EDC by any Person, at any time from and after the commencement date of the Old Agreement arising from any action (including, without limitation, acts of terrorism) or inaction by, or status of, any Person relating to, arising out of or occurring at the Demised Premises.

31.3 The provisions of this **Section 31** shall survive the expiration or earlier termination of this Agreement (including, without limitation, resulting from a taking of all or any portion of the Demised Premises) with respect to events occurring prior to such expiration or

termination, whether claims with respect thereto are made before or after such expiration or termination.

Form - All-Purpose Ack. N.Y. (rev 1/4/2000)

FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 18 day of July in the year ~~2004~~ 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared Joanne Ciccolello, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Peggy M. Spinelli
(notarial seal and stamp)

PEGGY M. SPINELLI
Notary Public, State of New York
No. 01SP6057870
Qualified in New York County
Commission Expires April 30, 2007

FOR KUWAIT AIRWAYS CORPORATION

STATE OF New York)
) ss.
COUNTY OF Queens)

On the 9th day of March in the year 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared Mr. Othman Saleem Othman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

KURT H. TELLEFSEN
Notary Public, State of New York
No. 01TE6018343
Qualified in Queens County
Commission Expires Jan. 11, 2007

(notarial seal and stamp)