ACRP

REPORT 33

AIRPORT COOPERATIVE RESEARCH PROGRAM

Sponsored by the Federal Aviation Administration

Guidebook for Developing and Managing Airport Contracts

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AIRPORT COOPERATIVE RESEARCH PROGRAM

ACRP REPORT 33

Guidebook for Developing and Managing Airport Contracts

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AIRPORT COOPERATIVE RESEARCH PROGRAM

Airports are vital national resources. They serve a key role in transportation of people and goods and in regional, national, and international commerce. They are where the nation's aviation system connects with other modes of transportation and where federal responsibility for managing and regulating air traffic operations intersects with the role of state and local governments that own and operate most airports. Research is necessary to solve common operating problems, to adapt appropriate new technologies from other industries, and to introduce innovations into the airport industry. The Airport Cooperative Research Program (ACRP) serves as one of the principal means by which the airport industry can develop innovative near-term solutions to meet demands placed on it.

The need for ACRP was identified in *TRB Special Report 272: Airport Research Needs: Cooperative Solutions* in 2003, based on a study sponsored by the Federal Aviation Administration (FAA). The ACRP carries out applied research on problems that are shared by airport operating agencies and are not being adequately addressed by existing federal research programs. It is modeled after the successful National Cooperative Highway Research Program and Transit Cooperative Research Program. The ACRP undertakes research and other technical activities in a variety of airport subject areas, including design, construction, maintenance, operations, safety, security, policy, planning, human resources, and administration. The ACRP provides a forum where airport operators can cooperatively address common operational problems.

The ACRP was authorized in December 2003 as part of the Vision 100-Century of Aviation Reauthorization Act. The primary participants in the ACRP are (1) an independent governing board, the ACRP Oversight Committee (AOC), appointed by the Secretary of the U.S. Department of Transportation with representation from airport operating agencies, other stakeholders, and relevant industry organizations such as the Airports Council International-North America (ACI-NA), the American Association of Airport Executives (AAAE), the National Association of State Aviation Officials (NASAO), and the Air Transport Association (ATA) as vital links to the airport community; (2) the TRB as program manager and secretariat for the governing board; and (3) the FAA as program sponsor. In October 2005, the FAA executed a contract with the National Academies formally initiating the program.

The ACRP benefits from the cooperation and participation of airport professionals, air carriers, shippers, state and local government officials, equipment and service suppliers, other airport users, and research organizations. Each of these participants has different interests and responsibilities, and each is an integral part of this cooperative research effort.

Research problem statements for the ACRP are solicited periodically but may be submitted to the TRB by anyone at any time. It is the responsibility of the AOC to formulate the research program by identifying the highest priority projects and defining funding levels and expected products.

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Primary emphasis is placed on disseminating ACRP results to the intended end-users of the research: airport operating agencies, service providers, and suppliers. The ACRP produces a series of research reports for use by airport operators, local agencies, the FAA, and other interested parties, and industry associations may arrange for workshops, training aids, field visits, and other activities to ensure that results are implemented by airport-industry practitioners.

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The members of the technical panel selected to monitor this project and to review this report were chosen for their special competencies and with regard for appropriate balance. The report was reviewed by the technical panel and accepted for publication according to procedures established and overseen by the Transportation Research Board and approved by the Governing Board of the National Research Council.

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FOREWORD

By Theresia H. Schatz
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ACRP Report 33: Guidebook for Developing and Managing Airport Contracts provides an intuitive, easy-to-use guidebook of best practices for developing, soliciting, and managing airport agreements and contracts for use by a variety of airports. This report responds to the need for a single resource for examples of current airport best practices in preparing and administering agreements. The agreements referenced in this guidebook range from airline-related agreements to communication and utility service as well as common-use, ground transportation, and concessions agreements for a variety of passenger services. An accompanying CD-ROM provides sample agreements in each of these areas.

This report will be useful for administrators; finance, properties and contract services staff at airports of all sizes; and other stakeholders involved in dealing with a variety of airport agreements and contracts.

Airport operators are responsible for developing and managing a wide variety of aeronautical and non-aeronautical agreements. These include, but are not limited to, agreements for airport use (both airline and non-airline), design and construction, commercial development, commercial operations, management, intergovernmental relations, real estate, maintenance and operations of buildings and grounds, utilities, administrative services, military use, airport "through-the-fence" operations, common-use facilities, ground transportation, and concessions for a variety of passenger services (i.e., rental car, parking, and retail/food/beverage). In addition, with the constantly changing environment in the airline industry, airports are becoming more responsible for services and programs that were traditionally the responsibility of the airlines.

While large airports typically have full-time professional property- or business-management offices to oversee the development, solicitation, award, administration, and overall management of these contracts, many medium and small air carrier airports as well as many general aviation airports do not. At these airports, the staff responsible for contracts may have other responsibilities in addition to administering these airport agreements and are often not aware of evolving trends or best practices for airports.

It is difficult to obtain templates for specific kinds of agreements and time-consuming to learn proven techniques for administering airport agreements. However, within the airport industry, several airports have developed and implemented creative programs. Other airports can benefit from their experience and example. In addition, the operators of overseas airports have developed and implemented contract procedures that are not widely known in the United States. To obtain copies of agreements that represent "best practices," airport operators were required to contact their peers individually, as there was no clearinghouse or easily accessible source for these documents. This report provides a consolidated location for such information. This research effort was conducted by HNTB under ACRP Project 01-02.

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CHAPTER 1

Airline Agreements

Airline agreements have undergone significant changes in many areas in recent years. These changes are in part due to changes in Federal regulations regarding use of space and calculation of rentals and fees for use of the airport, changes in the way airlines do business, economic impacts (e.g., airline bankruptcies and hub closures) and other significant regulatory, operational and economic impacts. Trends have emerged and continue to emerge on issues driving the way airports and airlines operate and relate to each other. Airports and airlines continue to attempt to cover those emerging issues and trends in their airport/airline agreements, primarily through the major agreement governing the airlines' operations at the airport, commonly referred to as the Airline Use and Lease Agreement or Signatory Airline Lease and Operating Agreement.

Key airline agreement provisions are as follows:

- Length of term
- Control of space
- Loading bridge ownership and maintenance
- Ability to accommodate new entrants and growing incumbents
- Affiliate definition and treatment
- Treatment of alliances
- Vacancy risk
- Privileges granted
- Defined obligations
- Maintenance, repair, and janitorial
- Reporting of activity
- Form and amount of payment security
- Insurance
- Assignments and subletting
- Handling agreements
- Rate making
- Billing, payments, and adjustments
- Aviation security
- MII approval for capital projects; formula for MII calculation
- Bankruptcy provisions

1.1 Length of Term

The strong trend in this area is for shorter term agreements. Gone are the days of the 20- or 30-year agreements that airports (and the financial markets) believed were required to support bonds used to construct terminal and airfield facilities. Airports have discovered that they can still

sell bonds without long-term leases. **The most common lease term in the industry today is 5 years.** This is tied in part to the PFC requirement that leases for exclusive space can be no greater than five years. In addition, as monumental changes take place in the airline industry (e.g., bankruptcies, mergers, and hub closures) and the overall fluid airline economic picture, airports prefer the greater flexibility of the shorter term (in addition to other flexibilities in the agreements).

Some airports have created even greater flexibility by including option terms in the agreement, either airport unilateral or by mutual agreement.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PDX Airline Agreement for provisions regarding the extension of the agreement by mutual agreement.

1.2 Control of Space

A strong trend in airline agreements is for the airport to have greater control over its facilities. This is driven by (1) needs and requirements to maximize use of facilities, (2) an affirmative obligation imposed by federal statute requiring airports to accommodate all carriers desiring to operate at their airports; and (3) a desire to minimize costs that result from the construction of new facilities and overall good husbandry of airport resources.

To increase their control, **airports are shifting from exclusive-use premises to preferential and common/joint-use premises.** There are a multitude of combinations of these constructs which in turn are driven by existing and projected airline activity, current space and planned construction of additional space, historical anomalies, and the existence of a hub or heavily dominant carrier, and other airport-specific drivers.

The general trend is for ticket counter and airline ticket office (ATO) space to be designated preferential space. This gives the airport flexibility in accommodating changing dynamics. However, based on the particular circumstances, airports continue to lease ticket counters and ATO space on an exclusive basis. This is motivated by availability of this type of space and airline concerns about proprietary functions, labor agreements and security (e.g., ticket stock and check out procedures). Every airport must customize its own requirements.

Gates (which include holdrooms, loading bridges, and apron parking) are most frequently leased on a preferential or common-use basis. In addition, many airports have utilization requirements related to the ability to lease a preferential gate.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the STL and BWI Airline Agreements for provisions regarding minimum gate utilization requirements.

Many airports strive to have a combination of preferential-use gates (the majority of gates) and common-use gates to create flexibility to accommodate new entrants and increased flight activity by incumbent carriers.

Baggage claim and tug roadway space is most commonly leased on common/joint-use basis, the notable exceptions being unit terminals or special facilities. The most frequently used formula for allocation of costs in these areas is a 20/80 formula (20% based on number of carriers and 80% based on deplaned passengers), however, many airports use a 10/90 formula. Generally, the airports do not have a strong preference for any one formula; the decision is frequently driven by the airlines' preference.

One issue that has been largely resolved is how to count deplaned passengers (i.e., total deplaned passengers versus deplaned destination passengers). **The strong trend is for deplaned passengers to be defined as deplaned destination passengers for purposes of calculating the airlines' rela-**

tive share of the 80% (or 90%). The basis of this is logic and equity—deplaning connecting passengers do not use the baggage claim area.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the STL Airline Agreements for a definition of deplaned destination passenger.

Outbound baggage makeup space has changed character with the advent of baggage security requirements. This space was historically more commonly designated exclusive or preferential. With the advent of TSA-mandated baggage screening, this space in many airports has converted to nonairline space used by TSA. Under current regulations, airports cannot charge the TSA for the space but can charge for electric and other utilities and janitorial costs. The same change has taken place with security checkpoints. Once commonly designated common-use airline space, the security checkpoint is now TSA space with rental costs not recoverable, but utilities and janitorial costs billable to the TSA.

Other types of space such as ATO and operations areas are variously classified as exclusive or preferential. This determination is frequently driven by the availability of vacant space. VIP rooms are generally classified as exclusive-use space.

For additional discussion of space control and accommodation, please refer to Section 1.4.

1.3 Loading Bridge Ownership and Maintenance

The trend is clearly a transition to airport ownership of loading bridges. This trend ties with the correlative trend to preferential use and common-use gates. Airport ownership of the bridges enables the airport to more easily reassign space or implement accommodation and other shared-use arrangements on gates.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the STL Airline Agreement for stating the long-term policy to own all passenger loading bridges.

In many airports there has been a mixed ownership of loading bridges. Many airports have a program to transition to full ownership via purchase of airline-owned bridges, airport replacement of airline-owned bridges whose useful life has expired, and airport purchase of bridges for newly constructed gates.

Maintenance of loading bridges varies considerably among airports, even those that own the bridges. Some airports own and maintain all bridges regardless of ownership (CLT); some require the airlines to maintain both airline and airport-owned bridges (IAD and DCA, STL). In others the maintenance responsibility is determined by ownership (PDX, BWI). The maintenance responsibility is a negotiated term driven by each airport's respective preference for control of maintenance standards, transfer of financial responsibility, staff availability, and other individual determinants. Even where airlines maintain the bridges, airports can include language in the airline lease agreement that controls the maintenance that airlines perform on bridges.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the STL Airline Agreement for provisions regarding airlines' maintenance of loading bridges.

1.4 Ability to Accommodate New Entrants and Growing Incumbents

Airports' desire to control the use of their facilities to accommodate new entrants and growing incumbents has become a preeminent focus of airport sponsors and is a major element of airline agreement negotiations. There are virtually as many methods of accomplishing

this goal as there are airports. However many common themes and goals can be identified in this critical area.

As indicated above, **most airline agreements entered into in the last 10 years have classified gate areas (including holdrooms, loading bridges, and aircraft parking apron) as preferential- or common-use space.** Example airports include AUS, BWI, PDX, PHL, SEA, SLC and STL.

Moreover, with the exception of PDX, all of the above listed airports also classify ticket counter as preferential-use space. PDX has a combination of exclusive-, preferential-, and common-use ticket counters with the obvious first choice for accommodation purposes being vacant or common-use space. However, PDX has detailed provisions for the accommodation of requesting carriers in exclusive- or preferential-use space if none is made available by the existing signatory carriers upon request, including the right to take back underutilized premises.

Virtually all recent airline agreements contain language requiring accommodation of requesting airlines. These accommodation provisions are generally detailed and comprehensive and are customized for each airport's particular circumstances.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PDX, AUS, BWI, MWAA, and STL Airline Agreements for provisions regarding accommodation of other airlines.

1.5 Affiliate Definition and Treatment

Most airline lease agreements contain definitions of airline affiliates and provisions addressing the treatment of affiliates regarding benefits and restrictions. Affiliate definitions generally include requirements that the affiliate be operating under a code share arrangement (or IATA flight designator code) or is the parent or subsidiary of a signatory airline and is not selling seats in its own name.

Most agreements require that the affiliate execute a nonsignatory operating agreement. The PDX agreement requires that the signatory carrier pay all rents due from the affiliate and file all activity reports on behalf of the affiliate. The PDX agreement also states that the affiliate's activity will count toward the signatory carrier's activity, revenue sharing, and MII weight. Conversely, the BWI agreement specifies that the affiliates activities and revenues are not counted for purposes of an MII. Some agreements, such as the one for STL, require the signatory to pay the affiliate's rents and other fees if the affiliate defaults in payment.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PDX, BWI, STL, and AUS Airline Agreements for provisions regarding definition and treatment of affiliates.

Generally, **the benefits accruing to an affiliate include waiver of an equal share of the 20% cost of common-use baggage areas and a waiver of a ground handling fee for handling by the signatory carrier.**

1.6 Treatment of Alliances

Many airport agreements do not contain any language regarding alliances. When alliances are addressed either directly or indirectly by exclusionary language, it is generally to differentiate or exclude an alliance from the definition of affiliate. This applies to what are commonly referred to as "code share alliances" such as those created by the formation of the worldwide alliances (e.g.,

Sky Team and Star Alliance). Some agreements contain a specific reference to the code share relationship by including a definition of "Partner" to cover the method of counting the code share carrier's operations for purposes of gate allocations.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the STL Airline Agreement for provisions regarding definition and treatment of alliance partners.

1.7 Vacancy Risk

Vacancy risk is becoming of increasing importance to airports as airlines adjust space needs due to mergers and economic vagaries. Airport agreements address the risk of space vacancy in several ways. Residual agreements cover the risk of vacant space via the methodology of calculating rates by netting revenues from expenses and then dividing the net by an airline-leased space denominator. Compensatory and commercial compensatory agreements generally do not recover vacancy costs because the denominator used in calculating rates is leasable space and the airport thereby bears the risk of unleased space. **One way that airports can mitigate vacancy risk is to create an additional weighted space category and allocate fewer operating and maintenance expenses to that space category given that vacant space does not require as much O&M costs.**

1.8 Privileges Granted

Most airline agreements have lengthy and detailed descriptions of the privileges granted to the signatory. These include the right to operate its flights, repair aircraft, sell tickets, train personnel, purchase fuel, service equipment, operate radio and other communications, sell or exchange equipment and products, operate VIP clubs, handle or be handled by other airlines or entities, and prepare and distribute food and beverages (with limitations). There is normally a blanket statement preceding the specific delineation of privileges that grants the airline the right to operate its air transportation business at the airport followed by a caveat that nothing be construed as granting airline the right to operate a business separate from the operation of the air transportation business.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the STL, MWAA, PDX, PIT, and BWI Airline Agreements for provisions regarding the rights granted to airlines for operations at the respective airport.

Most agreements exclude certain activities from airline rights and privileges. These prohibitions often include the right to

- Sell food and beverages in the airport, except in VIP rooms. (The sale in VIP rooms is commonly restricted to food provided by a vendor having a contract with the airport. The same source restriction generally applies to food purchased for sale onboard aircraft.)
- Install pay phones.
- Install internet or wireless connectivity. (However, there is a trend toward permitting such installation in exclusive space.)
- Land aircraft that exceed the design strength/capacity of the airport.
- Install cash machines.
- Install advertising.
- Enter into any agreement with any entity providing goods and services that does not have an agreement with the airport.

1.9 Defined Obligations

Airline agreements tend to have general provisions requiring the airport to operate and maintain the airport in a first class (or other descriptive term) and businesslike manner. There is normally a correlative obligation by the airline to operate its air transportation business prudently so as not to interfere with any other user's operations or those of the airport. In addition to these blanket statements, many agreements specifically delineate the airport's and airline's respective obligations. **There is a trend away from affirmative fiscal obligations by the airport to obtain the maximum amount of federal and state grants and to maximize concession revenue and other income.**

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PIT Airline Agreement for provisions regarding the obligations and responsibilities of the airport authority with respect to airport operations including operation and maintenance of facilities, security, maximization of concession revenues, obtaining uniform compliance by all tenants, and charges to non-signatory airlines. Also see *CRP-CD-81* for excerpts from the MWAA Airline Agreement for provisions regarding the responsibilities of the airlines with respect to maintenance of facilities and supervision of personnel.

1.10 Maintenance, Repair, and Janitorial

A general trend in agreements is a division of responsibilities between airports and airlines, based on the leased status of the space and the character of the space or area. Virtually all agreements require the airport to maintain the structure, roof, exterior, and utility systems up to the tenant's dedicated lines. The airport generally is responsible for all maintenance, repair, and cleaning of public and common-use areas. There tends to be great diversity among airports regarding the maintenance, repair, and janitorial services in airline-leased areas. The greater number of agreements places this responsibility on the airlines in preferential- and exclusive-use space. However some airports assume all maintenance, repair, and janitorial services for all airline areas in the terminal and ramp and charge it to the airlines in the rates and charges. Each airport addresses this area based on its overall philosophy, historical division of responsibility, preference for control of the services, availability of staff, and financial considerations.

Most agreements have a narrative in the body of the agreement that describes the services in more general terms and a support supplement in an exhibit that presents details in a matrix of maintenance, repair, janitorial, and utility responsibilities in specified areas.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the AUS, MWAA, PDX, SEA, and BWI Airline Agreements for provisions and matrices outlining the allocation of responsibilities for maintenance of facilities and a sample RFP from AUS.

1.11 Reporting of Activity

Airline agreements generally have specific provisions outlining the methods of reporting various airline activities. The requirements vary depending on the type of activity:

- Projections. Most agreements require the airlines to provide a projection of landed weight for the next fiscal year in order to calculate estimated landing fees and sometimes common use charges. The time period is generally 90 to 120 days prior to the expiration of the current fiscal year.
- Actual activity. Most agreements require airlines to report their variable activity, including landed weight and passenger activity within a specified period of time after the end of the pre-

vious month. The time period generally varies between 5 and 15 days; however, there is a trend toward requiring the submission of reports within 5 days of the previous month's end.

Most airports require airlines to include the passenger activity of affiliates in their passenger activity reports. Most airports permit the affiliate to file their own landed weight report. This will depend on the agreement's language regarding the treatment of affiliates (see Section 1.5).

Most agreements specify the format of the reports to be submitted and provide the form as an exhibit to the agreement. The report can be submitted either as a hard copy or electronically via email. However, there is a trend in the industry, as technology expands, to require reporting airline activity via an airport-proprietary electronic system. **Many airports have or are considering new electronic systems for activity reporting.**

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PDX, STL, and SEA Airline Agreements for provisions regarding activity reports and information to be provided by airlines.

1.12 Form and Amount of Payment Security

Airline agreements generally take one of four approaches to the issue of payment security:

- No payment security is required in the agreement. These agreements do not specifically waive the requirement, but rather are silent on the subject. This exclusion would be found in a residual agreement where the airport can recover the bad debt through the rates charged to other airlines. For this reason, frequently in an airport/airline negotiation, the more financially stable airlines would request a payment security provision in order to minimize their risk of paying the costs of a bankrupt or defaulting airline.
- An absolute payment security is required. These agreements have a requirement for payment security from the airline regardless of the airline's payment history or good standing status.

  See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the SEA Airline Agreement for provisions regarding the security deposit requirements.

- There is a slight variation on this approach in some airports where the rate making methodology is different in the various cost centers. For example, BWI requires payment security in compensatory cost centers only (terminal and loading bridges).

  See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the BWI Airline Agreement for provisions regarding performance bond requirements.

- A form of payment security is required if the airline has not previously served the airport, has not served the airport for a specified period of time (ranges from 12 to 24 months) or has been late in making required payments.

  See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PDX, PIT, and MWAA Airline Agreements for provisions regarding security deposits to be provided by airlines.

The form of payment security is generally specified as a performance or contract bond or a letter of credit, with general language allowing any other form approved by the airport. Some airports accept cash deposits but that is uncommon.

The amount of the payment security is generally 3 to 4 months' of rents, other charges, and landing fees. Some agreements require the bond amount to be updated annually or upon an increase in an airline's fees or if the security is depleted. Many agreements do not require the airport to escrow or pay interest on the payment security; others specifically exclude that requirement, as also evidenced in the SEA agreement.

1.13 Insurance

Airport and airline insurance requirements are addressed in the following sections.

1.13.1 Airport Insurance

A recent 2007 ACI/NA Airport Operating/Use Agreement Insurance Requirements-Benchmarking Survey (ACI Survey) revealed that only 44% of the airports that responded had airline agreements that contained language requiring the airport to carry property insurance and only 35% required airport liability insurance. Of the airports that responded that the insurance was required, most indicated that a limit was not specified. When a limit was indicated, it was generally replacement value.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the MWAA Agreement for provisions regarding the authority's insurance obligations.

As demonstrated by the lack of airport insurance requirements, it appears to be generally assumed by airlines that the airports carry appropriate insurance coverage. This may change in the future, due to a perception of enhanced risk, with airlines insisting on documentation of the airport's coverage of the airlines' insurable interests in the airport.

1.13.2 Airline Insurance

Many older airline agreements contain language no longer used in the insurance industry. Examples of this include the terms "comprehensive general liability insurance" and "broad form property endorsement." **Airports should consult with an insurance advisor when drafting a new or amended airline agreement to make sure that both the language and coverage limits are updated.**

Few airports require no insurance coverage. Airports that require coverage have significantly different requirements regarding types of insurance, coverage limits, and policy requirements.

Types of Insurance

Most airports require airline general liability insurance that covers all ground operations and all airport premises and includes products/completed operations and personal injury. Some general airline liability requirements in the agreements also include coverage for aircraft fueling and environmental/pollution liability. Few require terrorism/war coverage. Most airline agreements require auto liability for both the airfield and roadways/non-airfield.

Amounts of Coverage

The amount of coverage required varies significantly among airports, even those of similar size. **It is difficult to generalize in this area, but there appears to be a trend in larger airports in recent agreements to increase the limits for all types of insurance.** For example, both SEA and STL require $500 million in airline liability insurance and $5 million in auto liability insurance.

Airline Liability Insurance. The coverage requirement in this area ranges from $100 million to $500 million for major carriers and, if differentiated in the agreement, $25 million to $200 million for regional airlines. The ACI survey showed that only 4% of airports surveyed require liability insurance greater than $300 million. The ACI survey also noted that most major airlines carry liability insurance in amounts equal to $1 billion or greater.

Automobile Liability Insurance. Coverage in this area is frequently differentiated between landside and airside coverage. Most airports in the ACI survey require less than $5 million in land-

side coverage, but a significant number (27%) require $5 million. On the airside, most airports require between $5 and $10 million.

Workers Compensation. Most airports (90%) require workers compensation coverage as required and in amounts specified by state law, with 86% requiring employer's liability.

Property Insurance. If property insurance is required the agreement generally specifies full replacement value.

Policy Requirements

A vast majority of airline agreements (98%) require an Insurance Certificate, but only 4% require an actual copy of the policy. Some agreements do give the airport the right to request a copy of the policy at its discretion. **Ninety-six percent (96%) of agreements require the airport to be designated as an additional insured;** however, only 50% require an actual policy endorsement.

The standard requirement for notification of policy cancellation or change is 30 days.

Airports are split on the issue of requiring the airline coverage to be primary and non-contributory with a small majority (53%) requiring this provision.

Eighty percent (80%) of airports require the policy form to be an occurrence versus claims-made basis.

Most agreements (62%) did not specify a penalty for failure to maintain insurance, although in most agreements this failure would be considered an event of default.

A cross-liability clause is not generally specified in newer airline agreements.

Sixty-one percent of airports in the ACI study did not specify a minimum financial rating for the insurance carrier for the airlines; however, there is a trend in newer agreements to specify a high financial rating.

Most airports (67%) require a waiver of subrogation in the agreement and there is an increasing trend for this requirement.

Most agreements (70%) allow a periodic review of airline insurance to ensure adequacy.

Self insurance is a particularly difficult issue in airline agreements. In the ACI survey asking if self insurance is allowed, 30% of airports said yes, 33% said no, and 37% were silent. This is an area for careful consideration by the airport. The risk of self insurance is that there is no third-party insurance carrier to defend the claim as there is when the airport is "an additional insured" on the airline's policy. There is particular cost and risk to the airport in cases where the airline contests the claim.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the BWI and STL Airline Agreements for provisions regarding insurance coverage to be provided by airlines.

1.14 Assignments and Subletting

Airline agreements universally require the airline to obtain the consent of the airport sponsor to any assignment of the lease or subletting, with most agreements making a specific exception to the consent requirement for assignments to a parent or subsidiary or in the case of a merger.

Most agreements state that the assignor or sublessor will remain liable for all rents and charges through the term of the agreement. A written assignment or sublease is generally required, and subleases are typically restricted to the sublessor's actual cost plus a 15% administrative fee.

Many agreements condition the approval and sublease on the existence or lack of various conditions:

- Adequate space available for lease from the airport sponsor
- A sublease of greater than 50% of sublessor's leasehold
- Assignee is not as credit worthy as the signatory airline
- Assignee or sublessee is not willing to become a signatory

Some agreements state that an assignment or sublease may be rejected if the signatory airline has previously failed to accommodate another carrier when requested.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the MWAA and PIT Airline Agreements for provisions regarding assignment and sublease of premises.

1.15 Handling Agreements

Airline agreements generally give the airline the right to handle or be handled by other airlines or other entities. A significant number condition this right on either notice or approval by the airport sponsor and require the handled airline to have an agreement with the airport.

Many airports require the handling airline to pay a fee, which ranges from 5% to 15% of gross revenues; however, some agreements exclude the handling of affiliates from the fee.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the BWI and PDX Airline Agreements for provisions regarding ground handling services by airlines.

1.16 Rate Making

The rate-making methodology varies considerably from airport to airport. However, the methodology can generally be classified in the following categories: Residual (consisting of two distinct approaches to residual rate making), Compensatory, and Hybrid.

- Airport System Residual Cost Center. Frequently referred to as the "single cash register approach," this methodology adds all airport expenses and deducts all revenues to arrive at the airline rates and charges. **This methodology has fallen out of favor primarily because airports want to control revenue and have flexibility on capital improvements.**
- Cost Center Residual. This methodology calculates all the expenses allocable to the particular cost center (e.g., terminal, ramp, and landing area) and deducts the revenues that are allocable to or sourced from that particular cost center. The net requirement is then divided by the appropriate divisor (e.g., square feet and landed weight) to derive the rate or fee. Most airline agreements characterize the landing area as cost center residual, with the total allocated cost offset by non-signatory landing fees, fuel flowage fees, GA landing fees, and apron fees (if apron is considered part of the landing area). Many agreements classify the terminal as cost center residual, with allocated costs offset by ancillary fees and non-airline revenues (primarily concession revenue) specific to the terminal.
- Compensatory. Compensatory cost centers are those that calculate all expenses for the specific cost center and divide that cost by the applicable divisor (e.g., square feet or landed weight). The divisor for the terminal in a compensatory methodology is generally rented space. Revenues are not deducted in this methodology to calculate rental rate or landing fee.

Compensatory terminal cost centers tend to be more common in larger airports that generate greater revenues.

- Hybrid. This term is used loosely in the industry to describe vastly different methods of calculating rates and charges. It is frequently used to describe an airport that uses different methodologies in the separate cost centers. For example, BWI, SEA, and STL use a cost center residual methodology in the airfield and a compensatory methodology in the terminal. The term hybrid is also used to describe methods of calculating rates where the basic charges are established, either by a residual or compensatory approach, and the charges are then offset by surplus revenue. The amount of surplus revenue applied is determined by specific formulas in the agreement and varies considerably in the industry. For example, PDX (with a residual terminal cost center) has agreed to share up to $30 million in Port cost center revenues with the signatory airlines over the 5-year term of the agreement (at $6 million per year). Port cost center is defined as the cost center to which revenues and expenses associated with ground transportation, air cargo, and other aviation and non-aviation cost centers are allocated. There are restrictions on the availability of the Port revenue (e.g., required debt coverage ratios). A novel addition to the concept of revenue sharing in the PDX agreement is a reduction in the amount of the Port revenue sharing by a decrease in O&M expenses based on a specific formula.

  See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the PDX Airline Agreement for provisions regarding the calculation of rates and charges.

Many airports are moving to a controlled revenue sharing, with the formulations customized to the airport's particular financial needs and circumstances.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the SEA and STL Airline Agreements for provisions regarding the calculation of rates and charges.

Other important components of rate making are as follows:

- Variable space rent. Most airports attach weighted values to different space in the terminal generally based on location and accessibility. Some airports use the weighted values to discourage airlines from renting excessive space of a type that is limited (i.e., ticket counter).

  See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the SEA and STL Airline Agreements provisions with variable rates for different classes of space.

- Non-signatory premium. Most airports charge a non-signatory premium in both the airfield and terminal. The premium ranges from 10 to 25%.
- Apron charges. The treatment of apron costs varies considerably. Some airports treat it as a component of the airfield and do not charge a separate fee. This approach has fallen out of favor with the emergence of low-cost carriers who tend to use their gates more heavily and, therefore, prefer a separate fee rather than loading it into the airfield, which benefits carriers with more gates and less utilization. The trend is to establish a separate cost center and charge a separate apron fee. The basis for the apron fee varies. A few airports establish a fixed fee by type of aircraft (narrowbody versus widebody) adjusted annually. Most airports establish either a per square foot or per linear foot rate with the square foot rate becoming more preferred as it more accurately reflects the total square feet of the apron utilized.

1.17 Billing, Payments and Adjustments

Fixed rentals (e.g., exclusive or preferential terminal rents) in most agreements are due and payable without invoice on or before the first of the month. Most airports provide a "courtesy" invoice. For variable rents and fees (common/joint-use space, other use fees and landing fees), most

agreements require the airlines to submit an activity report for the previous month by a certain date (ranges from the 5th to the 15th day of the subsequent month), whereupon the airport submits an invoice and the airline is required to pay the invoice by "a date certain" (ranges from 10 to 30 days from the invoice date).

A growing trend in airport invoicing is the concept of "self-invoicing." Under this procedure, the airline submits its landing weight report and includes the calculation of the landing fees due based on the current rate. Payment of the fees must accompany the report.

A variation on this procedure is "advance self-invoicing." This process can be applied to landing fees as the airline can readily estimate the fees based on previous month's actual flight activity and known flight schedules. Under this process, the airline estimates its landed weight for the upcoming month and self invoices based on the estimated weight, submitting a payment on the first of the month. Any discrepancy from estimated to actual is then accounted for on the next month's self invoice.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for an excerpt from the SEA Airline Agreement for provisions relating to self-invoicing.

Most agreements provide for some type of interim rate adjustment, most frequently a mid-year adjustment of rents. Some airports, projecting significant variation of activity, require an adjustment more frequently.

Most airports also require a year-end adjustment, comparing projected with actual in all cost centers. The collection of the shortfall or payment of overcharges is handled either as a true-up or a deficit/surplus forward. In the case of a true-up, the airlines receive a bill or a check, respectively, for the variance. In the deficit/surplus forward, the deficit or surplus is rolled into the next fiscal year's rates and fees.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the SEA, PDX, and PIT Airline Agreements for provisions regarding payment of amounts due and year-end and midyear adjustments to rates.

1.18 Aviation Security

Most airline agreements have general language regarding airport security that requires the airline to comply with all federal, state, and local regulations. Gone is the language in older agreements requiring the airlines to provide checkpoint and baggage security now that those have been absorbed by the TSA.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the AUS, MWAA, and PDX Airline Agreements for provisions regarding airline responsibility for compliance with airport security plans and TSA requirements.

1.19 MII Approval for Capital Projects; Formula for MII Calculation

Airlines seek out Majority-in Interest (MII) rights of approval for airport capital projects. This has been driven by an increase in airport costs related to required capital improvements to support aging infrastructure, increased aviation activity, and a lack of funding. The scope of the MII

approval, the monetary thresholds, and the percentages required for airline approval vary considerably from airport to airport.

One trend that has arisen, particularly in larger airports, is the pre-approved capital improvement program (pre-approved CIP). A significant number of airports are negotiating an inclusion of a pre-approved CIP in new agreements or extension amendments of existing agreements. These pre-approved CIPs provide a detailed description of individual projects with projected capital expenditures and funding sources. The descriptions generally contain the estimated impact of the capital projects on airline rates and charges. The pre-approved CIP is typically presented in the Use and Lease Agreement as an exhibit.

The agreements generally require further airline approvals if any component project cost or the total capital cost of the pre-approved CIP varies by an established measure from the pre-approved amounts. A common measure for new airline approval is a value greater than 110% of the original cost. Some agreements permit an individual project to exceed its estimated cost if the total CIP cost does not exceed the approved amount. Many agreements provide for an annual cost escalator as part of the pre-approved CIP.

It is also a trend for airline agreements with an MII requirement to include an increasingly expanded list of projects that are exempt from MII. Projects that commonly fall into this category are projects dictated by safety, security, emergency, casualty, judgments and settlements, laws and regulations, compliance with trust indenture, and noise mitigation and environmental remediation. Some agreements have included an exemption from MII for capacity-enhancing terminal projects (particularly if there is an airline commitment for the space) and special facility projects if the benefiting airline agrees to pay for the project.

The required formula for airline participation in the approval/disapproval process varies. Generally, there is distinction made between airfield projects and terminal projects. For airfield projects, a common requirement is for approval or disapproval by 50% of signatory airlines with 50% of landed weight. For terminal projects, many agreements specify 50% of airlines by number with some requiring 50% of rents and others requiring 50% of enplaned passengers as the threshold. Although 50/50 is common, there are myriad other formulas depending on the size of the airport, the existence of a hub carrier, the extent of the pre-approved CIP and other anomalies. Airports appear to be fairly evenly split between an approval process and a disapproval process.

Airline agreements generally contain a threshold definition for a project to be considered a capital improvement. A common dollar threshold is $100,000 but can vary from $20,000 to $500,000. The useful life requirement also varies but the most common is probably 5 years. These thresholds generally reflect the individual airport's overall treatment of expensed costs versus capital improvements.

The value of the capital projects requiring MII approval (outside of a pre-approved CIP) vary considerably between airports, with the range from $100,000 to $10 million. The values are usually higher in the airfield. The values are generally net of PFC and other funding.

Airline agreements are specific and detailed on the requirements of the consultation process, particularly timing and information to be provided.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 1, Airline Agreements, for excerpts from the BWI, PDX, SEA, and STL Airline Agreements for provisions regarding the consultation with airlines and approval process for capital projects and for a summary of the ACI Survey of Airline Approval for Capital Projects.

1.20 Bankruptcy Provisions

The Federal Bankruptcy Code (Code) controls the treatment of airline agreements and the respective parties' rights and obligations. Any provision in an airline agreement inconsistent with the Code is deemed unenforceable. Because of preeminence of the Code, many new airline agreements do not discuss the event of bankruptcy. Some airports continue to put language in the agreements that the filing of a petition in bankruptcy is considered an event of default but the Code could prevent the airport from exercising its rights in default.

CHAPTER 2

Concession Agreements

Terminal concessions (e.g., food and beverage, news and gift, and passenger services of various kinds) and landside concessions (e.g., parking and rental cars) can provide important revenue to airports. Airport concession agreements represent an important mix of revenue generation and passenger service. Such agreements enable airports to earn revenues based on "market value" rather than just cost-recovery. As airports work to enhance the entire passenger experience, the overall concession program design as well as the service standards incorporated in the concession agreement are important tools in that effort. Airport concessions have been experiencing significant changes in all aspects of operations. Many of these changes are reflected in the make-up of the contracts under which they operate. Many contractual changes have been made as airport managers seek to increase concession revenues while optimizing use of land and facilities.

Critical issues in concession agreements are as follows:

- Financial terms
  - Rent structures
  - Defining gross revenues
  - Solicitation
  - Term
  - Improvements provided by airport
  - Improvements provided by concessionaire
  - Monthly reporting
  - Audit
- Service and operational terms
  - Exclusivity of concession rights granted
  - Hours of operation
  - Personnel and on-site manager requirements
  - Street pricing
  - Maintenance of and title to improvements
  - Recapture or relocation of premises
  - Materials handling

2.1 Financial Terms

Airports receive a significant amount of rent revenue and other fees from concessions. Unlike aeronautical rents which are geared toward the recovery of costs, concession revenues are established based on "market rent" principles and are designed to reflect the value of the privilege of doing business at the airports. Airport rents are typically much higher than their counterparts at "street" (local community) locations. This reflects that airport passengers provide concessionaires

a solid customer base at their location, thereby providing a greater sales penetration and lower marketing requirements.

2.1.1 Rent Structures

Most rent from concession operations is received through a revenue-sharing structure where the airport receives a percentage of the gross revenues from the concession, with a minimum annual guarantee (MAG) to protect the airport from a reduction in revenues. Some airports also charge separate cost recovery fees, such as utilities reimbursement, common area maintenance charges (for the cleaning and maintenance of food court seating, for example), or distribution and delivery charges.

Many structures in use at U.S. airports today would be reasonable choices on which to model an article for a new contract. Concession managers must frequently balance maximizing the rental rates and cost recovery with the financial pressures on concessionaires to pay labor and other costs.

Ideally, utilities should be paid by tenants proportionately. If possible, spaces should be metered individually. If that is not possible, a system that either allocates utility costs according to the utility loads of a tenant's equipment or allocates according to sales levels should be used. It is possible to calculate the inclusion of utilities in a percentage rent structure; however, doing so exposes the sponsor to a loss of income if the market's determination of percentage rent goes down.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the OAK concession agreement for a description of minimum guarantee and percentage rent and an excerpt from the DFW concession agreement template for an example of concession rents.

2.1.2 Definition and Calculation of MAG

The Minimum Annual Guarantee (MAG) is the total annual amount that the concessionaire agrees to pay at a minimum as rent under the concession agreement. The MAG may be established by the airport operator or may be bid by the concessionaire as part of its proposal.

MAGs are stated in annual amounts and should be tied to the Contract Year, Lease Year, or other term defined in the agreement. These annual amounts should be further defined as required monthly payments equal to one-twelfth of the annual amount paid at the beginning of each month.

MAGs may be defined so that they increase as the concessionaire's business increases. Some airports define MAGs so that MAGs increase with enplanements. Many airports take an approach that the MAG is adjusted to a level that is close to, but less than the most recent year's rent (e.g., MAGs may be set at 85% of the prior year's total rent paid). The agreement should also stipulate that the MAG can never fall below its initial annual level.

MAGs for terminal concessions may be established on a contract basis or on a per location basis. Establishing MAGs on a per location basis is useful if each location is viewed as likely to be profitable and/or if there are many operators. Single MAGs covering entire contracts are useful to ensure required revenue levels or if there is reason to believe that one or more locations under the contract may not be as profitable as the rest. In any case, MAGs should ensure that an adequate rate of return is earned. At the same time, they should support the established rent percentages to be paid.

Airports should also consider the inclusion of a "catastrophe clause" in their agreements. These clauses stipulate the terms, when traffic declines by a specified percentage at an airport, under which rent can be proportionately reduced.

Terminal concession contracts may also include temporary reductions in the MAG that may be granted in the case of construction in the immediate vicinity of the concession directly impacting exposure to passengers and sales.

2.1.3 Percentage Rents

Concession agreements almost always contain provisions for the payment of additional rents on a percentage basis. The percentage rents are calculated by multiplying the rental rate by the sales defined as Gross Revenues or Receipts for the locations.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the DFW Concession Agreement template for an example definition of Gross Receipts.

Some contracts will apply different percentages for different levels of sales, as shown in Table 2-1.

The contract may also provide a lower level of percentage rents for branded concepts to recognize the franchise fees that must be paid to the franchisor.

2.1.4 Term

As with many types of airport contract, the trend is toward terms shorter than the 30-year agreements of the past. The range of the sample agreements for terminal concessions was 5 to 2 years, and for rental cars, 2 to 6 years. The amount of required investment in facilities affects the term length—an airport's development of pro forma income statements is essential to establishing term length. The larger the capital investment, the more time required to amortize the investment. If the capital investment is minimal, then it is better to have flexibility to introduce new concepts or new entrants, update the contract provisions, and possibly increase revenue more frequently.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the DFW Concession Agreement template.

2.1.5 Solicitation

Depending on local purchasing requirements, airports may be able to renegotiate concession agreements without having to make requests for proposals (RFP). An airport operator may choose to negotiate a new agreement with an existing operator in order to reward an existing operator for great performance. An airport operator may also find it preferable to negotiate an agreement to bring in specified brands or concepts. An airport operator may also find that the extension of an existing agreement is appropriate when the concessionaire has made a recent reinvestment in facilities. A negotiated agreement approach may also be very appropriate at a small airport where it is difficult to attract new operators and renegotiating with the existing operator may result in more favorable terms than a bidding process would produce. However, in most instances, the

Table 2-1. Percentages for different levels of sales.

Category	$0 to $1,000,000	$1,000,001 to $2,000,000	Greater than $2,000,000
Casual dining/bar	10%	12%	14%
Quick-serve	12%	14%	16%
Fast food	10%	12%	14%
Specialty coffee	14%	16%	18%
Café	12%	14%	16%
Newsstand - Category 1	12%	12%	12%
Newsstand - Category 2	16%	16%	16%

competitive solicitation of concessions will result in higher percentage rents and/or MAGs and a broader array of new or additional brands to choose from in a terminal retail program. This process may also be used to assign more favorable operating locations to the highest bidder in rental car processes.

2.1.6 Improvements Provided by Airport

The contract should specify what facilities and improvements are being provided by the airport. The costs of facilities and improvements that the airport provides should be recovered in the space lease portion of the contract. In instances where the airport is investing a significant sum, it may be prudent for the agreement to have a net book value (NBV) provision whereby the tenant would have to pay the airport the unamortized portion of that investment if the agreement is terminated early.

2.1.7 Improvements Provided by Concessionaire

Concession agreements have become increasingly clear with regard to defining not only the improvements permitted, but their value and amortization/depreciation schedule. Airports are encouraged to ensure that agreements spell out required investment levels and the schedule that will determine the net book value of those improvements throughout the term of agreement.

Airports have also been successful in protecting the integrity of their asset(s) by including refurbishment clauses. These clauses require tenants to re-invest in the assigned premises at regular intervals, thereby preserving a "like new" condition for the duration of the term. Some airports require major refurbishment at a midpoint of the term. Others require ongoing refurbishment.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the PVD concession agreement requiring refurbishment of the premises annually commencing during the midpoint of the agreement.

Under some car rental agreements, the car rental company will construct the ready/return area and/or the service center. In this case, the airport may lease the land in an underlying ground lease at an appropriate land lease rate. The agreement should specify if the airport owns all improvements at the end of the lease. Additionally, there should be a procedure for valuation and buy out of facilities if the contract is terminated prior to its expiration or if the airport has to relocate the car rental operation for airport expansion or other valid reasons.

2.1.8 Monthly Reporting

The format for reporting transactions and remittances of monthly payments should be provided in the agreement. Detailed items required for monthly reporting include the following:

- Gross revenues
- Breakdowns by concession location (each space) and product type (food vs. alcohol, or sundries vs. gifts)
- Concessions fees/percentage rents/MAGs remitted
- Customer Facility Charges (CFC) collections
- Airport Concession Disadvantaged Business Enterprise (ACDBE) Reports

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions.

Transaction days and amounts for each car rental should be treated as confidential information when collecting monthly transaction information for rental car concessions, while the retail concessions reports generally will not require this.

2.1.9 Audit

All concession agreements should include provisions which permit the review of all books, and applicable records to substantiate the accuracy of the sales and other information reported to the airport. Typically these provisions also require the concessionaire to pay the expenses of the audit if underpaid fees are more than a specified percentage.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the DFW concession lease agreement regarding the right to audit for up to 3 years after expiration or termination of the lease.

2.2 Service and Operational Terms

2.2.1 Exclusivity of Concession Rights Granted

Car rental operators are not granted exclusive rights. Until the 1990s, other terminal concessions had sometimes been granted exclusivity but that is now a rare practice at large or medium hub airports.

2.2.2 Hours of Operation

Hours of operation should match airline operations. Ideally, terminal concessions should be open prior to first departure. The final arrival and final departure should govern how late concessions are open, with landside concessions being open until either the last departure or last arrival's bags are on a bag claim belt. This should be specified in the contract, and monitored monthly for revisions.

2.2.3 Personnel and On-Site Manager Requirements

Qualified, on-site, professional management must be required in the terms of the agreement.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions.

2.2.4 Street Pricing

Terminal retail concessions are operated under various street pricing assumptions. Agreements at U.S. airports have pricing policies ranging from strict street pricing to street plus an additional 5 to 10%. Other agreements do not restrict pricing at all. Pricing policy is a major determinant in establishing rent and term lengths, because it greatly affects expected revenues in the pro forma income statement. Airports are encouraged to establish the most competitive pricing policy possible that will still allow them to achieve their goals for revenue and customer service. Most car rental agreements do not address the issue of street pricing. The percentage rents and other concession fees may require the car rental companies to price airport rentals higher than off-airport which is why most airport car rental agreements are silent on this subject.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for the RDU Concessions Pricing Policy 2009.

2.2.5 Maintenance of and Title to Improvements

Maintenance arrangements between airports and terminal concessions tenants are becoming more specific, because these responsibilities had been the source of uncertainty in the past.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the MSP General Terms & Conditions for Concession Agreements regarding Operator Maintenance, Cleaning, and Distribution responsibilities and an excerpt from the PDX concession agreement for a matrix assigning maintenance responsibilities.

Title to improvements at the end of a lease often remains with the airport, and agreement language should reflect this if at all possible. At the same time, airports should include language in their agreements that require a tenant to remove these improvements at the airport's request.

The maintenance requirement for car rentals will depend on whether the company or the airport constructed the improvements. The agreement should clearly state which party is responsible for interior and exterior maintenance of the facilities. The airport should have a provision stating that any improvement to the leasehold becomes the property of the airport at the termination or expiration of the agreement.

2.2.6 Recapture/Relocation of Premises

Historically, when concessionaires were sometimes given exclusive rights, some were also protected from recapture or relocation. While concessions revenue is important, increased airline competition has made it necessary for some airports to protect their rights to recapture space. In those circumstances, recapture and relocation provisions are essential to protect both parties. The airport should retain similar rights to relocate the car rental operations if necessary for airport expansion, security mandates, or reasonable cause with provision for relocation costs and buyout of unamortized improvements.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions.

2.2.7 Materials Handling

It should be specified whether the concessionaire or the airport is responsible for arranging for these services and which party will pay for them. For product delivery (generally applicable to terminal concessions), exhibits should be added to the agreement depicting acceptable truck routes, loading docks, storage locations, and acceptable routes in-terminal for product to be moved to concession locations.

Similar detail should be added for recycling and trash removal, showing acceptable routes for these functions. Janitorial services must be addressed to first identify who is responsible for which functions. Who moves trash from concessions to dumpsters? Are there trash rooms on the concourse level for interim collection? Who moves it from there? Agreements should answer these questions to avoid misinterpretation later.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions and DFW Concessions Agreement Template.

2.3 Food and Beverage Concessions

Additional Issues for food and beverage concessions include the following:

- Food service standards
- Approval of menus and pricing
- Materials handling

- Food safety responsibilities
- Pest control
- Maintenance of kitchen equipment
- Cash and credit handling
- Disputes with other tenants

2.3.1 Food Service Standards

Food and beverage contracts are increasingly including standards that govern the level of services provided to the passengers and the operations of the facilities. Although the concessionaires are experts and need flexibility to manage their operations, based on sometimes inconsistent performance by airport concessionaires, many airport operators now include standards that dictate minimum levels of performance and include mechanisms for monitoring performance.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions.

2.3.2 Approval of Menus and Pricing

Establishing (and approving) menus and associated pricing is challenging for food service concessions. Among the major issues to address are defining the street price, menu variability, and service standards. Airports use various approaches to establish pricing. There is even more variety in the approaches to establishing menus and permitting or declining changes to them. Some existing contracts use language to protect the airports' interest in tenants' offering menus that satisfy all potential customers.

Pricing language is generally used to ensure compliance with a policy that limits pricing to certain levels (e.g., street or street plus a percentage). Many of these approaches use some variation of a "market basket" approach, where specific non-airport locations of the same restaurant brand or other similar concept are used as reference points to check airport prices and ensure they comply. Invariably, using the phrase "street pricing" results in complications and misunderstanding if the agreement is not worded appropriately.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the PHX and BNA concessions agreements regarding approvals of menus and pricing.

Pricing language may also require a statement of policy on employee discounts. However, authors of food/beverage agreements should be aware that employee discounts affect other elements of the agreement as follows:

- The practice of offering employee discounts stems from a time when almost all airport retail prices were set well above "street" level. The discounts were used to ensure that employees were not subjected to the same inflated prices as travelers. If the agreement being drafted envisions street pricing or similar, the need for an employee discount may be less.
- It is relatively common practice for sales generated with employee discounts to be excluded from gross sales when rent is calculated. On the surface, this may seem logical. However, any determination regarding the exclusion of discounted sales from rent calculations should be supported through the pro forma analysis. It is not recommended that this practice be implemented without that analysis.
- In a small sample of cases, these policies are being evaluated with regard to the possibility that airport employees may be receiving inappropriate gifts from concessionaires. The justification for the argument is that an airport employee will pay less for exactly the same good or service as a passenger will pay. The larger population of airport managers does not perceive

an employee discount as inappropriate, and this Guidebook does not recommend assuming such unless the airport's policies, procedures, or overriding law/ordinance specifically state so.

In addition to the information above, it is also recommended that airports consider using indices based on some variation of the Consumer Price Index (CPI) to standardize annual inflation-based price increases.

2.3.3 Materials Handling

Most materials handling issues are addressed above. However, for food and beverage agreements, there is an additional concern to address—grease traps and removal. The language dealing with this issue does not need to be extremely complicated; however, airports are cautioned that governing environmental law is becoming increasingly stringent with regard to grease storage. Airport managers are advised to ensure that tenants facilitate, rather than hinder, the airport's compliance with environmental requirements.

Airports should require tenants ensure that grease traps are installed and checked and/or cleaned at least monthly in all concession locations. The agreement should mandate that if a problem develops because of a clogged or under-maintained grease trap, the concessionaire shall repair, or cause to be repaired, all damages caused thereby at its sole expense. The concessionaire must agree that the airport may assess a fine for repeated instances of overflowing or malfunctioning grease traps in accordance with the agreement.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions.

2.3.4 Food Safety Responsibilities

At its most basic level, a food service concession agreement should mandate the sharing of health department inspection reports with the airport, as suggested by the following language.

An airport, aside from mandating compliance with all relevant rules and laws regarding health code compliance, can require compliance of its own cleanliness standards. Sample standards include the following:

- All areas within the tenant space shall be kept clean and well maintained.
- Any and all debris shall be removed from counters and tables within 2 minutes.
- Areas shall be kept free of unpleasant odor.
- Floors shall be kept free of debris and stains and shall be clean and well maintained.
- Carpeting shall appear vacuumed and floors shall appear washed.
- Entrance doors shall be free of smears, smudges, and dirt.
- Glass windows and display cases shall be clean and free of smudges.
- Any and all food being used for display purposes shall be rotated daily.
- Sales and cashier areas shall appear clean and organized.
- Tray slides (if present) shall be clean.
- Food trays shall be washed regularly (not just wiped down).
- Light fixtures and their attachments shall be kept clean and free of dust.
- Exhaust hoods, fans, and filters shall be appropriately maintained and cleaned.
- Grease traps shall be maintained and inspected for leaks regularly.
- Tenant waste shall be placed inside garbage compactor(s) and compacted.
- Delivery palettes and milk crates shall be neatly stacked and organized (while on the loading dock or outside tenant space) between deliveries.
- All cardboard boxes shall be broken down and placed within the designated cardboard receptacles.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the PHX Concessions Agreement.

2.3.5 Pest Control

Airports should ensure that tenants are solely responsible for a pest-free environment within assigned premises by maintaining its own pest control services, in accordance with the most modern and effective control procedures. All materials used in pest control shall conform to federal, state, and local laws and ordinances. All control substances utilized shall be used with all precautions to obviate the possibility of accidents to humans, domestic animals, and pets. Pests referenced should include all those typically encountered by pest control specialists in the area. Whenever the airport deems that pest control services must be provided to a building or area that includes assigned premises under the agreement, the Airport should ensure that the tenant pays for the costs of services provided.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the SFO Concessions Agreement.

2.3.6 Maintenance of Kitchen Equipment

Maintenance of kitchen equipment is not a topic traditionally encountered in food service concession agreements. Typically, its maintenance is presumed to be covered in other articles related to maintenance of the assigned premises or similar. There are good examples, though, of language used to ensure adequate care of other airport facilities; this language can be used to fashion a clause or article that addresses the appropriate maintenance of kitchen equipment.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for sample material from a concessions agreement.

2.3.7 Cash and Credit Handling

In a world that is becoming increasingly "cashless," most airports require that all food service providers accept credit cards for goods and services. Often, small concessionaires contend that the size of their business makes it impractical to pay the fees charged by major credit cards. As discussed before, however, the Airport can use the pro forma income statement to assess the effect of these fees on the concessionaire's profitability, and determine the appropriate rent structure to ensure that credit cards are accepted. Airports typically mandate the acceptance of at least three credit cards, with MasterCard and VISA a must, and American Express strongly recommended, particularly if an airport has a high percentage of business travelers. Airports should also strongly encourage tenants to provide a "swipe and go" credit card (no signature required) service to customers.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for an excerpt from the MSP Concessions General Terms & Conditions.

2.3.8 Disputes with Other Tenants

This is a critical element to address because well-written articles and clauses in food service agreements can diffuse disagreements before they escalate and cause confusion and in-fighting that may be apparent to customers.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the ELP and CHS concessions agreements regarding resolving disputes among tenants.

2.4 Specialty Retail/News and Gifts

Additional Issues for specialty retail/news and gift concessions include the following:

- Definition of product categories
- Carts and kiosks

2.4.1 Definition of Product Categories

As concessionaires have continued to add more brand names to their portfolios, they have increasingly been able to offer not just specialty retail brands, but branded merchandise in the gift sections of newsstands. This makes classifying certain products a challenge. "Gifts" typically bring different percentage rents than "Specialty Retail." Airports are encouraged to be specific in describing which product categories are expected in which locations (the RFP process should reflect these desires).

2.4.2 Carts and Kiosks

Many airports supplement their retail offerings through product carts where there is insufficient space or passenger exposure to support a full retail unit. Product carts are also sometimes used to sell individual specialty products (e.g., Rosetta Stone language software). Some airports are beginning to offer electronic vending kiosks selling electronics, cosmetics, and even over-the-counter medical supplies. Concession agreements for carts and kiosks typically have a shorter term, reflecting the reduced investment and different rental structures to reflect the margins. Similarly, concession agreements for these types of operations typically will need provisions for flexibility in changing out product mix with airport approval in order to adjust to changing market preferences.

2.5 Passenger Services

Airports offer various passenger services. Historically, such services were limited to shoe shine stands and business centers, but now these services range from battery-charging stations and massage stations to full-service spas and pharmacies and medical centers.

These services typically carry a different range of rental levels and may have either only percentage rents or a fixed rental amount, depending on the service and the level of investment required.

2.6 Parking

Additional issues for parking concessions include the following:

- Management responsibilities
- Revenue control procedures
- Additional services

2.6.1 Management Responsibilities

As with all airport functions involving direct contact between contractors and customers, great care must be taken to ensure that the governing contract language explicitly states the requirements of the contractor in all facets of the operation. For parking managers, various functions and services are often required or contemplated that may not be directly related to vehicle parking. It is especially important to call out such functions in contract language.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the BWI parking management services agreement which includes a detailed discussion of the management responsibilities to be performed.

2.6.2 Revenue Control Procedures

Vehicle parking at an airport generates significant revenue. In many cases, it generates the highest level of non-airline revenue for the airport sponsor. **A sponsor must have detailed revenue control procedures to ensure this revenue is maximized.** Revenue control is ensured by monitoring several key contract elements. These include parking tickets for which there is no accounting, missing or lost ticket inventory, and the requirement that a parking manager utilize a computerized parking facilities management system.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the CMH parking management services agreement which includes a detailed discussion of revenue control procedures.

2.6.3 Additional Services

Airports have been expanding their parking operations so as to enhance revenue and protect their market share from competition from off-airport parking operators. These services typically include all of the self-parking operations, and, more recently, have included provisions for valet parking.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the OAK parking management services agreement which includes a detailed description of valet parking services.

2.7 Rental Cars

Additional Issues for rental car concessions

- Location of operations
- Definition of gross revenues
- Definition and calculation of MAG
- Definition of transaction days
- Credit card acceptance
- Dual branding privileges
- DBE requirements
- Valet, pick-up, drop-off restrictions
- Vehicle sales
- Pass-through of concession fees
- Space leases
- Consolidated facilities
- CFC calculation and customer presentation
- Shuttle bus operations
- Employee parking
- Performance security
- Underground storage tanks
- Environmental conservation

2.7.1 Location of Operations

The location of rental car operations has also seen changes in the past 10 years. Smaller and medium-sized airports may offer the convenience of locating these operations in the parking garage—this can reduce or eliminate the need for buses, but can reduce available parking spaces. At larger, space-constrained airports, there is a movement toward consolidated car rental facilities (CONRACs) located close to the terminal or located more remotely to increase parking revenues or expand terminal areas.

2.7.2 Definition of Gross Revenue

Airport operators seek to maximize the gross revenue definition because this becomes the basis for the calculation of percentage rents and MAGs. In addition to time and mileage expenses associated with car rental transactions, revenues from the sale of personal accident insurance coverage, car seat rentals, global positioning system (GPS) unit rentals, or any fees associated with future technology amenities should be included in the gross revenue definition.

Exclusions from the gross revenue definition are items such as the following:

- Revenues collected for damage or repair of vehicles
- Fuel sales
- Sale of vehicles if permitted on the airport (Some airports ban the sale of vehicles on the airport premises.)
- Federal, state, and local taxes
- Customer Facility Charges (CFCs)
- Sales of uniforms to employees

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH Car Rental Agreement for definition of gross revenues.

2.7.3 Definition and Calculation of MAG

The MAG is the minimum amount the car rental operator must pay to the airport. The amount can be a minimum fixed-dollar amount or a minimum percentage amount. Using a fixed-dollar amount enables the airport to determine budgeted revenue amounts. The fixed-dollar amount can be stated as an annual amount divided by 12 to calculate the monthly amount due from the operator.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH Car Rental Agreement.

There is typically a process to calculate **the difference between the percentage rent calculation and the MAG to determine if the percentage rent is higher and therefore the Operator may have an amount due to the airport. The process should occur within 90 days of the end on the contractual year.**

2.7.4 Definition of Transaction Days

The Transaction Day definition can either encompass a 24-hour period for regular rentals or calendar days for rentals used for insurance replacement purposes. In many cases, if a rental exceeds a 24-hour period by more than 2 or 3 hours, the customer will be charged for another full day. This definition has less effect when the Gross Revenue definition includes all charges for time and mileage. It is relevant for CFCs.

On-airport car rental operators require a minimum 1-day rental. The advent of Smart Cars, which specialize in short-term hourly rentals off-airport, may spur the traditional car rental companies to offer a rental period of less than 24 hours.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH Car Rental Agreement.

2.7.5 Credit Card Acceptance

Some car rental agreements, such as those for the Metropolitan Washington Airports Authority (MWAA), which operates Dulles International Airport (IAD) and Ronald Reagan Washington National Airport (DCA), specify that a minimum number of credit cards must be accepted for payment (e.g., one to three cards). Car rental companies have various policies with regard to debit cards. Companies that accept debit cards may require large minimum hold requirements or $300 to $500 per transaction. Companies may also require additional identification or credit checks with the use of debit cards.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH Car Rental Agreement concerning credit card acceptance.

2.7.6 Dual Branding Privileges

Currently, Avis and Budget are both owned by The Avis Budget Group, while Alamo and National are both owned by Vanguard Car Rental. Under newer agreements, these brands may want to operate two brands under the same contract. The concessionaires may also want the ability to separate in the future if a brand is sold or discontinued.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the MWAA Car Rental Agreement.

2.7.7 DBE Requirements

DOT 49 CFR Part 23 governs the disadvantaged business participation presently defined as Airport Concession Disadvantaged Business Enterprise (ACDBE). The goals established for car rental concessions tend to be lower than the goals for other concessions. Historically, car rental operations had achieved lower levels of participation because the business had less participation by minority- and women-owned businesses available to meet the goals.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the MWAA Agreement concerning meeting ACDBE participation through purchase of goods and services.

2.7.8 Valet, Pick-up, Drop-off Restrictions

Airports may specify where customers can be picked up and dropped off for car rental operations. This location will depend on the location of the ready and return lots and provisions made for customer transportation between the terminal areas and the ready and return lots. Valet services permit the customer to return vehicles somewhere other than the ready and return lot areas. Most airports prefer to restrict customer pick up and drop off to specified loading areas and/or ready and return lots.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH Car Rental Agreement.

2.7.9 Vehicle Sales

The car rental contracts should specify whether or not vehicle sales are permitted on the airport premises. If vehicle sales are permitted, then the Gross Revenue definition must specify whether or not the revenues from vehicle sales are included or excluded from the Gross Revenue definition.

2.7.10 Pass-through of Concession Fees

The car rental operators will want to pass through the concession fees to their customers and display the fee as a separate line item on the customer receipt. The contract should specify whether the fees can be passed through to the customers and whether the fees can be displayed.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH Car Rental Agreement.

2.7.11 Space Leases

In addition to concession fees, airports can charge car rental operators for leased areas as an annual fee per square foot that is charged on a monthly basis. The price per square foot should be based on the type of area, and the associated costs that the airport needs to recover for the space.

The typical leased areas for car rentals include the following:

- **Service Counters.** Counter positions within the terminal areas used to serve customers.
- **Telephone Alcoves.** Used instead of or as a supplement to service counters in the terminal ground transportation areas.
- **Ready/Return Lots.** Place where customers can pick up and drop off vehicles for rental. For customer convenience, it is preferable to have the ready and return lot in easily accessible parking garages, thereby reducing the need for shuttle buses or other forms of ground transportation between the passenger terminal areas and the ready and return lots.
- **Quick-Turnaround Areas.** Usually used for car wash and fueling, but no heavy maintenance.
- **Service Centers.** Maintenance and vehicle service area.

2.7.12 Consolidated Facilities

The current trend is to consolidate car rental operations in one area, which can be a parking garage for ready and return lots or a building remote from the terminal areas. The ready and return lots are usually separated from the service centers in consolidated operations.

2.7.13 CFC Calculation and Customer Presentation

The Customer Facility Charge (CFC) may be instituted by ordinance by the local governing jurisdiction, or it may be tied to a bond issue to fund construction of new car rental facilities. The document governing the CFC may be referenced in a section of the car rental concession agreement and it may be documented with associated bond issues in separate agreements (e.g., Special Facility Leases). The CFC is considered property of the airport or the bond trustee to be used to service debt associated with constructing new facilities. The CFC may expire once all approved costs have been paid and is normally stated as a fixed-dollar amount per transaction day. The amount of the CFC is calculated to cover the applicable costs of new facilities within a specified period.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the BNA Agreement for provisions regarding separate statement of concession recovery fee.

2.7.14 Shuttle Bus Operations

Shuttle busses are usually operated by the car rental companies to transport customers and employees between the passenger terminal areas and the ready/return operations. **The contract should specify what entity will operate the bus** (i.e., whether it is the car rental operator, the airport, or a third party) and should also assign loading and drop off areas using an exhibit and include specifications for any signage standards. The airport may choose to limit the number of buses at the loading area to minimize curbside congestion.

2.7.15 Employee Parking

Airports may permit car rental employees to park in designated airport employee parking areas. Employees using these lots may require a badge or medallion to access the lot. This permission and any associated rules should be provided in the car rental agreement.

2.7.16 Performance Security

The airport may require a performance bond from the car rental operator. The amount is frequently within the range of 3 to 5 months or up to 100% of the annual MAG.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH agreement concerning performance security.

2.7.17 Underground Storage Tanks

Car rental operators may require fuel storage tanks at the Quick-Turnaround Area and/or the Service Centers. Provisions in the contract should address descriptions of tanks, location, ownership, installation, removal, operation and maintenance, leak detection, and vapor recovery. Additionally, the contract should require airport approval of installation of additional fuel storage tanks.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the IAH agreement concerning installation, removal operation and maintenance of tanks.

2.7.18 Environmental Conservation

Car rental operations consume large amounts of water and paper. Some car rental companies are conducting internal reviews to improve conservation efforts. Drought conditions affecting various areas of the country may necessitate formal conservation policies and recycling measures as part of future agreements.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 2, Concession Agreements, for excerpts from the MWAA Car Rental Agreement.

CHAPTER 3

Communication and Utility Services

Communication services are those that relate to public telephones, administration telephones, wireless, internet, antennas, and fiber leases. The agreements can cover construction and/or installation, operations, or management, or can be concession agreements related to business ventures that rely on these products and services. Utilities for use on-airport are typically not governed by a contract; however, easements for utility pipes, conduits, lines, and poles are sometimes granted. The critical issues associated with these types of contracts are discussed below.

3.1 Critical Issues—Fiber, Cable, and Internet

Airports often enter into contracts with tenants or other users that result in a sharing of infrastructure or services. As it relates to communications or utilities, these contracts may pertain to the sharing of fiber already run through an airport building, internet access that an airport can legally share with or sell to others, wireless systems and or distributed antennae systems, telephone service, or utility easements. Critical issues include the following:

- Rate methodology for recovery of costs
- Limits of liability
- Rights regarding resale
- Firewall and virus protection

3.1.1 Rate Methodology for Recovery of Costs

An airport may choose to lease all or part of its fiber network to a user. In doing so, it is important to establish a rate proportionate to the amount of fiber leased (e.g., a rate per linear foot of fiber).

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from the PIT agreement providing examples of linear rates.

3.1.2 Limits of Liability

In allowing a user access to the airport's infrastructure, it is critical that sponsors protect themselves from claims of liability that pertain to elements of the service they cannot influence.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from the PIT fiber lease agreement which provides that the Authority shall not be liable for damages arising out of or relating to the agreement.

3.1.3 Rights Regarding Resale

To maintain additional control over its own infrastructure, a sponsor should prohibit the resale of any service obtained through a fiber lease.

Airports may also find they can share internet service with tenants, thereby reducing airport costs of paying for that service from an internet service provider. The agreement for this sort of service is relatively straightforward. Contract language should clearly state what is provided (generally, access to the internet through the sponsor's system), the price for this access, and a start-up fee, if applicable.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for language based on the PIT agreement, which provides model ISP contract language to be included.

3.1.4 Firewall and Virus Protection

Because the sponsor is permitting an outside user to access its internet, and thereby portions of its network, the sponsor is exposing itself to the outside. Online crime is a real possibility without sufficient protection, so it is important to require users to enable adequate protection and to recover costs if a user fails to implement protection.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an example of internet service terms in the PIT agreement.

3.2 Critical Issues—Distributed Antenna Systems

The growth of wireless technology in the last two decades has created opportunities for airports to enhance the customer experience through the addition of distributed antenna systems (DAS). These systems also provide opportunities for revenue generation. In implementing a DAS, however, various issues must be addressed to ensure a positive relationship between the provider and the sponsor.

Critical issues in distributed antenna systems include the following:

- Definition of objectives
- Designated premises
- Limitations on advertising
- Right to relocate
- Specification of services
- Rent escalation provisions
- Maintenance responsibilities
- Ownership of equipment
- Airport obstructions compliance

3.2.1 Definition of Objectives

When contracting for a DAS, there are objectives implied that the sponsor hopes to achieve through the contract. They are not "requirements" per se, and the tendency would be to exclude them from contract documentation. However, including them can provide the sponsor with additional documentation to support the initiation or discontinuation of a particular activity.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for the LAS technical services concession contract description of services to be provided in connection with a distributed antenna system.

3.2.2 Designated Premises

Because of the uncertainty regarding the final locations of antennae and other equipment, LAS is very specific regarding the creation of an exhibit, which identifies the designated premises. The detailed process of creating this exhibit ensures accuracy and allows the sponsor to make sure that space shared with other users is identified as such.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for a description of exhibit creation as detailed by the LAS agreement.

3.2.3 Limitations on Advertising

The LAS DAS agreement protects the sponsor from users that implement advertising on or around its equipment without permission. Distinction is made regarding the difference between advertising for itself or for third parties, with the sponsor maintaining the right to charge for third-party advertising according to its accepted rate schedule.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for details on the LAS contract language pertaining to advertising component charges for third parties.

3.2.4 Right to Relocate

As with most types of agreements where the tenant or user installs equipment, **an airport sponsor must retain the right to relocate this equipment.** It is particularly interesting that in the case of LAS, the cost of any said relocation is to be borne by the tenant.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for the LAS agreement which includes language that explicitly states Clark County's right to relocate any portion of the premises for the purpose of accommodating airport expansion, development, etc.

3.2.5 Specification of Services

The activities required of a DAS concessionaire are more complex than may be realized by many. LAS is careful to state the specific requirements of the concessionaire to ensure all desired activities are provided. A section is dedicated to the administrative tasks required, and another to scoping the actual services. Included among the administrative functions are managing the RF environment, recommending technical standards, maintaining a system frequencies database, providing interference studies and resolutions, attending meetings concerning RF issues, and providing regular updates on various issues. The scope of services should consider up-and-coming technologies and services to incorporate as a way to address airport user needs.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an RFP by the LAS detailing administrative task proposals as well as scope of services proposals as they relate to the concessionaire.

3.2.6 Rent Escalation Provisions

Airport sponsors should, wherever possible, insist on **provisions that permit rent increases in reasonable increments.** This is especially important in the fields of wireless and communications

technology, where new advances can create new revenue opportunities with very little lead time. The LAS agreement includes a provision that permits Clark County to adjust rent 3 years from the anniversary date of the contract, and every 3 years after that. There is no cap on the adjustment, but the concessionaire can cancel the agreement entirely if the increase is unacceptable.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from LAS' agreement regarding rental rate and fee adjustment provisions.

3.2.7 Maintenance Responsibilities

Because a DAS involves the installation of equipment by a third party, airport sponsors should ensure that facilities and maintenance responsibilities are clearly identified and differentiated by responsible party. County responsibilities should include maintenance and repair of terminal buildings, properties, common use areas, HVAC, and utilities. The third party installer's responsibilities should acknowledge any improvements, decorations, equipment, and furnishings that it installs. The installer shall also be responsible for connections of all utilities, removal of waste, and general maintenance of interior premises.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt based on LAS agreement, which identifies language pertaining to responsible parties and their DAS activities within the premises.

3.2.8 Ownership of Equipment

Another issue to be resolved when a third party installs equipment concerns the ownership of the equipment at the end of the agreement term. In many airport contracts where equipment is installed, the economics of the agreement allow the airport to maintain ownership because the net book value is zero at the termination date. If the economics of a DAS agreement are similar, and a sponsor is willing to undertake the required maintenance, the airport operator should seek similar rights.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for language expounding on ownership derived from the LAS DAS agreement.

3.2.9 Airport Obstruction Compliance

Because some of the DAS equipment may be on the exterior of the terminal, sponsors should also include specific articles or paragraphs describing the mandated compliance with regulations regarding airport obstructions, airspace, FAR Part 77, and other potential hazards.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for text from the LAS agreement outlining regulations and requirements pertaining to airport obstructions, airspace, and other hazards, that must be adhered to by the third party.

3.3 Critical Issues—Telephone Service to Airport Sponsor

Airports often have hundreds or thousands of employees, many of whom have telephones in their workspace. Some employees also travel as part of their job, which adds the need for remote telephone access to the required telephone services for an airport sponsor. This service is expensive and should be engaged through an agreement which provides for all services that may be required at the best price possible.

Critical Issues related to telephone services are as follows:

- Vehicle operations on airport
- Copyright and patent rights
- Work area
- Excusable delays
- Terms of payment
- Description of existing equipment and services desired
- Transition plan
- Calling cards
- Response and communication plan
- Systems requirements
- Detailed billing
- Response to alarms and outages

3.3.1 Vehicle Operations on Airport

A contract for providing telephone service may require significant travel to and from the airport(s) by concessionaire's vehicles. Given heightened security requirements, it is critical that any contract state very clearly the requirements for operating vehicles on the airport and the provisions for escorts, security details, and badging requirements for drivers.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an example of such language, which is found in the agreement for services at the MWAA airports—DCA and IAD.

3.3.2 Copyright and Patent Rights

Telephone service, like other services that incorporate technology, is more prone to instances of copyright or patent infringement. Although such an occurrence may not seem likely, sponsors must protect themselves from liability or damages using language similar to that used in the MWAA agreement.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for language from the MWAA agreement specific to copyright and patent rights as they pertain to services basic to the facility.

3.3.3 Work Area

Telephone service often requires the presence of technicians on site to perform routine or emergency maintenance. Often, these service visits require access to very public locations, where an untidy appearance would reflect poorly on the airport. It is therefore important to ensure an agreement includes a provision requiring the provider to maintain a clean work area.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for sample language from the MWAA agreement outlining service provider requirements dealing with work areas and maintenance.

3.3.4 Excusable Delays

With complex services such as the provision of telephone service to hundreds of offices and work stations at several locations, delays in execution often occur. Airports have historically been very aggressive in addressing contractor delays in contracts, but, in most cases, the language seeks to

protect the airport when the delay is the fault of the contractor. More recently, airports have been including language that identifies delays that are excusable, thereby protecting all parties in such a case. In doing so, the airport can specifically identify the delays that are excusable and eliminate potential situations where the fault for delay is subject to misinterpretation. MWAA incorporates an excusable delay provision, which protects both parties when unforeseeable events occur, but also protects the sponsor by limiting the events under which a concessionaire can make a claim of "unforeseeable delay"

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for details from the MWAA agreement outlining excusable delay provisions for contractors.

3.3.5 Terms of Payment

Because phone service is a supply (cost) and not a revenue source, it is critical that the terms of the sponsor's payments be outlined

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for sample payments language derived from the MWAA document.

3.3.6 Description of Existing Equipment and Services Desired

In describing existing equipment and services, sponsors should include the maximum detail possible in order to ensure the provider's complete understanding of the services required.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for the reference to MWAA RFP language for examples of the appropriate degree of detail regarding scope of services.

3.3.7 Transition Plan

Complex utility services are complicated to provide; changing from one provider to another can be even more complex if a well-crafted transition plan is not agreed on. In the case of telephone service, for example, airport sponsors should require a transition plan from the provider that shows that the test procedures and cutover plan will minimize disruption to the sponsor. The sponsor also should require an operations and maintenance plan in order to show the procedures the provider will use to accomplish the scope of work.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for good language from MWAA's RFP describing development of a transition plan and an operations and maintenance plan for procedures relating to the provision of utility services.

3.3.8 Calling Cards

For telephone service, sponsors should consider including a requirement for calling cards. Even in the modern age of the mobile phone, airports typically do not supply phones to all staff who may travel for business. For those staff, telephone expenses can be better controlled and monitored through the use of airport-issued calling cards.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for MWAA's telephone service provider agreement for an example of such a provision.

3.3.9 Response and Communication Plan

One of the important aspects of a utility service contract is the degree to which the contract mandates the customer service provisions. Airports must know who to call for help, what staff are assigned to their account, and how quickly they can expect service and problem resolution.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for the MWAA telephone service contract, which has excellent language addressing these issues.

3.3.10 Systems Requirements

In the case of all services (even if not directly related to communications or utilities) system requirements should be explicitly detailed.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for MWAA's telephone service provider agreement for an example of system requirements.

3.3.11 Detailed Billing

For any communication service with detailed billing capability, the billing system must be explained in great detail, as should the method for resolving disputes.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from MWAA's telephone service agreement which illustrates this point.

3.3.12 Response to Alarms and Outages

Communications services contracts should detail how the provider will deal with alarms and outages of service. Similar language should be in place for all communications providers (e.g., mobile phones or internet service).

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for (1) an excerpt detailing the requirements MWAA assigns its telephone service provider and (2) the language used to define the license agreement, which has been taken from the PIT agreement.

3.4 Critical Issues—Utility Leases or Easements

Critical issues in utility leases or easements are as follows:

- Compliance with safety zones
- Ingress and egress
- No warranty of suitability
- Notice prior to construction or installation
- Sponsor's title
- Rights of termination

3.4.1 Compliance with Safety Zones

If the license is for lines and utility poles, as it is in the PIT case, then the agreement must call for compliance with FAA regulations, but ideally will call out the specific regulations most likely to be relevant (e.g., Part 77, object-free zones or runway safety areas).

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for language from the PIT agreement regarding appropriate license terms for adherence to regulations.

3.4.2 Ingress and Egress

Easements often imply certain ingress and egress paths to the property. Because movement on airport property is so much more restricted than on roads or other property, this type of license should grant explicit, detailed ingress and egress rights, ideally through particular gates if airfield access is granted.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from PIT regarding developing a provision based on ingress- and egress-related license details.

3.4.3 No Warranty of Suitability

With a utility easement, it is likely that, at some point, digging may occur on airport property. Because most airports cannot know what is under the surface of all parts of their property, a license such as the PIT license should offer no warranty as to what is underground, to the extent that is possible.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from the PIT license providing good language on warranty provisions as they apply to airport grounds.

3.4.4 Notice Prior to Construction or Installation

Similarly, the licensee must be required to provide adequate notice prior to any construction or installation. The license should be clear in the chronology of design, airport approval, building permit, construction and/or installation, and the notice periods governing all of these.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for text from the PIT agreement on details about notification to airport on construction or installation.

3.4.5 Sponsor's Title

Because the license contemplated here is an easement, it is critical that language be included that ensures the licensee's understanding that the sponsor maintains title to the airport and everything on it for the duration of the license.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for an excerpt from the PIT license regarding the authority's title.

3.4.6 Rights of Termination

There is a particularly interesting paragraph in the PIT utility easement. The utilities provided by the licensee in this case are critical to the airport's community. ACAA recognized that if the license were terminated, the removal of any installed pipes, conduits, utility poles, or wires could cause a major disruption to the community. So, contrary to typical language in airport contracts that gives a sponsor authority to absolutely control their property, this license states explicitly that the easement cannot be terminated as long as the utility product is required in the area.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 3, Communication and Utility Services, for a specific paragraph from the PIT utility easement relating to termination of easement in the case of a required utility product.

CHAPTER 4

General Aviation

General aviation contracts relate to fixed-base operations, hangar leases, tie-down agreements, and, in some cases, land leases, non-aviation development, and through-the-fence arrangements.

4.1 Minimum Standards

For airports or airport systems with significant general aviation activity, a large variety of businesses and operations, and frequent entry and exit from the airport, it may be logical to standardize the requirements for airport tenants and users in a Minimum Standards document.

Minimum standards can be defined as those provisions that allow airport tenants to operate on a level through which quality, selection, and service goals are met. These standards also dictate an airport's responsibilities toward those standards and, therefore, help govern future development. Each airport's unique nature calls for distinct requirements, and airport staff and tenants should be involved in developing the minimum standards so as to produce a more receptive, tenant- and user-friendly environment.

During the standards writing process, it is important to consider Exclusive Rights (Advisory Circular 5190/150.6, dated 1/04/2007), which expounds on limitations at federally obligated airports granting exclusive rights to conduct activities, with the objective being the preservation of competitive enterprise for public benefit. In addition, a few prime components to include in minimum standards would be definitions of operators, services, and activities; hours of operations; staffing; employee training; facility requirements; and insurance requirements.

In accordance with the FAA's Advisory Circular 150/5190.7, which illustrates an airport sponsor's duty to establish and enforce minimum standards for commercial aeronautical service providers, tailoring minimum standards separately for each type of class and service can eliminate difficulties that would arise if the same standards were forced to apply equally to all businesses.

AC 150/5190.7 also assists the airport by giving examples of minimum standards used elsewhere and providing sample questions that would help an airport discover what its standards should be as compared with other facilities. The Circular recommends including these stipulations in lease agreements with aeronautical service providers. Also important, the Circular advises that providers be notified as amendments are proposed and that providers be part of the discussion.

Following the Advisory Circular and complying with Federal obligations will minimize the potential for violations and ensure the efficiency of the airport's operations.

4.2 Critical Issues—Fixed-Base Operators

For many airports, their fixed-base operators (FBOs) are the most visible tenants. The FBOs are in many ways an extension of airport staff and are what users (particularly transient visitors) often remember most about an airport. It is therefore vital that FBOs be governed by an agreement that ensures outstanding customer service while maximizing revenue for the sponsor and providing an opportunity for the FBO to earn an adequate return on its investment. To create such an agreement, some critical issues must be faced, including the following:

- Mandatory FBO services
- Leased area and premises
- Terms of relocation
- FBO construction
- Sponsor investment
- Provisions for existing tenants
- Construction compliance
- Maintenance responsibilities
- Technology requirements
- Security requirements
- Monitoring FBO activities
- Appraisals and fair market value
- Procedure for collecting landing fees
- Environmental issues

4.2.1 Mandatory FBO Services

For most airports, the quality of general aviation services depends on the FBOs present at the facility. Because FBOs can take many different forms, many airports specify a list of minimum or mandatory services to be provided by FBOs.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the AUS and PDX FBO Agreements for examples of provisions regarding minimum services to be provided by FBOs.

4.2.2 Leased Area and Premises

For all FBO agreements, the area and premises leased to the FBO must be carefully defined to ensure differentiation between public-use and FBO areas, because this can affect the interpretation of maintenance responsibilities and other operational issues.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PDX FBO Agreement for example of detailed description of the leased premises and parking facilities.

4.2.3 Terms of Relocation

GA facilities at commercial service airports are often in areas that may eventually be needed for other development, because of expanded commercial airline activity or required airfield expansion. As such, contracts should carefully explain the rights of both parties in the event of relocation.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the AUS FBO Agreement for example of provision regarding right to relocate the FBO operations and for excerpts from the PDX FBO Agreement for example of provisions regarding rights of early termination for airport purposes.

4.2.4 FBO Construction

FBOs often engage in construction on their leased areas. To ensure that construction does not adversely affect airport operations beyond what would ordinarily be expected, the agreement must explicitly lay out the timeline of construction, excusable delays, damages for delay, and other obligations of the FBO.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PDX FBO Agreement for example of provisions regarding construction obligations of FBO operators.

4.2.5 Sponsor Investment

There are instances where airport sponsors are investing in facilities to be leased or managed by an FBO. Sponsors should take great care to ensure these investment monies are included in the airport's capital plan and are available at the time of contract execution to avoid possible instances of default.

4.2.6 Provisions for Existing Tenants

If a new FBO is replacing an old one that held many subleases for aircraft storage and so forth, the new contract must address the assignment of subleases to ensure a smooth transition. Ensuring that subtenants to the agreement are seamlessly transitioned to a new agreement can eliminate some potentially sensitive issues for airport management.

4.2.7 Construction Compliance

As with any contract that may result in construction of either temporary or permanent structures, language requiring compliance with airport design criteria is necessary. In particular, FAA orders and circulars, as well as pertinent sections of the FARs, should be cited wherever necessary to ensure compliance.

4.2.8 Maintenance Responsibilities

Because an FBO will be representing the airport to the GA users, the airport sponsor should ensure that the contract includes detailed language regarding the maintenance requirements of the tenant, and, in particular, the requirements that directly pertain to the image the FBO presents to airport users.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the AUS FBO Agreement for example of provisions regarding maintenance responsibilities of the FBOs operators.

4.2.9 Technology Requirements

Older FBO contracts may not have envisioned the significant recent increase in the use of technology on-airport and by airport users in general. New contracts must address technology and connectivity, by wired or wireless means, to ensure exceptional service is provided to users of the FBO.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the AUS FBO Agreement for example of provisions regarding telecommunications and connection to the airport's premise distribution system.

4.2.10 Security Requirements

Airports with old FBO agreements may find that at the time of their execution, there were relatively few security requirements compared with today. With numerous enhanced security requirements since late 2001, airport sponsors must address all elements of airport security in their FBO agreements, including background check requirements, badging requirements, and other requirements that protect the airport from security breaches.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the AUS FBO Agreement for example of provisions regarding compliance with the airport security plan.

4.2.11 Monitoring FBO Activities

More and more airports are taking an active role in observing and monitoring of their FBO operations. Sponsors choosing to be active in monitoring the activities of an FBO may conduct annual business reviews.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PDX FBO Agreement for example of provisions regarding annual business review meeting with the FBO operator.

4.2.12 Appraisals and Fair Market Value

In some cases, an airport's FBO contract consists of a land lease in addition to or instead of a building lease. The rent for the property, and the manner in which the rent is escalated over time, sometimes is tied to a concept called "fair market value." The determination of that fair market value, if not explicitly defined, can be questioned, thereby delaying the implementation of rent increases. Best practices incorporate detailed language to describe the method for resolving a dispute or objection to the calculation of fair market value.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PDX FBO Agreement for example of provisions regarding process for objection to fair market rental determination.

4.2.13 Procedure for Collecting Landing Fees

Many airports have experienced difficulty in establishing a system for having FBOs collect landing fees. Airports are often concerned about the accuracy of the collections, the accounting methods, and the ability of FBOs to collect the fees while still providing excellent customer service to airport users. FBOs sometimes contend that their fee for performing the collections is inadequate. A well-written agreement will strike a balance between the concerns of both sponsor and FBO.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PDX FBO Agreement for example of provisions regarding the procedures for the FBO Operator's collection of landing fees.

4.2.14 Environmental Issues

Environmental awareness is expanding rapidly in virtually all industries and among the general public. Airport sponsors have also been very active in enhancing their efforts to become more eco-friendly. Although green issues are typically reported with respect to commercial aviation (e.g., emissions from air carrier jets), many FBO functions can affect an airport's efforts to

be environmentally conscious. Recent contracting efforts have enhanced the environmental stewardship sections of FBO agreements. PDX, at the forefront of this trend, has excellent language covering virtually all requirements that should be placed on an active FBO.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PDX FBO Agreement for example of provisions regarding environmental management and compliance requirements for FBOs.

4.3 Critical Issues—Hangar Leases

As with FBOs, it is in the airport sponsor's best interests to regulate the activities conducted under a hangar lease. Because these leases are usually executed for very short or month-to-month terms, it is also important to make these agreements easy to execute and terminate. Critical issues are as follows:

- Uses and privileges
- Forms for leasing and terminating
- Revenue sharing

4.3.1 Uses and Privileges

As with FBO leases, a sponsor must regulate the activities that occur in a leased hangar.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the JAX T-Hangar Lease Agreement for example of provisions regarding permitted uses of the premises.

4.3.2 Forms for Leasing and Terminating

Airports can improve compliance with the regulations in a lease agreement by providing forms for registering aircraft and terminating leases.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PIT Hangar Registration Form for registration of aircraft based in a leased hangar and Notice of JAX's lease termination form attached which is attached to its T-hangar lease form.

4.3.3 Revenue Sharing

In some cases, hangars are leased for specific business purposes. For these arrangements, airports should seek revenue sharing provisions, just as they do with FBOs or terminal concessions. When practical, a percentage of gross revenue approach is preferred (please see Chapter 2 of this Guidebook for additional detail on percentage rent structures). Some forms of business, however, may not lend themselves well to a percentage approach. To accommodate these businesses, ACAA takes a simple approach to revenue sharing if a business is to be run from a leased hangar. Rather than a percentage of gross sales or similar arrangement, the Authority adds a per square foot surcharge on top of the rate for the base hangar lease. The Authority also adds a charge for fuel delivered and not purchased from Authority-approved sources.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the PIT Lease Agreement for provisions regarding rent payments, business surcharges and fuel flowage fees.

4.4 Through-the-Fence Arrangements

Many general aviation airports are adjacent to businesses and, in some instances, residential neighborhoods. In these cases, the airport may receive requests from adjacent neighbors for an access point to the airport that runs "through the fence." As a general principle, the FAA does not support agreements that grant access to federally obligated airports by aircraft stored and serviced off-site on adjacent property. Although the FAA recognizes that residential through-the-fence agreements exist, there are no acceptable forms of residential through-the-fence agreements for public-use airports receiving Federal financial assistance.

Non-residential compatible through-the-fence agreements can be effectively used to support an adjacent industrial airpark or manufacturing facility. When negotiating agreements with through-the-fence (TTF) operators, airport owners should consider the following best management practices:

- The access agreement should be a written legal document with an expiration date and signed by the airport owner and TTF operator. It may be recorded. Airport owners should never grant a right of access in perpetuity.
- The right of access should be explicit and apply only to the TTF operation (i.e., right to taxi its aircraft to and from the airfield).
- The TTF operator should not have a right to grant or sell access through its property. Only the airport owner may grant access to the airfield, but any access requirements should be consistent with TSA requirements.
- The access agreement should have a clause making it subordinate to the airport owner's federal obligations with the FAA grant assurances. The airport owner should have the right to terminate the agreement if any provision conflicts with the airport owner's federal obligations.
- The TTF operator should not have the right to assign the agreement without the airport owner's approval and appraisal of the change in value of the agreement.
- The fee to gain access to the airfield should reflect the airport fees charged to on airport tenants and aeronautical users.
- The access agreement should contain termination and insurance articles to benefit the airport owner.

In allowing access, an airport should be able to place the cost of all required improvements on the licensee.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 4, General Aviation, for excerpts from the DIG Agreement for provisions regarding licensee's responsibility for costs of installing and maintaining all security measures and means of access.

TTF agreements must (1) contain language ensuring compliance with all regulations that might affect operations and (2) maintain insurance at levels required by the sponsor.

Because it is likely that a TTF licensee will be using the airport significantly and, in many cases, for a business purpose, the sponsor should protect itself from potential conflict in the case of airport closure.

CHAPTER 5

Ground Transportation Agreements

Ground transportation, a substantial customer service component for airports, involves the coordination of baggage delivery services, chartered transportation, courier services, courtesy vehicles, shuttles, taxicabs, and public transportation.

5.1 Trends in Ground Transportation Agreements

Trends in ground transportation agreements are as follows:

- Management of ground transportation
- Technology advances
- Compliance with local regulations
- Taxicabs—open or closed systems
- Airport access fees
- Rules for solicitation
- Public transportation agreements
- Forms of ground transportation agreements

5.1.1 Management of Ground Transportation

Historically, airports have included the management of ground transportation with parking. Best-practice airports have split the management function and assigned the ground transportation responsibilities to separate staff or contract with a third-party management company to provide coordination.

5.1.2 Technology Advances

Installation of automated vehicle identifications (AVI) systems has significantly improved the ability of airports to manage the ground transportation flow and capture the associated revenues due the airport. As airports install AVI systems, airports may consider contracting the management and operation of the system as well as overall ground transportation coordination to a third-party contractor.

5.1.3 Compliance with Local Regulations

The requirements and contractual issues for each component of ground transportation must comply with local regulations and ordinances, particularly with regard to taxicabs, limousines, and public transportation. Often local ordinances govern where and how passengers can be picked up and dropped off and may also dictate the fares that can charged.

5.1.4 Taxicabs—Open or Closed System

Taxicabs may operate under an open system where any legitimate taxicab operator can pick up a fare at the airport. Under a closed system, the airport restricts the entities that can pick up passengers from the airport. Large urban areas such as New York and Chicago have medallion systems that taxicab owners purchase and lease to the taxicab drivers. The medallion fees have a significant economic impact on the operating costs for taxicab drivers as well as controlling the availability of taxicabs in a locale.

Washington's Dulles International Airport (IAD) is an example of an airport having a closed taxi system because of the long distance between IAD and downtown Washington, D.C. As a result, the Washington Flyer has exclusive rights to pick up fares at IAD. The airport takes the position that the distance from downtown would be an economic deterrent to keeping the necessary supply of taxicabs at IAD under an open system.

5.1.5 Airport Access Fees

Airport access for ground transportation providers most often requires a permit for a specified fee. Airports may set forth requirements and applications for permits in contractual agreements or through local ordinances. Designated areas for passenger pick-up and drop-off should be assigned and properly identified with signage. For larger airports, commercial vehicle staging areas may be utilized.

5.1.6 Rules for Solicitation

Airports may create rules for solicitation of passengers and/or have designated agents or points of contact to arrange ground transportation. Typically, ground transportation providers have representation in centralized areas inside and outside of terminal areas. Appropriate wayfinding is critical to direct passengers to the appropriate ground transportation provider.

5.1.7 Public Transportation Agreements

Public transportation may require a contractual agreement between the airport and the public transportation agency. These agreements may arise from extensions of public transportation routes to the airport property, construction of multimodal facilities/shelters/transit stations, extension of service hours and transport of airport employees. The agreement may involve payment of compensation from one party such as the airport to/from the public transportation agency.

5.1.8 Forms of Ground Transportation Agreements

For the purposes of this chapter, the terms "contract" and "agreement" may refer to actual contract instruments, but in many cases will refer to "permits," which are the preferred method of regulating ground transportation providers. These permits are much easier to put in place with a group of operators that come and go frequently and, even more frequently, add and remove vehicles from their fleets. The permits will typically refer to a much more comprehensive set of rules and regulations that govern ground transportation functions. References to language for contracts might instead be in a rules and regulations document; for this chapter, however, the discussion of contract language may refer to either a contract or rules/regulations document.

5.2 Definitions

Because ground transportation regulations must apply to various providers with different types of operations, a definitions section must be as detailed and complete as possible. Sponsors should define as many relevant terms as possible, even those which may be considered slang or colloquial.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for definitions in the PIT Ground Transportation Rules & Regulations.

5.3 Critical Issues in Ground Transportation

Issues critical for airport managers to consider when developing ground transportation contracts are as follows:

- Define purpose and areas served
- Compliance with local licensing
- Vehicle safety requirements and inspection
- Vehicle condition and appearance
- Driver requirements and appearance
- Permitting
- Compensation
- Enforcement
- Customer services
- Insurance

5.3.1 Define Purposes and Areas Served

All modes of ground transportation may need to have a defined service area on-airport that restricts their movements to areas approved by airport management. These restrictions help an airport control vehicle traffic flow, as well as count trips made by these vehicles if their rate structure includes a per trip fee.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the PIT Ground Transportation Rules & Regulations designating the curb area for loading and unloading passengers.

5.3.2 Compliance with Local Licensing

Operators of all transportation modes must comply with local ordinances with regard to driver's licenses, vehicle registrations, providing public transportation or transportation for hire, and permits. In some cases, licensing may be complicated in that multiple jurisdictions are served.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for an excerpt from the PIT Ground Transportation Rules & Regulations addressing intrastate and interstate regulations.

5.3.3 Vehicle Safety Requirements and Inspection

State or local regulations may control; otherwise the contract may set forth maintenance schedules or may provide for periodic inspections.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for an excerpt from the SMF Ground Transportation Rules & Regulations regarding vehicle inspections.

5.3.4 Vehicle Condition and Appearance

Airport managers understand that for many deplaning passengers, the ground transportation system is one of the first opportunities for a visitor to form an impression of the airport and its community. To help ensure a positive impression, airports are now adopting more restrictive language regarding vehicle condition and appearance.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the SMF Ground Transportation Rules & Regulations regarding vehicle appearance and vehicle standards.

Another way to ensure good vehicle condition is to prohibit vehicles beyond a certain age from operating at the airport. Although it is difficult to place restrictions on the age of very large fleets, such as taxis, it is possible with small fleets such as those providing on-demand van service. Some airports have strict restrictions that vehicles be no more than a certain age.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the JAX On-Demand Service Agreement requiring that the vehicles be no less than 3 years old.

5.3.5 Driver Requirements and Appearance

Requirements for ground transportation drivers accessing the airport are also becoming more stringent. Some airports specify requirements for licensing and compliance with laws as well as customer service standards such as the following:

- Require drivers to comply with local laws and regulations as well as airport rules and regulations
- Require drivers to obey lawful orders and directions of airport law enforcement personnel and other airport officials
- Possess a valid state driver's license
- Be registered with the airport operation
- Understand the airport rules and regulations
- Be knowledgeable of local geography
- Be able to communicate with passengers
- Be courteous to the public at all times
- Solicitation of passengers
- Sale of other products
- No unattended vehicles
- No deception of the public
- Provide receipts
- Display schedule and rate information
- Credit card acceptance
- No solicitation of gratuities

5.3.6 Permitting

For permit applications, the focus should be on obtaining as much information as reasonably possible about the companies that would be operating on the airport. In addition to a business name, corporate officers, owners, and managers must be provided. Attached to a permit application should be all required insurance forms, driver and vehicle information forms, AVI forms, and government certification forms (as required).

If the application is accompanied by a Route Sheet describing the proposed hours of service route scheduled for each day of the week, the sponsor can work with an operator to arrive at a schedule that can be accommodated at the airport.

Also, requiring credit card information for billing purposes ensures a more consistent cash flow and allows regular billing of the operator for all AVI trips recorded.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the CMH Permit Package and Ground Transportation Regulations.

5.3.7 Compensation

Airports may receive compensation in the form of concession fees, permit fees, space rents, and/or percentages of revenues. Whenever possible, airports should incorporate technology in the form of an AVI or similar system, because it has been shown that the presence of these reveals significantly more trips to the ground transportation center occurring at the airport than are reported without one. The compensation system requires precise language in order to eliminate confusion for the operator as to how fees are calculated.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the BWI Pre-Arranged Shuttle Agreement regarding reporting of gross revenues and the payment of percentage concession fees.

5.3.8 Enforcement

Defining violations and enforcing mitigation and penalties can be very difficult without detailed language.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the PIT Ground Transportation Rules and Regulations defining acts constituting violations, procedures for issuance of notices of violation, hearings procedures, and penalties.

5.3.9 Customer Service

Regardless of the type of service provided, there are various ways to use language in the regulations or a contract to ensure superior customer service.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for excerpts from the JAX On-Demand Van Services Agreement defining service expectations.

5.3.10 Insurance

Ground transportation operations present numerous possibilities for accidents or other events that require the involvement of insurance policies. It is critical that airports require every operator to maintain sufficient coverage.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 5, Ground Transportation Agreements, for an excerpt from the SMF Ground Transportation Rules & Regulations regarding insurance requirements.

CHAPTER 6

Contract Services

Virtually all airports use contract services for some part of the operation and maintenance of their facility or the provision of services to their tenants or passengers. Airports may use contract services for a wide variety of task groupings but typical services for which airports contract are janitorial, landscaping, technical support (e.g., information technology and graphics), building maintenance and security guard services.

6.1 Characteristics of Contract Services

In this Guide, "contract services" refers to an agreement with a company to use its human resources to directly render an ongoing service on behalf of the airport proprietor. Such contracts can be distinguished from consulting and construction contracts in that (1) the services provided under consulting contracts tend to be related to a specific project or program, require the use of highly trained or educated professionals, and consist of advising the airport proprietor rather than conducting some of the operation; and (2) the services provided under a construction contract are episodic and delimited in duration by a project to build or renovate a facility or portion of a facility. Revenue-generating operating contracts (e.g., parking management agreements) were covered in Chapter 3, Concession Agreements.

6.2 Deciding to Contract Services

Airport proprietors differ in their philosophy toward "outsourcing," guided by considerations such as tradition, the influence of unions on local government, the airport's risk tolerance, and the cost and availability of in-house human capital for the service. Airports may use in-house forces for some of the airport (e.g., a new passenger terminal or for non terminal buildings) or supplement those forces to undertake some tasks (e.g., infrequent tasks that require specialized equipment or training). Airport managers that outsource routine services reported that the principal factors they considered were the desire for airport management to focus on their core strengths, costs, the desire to transfer some risk to a third party, the availability of qualified companies, and the lack of internal resources to provide the service.

6.3 Critical Issues in Contracting Services

In achieving best practices in developing and managing operating contracts, airports report that critical success factors include developing a detailed scope of services, establishing performance standards, imposing qualification criteria for the contractor's general manager and/or on-site lead,

payment terms, allocation of risks, outlining requirements for the handling and disposal of hazardous material, and training of staff. Critical issues are as follows:

- Scope of services
- Performance standards
- Qualifications of lead contractor personnel
- Terms of payment
- Insurance
- Indemnification
- Handling and disposal of hazardous materials
- Training of staff

6.3.1 Scope of Services

Airports have developed sophisticated scope statements for larger operating contracts that enable the contractor to accurately price and staff the service and enable the airport to expect that the contractor can reasonably meet the airport's expectations. These scope statements include

- A broad definition of the standard for the services to be performed
- Materials to be furnished by the airport sponsor
- Equipment to be furnished by the airport sponsor
- Contractor responsibilities for
  - Trash removal
  - Staffing standards
  - Equipment and supplies
  - Employee compensation
  - Uniforms
  - Security regulations
  - Security access
- Specification standards for the services to be provided
- Inspections by the airport sponsor

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for [1] a Scope of Services/Specification excerpt from MEM janitorial contract which includes details on coverage areas for the service, schedules, staffing and means and methods; [2] service standards excerpts from LAS janitorial contract which includes details on means and methods for cleaning various areas; [3] service standards excerpts from PIT janitorial contract which includes details on timing for the services, and means and methods; and [4] service standards excerpts from MWAA landscaping contract which includes a more general description of the services to be provided and an appendix with specifics including details on timing for the services, means and methods, and materials.

6.3.2 Performance Standards

In contracting out a service, the airport operator does not want to relinquish responsibility to its users for the quality of the service. Therefore, airports can establish (within the contract) provisions for regular assessment of the contractor's performance and assign one or more in-house staff to perform these assessments. Best practices establish in the contract criteria on which the performance assessments will be based. Some airports also provide for monetary penalties based on the results of the assessment.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for excerpts from [1] the MEM janitorial contract for a particularly innovative provision which includes a

grade sheet and provides monetary incentives for exceeding a defined level of performance as well as monetary penalties for unsatisfactory performance; and [2] the CHS janitorial contract regarding weekly janitorial inspections, inspection forms, the performance evaluation based on those inspections, and the reduction of monies under the contract in the event of repeated "not acceptable" evaluations.

6.3.3 Qualifications of Lead Contractor Personnel

Given that airport managers contract for services so as to perform an important service on their behalf and some of these contracts are for large operations within the airport complex, airport managers have a vested interest in the quality of the leadership of such operations.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for [1] an excerpt from the MEM janitorial contract requiring a full-time project manager, who is subject to the approval of the airport sponsor, and the staffing and qualifications of other on-site management staff and [2] service standards excerpts from the MWAA landscaping contract with staffing and qualifications requirements for an on-site supervisor.

6.3.4 Terms of Payment

A key element of a contract is the detailing of the amount of compensation, the criteria on which compensation will be based, the method and timeframe for the payee's request for compensation, and the method and timeframe for the payer to respond to the payee's request. Depending on the type of activity covered, the compensation provisions may be simple or highly detailed.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for an excerpt from the PHX wildlife management services agreement for provisions regarding compensation and terms of payment.

6.3.5 Insurance

Comprehensive insurance provisions are important for the proper allocation of risks.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for excerpts from the DFW contract template for sample insurance provisions.

Some typical types of required insurance are as follows:

- Workers' compensation—employers' liability insurance
- Commercial general liability
- Damage to rental premises
- Personal and advertising injury
- Products and completed operations
- Pollution liability
- Professional liability
- Business automobile liability
- Excess/umbrella liability

6.3.6 Indemnification

Indemnification provisions are also an important part of the proper allocation of risks.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for excerpts from the MEM and DFW contracts for sample indemnification provisions.

6.3.7 Handling and Disposal of Hazardous Material

Airport managers have had increasing concerns about environmental hazards as (1) more is learned about the effect of certain materials and processes on human health and (2) legislation and case law have heightened airport liability for environmental contamination. Because many of the common operating contract agreements (e.g., for janitorial, landscaping, maintenance, and deicing services) involve considerable handling of potentially hazardous material or contaminants, airports have adopted extensive provisions in their contracts guiding the handling and disposal of such materials and outlining contractor liability for improper methods and outcomes and requirements for reporting.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for excerpts from the [1] CHS janitorial contract regarding requirements relating to handling industrial waste and compliance with applicable pollution laws; and [2] DFW Airport Operating contract regarding environmental licenses and permits, compliance with environmental codes, release of hazardous materials, solid waste, or process water, inspections, products containing asbestos, environmental indemnity, and safety provisions.

6.3.8 Training of Staff

In order to better ensure compliance with the performance standards airport operators may include specific provisions for the training of staff.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 6, Contract Services, for the MEM security contract for provisions regarding instruction and training.

CHAPTER 7

Professional Services

A wide range of entities provide professional services, including, but not limited to, architectural and engineering firms, law firms, concessions consultants, financial services firms, and real estate professionals. This group of providers is distinguished from Contract Services providers in that many of the consultants staffing the provider firms are licensed and/or have advanced educational degrees.

Successful professional services contracts have a clearly understood and **well-defined scope of services,** a **realistic timetable** to perform the services, and timely compensation to the service providers. A scope should be defined for each contract, clearly defining the services to be performed by the services firm. The scope should be accompanied by a **schedule/timetable** and a **list of deliverables** and be contained in a separate exhibit of the contract. The mantra of professional services firms is to finish on time and within budget. The airport facilitates successful delivery of services by providing well-managed contract administration.

To maintain control of the budget and expenditures, a **list of reimbursable expenses** should be defined in the terms of the contract. These may include, but are not limited to, travel, telephone calls, overnight delivery expenses, and reproduction expenses.

7.1 Critical Issues in Professional Services Agreements

There are a number of critical issues for an airport sponsor to address in professional services agreements. These issues are discussed individually in the following sections.

The critical issues in professional services agreements are as follows:

- Designated representatives (both parties)
- Project deliverables
- Additional services
- Relationship of parties
- Ownership of documents
- Schedule and excusable delays
- Budget
- Confidentiality
- Warranties/errors and omissions insurance
- Professional certifications
- Payment terms
- Assignment
- Place of work
- Termination provisions

7.1.1 Designated Representatives (Both Parties)

The service provider and the airport should designate the project managers or key project leadership and the liaisons for both parties. The project managers should be identified by name and title, and the procedures for replacing them should be outlined.

7.1.2 Project Deliverables

Project deliverables include documents, drawings, and any other forms of work product to be developed under the Scope of Services to be performed. Deliverables should be described in terms of the format to be provided (e.g., electronic, hard copy, color or black/white, and CDs), method of delivery, and relationship to the project schedule.

7.1.3 Additional Services

When a service provider performs well and the airport establishes a good working relationship, the airport may want the provider to perform additional services related to the original contract, but going beyond the services defined in the Scope of Services. This provision allows the airport to expand the scope and increase the compensation to the service provider.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the CHS Consultant Services Agreement for example of provisions regarding procedures for authorizing and paying for additional services.

7.1.4 Relationship of Parties

The contract should contain language that specifies that the service provider is not an employee of the airport, but is an independent entity.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the IAH Concessions Services Agreement for an example of provisions for defining a relationship as an independent contractor.

7.1.5 Ownership of Documents

The airport sponsor should have a provision that it is the owner of the work products, deliverables, and all documentation produced under the terms of the contract.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the MWAA, IAH and CHS Consultant Services Agreements for example of provisions regarding ownership of the work product.

7.1.6 Schedule and Excusable Delays

The schedule provided under the contract is typically based on time estimates to which both parties agree. Delays may occur that are out of the control of the service provider and may result from the airport's delay in providing required inputs or task orders. A well-written agreement provides for these types of delays.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the IAH Concessions Services Agreement for example of provisions regarding schedule and excusable delays.

7.1.7 Budget

The project budget is typically found in an exhibit of the Professional Services contract. It comprises the estimated costs for labor, materials, and reimbursable expenses based on the schedule of work. The budget may have been developed as a response to an RFP or negotiated/modified after the award of the contract. The budget is the basis for billings and compensation to the service provider and should incorporate as much detail as can be reasonably tracked by the sponsor's staff.

7.1.8 Confidentiality

The professional services contract should contain a provision of confidentiality with regard to information the airport provides to the contractor and also with regard to the work product.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the IAH Concessions Services Agreement for example of provisions regarding confidentiality of information.

7.1.9 Warranties/Errors and Omissions Insurance

Errors and omissions insurance is a requirement for architectural and engineering services because of the potential liability associated with such work. Risk management staff should be involved in determining the indemnification, insurance, and errors and omissions coverage for other Professional Services agreements.

7.1.10 Professional Certifications

The contract should specify that all necessary professional certifications and licensing requirements should be met by the contractor in accordance with local, state, and federal regulations.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the JAX Ground Handling Agreement for example of provisions regarding compliance with licenses and permits.

7.1.11 Payment Terms

Many professional services contracts involve a monthly billing cycle with payment due within a specified number of days. Sponsors should seek terms that are favorable, yet fair, and do not adversely affect the airport's cash flow.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the IAH Concessions Services Agreement for example of provisions regarding payment terms.

7.1.12 Assignment

Assignment of a professional contract should be prohibited without consent of the airport. The provider was selected on the basis of its qualifications and experience and should not be allowed to freely assign the contract to another entity. In instances where the contractor is acquired by another firm while a contract is in progress, the airport should consider assignment only if the same personnel remained assigned to the project or if comparable or superior staff from the acquiring firm is assigned.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the CHS Consultant Agreement for example of provisions regarding assignment.

7.1.13 Place of Work

The contract should state where the work is to be performed—whether at the contractor's offices or at the airport if the airport is providing work space.

7.1.14 Termination Provisions

The contract should clearly provide conditions and terms for termination by both parties. It is especially critical that any provision for termination with cause be as detailed as possible to ensure such action is defensible against protest or civil suit.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 7, Professional Services, for excerpts from the CHS Consultant Agreement and the LAS Mystery Shopper Agreement for example of provisions regarding the rights of termination.

7.2 Selection Process

The selection of firms to provide professional services is often accomplished through the RFP/RFQ process to ensure the selection of experienced, qualified providers. Selection of architects and engineers for projects that will be funded through federal grants must be done through an RFQ process. Cost may not be a factor for selection.

The Scope of Services is the key contract element defining the services to be provided. Typically, the **scope of services** is found in Exhibit A of professional services contracts because the language is customized for each type of service whereas the rest of the contract may contain standardized provisions. Exhibit A may also contain the **schedule for services** to be performed and should also list any deliverables to be provided under the contract. Exhibit B typically contains the **terms of compensation** and may detail a list of **staff or positions** performing the services and their respective hourly labor rates. The total compensation may contain a not-to-exceed amount. In some cases, compensation may be based on a cost- plus fixed-fee basis where the service provider is compensated for the cost of services provided plus a fixed-fee amount.

Another consideration commonly factored into professional services contracts is the **ownership of the work product** and use of the work product. From the airport's perspective, the airport should stipulate that it is the owner of the work product.

Airports establishing good relationships with professional services firms may **add tasks or services** to the Scope of Services defined in the contract. It may be useful to have a provision to enable the airport to request additional services and have a mechanism to determine the appropriate compensation for additional services.

CHAPTER 8

Proposal and Bid Documents

Airport sponsors select business partners through various solicitation processes (see Figure 8-1). Some processes are well-suited to a **bid process,** where the product desired can be specified so well that the only differentiating factor is price. Others require an evaluation of much more than price and are better suited to a **request for proposal** (RFP). In some cases, price is not considered as part of the selection process and a **request for qualifications** (RFQ) is used. Finally, in some instances, as a preliminary measure, a **request for letter of interest** (RFI) process will be used to determine the universe of potential proposers without requiring the submission of a full-blown proposal.

The research for this chapter of the *Guidebook* revealed some common themes. First, airport managers often feel torn between the desire to make proposal instruction documents as complete as possible and keeping the documents brief and manageable. Second, airport managers are often frustrated by respondents, and occasionally governing bodies (e.g., boards of directors, city councils, and county commissions), that overrule staff decisions or otherwise undermine the integrity of the process. Finally, airport managers often find timing and schedule to be big challenges in the process. These themes are evident in the discussion of critical issues below.

8.1 Best Practices in Bid/RFP/RFQ Process

Airports are going to greater lengths to ensure that processes do not stall because of manageable factors. **Instructions and requirements are explicit in many of today's solicitations to ensure potential respondents understand what is asked of them.**

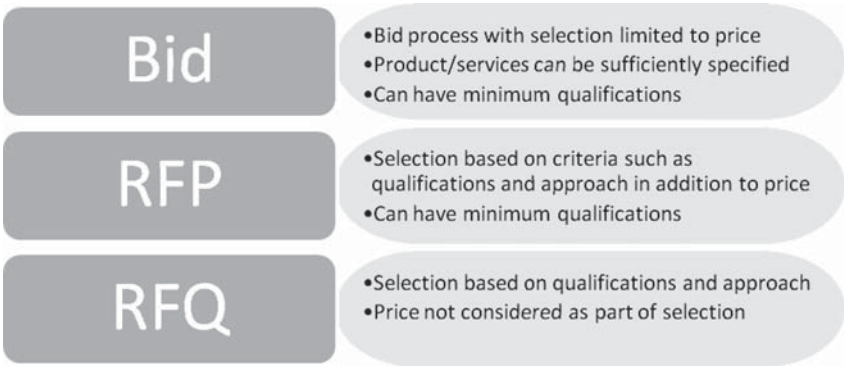

Figure 8-1. Types of solicitation processes.

Best Practices in Structuring Bid/Proposal Process

Explicit instructions and requirements to ensure potential respondents understand what is asked of them.

- Timing
  - Specify due date, time and location
  - Designate official time keeper
  - Provide steps and expected dates for selection process
  - Identify expected dates to commence work, major milestones, and completion
- Pre-Bid/Proposal Conferences
- Sponsor Contact
- Information to Respondents
  - Background Information
  - Public/Confidential Information
  - Operational Information
- ACDBE Requirements
- Proposal/Bid Affidavits
- Addenda
- Airport Sponsor Protections
  - Contract Exceptions and Consistency with contract terms
  - Right to Interpret
  - Validity Period
  - Disqualification and Protests

8.1.1 Dates, Times & Schedules

Solicitation documents should include the specifics of proposal submittal deadlines, including date, time, and location. Some RFPs also specify how the official time will be determined.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from solicitations from AUS and FLL.

RFP Contents Best Practices

Explicit instructions and requirements to ensure potential respondents understand what is asked of them.

- **Proposal Due Dates and Times**
- **Selection Schedule**
- **Schedule for Commencing and Performing the Services**
- **Required Information and Format**
- **Background Information**
- **Proposal Evaluation**
- **Minimum Qualifications**
- **Operational Issues**
- **ACDBE Requirements**
- **Scope of Services and Major Requirements**

It is also critical to provide a schedule governing the process so that potential respondents will know not just when proposals are due, but also the speed with which they will be expected to perform contracting and construction activities. Many sponsors include schedules in RFPs that detail activities up to and including the proposal due date.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from a sample retail RFP from PHX for details regarding pre-proposal due date activities.

It is preferable, however to include activities beyond the approval and execution of a lease.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from a sample RFP from AUS.

In addition to these specifics, airport sponsors should also consider adding specific dates for board meetings, council meetings, or other meetings regularly scheduled far in advance. Being able to tell prospective respondents the schedule for board meetings can help them keep dates clear for possible attendance at those meetings.

8.1.2 Pre-Bid/Proposal Conferences

A pre-bid or proposal conference provides an opportunity for an airport sponsor to provide additional information to prospective respondents. This is especially helpful if the conference includes a guided tour of the facility or facilities related to the opportunity offered. Prospective respondents, in turn, are given the opportunity to ask questions of staff.

Staff should ensure that attendees understand that verbal responses to questions posed at a pre-bid/proposal conference are not binding—binding answers will be provided in a written addendum issued after the conclusion of the pre-proposal conference.

Many airports believe that pre-bid/proposal conferences are more efficient if the RFP or bid documents expressly invite written questions in advance of the pre-proposal conference. Some airports also use attendance at a pre-bid/proposal conference to establish the list of recipients for addenda.

Airports should consider logistics when planning a pre-bid/proposal conference. The room should be large enough to hold as many participants as expected comfortably. If no such venue exists, participation should be limited to a set number of participants per firm. Airports might also consider adding a provision that allows them more flexibility in interpreting proposals from entities that do not attend a pre-bid/proposal conference.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the RDU and PHX RFPs for good examples of RFP language describing the process for pre-proposal conferences.

8.1.3 Objectivity/Sponsor Contact

Part of an airport's effort to ensure objective and unbiased selection processes depends on its position regarding contact by prospective respondents during the proposal/bid preparation period. **Airport sponsors are encouraged to explicitly state the circumstances under which a prospective respondent can contact the sponsor, the individual staff members who may be contacted, and at what times contact may take place.** It is especially helpful to acknowledge the ways in which contact may occur for matters outside the solicitation in question, to help respondents avoid additional confusion.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the PHX RFP regarding contracting policy and parameters for discussions with staff and board members during a solicitation process.

8.1.4 Scopes of Service

Solicitation documents geared for consultant selection require a well-defined scope of services in order to help potential respondents understand what is being asked of them and the effort required to perform the work or deliver the service. Accordingly, these scopes of service should have as much detail as possible, allowing for the fact that some detail might be withheld in order to receive different descriptions of approaches to the work.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the PHX Air Service Consultant Agreement providing a detailed scope of services.

8.1.5 Background Information

In solicitation documents, airports have always done a relatively good job of providing the necessary background information to prospective respondents. This information is usually tailored to the type of solicitation and assists any respondents who may not have regular access to it.

Over time, companies doing business at airports have become more sophisticated in their approaches and have expressed a desire to receive more detailed information in solicitation documents. Some airport sponsors provide information about historical enplanement activity, nature of airline service, airline market shares, gate assignments, passenger profiles, the socio-economics of the air service catchment area, and other concessions at the airport.

Background Information Best Practices

- Historical enplanement activity
- Nature of airline service, market shares and gate assignments
- Passenger profiles
  - Demographics
  - Travel profile
  - Purchasing patterns & preferences
- Socio-economic characteristics for air service catchment area
- Other concessions

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for a sample of detailed background information in a 2010 solicitation by SFO for a bookstore operator.

8.1.6 Public/Confidential Information

In order to receive enough information to evaluate proposals or bids, airports often ask for detailed financial information that often would be considered proprietary by the respondent. Given that, it is critical that the sponsor be clear in describing how confidential information will be handled. Although some airports believe that all information in proposals or bids is public information and should not be protected, **most airports make an effort to protect such information because it is believed that doing so will result in a higher number of quality responses.** However, the airport should also disclose the possibility of required disclosure and disclaim any liability for inadvertent or mandated disclosure.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for an excerpt from the RDU RFP regarding the public record nature of proposals and authorities' willingness to take reasonable efforts to protect information marked confidential.

8.1.7 Operational Issues

Solicitation documents should, to the extent possible, detail all operational issues and requirements that are of importance to the airport. For example, when considering terminal concessions, the following operational issues typically are important to the airport and can affect the potential respondent's evaluation of the opportunity.

- **Hours of operation** must be clearly outlined and should be consistent with the anticipated airline schedules affecting the concessions. Sponsors should consider the needs of passengers, meeters/greeters, other tenants, and employees in determining operating hours.
- **Advanced point-of-sale (POS) systems** to be used by all tenants should be described. RFPs should mandate their use whenever possible to ensure accurate reporting by tenants to the sponsor.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for an excerpt from the MSP Concessions General Terms and Conditions and SFO Retail Lease Agreement regarding minimum requirements for cash handling and point-of-sale systems.

- Responsibilities for the payment and installation of **utilities** and the method for allocation of utility costs (if spaces will be metered individually or utility costs allocated according to the utility loads of a tenant's equipment, or one that allocates according to sales levels).
- In addition to utilities, a sponsor should be very clear in describing the **communication systems** to be provided.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for an excerpt from the AUS RFP for food/beverage concessions regarding Shared Tenant Service (STS) telephone system and communication services through a Premises Distribution System (PDS).

- The sponsor should also clearly describe the **responsibilities for maintenance.** In particular, the responsibilities for janitorial services in tenant spaces and common area spaces should be clearly delineated.
- If **street pricing** is a policy for a particular airport, a separate policy statement and monitoring process should be expressly spelled out.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for an excerpt from the RDU Concessions Pricing Policy.

8.1.8 ACDBE Considerations

In any process for which solicitation documents are used, the presentation of the Airport Concession Disadvantaged Business Enterprise (ACDBE) goals are critical to ensuring responsive proposals. ACDBE requirements can be confusing to readers not accustomed to them. RFPs and bid documents should use as much detail as possible to convey the goals of the airport, the requirements for qualification, the consequences for failure to meet the goals, and the documentation that must accompany the proposal.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for the MSP Concessions General Terms and Conditions and SFO Retail Lease Agreement for language regarding ABCDE requirements and the RDU RFP which provides more expansive language.

8.1.9 Addenda

The consistent flow of information from approved sponsor sources to prospective respondents is another key to ensuring a high response rate. Even well-written RFPs require addenda to clarify information or to answer questions posed in the pre-proposal conference. To ensure

all prospective respondents receive the necessary information, **solicitation documents should detail the procedure for issuing addenda,** including any requirement for being on the distribution list, the methods for transmittal (e.g., online, fax, and e-mail), and the use of an affidavit acknowledging receipt, which can be required as part of the proposal.

8.1.10 Proposal Affidavits

The use of affidavits to establish, in writing, that respondents have received all of the information available and required to submit a proposal are becoming more popular. Airports have grown tired of receiving complaints after a selection is made that, for example, "Company X had no knowledge of this requirement." Affidavits eliminate the possibility that a respondent can make such a claim.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for affidavit forms from the PHX RFP.

8.1.11 Consistency with Contract Documents

Solicitation processes are typically accompanied by a draft contract, which includes an extensive list of definitions governing that document. Often, an RFP or RFQ uses language similar to that in a draft contract, but with a different connotation. Sponsors should take great care to ensure that definitions in the two documents do not create confusion. If necessary, a separate set of definitions for the solicitation document may be included, provided there is accompanying language that explicitly states that any definition in the contract will take precedence should there ever be confusion over the use of a term in both documents.

The concept of defining contract exceptions is also important here. By inviting respondents to provide exceptions to the draft contract in their proposals or bids, the sponsor can ensure that only those exceptions are subject to negotiation.

8.1.12 Right to Interpret

The right to interpret proposals and certain elements of bids and to waive irregularities in the same is essential for airports. Not reserving this right can expose an airport selection committee to protests from unsuccessful respondents.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for the RDU RFP with language to reserve these rights.

8.1.13 Validity Period and Proposal Bonds

Respondents to RFPs or bid requests are typically businesses that, all else being equal, would prefer to adapt their bids or proposals as market conditions change. Because there is a minimum amount of time required for a selection committee to evaluate bids/proposals and make a recommendation, it is not possible to permit respondents to alter the contents of a submittal. It is therefore necessary to include a period of validity in the solicitation document. This period should include, at a minimum, all of the days between and including the delivery of the submittal and the execution of a contract resulting from the solicitation process. Airports typically use periods of 60, 90, or 120 days.

8.1.14 Disqualifications and Protests

Disqualifications of proposals and protests of selections are not common, but must be taken very seriously should they occur. The reasons given by an entity for either can vary greatly.

Responding to them can be difficult, and finding resolution sometimes requires the intervention of the Director or Board.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the PHX RFP outlining the procedure for appeals.

8.2 Proposal Evaluations

8.2.1 Minimum Qualifications

Because of the unique nature of operations on airport property, solicitation documents must explicitly describe the minimum qualifications required of respondents. In some cases, solicitations should ensure that these qualifications include some history in an airport environment.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for examples that illustrate the varying degrees of qualification required by airport sponsors. See OAK's RFP which mandates some airport experience as part of the overall minimum operational or developer experience and sales requirements. See PHX Wildlife Professional Services Agreement for professional qualifications.

8.2.2 Required Information

The evaluation of proposals is simplified if the RFP or bid documents clearly lay out the format each response should take. Separating the response into distinct sections enhances readability and makes it possible to disassemble proposals for disbursement to individual members of the evaluation committee.

Submittal Format Typical Sections Included in Proposal

- Cover Letter
- Company Background and Management Experience
- ACDBE Participation
- Proposed Products and Services
- Financial Projects
- Financial Background
- Management and Operations Plan
- Exceptions to the Concession Agreement
- Proposal Bond
- Executed Proposal Forms and Appendixes

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for an excerpt from the RDU RFP which defines the submittal sections and submittal forms for the SFO Retail RFP.

8.2.3 Proposal Evaluation

Evaluating proposals is often the most challenging part of the process. Transparency is key, and one of the primary goals should be to ensure that no protests are filed in response to the process.

Typical Criteria for Evaluating Concession Proposals

- Qualifications and Experience of the Proposer
- Management and Operations Plan
- Merchandise Plan
- Marketing Plan
- Capital Investment
- Design and Quality of Improvements
- Financial Returns to Airport

Maintaining transparency suggests that scoring should be purely objective in nature. In reality, some subjectivity may be required. The process used should be one that permits subjectivity without creating an appearance that the process is entirely so.

Scoring criteria and flexibility in considering proposals can help limit the amount of subjectivity. This may be accomplished through the scoring criteria used or by reserving flexibility in how proposals are considered.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for an excerpt from the PHX Retail RFP.

Airports will frequently reserve the right to develop a short list of proposers and interview proposers.

8.3 Best Practices Specific to Bid Processes

In cases where an airport seeks a specified product or service that can be provided (identically) by more than one vendor or business, bid processes are often used instead of RFPs or RFQs. When using a bid process, some issues should be treated differently than they might in an RFP.

8.3.1 Specifications

Bid requests must be accompanied by detailed specifications that ensure respondents are bidding on precisely the same product or service. **In instances where some deviations are permitted or deemed necessary by a respondent, procedures for bidding with these changes need to exist.**

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the Dallas-Ft. Worth International Airport's (DFW) Request for Bid template regarding language that presumes compliance with specifications and defines when substitutes are permitted.

8.3.2 Bid Opening and Evaluation

Many bid openings are attended by respondents, some of whom pay very careful attention to the procedures followed to evaluate the bids. It is critical that an airport sponsor have detailed processes in place to ensure that in such situations, the same procedures are always followed. This will help minimize the number of protests or contested decisions that arise from a bid process.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the DFW's Request for Bid template language regarding bid opening and evaluation process.

8.3.3 Non-Responsive Bids/Rejection of Bids

As highlighted in other sections of this Guidebook, some of the toughest challenges an airport faces come in the form or protests or challenges. Bid processes, if not carefully structured, can

be targets for protests, particularly if the bid specifications are not specifically stated and likely to be misinterpreted. A complete, specific set of criteria to determine either a bid or bidder to be non-responsive is a critical component to a successful bid process.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 8, Proposal and Bid Documents, for excerpts from the DFW's Request for Bid template language regarding determination of non-responsive bids.

8.3.4 Provisions Governing Successful Bidders

By their nature, bid documents are often more straightforward and precise than RFPs and RFQs. As such, accompanying documents identifying all of the provisions that will govern a successful bidder are necessary. These provisions include all of the rules, regulations, and policies that govern airport users, tenants, and vendors in matters pertaining to environmental management, security, insurance requirements, and ACDBE processes, among others.

CHAPTER 9

Non-Aviation Development

Although many airports have long had some instances of non-aviation land uses on their property, and a few airports have had extensive experience with non-aviation development, this sector is emerging as one of highly salient interest to airport proprietors. Although airport managers strive to improve their performance in conventional sources on non-aeronautical revenue, they have turned greater attention to less conventional sources, including non-aviation development.

For this Guidebook, "non-aviation development" is loosely defined as development of real property owned by the airport proprietor that is designated for commercial uses other than the direct conduct of aviation services by the airport proprietor, the airlines, or their respective agents and vendors. The definition does not attempt to correlate with the definition of "aviation support" facilities that airports may use in their cost center accounting pursuant to airline lease and use agreements. It typically, but not necessarily, involves an agreement between the airport owner and the developer of the property rather than the direct user, or tenant, of the land improvements.

Airport processes for commercial development tend to evolve over time as their markets mature, their governing body and staff become more knowledgeable about their market opportunities, their business communities become more comfortable with the commercially unconventional features of development in an airport environment, and their surrounding jurisdictions become more attuned to the economic expansion prospects for their own communities. Figure 9-1 illustrates this evolution.

The early stages of an airport's commercial development profile are characterized by one-off transactions, either initiated by the airport owner or in response to a developer's unsolicited proposition, followed by the handling of incremental developments, again, with the airport either responding to declared developer interest or its own initiation. Further evolution is characterized by sophisticated airport-driven subdivision planning, with, perhaps, the ultimate stage of airport leadership in collaborative environs planning in what has variously been labeled as "airport cities" or "edge" planning.

9.1 Key Factors for Success in Airport Commercial Land Development

Airports with successful track records in non-aviation development report several key factors for that success, above and beyond the issues contained in lease or development agreements. These factors are as follows:

- **Local Market Conditions.** Although most airports operate in a national or global market, and the ultimate tenants of their commercial developments may operate on a national or international stage, prevailing conditions in the airport's environs carry great significance.

Figure 9-1. Stages in airport commercial development.

- **Strong Business Practices.** Not surprisingly, the adoption of strong business practices becomes more important in the face of dynamic market conditions. **Successful airports recommend that the airport owner perform detailed master planning for its non-aviation areas (with specific master planning for each sector), prepare realistic market analyses, adopt an opportunistic and entrepreneurial perspective, and institute aggressive marketing techniques.**
- **A Developers and Lenders Education Process.** Airports early in their non-aviation development process must patiently and persistently educate developers, lenders, and potential tenant businesses about the airport regulatory environment. For those parties not accustomed to on-airport development projects, including their requirements for adherence to federal grant sponsor assurances and environmental provisions, airport development leases may be daunting. Developers may face difficulty obtaining financing from lenders unfamiliar with the provisions necessary for airports to comply with federal regulations. Airports have found that, at least in their early development transactions, it was critically important to deal with national or large regional developers who had previous successful experience with commercial development in an airport setting.
- **Coordination with Local Planning Agencies.** Finally, the sensitivities regarding perceived airport competition with off-airport commercial development is an issue not to be ignored, particularly when a non-local developer is involved and when the airport is not owned by the political jurisdiction in which competing development parcels are located. **Airports have reported greater success when the planning agencies and officials of these jurisdictions are involved and coordinated with early in the airport's process.** Some airports require a letter from prospective developers stating that they have looked around the area and, because of their specific business purpose, need to be on the airport. Conversely, airports have experienced delays in realizing their development objectives and attraction of adverse political reaction, when the members of the area business community or bureaucracy raise concerns.

9.1.1 Mortgage and Subordination Rights

Developers will need to obtain temporary construction and/or permanent financing and refinancing during the term of their ground lease. These financings will require a leasehold mortgage in the form of a mortgage, deed of trust, or deed to secure debt or other security instrument by which lessee mortgages, conveys, assigns or otherwise transfers its leasehold to secure a debt or other obligation. The ground lease should specify the right of the developer to encumber the property such that financing can be obtained. However, under FAA regulations, no conveyance of a fee simple interest can be implied.

Other documents that should be covered are also the provision of estoppels but with the provision that no documentation shall impose any additional obligations on the airport operator or impair the lessor's remedies under the ground lease.

The ground lease should also specify notice requirement by the mortgagee to the airport operator in the event of foreclosure or voluntary assignment. The ground lease must also make it clear that the mortgage is subject to the ground lease and that the lien under the mortgage will terminate upon any expiration or termination of the leasehold estate.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the MIA, DFW, and PDX Development Agreements for good examples of development agreement language describing the developer's rights associated with financings.

9.1.2 Options and Rights of First Refusal

The airport may wish to grant an option for the leaseholder to obtain additional property during the term of its base lease; **best practice is to identify such property and to charge the leaseholder for this privilege.**

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the DFW Development Agreements for example of option granted to developer.

9.1.3 Development Milestones

In order to prevent developers from tying up the revenue potential of airport property by holding land for the purpose of improved future return, **the setting of development milestones is a key lease provision.** In this, the airport requires the start of construction by a certain date, period from the lease commencement, or upon a specified event. When the lease is with a master developer with a phased development schedule, the lease contains provisions for those milestones.

The lease should also provide the airport operator with the right to take back undeveloped portions of the premises if the developer does not construct improvements as contemplated by the agreement within a specified period of time.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the DFW Development Agreements for example of development milestones and the right to recapture undeveloped portions of the property.

9.1.4 Initial Rent

The other provision designed to deter land speculation by developers is to charge rent commencing by a certain date or by a specified event.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the MIA Development Agreement for example of initial rent which begins on the earlier of date of beneficial occupancy or 25 months from the commencement date of the lease.

9.1.5 Master Developer

Airports have varied in their utilization of a master developer concept for both aviation-related and non-aviation development. Even within the same airport, different development transactions will have different structures. Interestingly, the pattern appears to be that airports use master developers both early in their development cycle and late in their development cycle, for different reasons. Early in their cycle, airports turn to master developers to help them develop and execute a market strategy for their property, respond to market changes, and take advantage of market opportunities for which the airport may not be prepared. As the airport's market matures and the owner becomes more sophisticated in understanding the market, airports have used master developers to enable the owner to undertake larger, mixed-use developments. Airports may enter into development agreements that provide for phasing in of ground leases as tenants are identified. For development agreements, the specification of development milestones and the imposition of "initial rent" are key provisions.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the Sample Development Agreement for an example of phased development goals.

9.1.6 Solicitation Process

Airports vary in their approach to soliciting developers. Some airports are required by local statute or policy to undertake a formal solicitation process, typically a Request for Proposals. Those not so required report being more likely to use a formalized process when seeking a master developer or when they believe there to be multiple developers interested in the transaction. Whether or not they use a formalized process, successful airports report value in continuingly marketing their opportunities and have established website pages on their airport websites as recent additions to their marketing profile. They have developed standard leases negotiated with individual developers on a first-come-first served basis. Again, the development of standard lease forms has been an evolutionary process for most airports as their market players, developers, lenders and tenants, and staffs and governing bodies gain confidence and understanding.

9.1.7 Site Development Standards

The agreement should contain specifications for the review of designs by the airport and adherence to airport design standards—as may be modified for the commercial use.

The lease should also require compliance with the notice and review process of Part 77 and a requirement to comply with any recommendations by the FAA in order to avoid the obstruction of air space.

9.1.8 Environmental Provisions

Airports must comply with federal, state, and local environmental laws and regulations and must incorporate requirements in their development leases. Although specific provisions vary by locale, common to any development lease are provisions to require baseline and concluding assessments, the right of the owner to inspect for environmental compliance during the lease term, inspections by the owner and to outline responsibilities for indemnification, liability and insurance.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the DFW and MIA Development Agreement for example of comprehensive environmental provisions.

9.2 M/W/D/BE Participation

Airports have included requirements for participation in development projects by minority, woman and/or disadvantaged business enterprises. This participation may be in the form of the purchase of areas of goods and services or more conventional requirements with respect to construction.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the DFW and PIT Development Agreements for example of provisions relating to minority and disadvantaged business enterprise participation.

9.3 FAA Compliance

Finally, airports are required under the Airport Compliance Handbook—FAA Order 5190.6A-AGL600 to include provisions in their ground leases for the lessee to acknowledge that the airport's purpose is primarily that of accommodating civil aviation and, as such, the

lessee's rights to use the property for the (non-aviation) purposes set forth in the lease are subordinate to and must not interfere with that primary purpose. The agreement should also reserve the airport's right to further develop or improve the landing areas of the airport as it sees fit without obligation to maintain and repair any particular portion of the facilities and aviation right-of-ways and otherwise preserve the airport's right of flight for the passage of aircraft in the airspace above the surface of the leased premises.

Lessee must agree not to use the leased premises in a manner that interferes with the landing and taking off of aircraft.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 9, Non-Aviation Development, for excerpts from the PIT and MIA Development Agreements for examples of provisions requiring compliance with FAA requirements for leases.

CHAPTER 10

Multiple-Use Facilities

Atlanta's International Concourse E, Chicago's Midway Airport, and Chicago O'Hare's International Terminal 5 are examples of airports with common-use terminal facilities. In these examples, the airports contract with a third-party company that manages the facilities on behalf of the Airport in a third-party agreement. The regulations governing the tenant rules, policies, and procedures for use of the facilities may either be contained in the third-party agreement or set forth in a separate policy document.

Ticket counters and gate holdroom areas are used by the airlines on a common-use or preferential-use basis. Other areas may be under exclusive leases (e.g., support offices and VIP lounges). Common-Use Terminal Equipment (CUTE) may be used under separate agreements or may be covered under provisions in the common-use regulations. Common-use agreements may also include fuel facilities.

Critical issues in common-use management contracts are as follows:

- Parties to contract
- Term
- Scope of services
- Indemnity issues
- Ownership issues
- Resolution of disputes
- Compensation
- Rights and responsibilities of the parties
- Reporting

10.1 Parties to Contract

The parties may include the airport, the airlines, and possibly a third-party management company. **If the agreement is between the airport and a third-party management company, the airlines may not be a party to the agreement,** but subject to conditions of the agreement or subject to common-use regulations that may be in a separate policy document. The terms of the airline terminal lease or use agreement with the airport may contain provisions for common-use facilities as well.

10.2 Term

Common-use terminal agreements tend to have shorter terms (i.e., 5 to 10 years) compared to longer terms (i.e., 10 years or more) for airline use agreements.

10.3 Scope of Services

The scope of services may apply to a third-party management agreement in a multiple-user terminal situation that is common use. This would define the duties of the management company. At Chicago's Midway Airport, the scope was defined in an agreement with the Midway Airlines' Terminal Consortium (MATCO), which was created to provide the airport's airlines with a single entity through which to participate in the design, construction, and management of the recently built main terminal building.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement defining the obligations of the operator and the standard of care.

10.4 Indemnity Issues

It is important for the airport to have adequate indemnity provisions and insurance requirements satisfactory to the airport's risk management and to ensure protection of the airport sponsor, provision of adequate insurance levels, and detailed administration, reporting, and maintenance of these requirements.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement defining the indemnification obligations of the operator to the city, release of the city, and required insurance coverage.

10.5 Ownership Issues

In most cases, the airport owns the facilities and there should be a provision clearly stating which party owns the facilities.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement defining title to replacement parts, components and equipment.

10.6 Resolution of Disputes

The contract should **indicate which state's governing law and court will apply in the event of dispute resolution.** Some agreements may call for resolution through arbitration. In these cases, it is advisable to indicate as many details as practicable regarding arbitration (e.g., required experience of arbiter, location of arbitration meetings or hearings, and time frames in which arbitration will be accomplished)

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement defining governing law and consent to service of process and jurisdiction.

10.7 Compensation

Compensation provisions apply in contracts between management companies, such as third-party agreements like the MATCO agreement. These provisions should include detail pertaining to cost basis (as required), invoicing procedures, and payment terms.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement defining compensation for the operation and maintenance of the equipment and fuel system.

10.8 Rights and Responsibilities of the Parties

The rights and responsibilities of each party to the agreement must be clearly identified in the contract. The MATCO agreement explicitly details not just the rights granted, but any conditions to the granted rights. It addresses matters such as easements and ingress/egress to ensure no conflicts with any future agreements with other operators/managers that may require access to similar facilities. Great care should be taken to address rights and conditions in all such contracts.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement defining the rights of the Consortium with respect to the equipment and fuel system and conditions to the grant of rights.

10.9 Reporting

Each contract should contain regular reporting, specifying the format and frequency of reports. If possible, **reporting provisions should be accompanied by sample formats and/or documents,** which can be included as exhibits or appendices and changed by amendment if there are changes to standard forms used by the airport sponsor.

See *CRP-CD-81* (enclosed herein), Appendix to Chapter 10, Multiple-Use Facilities, for excerpts from the Midway MATCO Agreement outlining required reporting of the progress of the work and reports pertaining to the operation and maintenance of the equipment.

CHAPTER 11

Agreements with Public Agencies and Not-For-Profit Organizations

Airports are home to a wide variety of activities, undertaken by the airport proprietor, airlines, other private companies, not-for-profit organizations, and governmental agencies, some of which are owned by the same jurisdiction that owns the airport. Except for those activities conducted by airport personnel, airport managers have found best practice to be execution of a written agreement between the airport and the party or parties conducting the intended activities.

11.1 Agreements with Sister Organizations

Although the agreement may be simple (e.g., a "memorandum of understanding" that may be used between sister organizations of the same owner), there are still critical issues that are useful to cover. These include parties to the agreement, the term of the agreement, the scope of services, indemnification and insurance, and compensation (if any).

See CRP-CD-81 (enclosed herein), Appendix to Chapter 11, Agreements with Public Agencies and Not-For-Profit Organizations, for an excerpt from the SFO memorandum of understanding between the airport and another city department.

11.2 Public Art

For this chapter, we have chosen to highlight public art as an agreement type that airport managers encounter but which is sufficiently different from other types of agreements for which specific guidance is warranted. Many jurisdictions require or desire that public buildings use some construction funds to acquire art, both to civilize its facilities and to support the arts as a matter of civic good. As facilities frequented by large numbers of local residents and visitors, airports are seen as high-priority sites for the placement of public art. Yet, probably because of the disparate environments in which managers of airports and managers of cultural organizations and institutions operate, even with the best intentions of all parties, the programs pose special challenges for the airport, the cultural organization, and the artists. Critical issues include decision-making on cultural pieces and site selection, coordination with the airport's construction project, maintenance, security, fiscal accountability and, generally, control over the program.

See CRP-CD-81 (enclosed herein), Appendix to Chapter 11, Agreements with Public Agencies and Not-For-Profit Organizations, for an excerpt from the SFO policies and guidelines for civic art collection, the SFO memorandum of understanding between the airport and the San Francisco Art Commission, and excerpts from the BWI cultural exhibition agreement.

Abbreviations and acronyms used without definitions in TRB publications:

AAAE	American Association of Airport Executives
AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway and Transportation Officials
ACI–NA	Airports Council International–North America
ACRP	Airport Cooperative Research Program
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	Air Transport Association
ATA	American Trucking Associations
CTAA	Community Transportation Association of America
CTBSSP	Commercial Truck and Bus Safety Synthesis Program
DHS	Department of Homeland Security
DOE	Department of Energy
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HMCRP	Hazardous Materials Cooperative Research Program
IEEE	Institute of Electrical and Electronics Engineers
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITE	Institute of Transportation Engineers
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NCFRP	National Cooperative Freight Research Program
NCHRP	National Cooperative Highway Research Program
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
PHMSA	Pipeline and Hazardous Materials Safety Administration
RITA	Research and Innovative Technology Administration
SAE	Society of Automotive Engineers
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (2005)
TCRP	Transit Cooperative Research Program
TEA-21	Transportation Equity Act for the 21st Century (1998)
TRB	Transportation Research Board
TSA	Transportation Security Administration
U.S.DOT	United States Department of Transportation