

A RESOLUTION BY TRANSPORTATION COMMITTEE AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PASSUR AEROSPACE, INC. COVERING THE OCCUPANCY AND USE OF INTERIOR BUILDING SPACE AND ROOFTOP AREAS LOCATED AT CONCOURSE E AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

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Certified by Presiding Officer	Certified by Clerk
Mayor's Action <i>See Authentication Page Attachment</i>	

LEGISLATION HISTORY – BLUE BACK

A RESOLUTION BY TRANSPORTATION COMMITTEE AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PASSUR AEROSPACE, INC. COVERING THE OCCUPANCY AND USE OF INTERIOR BUILDING SPACE AND ROOFTOP AREAS LOCATED AT CONCOURSE E AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

WHEREAS, Passur Aerospace, Inc. (“Passur”) is engaged in the air/ground telecommunications business and has requested a lease of space on Concourse E; and

WHEREAS, the Airport has negotiated acceptable lease terms with Passur, and will submit such terms for approval by Council; and

WHEREAS, the term of a lease with Passur shall not exceed three years; and

WHEREAS, the payment of rental for the lease of space shall be computed at rates equivalent to standard rates, fees and charges for comparable space(s) at the Airport; and

WHEREAS, Passur, at no expense to the City, shall be responsible for maintenance and repairs of the leased premises; and

WHEREAS, the Aviation General Manager has determined that sufficient space is available on the Fifth Level and Rooftop of Concourse E to meet Passur’s requirements and has recommended that the City enter into a lease agreement on the conditions hereinbefore set forth and as otherwise appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor is hereby authorized to execute, on behalf of the City of Atlanta, a lease agreement with Passur which shall provide for the occupancy and use by Passur of certain spaces located on Concourse E for a term not to exceed three years at a rental payment for space computed at rates that are applicable to all tenants for comparable space at the Airport and where all maintenance and repairs of the premises shall be at the expense of Passur.

BE IT FURTHER RESOLVED, that the City Attorney is hereby directed to prepare said agreement for execution by the Mayor, with same to be approved as to form by the City Attorney.

BE IT FINALLY RESOLVED that said Agreement shall not become binding on the City and the City shall incur no liability hereunder until the same has been signed by the Mayor and delivered to Passur.

**City of Atlanta
Department of Aviation
Hartsfield-Jackson Atlanta International Airport**

LEASE AGREEMENT

with

**PASSUR AEROSPACE, INC.
(PASSUR)**

for

Building & Rooftop Space on Concourse E of CPTC

in

Atlanta, Georgia

Attachment: Passur Lease Agreement Draft (14-R-3574 : Passur Aerospace, Inc. Lease Agreement)

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Attachment: Passur Lease Agreement Draft (14-R-3574 : Passur Aerospace, Inc. Lease Agreement)

LEASE AGREEMENT

PASSUR AEROSPACE, INC
(PASSUR)

for
Building & Rooftop Space in Concourse E
in

GEORGIA....CLAYTON COUNTY

THIS AGREEMENT AND LEASE (the "Lease"), made and entered into on the ____ day of _____, 2014 by and between the **CITY OF ATLANTA**, a municipal corporation of the State of Georgia (hereinafter referred to as the "City") and , **PASSUR AEROSPACE, INC. ("PASSUR")** a corporation organized under the laws of the state of New York (hereinafter referred to as "Lessee").

WITNESSETH THAT:

WHEREAS, the City owns and operates Hartsfield-Jackson Atlanta International Airport (hereinafter referred to as the "Airport,") situated in the Counties of Fulton and Clayton, Georgia, on which there exist certain facilities designed and constructed by the City for use by firms engaged in the business of telecommunications in support of the transporting of passengers, cargo, and mail by aircraft, among which are facilities located in an area designated as and hereinafter referred to as Concourse E; and

WHEREAS, Lessee is engaged in the air/ground telecommunications business for airlines operating at the airport; and

WHEREAS, Lessee desires to lease certain premises in Concourse E as shown on Exhibits A1, A2, and A3 for use in its business, and the City is willing to lease such premises to Lessee, subject to the terms and conditions hereinafter set forth; and

WHEREAS, the execution of this Lease has been authorized by Resolution No. of the Council of the City of Atlanta adopted on , and approved on by the Mayor of the City of Atlanta, a copy of which is attached hereto as Appendix C and made a part hereof.

Attachment: Passur Lease Agreement Draft (14-R-3574 : Passur Aerospace, Inc. Lease Agreement)

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinafter set forth, the City hereby leases and demises to Lessee, and Lessee hereby hires and takes from the City for its exclusive use, and for the uses and purposes herein enumerated, the leased premises hereinafter described, subject to the following terms and conditions:

SECTION 1 - LEASED PREMISES:

Subsection 1.01 - Description of Leased Premises. The leased premises herein demised consist of approximately:

- (a) Building Area: Approximately 16 square feet of space on the 5th level of Concourse E used to install PASSUR standard radio rack communications equipment and approximately 36 square feet square feet of roof-top space for an electrical box associated with PASSUR installed VGS Antennas on the roof, as detailed on Exhibits A1, A2, and A3 attached hereto.

The above-referenced area shall be for Lessee’s exclusive use and shall hereinafter be known as the “Exclusive Leased Premises”. The Exclusive Leased Premises and the “Non-exclusive Leased Premises” (as defined below) shall together comprise the “Leased Premises”.

Lessee shall have non-exclusive use (the “Non-exclusive Leased Premises”), subject to any restrictions referred to in Section 2 hereof, of the following areas:

- (a) Common Use Area of Concourse E, including corridor, stairs, reception area and restrooms, as shown on Exhibits A.

The Leased Premises are being received by Lessee in its "as-is" condition, including, but not limited to, any existing Hazardous Materials (as that term is defined hereinafter), if any, as the same exist on the effective date hereof.

Subsection 1.02 - Ingress and Egress. Lessee, its officers, directors, employees, patrons, customers, invitees, guests, and suppliers of materials or furnishers of services shall have the right of ingress to and egress from the Leased Premises 24 hours per day, seven (7) days per week, over Airport roadways, including the use of common use roadways,

subject to such reasonable rules and regulations as may be established by the City and other governing jurisdictions with respect to such use, and subject to applicable law.

Escorted access to the Leased Premises may be obtained by contacting the Airport Maintenance Division using the 24 hour duty telephone numbers (404-530-6688 or 404-382-2028 during the day; 404-382-2028 or 404-382-2029 after 5:00 pm).

SECTION 2 - USE OF LEASED PREMISES:

The Leased Premises shall be subject to the terms and conditions of this Lease, and applicable federal, state and local laws, regulations, rules, codes, ordinances, and executive orders, solely for such uses and purposes as are a part of or incidental to PASSUR's business as a specialized aviation service provider engaged in the air/ground telecommunications business for airlines operating at Hartsfield-Jackson Atlanta International airport. The Leased Premises shall be used for no other purpose than that stated without the prior written consent of the City's Aviation General Manager. Any revenue received by Lessee for uses of the Leased Premises not authorized herein shall inure immediately and completely to the City. Violation of this paragraph shall be deemed a default under Section 18 herein.

Lessee shall not do anything, or cause or permit anything to be done, in or about the Leased Premises, which will create a nuisance, or in any way obstruct or interfere with the rights of others at the Airport, or injure or annoy them, or allow any sale by auction on the Leased Premises, or use or allow the Leased Premises to be used for any improper, immoral, unlawful purpose, or any purpose which violates applicable Airport rules or regulations, or obstruct the streets, roads or common passageways, in front of, within, or adjacent to the Leased Premises or the Airport, or do or permit to be done anything in any way tending to injure the reputation of the City, or the appearance of the Airport.

Subsection 2.01 - Restrictions on Use of Leased Premises.

- (A) **Passenger Handling.** Lessee shall not, except in case of an emergency, use or allow others to use the Leased Premises in any manner in connection with the serving or handling of passengers into or out of the Airport, nor shall Lessee use or allow others to use the Leased Premises for passenger accommodations.

- (B) Vending Machines & Public Phones. Coin operated amusement devices shall not be placed or used upon the Leased Premises without the written permission of the City. Public telephones will be permitted on the Leased Premises only subject to terms, fees, and conditions of an appropriate written permit issued therefor by the City. Lessee shall have the right to install, maintain and operate vending machines upon the Leased Premises for the purpose of providing and making available foods, beverages, and sundry items only to employees of Lessee or its tenants.
- (C) Improvements to Leased Premises. All development, construction, and use of improvements on the Leased Premises shall be in accord with the applicable provisions of the "Building Development and Operations Standards" for the Airport, a copy of which is on file in the Facilities Division of the Department of Aviation of the City (<http://apps.atlanta-airport.com/engineeringguidelines/>).
- (D) Obstruction of Ingress & Egress. Lessee shall not obstruct ingress and egress to other facilities nor any easement in the area in its use of the Leased Premises.
- (E) Parking/Storage Outside Leased Premises. Lessee shall not use any Non-exclusive Leased Premises for the purpose of parking or storing business materials, vehicles, or equipment.

Subsection 2.02 - Hazardous Materials. Lessee shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and stormwater drainage system serving the Airport. Lessee shall not cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises. Lessee hereby indemnifies the City from and against any breach by Lessee of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Lessee, the City or others for whom the City may be responsible, diminution in value of the Airport, damages for the loss or restriction on use of rentable or usable space or of any amenity on the Airport, damages arising from any adverse impact on leasing of space on the Airport, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term (as defined in Section 3 herein) as a result of such breach. This indemnification of the City by the Lessee also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water

on or under the Airport which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on the Airport caused or permitted by the Lessee results in any contamination of the Airport, the Lessee shall promptly take all actions at its sole expense as are necessary to return the Airport to the condition existing prior to the introduction of such Hazardous Material to the Airport; provided that the City's approval of such actions, and the contractors to be used by the Lessee in connection therewith, shall first be obtained.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any state or local governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 et seq. (42 U.S.C. § 903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601).

As used herein, the term "Environmental Laws" shall mean all federal, state and local statutes, laws, codes, rules, regulations, ordinances, orders, standards, permits, licenses or requirements (including consent decrees, judicial decisions and administrative orders), currently in force, as amended or re-authorized, pertaining to the protection, preservation, conservation, or regulation of the environment, or imposing requirements relating to public or employee health and safety, including, without limitation, the FWPCA, RCRA, CERCLA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. sec. 11001 et. seq., the Clean Air Act, 42 U.S.C. sec. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. sec. 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. sec. 300F et seq., and the Occupational Safety and Health Act, 29 U.S.C. sec. 651 et seq., each as amended or re-authorized.

The City and its employees, representatives and agents shall have access to the Leased Premises during reasonable hours and upon reasonable notice to the Lessee in order to conduct periodic environmental inspections and tests of Hazardous Material contamination on or at the Leased Premises. Such periodic environmental inspections

shall not be performed in a manner which will unreasonably disrupt the operations of the Lessee.

Subsection 2.03 - Signs and Advertising. Lessee is hereby granted the right to install identification and directional signs on and about the Leased Premises, subject to prior written approval by the Department of Aviation’s division of Planning & Development (or such other department as the Aviation General Manager may, from time to time, direct), of their sizes, designs, texts, locations, specifications and characteristics of such identification and directional signs.

SECTION 3 - TERM:

For purposes of this Lease, the term of this Lease shall commence from the date of execution by the City and shall continue thereafter for a term of three years, subject to the provisions below (the “Term”).

Subsection 3.01 - Inspection of Leased Premises. Contemporaneously with the execution of this Lease, a walk through inspection of the Leased Premises shall be made by the Aviation General Manager or his designee and a representative of Lessee for the purpose of noting the condition of the Leased Premises at the time of execution of this Lease.

Subsection 3.02 - Inspection of the Leased Premises Prior to Expiration of the Term. A walk through inspection of the Leased Premises shall be made by the Aviation General Manager or his designee and a representative of Lessee prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Leased Premises. The Lessee shall correct or repair any and all deficiencies prior to the expiration of the Term noted during such inspection.

Subsection 3.03 - Right to Terminate this Lease.

It is further covenanted and agreed that, in addition to any other right of termination provided hereunder, the City or Lessee shall have the right to terminate this Lease at any time during the Term with at least ninety (90) days prior written notice to the effective date of such termination.

Subsection 3.04 – End of Term. Upon the expiration or other termination of the Term, Lessee shall quit and surrender to the City the Leased Premises in good order and

condition, ordinary wear and tear excepted. Lessee's obligation to observe or perform this covenant shall survive the expiration or other termination of this Lease.

SECTION 4 - IMPROVEMENTS BY LESSEE:

Subsection 4.01 – Realty Improvements, Tenant Improvements, Equipment and Fixtures. No improvements, including landscaping, shall be erected or placed on the Leased Premises, and no alterations, work or penetrations to the roof of any nature (whether structural or non-structural) shall be made to the Leased Premises without prior written approval of the City's Aviation General Manager of such work, penetrations, improvements or alterations; provided, however, that: (1) all such work, penetrations, alterations or improvements shall be commenced only after plans and specifications therefore have been submitted to and approved in writing by the City's Aviation General Manager in full conformance with Article 13 of the Building Development and Operations Standards referred to in Subsection 2.01(C) above, and (2) realty or building improvements to be reimbursed by the City must be approved by the Aviation General Manager. All other tenant improvements shall be accomplished without cost or expense to the City. (<http://apps.atlanta-airport.com/engineeringguidelines/>)

The City is responsible for the general maintenance of the structure to include the roof and utilities up to the meter. Lessee is responsible for the maintenance of all existing trade fixtures, as well as any fixtures added by Lessee to the Leased Premises during the Term. Upon termination of the Lease, all existing trade fixtures that were accepted as working at the commencement of the Lease must be returned in working condition, unless otherwise approved in writing by the City. The City reserves the right not to replace any existing trade fixtures in the event they are disabled, destroyed or otherwise rendered unusable during the Lease.

Ownership and maintenance of all trade fixtures and any associated structural, electrical or other support infrastructure are the responsibility of the Lessee. Upon termination of the Lease, all trade fixtures installed by Lessee must be removed (including without limitation the antenna units and Rack) and premises returned to a working condition, unless written approval is given by the Aviation General Manager for a defined grace period to attempt to sell any trade fixtures to a subsequent lessee of Leased Premises.

The plans and specifications for such improvements and alterations shall be prepared by a licensed architect and mailed to the following official (or such other official as may be

designated in writing by the Aviation General Manager from time to time) for approval on behalf of the City:

**City of Atlanta
Department of Aviation - Facilities Division
ATTN: Mr. Jim Drinkard, Assistant General Manager - Facilities
P.O. Box 20509
Atlanta, GA 30320**

Phone (404) 530-6600 for instructions regarding delivery by hand or by courier or express service.

Subsection 4.02 - Removal and Demolition. Lessee shall not remove or demolish, in whole or in part, any improvements upon the Leased Premises without the prior written consent of the Aviation General Manager who may, in his discretion, condition such consent upon the obligation of Lessee to replace the same by an improvement specified in such consent.

SECTION 5 - RENTAL:

Lessee hereby covenants and agrees to pay on the first day of each month of the Term hereof to the City in lawful money of the United States of America, without deduction or offset (except as specifically authorized herein), and in advance and without demand, at the City's principal place of business as indicated in Subsection 5.01 of this Lease or at such place or places or to such person or persons as may be designated from time to time by the City, the total monthly rental which shall be calculated based on the Leased Premises as outlined in Exhibit A1, A2, & A3 and under the rate schedule set forth in Exhibit B attached hereto and made a part hereof by reference (the "Rental"). The Rental shall be subject to an escalation. The Building Rent as described in Exhibit B shall each increase by 6% every two (2) years.

Subsection 5.01 - Place of Payment and Late Fees. All amounts due pursuant to this Lease shall be payable to the

**CITY OF ATLANTA
DEPARTMENT OF AVIATION**

**P.O. BOX 920500
ATLANTA, GA 30392**

or such other place as designated by the Aviation General Manager. Any amount that is not paid within five (5) days of the due date, shall accrue interest from the due date at a rate of one and a half percent (1.5%) per month until paid. Notwithstanding the foregoing, Lessee shall not abate, suspend, postpone, set-off or discontinue any payments of fees payable hereunder.

Subsection 5.02 - Proration of Rental Payments. For any period of less than one calendar month that this Lease shall be in effect, the aforesaid rental payments shall be pro-rated.

Subsection 5.03 – Lease Security. A security deposit of up to three (3) months Rental is required but may be reduced depending on the Lessee’s financial condition and payment history with the City. In addition, the requirement for a security deposit may be re-evaluated in the future depending on the Lessee’s payment history and general economic conditions.

Subsection 5.04 – Surety Bond or Letter of Credit. Lessee shall file with the City a Surety Bond or an Irrevocable Letter of Credit, in the initial amount of three (3) months' Rental and charges, as collateral security for the payment of the rents and charges to become due to the City from Lessee under this Lease, and for faithful performance by Lessee of all the other obligations under this Lease, and for payment of any and all sums of money for which Lessee may be or become liable under this Lease. If the Lessee is in default under this Lease more than two (2) times within any twelve-month period, irrespective of whether or not such default is cured, then, without limiting the City’s other rights and remedies provided for in this Lease or at law or equity, the Letter of Credit shall automatically be increased to an amount equal to four (4) months Rental, which shall be provided by the Lessee to the City forthwith on demand.

SECTION 6 - COMPLIANCE WITH LAWS AND REGULATIONS:

Subject to all applicable notice and cure periods provided herein, Lessee shall not at any time during the term hereof:

- (A) Omit or fail to procure at the appropriate time any permit or license necessary for any activities or operations on the Leased Premises, and shall

not omit or fail to pay, before delinquent, any cost, charge or expense of any kind or nature required to be paid by Lessee hereunder; or

- (B) Omit or fail to do anything or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises or in any improvement or facility erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by the Lessee which is now in force or which may hereinafter be enacted or promulgated by any public authority or government entity having jurisdiction over the Leased Premises; or
- (C) Create or suffer to be created a nuisance, or commit or suffer to be committed any waste in or upon the Leased Premises; or
- (D) Use or allow the Leased Premises to be used for any immoral or unlawful purposes; or
- (E) Commit or suffer to be committed in or on the Leased Premises any other act or thing which may unreasonably disturb the quiet enjoyment of any other tenant at the Airport.
- (F) Fail to comply with all present or future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards.

Subsection 6.01 - Airport Rules and Regulations. The occupancy and use by the Lessee of the Leased Premises and the rights herein conferred upon Lessee shall be subject to such reasonable Airport rules and regulations as are now or may hereafter be prescribed by the City through the lawful exercise of its powers; provided, however, that no such rule or regulation shall be of such nature as to interfere with or constitute any derogation of or infringement upon the rights and privileges herein granted to the Lessee.

SECTION 7 - RESPONSIBILITY FOR MAINTENANCE OF THE BUILDING AREA.

Subsection 7.01 - General. The City shall assume responsibility for performance of maintenance and repairs in the common areas in accord with the provisions of this Section 7.

Subsection 7.02 - Lessee's Responsibility. Lessee shall, throughout the Term and without cost or expense to the City, keep and maintain Lessee's Exclusive Leased Premises and all improvements, landscaping, fixtures, and equipment, which may now or hereafter exist thereon, in good and sanitary order and repair and in good, safe, and presentable condition, consistent with the highest forms of business practices. If, after thirty (30) calendar days written notice from the City, Lessee fails to maintain or repair Lessee's Exclusive Leased Premises, then the City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance or repair, and Lessee shall pay the cost thereof to the City upon demand; provided, however, that if such repairs cannot be completed within said thirty-day period, then Lessee shall not be in default and the City may not exercise its option herein if Lessee has commenced repairs within said thirty-day period and diligently pursues same to completion. Any unpaid amounts under this Section 7 shall bear interest at the rate of 10% per annum until paid in full.

Subsection 7.03 - City's Responsibility. The City shall maintain the interior and exterior common areas of the building in good repair and cleaned, striped, and lighted, as applicable, consistent with reasonable business practices. The City, acting through its Aviation General Manager or his designated representative, may enter upon the Leased Premises, with the prior consent of Lessee, at such times as might be necessary to carry out its maintenance responsibilities hereunder. The City may accomplish its responsibility hereunder through arrangements with Lessee or others, in the City's sole discretion; provided that any such services provided by City on behalf of the Lessee shall be in accordance with a separate agreement between the City and Lessee.

SECTION 8 - ABANDONMENT:

Lessee shall not vacate nor abandon the Leased Premises at any time during the Term, and if the Lessee shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, any personal property belonging to Lessee and left upon the Leased Premises and any or all of Lessee's improvements and facilities thereon shall, at the option of the City, be deemed to be abandoned by Lessee and shall, at the option of the City, become the property of the City.

SECTION 9 - LIENS:

Lessee shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred (except as provided in Section 27 hereof) by Lessee, Lessee's employees, agents, or contractors. However, if any mechanic's or material man's lien shall at any time be filed against the Leased Premises or any part hereof, Lessee shall be entitled to contest such lien provided that, within sixty (60) days after notice of the filing hereof, Lessee shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise, or shall deposit with the City such security as the City may find satisfactory to cover said lien. Lessee shall save the City harmless from any such liens (including any lien created pursuant to Section 23 hereof) and shall pay to the City, upon demand, the cost of discharging such liens (other than those which may have been created pursuant to Section 23 hereof) with interest at the rate of seven (7%) percent per annum to the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that Lessee may pay any such liens under protest and, without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

SECTION 10 - TAXES:

Lessee shall pay or cause to be paid, prior to delinquency, any lawful taxes, and any assessments levied or assessed during the Term hereof on: (a) the Exclusive Leased Premises; (b) all property interests hereunder or in the Exclusive Leased Premises; (c) any improvements, fixtures and equipment now or hereafter existing on the Exclusive Leased Premises; and (d) any personal property on, in or about any buildings or improvements on the Exclusive Leased Premises. It is understood, however, that Lessee may pay any such taxes and assessments under protest, and, without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

SECTION 11 - UTILITIES:

Subsection 11.01 - Utility Services. The City or others have brought, or will cause to be brought, electrical, gas, telephone, sewer and water lines to the centralized utility distribution point. Subject to applicable ordinances and regulations, Lessee may, at its expense, connect to said utilities at the points where same have been brought to the centralized utility distribution point and Lessee shall thereafter pay for, maintain, repair, and replace all such utilities to and including the points of such connection.

Subsection 11.02 - Waiver of Damages. Lessee hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services furnished by the City or others, including but not limited to electricity, gas, water, plumbing, sewage, telephone, or communications, provided that such failures or interruptions were not occasioned by the City's fault or neglect. In any event, the City shall restore promptly any of such services which are provided by the City when the cause of the interruption has been removed.

Subsection 11.03 - Utility Charges. Lessee shall contract for and pay all allocated charges for utility services separately metered to the Leased Premises.

SECTION 12 - TRASH AND REFUSE:

Subsection 12.01 - Removal and Disposal. It is hereby expressly stipulated that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and Lessee shall arrange for such removal and disposal of same at Lessee's cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

Subsection 12.02 - Storage Containers. Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened and protected from public view, pending their removal and disposal, and such storage shall not generate odors, attract rodents or insects, or become offensive in any manner. The storage area shall be kept neat and clean at all times.

Subsection 12.03 - Deleterious Wastes. Lessee shall obey any and all applicable laws, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems serving the Airport and the required treatment of those products. In the event that Lessee violates this provision and/or the City is required by any federal or state agency having jurisdiction in such matters to pay a fine or other penalty or incur other costs due to the failure of Lessee to comply with this Subsection, then, in such event, Lessee shall reimburse the City the full amount of such fine or penalty and/or costs promptly upon receipt of invoice therefore from the City and, in addition, the provisions set forth in Subsection 2.02 above regarding Lessee's obligations to the City, shall apply. For purposes of this Subsection 12.03, deleterious wastes shall not include materials which are deemed Hazardous Materials, as set forth in Subsection 2.02 above.

SECTION 13 - HOLD HARMLESS AGREEMENT AND LIABILITY INSURANCE:

Subsection 13.01 - Indemnification.

- (A) Releases and Indemnification. In addition to Lessee's indemnification obligations set forth in Section 2.02 of this Lease, it is an express condition of this Lease that Lessee hereby releases and shall indemnify, defend and hold harmless the City, its elected officials, officers, agents, employees, successors, assigns, and its authorized representatives from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or in equity, and expenses of whatsoever kind or nature, including without limitation those arising out of injury to or death of Lessee's employees, and in any manner, directly or indirectly, caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned or contributed to in whole or in part by reason of any act, omission, fault or negligence, whether active or passive, of Lessee, its employees, its contractors, its agents, its lower-tier suppliers, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Lease. Lessee's release, indemnity and hold harmless obligations shall include, but not be limited to, any death, injury, or damage to any person or persons or damage or destruction of property of Lessee, its employees, agents, or of any third persons, caused by the act or omission of any third persons (including trespassers entering the Airport through the Leased Premises) while on or about the Leased Premises during the term of this Lease.
- (B) Negligence and Waiver. Lessee's aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the City to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or negligence of the City. Lessee specifically waives any immunity provided against this indemnity by an industrial insurance

or workers' compensation statute. Lessee further agrees that this agreement to indemnify and hold the City harmless shall not be limited to the limits or terms of the liability insurance required under this Lease. This Subsection 13.01(A) and Subsection 13.01 (B) shall survive any termination or expiration of this Lease.

Subsection 13.02 - Insurance

City Not Responsible for Acts of Others. City shall not be liable to Lessee, nor to those claiming by, through or under Lessee, for any loss, theft, injury, liability or damage of, for or to Lessee's business and/or property which may result from: (a) any act, omission, fault or negligence of other lessees or licensees, their agents, employees or contractors, or any other persons (including occupants of adjoining or contiguous buildings, owners of adjacent or contiguous property, or the public), (b) the breaking, bursting, backup, stoppage or leaking of electrical or phone/internet cables and wires, or water, gas, sewer, HVAC or steam pipes or ducts serving the Leased Premises, and/or (c) water, snow or ice being upon or coming into the Leased Premises. Lessee acknowledges that its use of the Leased Premises is at its own risk.

(A) Any and all insurance required pursuant to this Lease shall be maintained by Lessee during the Term, including any extension thereto, and Lessee shall provide to City Certificates of Insurance with respect to all required coverages contained herein. City shall have the right to inquire into the adequacy of the insurance coverages set forth in this Lease and to require adjustments as necessary. Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Lease shall warrant when signing the Certificate of Insurance that specific authorization has been granted by companies for the agent to bind coverage as required and to execute the Certificate of Insurance as evidence of such coverage. Any and all companies providing insurance required pursuant to this Agreement must meet certain minimum financial security requirements as set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key rating Guide-Property-Casualty or other internationally recognized ratings acceptable to the City, in City's reasonable judgment. Each of the companies providing insurance pursuant to this Agreement must have current, the following:

- (1) Best's Rating or other internationally recognized ratings acceptable to the City, in City's reasonable judgment, of not less than A.

- (2) Best's Financial Size Category or other internationally recognized ratings acceptable to the City, in City's reasonable judgment, of not less than Class IX.

(B) Upon failure of Lessee to furnish, deliver and maintain such insurance as herein provided, Lessee shall be in default and, in addition to City's other remedies, this Lease, at the election of City, may be terminated. Failure of Lessee to obtain and/or to maintain any required insurance shall not relieve Lessee from any liability pursuant to this Lease, nor shall these requirements be construed to conflict with Lessee's indemnification obligations.

(C) Except as set forth below, City shall be covered as an additional insured, as its interest may appear, under any and all insurance required of Lessee pursuant to this Lease (including without limitation with respect to General Liability, Excess Liability/Umbrella, Pollution Legal Liability and all other liability coverages required by this Agreement except as provided below), and such insurance shall be primary and non-contributory with respect to the additional insured, and also include a waiver of subrogation in favor of the additional insured. Confirmation of this shall unconditionally appear on the Certificate of Insurance. However, the requirement of additional insured status does not apply to workers' compensation or professional liability insurance. Lessee must also submit to City an Additional Insured Endorsement attached to the Certificate of Insurance evidencing City's rights as an additional insured for each policy of insurance: General Liability, Excess Liability/Umbrella, Pollution Legal Liability and any other policy under which City is required to be an additional insured pursuant to this Lease and all such insurance shall be primary and non-contributory.

(D) Lessee must, within 2 business days of receipt, forward to the City, at the address listed below, by mail, hand-delivery or facsimile transmission, all notices received from all insurance carriers providing insurance coverages under this Lease that concern the proposed cancellation, or termination of coverage of any insurance policies. Thirty (30) days prior written notice of cancellation must be provided to the City. All notices pursuant to this provision shall be sent to:

Director of Enterprise Risk Management
68 Mitchell St., Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Lessee shall provide the City with evidence of required insurance in the form of Certificates of Insurance prior to the commencement of this Lease, and, thereafter, with Certificates of Insurance evidencing renewals or changes to required policies of insurance at least thirty (30) days written notice prior to the expiration of previously provided certificates.

City shall be covered as an additional insured, as its interest may appear, under General Liability, Excess Liability/Umbrella, Pollution Legal Liability and any and all insurance required of Lessee pursuant to this Lease (except as set forth above), and such insurance shall be primary and non-contributory with respect to the additional insured, and also include a waiver of subrogation in favor of the additional insured.

(E) Worker’s Compensation and Employer’s Liability.

Lessee shall maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each employee who is or may be engaged in work under the Lease:

Worker’s Compensation	Statutory
Employer’s Liability	
Bodily Injury by Accident/Disease	\$1,000,000 each accident
Bodily Injury by Accident/Disease	\$1,000,000 each employee
Bodily Injury by Accident/Disease	\$1,000,000 each policy

Waiver of subrogation in favor of the City of Atlanta.

(F) General Liability.

Lessee shall maintain coverage for Bodily Injury and Property Damage in an amount not less than \$25,000,000 combined single limit. The following specific extensions of coverage shall be provided by Lessee and indicated on the Certificate of Insurance:

- (1) Commercial General Liability (CGL)
- (2) Contractual Insurance (Blanket or specific to this Lease)
- (3) Personal Injury
- (4) Broad form Property Damage
- (5) Premises-Operations

- (6) Lessee shall carry Independent Contractors Contractual Liability on a blanket basis or Contractual Liabilities specifically covering this Lease.
- (7) Terrorism Coverage for Certified and Non-Certified Acts.

The above required Liability limits can be a combination of Primary Limits and Excess Liability/ Umbrella limits.

(G) Auto Liability.

Lessee shall carry Auto Liability coverage as follows:

- (1) Auto Liability Limits: Bodily Injury and Property Damage - \$10,000,000 combined single limit.

The following specific extensions of coverage shall be provided by Lessee and indicated on the Certificate of Insurance:

- (1) Owned, hired, leased and non-owned vehicles to be covered
- (2) Specific liability for vehicles operated on the Airfield
- (3) Commercial Auto Broadened Pollution Liability coverage, endorsement (CA9948) and the MCS-90 endorsement.

The above required Liability limits can be a combination of Primary Limits and Excess Liability/ Umbrella limits.

(H) Aircraft Liability.

Lessee shall carry Aircraft Liability coverage as follows:

- (1) Aircraft Liability Limits: Bodily Injury and Property Damages - \$100,000,000 combined single limit.

The above required Liability limits can be a combination of Primary Limits and Excess Liability/ Umbrella limits.

(I) Pollution Legal Liability.

Lessee shall maintain Pollution Legal Liability coverage for Bodily Injury and Property Damage in an amount not less than \$10,000,000 Each Incident and \$10,000,000 Aggregate.

The following specific extensions of coverage shall be provided and indicated on the Certificate of Insurance.

- (1) Policy Form to be written on Claims Made Form for the term of the lease. If Lease is not renewed, must obtain a 5 Year Extended Reporting Provision Endorsement
 - (2) On & off site clean-up coverage for new conditions, i.e., underground storage tanks (standard coverage in PLL policy). Third Party claims for on and off site Bodily Injury and Property Damage.
 - (3) "Natural Resources Damage" included in the definition of Property Damage. Provides coverage for damage to water, land and wildlife.
 - (4) Terrorism Coverage for Certified and Non-Certified Acts
 - (5) Transportation and Disposal Site Endorsement
 - (6) Waste Broker Disposal Site Endorsement
 - (7) Diminution of Value Coverage
- (J) Property Insurance.

(1) **Property Insurance by City.** City shall obtain a Special Perils policy of property insurance covering reasonably foreseeable risks insuring the building in an amount equal to 100% of the full replacement value. City shall maintain such policies in effect, with responsible insurance companies at all times throughout the Term.

(2) **Property Insurance by Lessee.** Lessee shall obtain and provide, at Lessee's expense, during the Term a Special Perils policy of property insurance covering Lessee's interest in the Leased Premises and reasonably foreseeable risks, insuring the systems, fixtures, equipment, improvements and personal property owned, used or installed by or on behalf of Lessee on the Leased Premises or by any previous tenants thereon, in an amount equal to 100% of the full replacement value thereof. No goods, merchandise, or materials shall be kept, stored, or sold in or on the Leased Premises which would have the effect of suspending the insurance upon said Leased Premises or other property of City, or of increasing the rates therefor. Lessee shall also maintain business interruption, loss of income and extra expense insurance in amounts sufficient to pay for Lessee's expenses and loss of income.

(3) **Waiver of Subrogation.** Each party waives and releases, to the extent of the proceeds that are or would be payable to it in respect of the policies of property insurance that it maintains in force, all rights of recovery, claim, action or cause of action that it may now or later have against the other or the other's agents, officers and employees, by virtue of (1) any loss or damage that may occur to the building, improvements to the

building or other structures or personal property within the building or associated therewith or (2) any diminution in the rent derived from the operation of the building or in the revenue derived from the conduct of business within the Leased Premises or elsewhere on the Airport, regardless of cause or origin, including, without limitation, the negligence of the City or Lessee or any of their respective representatives, agents, employees, contractors and invitees. Because this Subsection will preclude the assignment of any claim described above by way of subrogation or otherwise, each party must give each insurance company that has issued to it policies of insurance covering all risks of direct physical loss or revenue loss written notice of the terms of the mutual waivers set forth in this Subsection and to have those policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverages by reason of the mutual waivers set forth in this Subsection.

(K) Rental Value Insurance.

Lessee shall maintain Rental Value Insurance at a coverage amount not less than one (1) year's fair rental value of the Exclusive Leased Premises.

SECTION 14 - DAMAGE OR DESTRUCTION OF THE LEASED PREMISES:

Subsection 14.01 - Damage to the Exclusive Leased Premises. In the event that any part of the Exclusive Leased Premises hereunder is partially or completely damaged or destroyed as to make such part un-tenantable or practically unusable for the purposes provided for hereunder, or if any part of the Exclusive Leased Premises hereunder are rendered practically unusable for the purpose for which it was formerly used because of damage to other portions of the Exclusive Leased Premises, then the Lessee shall provide written notice to the City within five (5) days of the date of damage or destruction. The City shall review the cause and extent of damage to the Exclusive Leased Premises and respond within thirty (45) days of Lessee's written notice on whether the City intends to repair the Exclusive Leased Premises with City's and Lessee's insurance proceeds or if the City will require the Lessee to repair the Exclusive Leased Premises with same insurance proceeds. In either case, the repair of the Exclusive Leased Premises shall be completed as expeditiously as possible, and both the City and the Lessee shall make every temporary provision as reasonably practical for Lessee to continue to operate in any such part of the Exclusive Leased Premises or other available cargo area during the period of reconstruction.

SECTION 15 - BONDS:

Lessee shall, at no expense to the City, cause to be made, executed, and delivered to the City, bonds as follows:

- (a) Prior to commencement of any construction or alterations upon the Leased Premises involving an expenditure of more than \$20,000.00, a corporate surety bond in a sum of not less than 100% of the estimated cost of construction, guaranteeing the faithful performance and the completion of such construction, all in accord with final plans and detailed specifications to be approved in advance by the Aviation General Manager. Said bond shall guarantee the City against any losses and liability, damages, and expenses (including reasonable attorneys' fees), claims, and judgments caused by or resulting from any failure of Lessee or Lessee's contractors to perform fully and faithfully the work in question within the time period herein provided for completion.

- (b) Prior to the commencement of any construction work upon the Leased Premises involving an expenditure of more than \$20,000.00, a corporate surety bond, with Lessee's contractor(s) as principal, in a sum equal to not less than 100% of the amount of the contract for the completion of such work, guaranteeing the payment of wages for services engaged and of bills for materials supplied and equipment used in the performance of the work, and protecting the City from any liability (including reasonable attorney's fees), and loss or damage arising therefrom. In the event that Lessee initially furnishes such bonds and hereafter obtains from its contractor(s) such bonds in like amount which are satisfactory to the City, and which provide the same protection as aforesaid, the City, upon application by Lessee's principal and surety under such bonds, shall release Lessee from and consent to the cancellation of the bond(s) originally furnished by Lessee under this Section 15; it being expressly stipulated that nothing herein contained shall prevent Lessee's compliance with the provisions of this Section 15 by initially obtaining such bond(s) from its contractor(s) prior to the commencement of any construction hereunder.

SECTION 16 - INSPECTION OF THE LEASED PREMISES:

The City or its duly authorized representative may enter upon the Leased Premises, upon reasonable notice, and at all reasonable times during the Term hereof for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. No prior notice shall be required in the event of an emergency threatening the public safety or welfare, provided the appropriate governmental agency or agencies are responding to such threat.

SECTION 17 - TITLE:

During the Term, upon completion of any improvements placed on the Leased Premises by Lessee, title shall remain with Lessee, however, upon the expiration or earlier termination of the Term, City shall have the option of (i) taking title to such improvements in which case title shall pass to and be vested in the City or (ii) causing Lessee, at Lessee's sole risk and expense, to remove such improvements and restore the Leased Premises to the same condition as existed prior to the installation thereof.

SECTION 18 - EVENTS OF DEFAULT BY THE LESSEE:

Each of the following events shall constitute an "event of default" by Lessee; provided, however, that Lessee shall have not less than thirty (30) days (except in the case of subparagraph (d), sixty (60) days) after receipt of written notice from the City of any such event of default by Lessee to cure or obviate same:

- (a) Lessee's failure to pay the rent or additional rent herein provided at the time herein fixed for the payment thereof.
- (b) Lessee's failure to pay any lawful tax or assessments agreed to be paid by the Lessee in Section 10 of this Lease in accordance with the terms of said Section.
- (c) Lessee's failure to keep, perform, or observe any term, covenant, or condition of this Lease agreed to be kept, performed, or observed by Lessee; provided, however that if such failure cannot reasonably be cured within fifteen (15) days, Lessee shall not be deemed to be in default

hereunder if Lessee has commenced its cure within the initial fifteen (15) day notice period and is diligently completing same immediately thereafter.

- (d) Lessee's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of the Lessee's assets for the benefit of Lessee's creditors or the institution of proceedings in bankruptcy against Lessee or the appointment of a receiver of the assets of Lessee; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an event of default by Lessee unless Lessee fails to procure a dismissal thereof within sixty (60) days after institution of such involuntary bankruptcy proceedings or appointment of such receiver.

*Notwithstanding the provisions of Subsections 18(a) and 18(b) above, for any failure to perform of a monetary nature on the part of Lessee, Lessee shall be entitled to no more than a total of three (3) such notices during any twelve (12) month period of this Lease, whether any of such notices shall have been for failure to perform under either of Subsections 18(a) or 18(b) above, and the fourth occasion of Lessee's failure to perform a monetary obligation hereunder shall be deemed to be an event of default hereunder without further notice.

SECTION 19 - RESULTS OF THE LESSEE'S DEFAULT:

Subsection 19.01 - Termination by the City. If any one or more of the foregoing events of default shall happen, then (subject to the provisions of Section 18 above) the City shall have the right to terminate this Lease by giving at least thirty (30) days prior written notice to Lessee of the date such termination is to be effective, specifying in such notice the exact event of default which gives rise to such action.

Subsection 19.02 - Other Rights and Remedies of the City. Upon the failure of Lessee to cure or obviate an event of default by Lessee within the time periods specified hereinabove, the City shall have, in addition to the rights or remedies set forth hereinabove, the immediate right of re-entry and may remove all persons and property from the Leased Premises and store the property in a public warehouse or elsewhere at the cost of and for the account of Lessee. Should City elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease or re-let the Leased Premises or any part thereof and any improvements thereon, without terminating this Lease, for such term or terms (which may be for a term extending beyond the term of this Lease) and at

such rental or rentals and upon such other terms and conditions as the City, in its sole discretion, may deem advisable, with the right to make alterations or repairs to the improvements or to the Leased Premises. Upon such re-letting, the City shall have the following options:

- (a) Lessee may be required to pay the City, in addition to any indebtedness other than rent due hereunder, the cost and expense of such re-letting and of such alterations or repairs due to Lessee's fault or negligence incurred by the City, and the amounts (if any) by which the rent reserved in this Lease for the period of such re-letting (up to but not beyond the term of this Lease) exceeds the amount agreed to be paid as rent for the Leased Premises during the period of such re-letting; or
- (b) The rent received by the City from such re-letting may be applied, first, to the payment of any indebtedness other than rent due hereunder from Lessee to the City, second, to the payment of any costs and expenses of such re-letting and of such alterations and repairs, third, to the payment of rent due and unpaid hereunder, and the residue (if any) shall be held by the City and applied to the payment of future rent as the same may become due and payable hereunder. If Lessee is ever credited with any rent in excess of the rent received by the City from such re-letting under option (a), then Lessee shall promptly refund such excess to the City. If the rental due the City under such re-letting under option (b) is ever less than that due the City from Lessee hereunder, then Lessee shall promptly pay any such deficiency to the City. Such deficiency shall be calculated and paid monthly.

No such re-entry or taking possession of the Leased Premises and any improvements thereon by the City shall be construed as an election on its part to terminate this Lease unless a written notice of such intention shall have been given to Lessee. Notwithstanding any such re-letting without termination, the City may elect at any time thereafter to terminate this Lease for any breach, in addition to any other remedy it may have, and in such event, Lessee's interest in any and all buildings and improvements on the Leased Premises shall, at the option of the City, automatically pass to the City and the City may recover from Lessee all damages it may incur by reason of such breach, including the excess, if any, of rent (and charges equivalent to rent) at the time of such termination that is reserved to the City in this Lease for the remainder of the term, all of which amount shall be immediately due and payable from Lessee to the City.

SECTION 20 - TERMINATION BY LESSEE:

Lessee may cancel this Lease at any time if:

- (a) The Federal Aviation Administration (the "FAA") or other proper Federal Agency shall withdraw its approval from the Airport and restrict the use of the Airport in such a manner as to interfere with the use of same by Lessee for its business operations.
- (b) An order is issued by any Court of competent jurisdiction restricting the use of the Airport in such a manner as to interfere with the use of same by Lessee for its business operations.
- (c) The airfield shall be closed by lawful authority restricting the use of the Airport in such a manner as to interfere with the use of the same by Lessee for its business operations.

SECTION 21 - RIGHTS UPON TERMINATION:

If Lessee is not in default hereunder, Lessee shall have the right to remove during the Term hereof and for thirty (30) days thereafter any and all trade fixtures which Lessee may have placed upon the Leased Premises; provided, however, that upon said removal, Lessee shall repair, at Lessee's own expense, any damage resulting therefrom and leave the Leased Premises in a clean and neat condition.

SECTION 22 - NON-WAIVER OF DEFAULTS:

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

SECTION 23 - LESSEE'S ENCUMBRANCES:

Lessee shall not encumber Lessee's interest in the Leased Premises or in any improvements Lessee places thereon by mortgage, deed of trust, or other instrument without prior written consent of the Aviation General Manager.

SECTION 24 – USUFRUCT:

It is the purpose and intent of the City and Lessee to create under the terms of this Lease a landlord-tenant relationship and no estate for years or other estate shall pass to Lessee. Lessee possesses under this Lease a usufruct to use the Lease Premises, subject to the terms and conditions contained in this Lease.

SECTION 25 - HOLDING OVER:

Should Lessee hold over said Leased Premises after this Lease has terminated in any manner, during such holding over Lessee shall be deemed merely a tenant at sufferance and at a reasonable rental to be fixed by City, payable in advance, but otherwise on the same terms and conditions as herein provided.

SECTION 26 - REDELIVERY OF PREMISES:

Lessee shall, upon expiration or termination of this Lease in any manner, quit and deliver up the Leased Premises to the City peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Lessee or the City, reasonable wear and tear thereof excepted.

SECTION 27 - CITY'S LIEN:

If Lessee is in default under any covenant, term, or provision of this Lease or has abandoned the Leased Premises, in addition to the rights granted to the City under Section 9 hereof, Lessee hereby grants to the City a lien (which shall be subordinated to any lien created pursuant to Section 23 hereof or any other lien then in effect against the property of Lessee) upon any improvements, personal property, and trade fixtures of Lessee upon the Leased Premises, which lien the City may satisfy by selling said improvements, personal property, or trade fixtures at public sale without notice to the Lessee and from the proceeds of sale satisfy first any costs of removal, storage, and sale, and any other debts due from Lessee to the City, and second satisfy the total amount of

unpaid rent due hereunder and hold any remaining balance for the account of Lessee. This lien shall inure to the City's benefit whenever Lessee is in default hereunder and when the City exercises any right which the City may have at law, in equity, or under this Lease.

SECTION 28 - QUIET ENJOYMENT:

Lessee, upon payment of the Rental to be paid by Lessee under the terms of this Lease and upon observing and keeping all of the covenants, terms, and provisions of this Lease shall lawfully and quietly hold, occupy, and enjoy the use of the Leased Premises during the term of this Lease.

SECTION 29 - LIMITATIONS ON ASSIGNMENT, TRANSFER, AND SUBLETTING:

Lessee shall not sell, assign, transfer or encumber its interest in this Lease or any other right, privilege or license conferred by this Lease either in whole or in part, without the prior written consent of the City. No assignee, for the benefit of the Lessee's creditors, and no trustee, receiver, or referees in bankruptcy shall acquire any rights under this Lease by virtue of this paragraph. The Lessee shall not sublet the Lease Premises or any portion thereof, nor shall the Lessee sublet, license, or otherwise alienate any rights or privileges granted with respect to the operation of said Lease premises or any portion thereof, without the prior written consent of the Aviation General Manager.

No assignee for the benefit of Lessee's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Lease by virtue of this Section. The City shall have the right to increase the Rental up to fair market value at the time of any assignment or sublease.

SECTION 30 - WAIVERS:

No waiver by either party hereto at any time of any of the terms, conditions, covenants, or provisions of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant, or provision herein contained, nor of the strict and prompt performance thereof by either party. No delay, failure, or omission of the City to re-enter the Leased Premises or to exercise any right, power, privilege, option, or remedy arising from any default, and no subsequent acceptance of rentals then or thereafter accrued, shall impair any such right,

power, privilege, option, or remedy, or be construed to be a waiver of any default or acquiescence therein. No right, power, privilege, option, or remedy of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is expressly stipulated that each and all of the rights, powers, privileges, options, or remedies given to the City or Lessee by this Lease are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided bylaw, and that the exercise of one right, power, privilege, option, or remedy by the City or Lessee shall not impair the right to any other right, power, privilege, option, or remedy.

SECTION 31 - AGENT FOR SERVICE OF PROCESS:

If Lessee is not a resident of the State of Georgia, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, then in any such event Lessee shall register with the Secretary of State of the State of Georgia, as a foreign corporation, and Lessee hereby designates

Name: _____
Address: _____
City: Atlanta State: GA Zip: _____

as its agent for the purpose of accepting service of process issued by any court in the State of Georgia for any breach or default of the terms, conditions, covenants, or provisions of this Lease, and service shall be made as provided by the laws of the State of Georgia for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that if for any reason such service of process is not possible, and as an alternative method of service of process, then Lessee may be personally served with such process out of the State of Georgia by the registered mailing of such Complaint and process to the Lessee at the address set out hereafter in this Lease, and that such service shall constitute valid service upon Lessee as of the date of mailing, and Lessee shall have thirty (30) days from the date of mailing to respond thereto. It is further expressly agreed that Lessee is amenable to the process so served, submits to the jurisdiction, and waives any and all obligations and protest, any laws to the contrary notwithstanding.

SECTION 32 - WAIVER OF CLAIMS:

Lessee hereby waives any claims against the City and its elected officials, officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings, directly or indirectly, attacking the validity of this Lease or any part hereof,

or by any judgment or award in any suit or proceedings declaring this Lease null, void, voidable, or delaying the same, or any part hereof, from being carried out.

SECTION 33 - SAFETY AND SECURITY ARRANGEMENTS:

City shall provide, or cause to be provided, during the Term, all proper and appropriate public fire and police protection similar to that afforded to other tenants at the Airport, and it will issue and enforce rules and regulations with respect thereto for portions of the Airport. Lessee shall have the right, but not the obligation, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Lessee, shall not in any way be construed to limit or reduce the obligation of the City hereunder with respect to safety and security on the Airport.

Lessee shall comply, at its own expense, with the Transportation Security Administration (“TSA”) and the City’s security requirements for the Airport including, but not limited to employee security training and badging. The Lessee shall cooperate with the TSA and the City on all security matters and shall promptly comply with any project security arrangements established by the City. Compliance with such security requirements shall not relieve the Lessee of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner the Lessee’s obligations with respect to all applicable federal, state and local laws and regulations and its duty to undertake reasonable action to establish and maintain secure conditions at and around the Leased Premises and Airport. To comply with TSA requirements, Lessee hereby agrees to execute an Exclusive Area Agreement with the City. Lessee accepts security responsibility to prevent unauthorized access to the premises and to the secured area.

SECTION 34 - PUBLIC USE AND FEDERAL GRANTS:

Subsection 34.01 - Grant Agreements. The Leased Premises and the Airport are subject to the terms of those certain sponsor's assurances made to guarantee the public use of the Airport as incidental to grant agreements between the City and the United States of America, as amended, and the City represents that none of the provisions of this Lease violate any of the provisions of the Sponsor's Assurances in the various Grant Agreements.

Subsection 34.02 - Non-exclusive Rights. Nothing contained in this Lease shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

Subsection 34.03 - Right to Develop the Airport. The City hereby reserves the right to further develop and improve the Airport and all roadways, parking areas, terminal facilities, landing areas, aircraft parking, taxi lanes and taxiways, as it may deem necessary and desirable in order to serve the best interests of the City and the traveling public, regardless of the desires or views of Lessee and without interference or hindrance by the Lessee. If development or improvement of the Airport, roadways, parking areas, terminal facilities, landing areas, aircraft parking, taxi lanes or taxiways causes the requirement for use and mandates that Lessee vacate the Leased premises, the City shall have the right to terminate the Lease pursuant to Section 3.03 of this Lease.

Immediately upon such termination, all land and facilities rentals accruing to the City by virtue of this Lease shall cease. The City shall use reasonable efforts to identify a replacement site for the development anticipated herein as it may exist at the time of vacating. However, nothing contained herein shall require the City to make any identifiable site so available or to make extensive preparations to any identified site. The appropriateness and availability of any site on the Airport shall be at the sole determination of the City.

Subsection 34.04 - Subordination of Lease. This Lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States of America, its boards, agencies, or commissions relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds on the development of the Airport or operation of facilities thereon.

Subsection 34.05 - Federal Non-Discrimination Covenant. Lessee, for itself; its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefit of, or otherwise be subjected to discrimination in the use of the Leased Premises or the facilities thereon, (2) that, in the construction of any improvements on, over, or under the land comprising the Leased Premises and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee shall use the Leased

Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and (4) that, in the event of breach of any of the above discrimination covenants, the City shall have the right to terminate this Lease and to re-enter and repossess said land, the facilities thereon, and hold the same as if this Lease had never been made or issued. Provision (4) shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

Subsection 34.06 - Right to Amend. In the event that the FAA or its successors shall require any modifications or changes to this Lease as a condition precedent to the granting of funds for the improvement of the Airport, Lessee hereby consents to such amendments, modifications, revisions or supplements or deletions of any of the terms, conditions, or requirements of this Lease as may reasonably be required to obtain such funds; provided, however, that in no event shall Lessee be required, pursuant to this provision, to accept an increase in the rent or fees provided for hereunder or to accept a change in the use or to accept a reduction in the size of the Leased Premises, or to accept any change which would adversely affect the rights of any mortgagee, beneficiary, payee, or trustee registered with the City as provided in Section 23 hereof.

SECTION 35 - CITY'S EEO ORDINANCE AND CERTIFICATION OF NON-DISCRIMINATION COVENANT:

Subsection 35.01. City's EEO Ordinance.

Statement of Non-Discrimination

During the performance of this Lease, Lessee agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances of the City of Atlanta, Georgia, as amended.

Subsection 35.02. Equal Business Opportunity and Disadvantaged Business Enterprises

During the performance of this Lease, Lessee agrees to comply with Part 2, Chapter 2, Article X, Division 12, including Sections 2-1441 through 2-1459 of the Code of

Ordinances of the City of Atlanta, Georgia, as amended and/or with the USDOT regulations related to disadvantaged business enterprises located at 49 C.F.R. Part 23, as appropriate, and with all implementing laws, regulations, rules, guidelines and policies in regard thereto and all standards and requirements.

SECTION 36 - Intentionally deleted.

SECTION 37 - PREVENTION OF TRESPASS; PAYMENT OF FINES FOR VIOLATION OF FEDERAL REGULATIONS:

Lessee shall be responsible for preventing unauthorized persons from gaining access to the restricted areas of the Airport through the Leased Premises, and in the event that the FAA, the Transportation Security Administration (the "TSA"), their respective successors, or other government entity with jurisdiction over or at the Airport imposes a fine on the City as a result of the violation of security regulations, including but not limited to unauthorized runway crossings by employees, agents, guests, or invitees of Lessee or by any other person who gains access to the restricted areas of the Airport by means of the Leased Premises, then in such event Lessee shall promptly reimburse the City the amount of such fines immediately upon receipt of invoice therefor from the City.

SECTION 38 - NOTICES:

All notices to be given hereunder shall be in writing and shall be deemed to have been given when deposited in the United States mail, postage prepaid, certified or registered, addressed as follows (or to such other address as from time to time may be designated by either party by written notice to the other party):

- (A) City: City of Atlanta - Department of Aviation
P.O. Box 20509
Atlanta, GA 30320-2509
ATTN: Properties & Airline Affairs
- (B) Lessee: Passur Aerospace, Inc.
35-1 Orville Drive
Bohemia, NY 11716
Attn: Jeff Devaney - CFO

SECTION 39 - RELATIONSHIP BETWEEN THE PARTIES:

The City is neither a joint venturer with nor a partner or associate of Lessee with respect to any matter provided for in this Lease. Nothing herein contained shall be construed to create any such relationship between the parties or to subject the City to any obligation of Lessee whatsoever.

SECTION 40 - TIME OF THE ESSENCE:

Time is expressed to be of the essence of this Lease.

SECTION 41 - LEASE MADE IN GEORGIA:

This Lease has been made in and shall be construed in accordance with the laws of the State of Georgia. All duties, obligations, and liability of the City and Lessee are expressly set forth herein, and this Lease can be amended only in writing and agreed to by both parties.

SECTION 42 - SURRENDER AND MERGER:

The voluntary or other surrender or termination of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or subtenancies applicable to the Leased Premises or may, at the option of the City, operate as an assignment to the City of all such subleases or subtenancies.

SECTION 43 - SUCCESSORS AND ASSIGNS:

Subject to the terms and conditions of Section 29 hereof, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

SECTION 44 - HEADINGS:

The headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provisions of this Lease.

SECTION 45 – SEVERABILITY:

If any provision of this Lease or the application thereof to any person or circumstances shall become invalid or unenforceable to any extent, such provision shall be struck and severed and the remainder of this Lease shall not be affected and shall continue to be enforceable to the greatest extent of the law. Each covenant and agreement contained in this Lease shall be construed to be a separate and independent covenant and agreement and the breach of any such covenant or agreement by the City shall not discharge or relieve Lessee from Lessee’s obligation to perform each and every covenant and agreement of this Lease to be performed by Lessee.

SECTION 46 – ENTIRE AGREEMENT:

It is expressly agreed by the City and Lessee that this Lease is the entire agreement of the City and Lessee. All written or oral representations, warranties, understandings, stipulations, agreements, promises or discussions prior to or simultaneous to this Lease are merged and incorporated into this Lease and cannot be relied upon by either party, except to the extent of any rights or obligations which have accrued as of the effective date of this Lease.

SECTION 47 – CUMULATIVE RIGHTS:

Each right and remedy of the City provided for in this Lease, now or hereafter existing at law, in equity or by statute or otherwise, shall be cumulative and concurrent, and the exercise or beginning of the exercise of any one or more of such rights or remedies shall not preclude the exercise of that right or remedy in the future or the exercise of any other right or remedy at any time.

SECTION 48 – FORCE MAJEURE:

Neither party shall be deemed to be in breach of this Lease by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by strike or labor troubles, unavailability of materials or utilities, riots, rebellion, terrorist attack, insurrection, invasion, war, action or interference of governmental authorities, acts of God, or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties (collectively “Force Majeure Event”). If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and

extent thereof, the obligation hereunder affected thereby and the actions to be taken to abate or terminate such event.

SECTION 49 – REAL ESTATE BROKERAGE COMMISSION:

Each of the City and Lessee represent and warrant to and indemnify the other that it has dealt with no real estate broker who would be entitled to be paid a commission or other fee in connection with the transaction which is the subject of this Lease.

SECTION 50 – PROHIBITION ON KICKBACKS AND GRATUITIES:

As required by Section 2-1484(d) of Chapter 2, Code of Ordinances of the City of Atlanta, Lessee hereby acknowledges the following prohibitions on kickbacks and gratuities: It is unethical for any person, including Lessee, to offer, give or agree to give any employee or former employee of City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase or leasing request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a lease, contract, sublease or subcontract or to any solicitation or proposal therefor. It is unethical for any employee or former employee of City to solicit, demand, accept or agree to accept from another person, including Lessee, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a lease, contract, sublease or subcontract or to any solicitation or proposal therefor. It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract or to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

SECTION 51 – ADDENDUM (Intentionally left blank)



INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, as of the day and year first above written.

WITNESS **CITY OF ATLANTA** (Seal)

Municipal Clerk Mayor

APPROVED AS TO INTENT:

Aviation General Manager

APPROVED AS TO FORM:

APPROVED:

City Attorney

Chief Procurement Officer

ATTEST:

PASSUR

(Seal)

Secretary

Contracts Manager

Attachment: Passur Lease Agreement Draft (14-R-3574 : Passur Aerospace, Inc. Lease Agreement)

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption:

Council Meeting Date:

Requesting Dept.:

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Approval from the City Council for the Mayor to execute a lease agreement between the City of Atlanta and Passur Aerospace covering the occupancy and use of space located on the Fifth Level and Rooftop of Concourse E at Hartsfield-Jackson Atlanta International Airport.

2. Please provide background information regarding this legislation.

Passur Aerospace, Inc. (Passur) currently occupies approximately 16 square feet of space on the 5th Level of Concourse E for their transmitter and related antennas. Passur has expressed a desire to continue to occupy this space for the purposes of providing telecommunications services and has requested to enter into a new lease with the City of Atlanta.

Passur is a specialized aviation telecommunications service company that provides a web-based air and ground surface, gate-to-gate visual flight tracking. Passur also provides integrated air-to-ground display of flights and related airspace status. Passur has been operating on Concourse E since February 2011.

Passur serves most major airlines (including six of the top eight North American airlines, as well as the top five hub and spoke airlines), approximately 60 airport customers (including 23 of the top 30 North American airports), and approximately 200 corporate aviation customers, as well as the U.S. government. Passur is headquartered in Stamford, CT with regional offices in Florida and Minnesota.

3. If Applicable/Known:

- (a) **Contract Type** (e.g. Professional Services, Construction Agreement, etc): Airline Support Tenant Lease
- (b) **Source Selection:**
- (c) **Bids/Proposals Due:**
- (d) **Invitations Issued:**
- (e) **Number of Bids:**
- (f) **Proposals Received:**
- (g) **Bidders/Proponents:**
- (h) **Term of Contract:** Three years

4. **Fund Account Center (Ex. Name and number):**

Fund: _____ Account: _____ Center: _____

5. **Source of Funds: Example: Local Assistance Grant**

6. **Fiscal Impact:** Because DOA is an Enterprise fund, there will be no fiscal impact on the City.

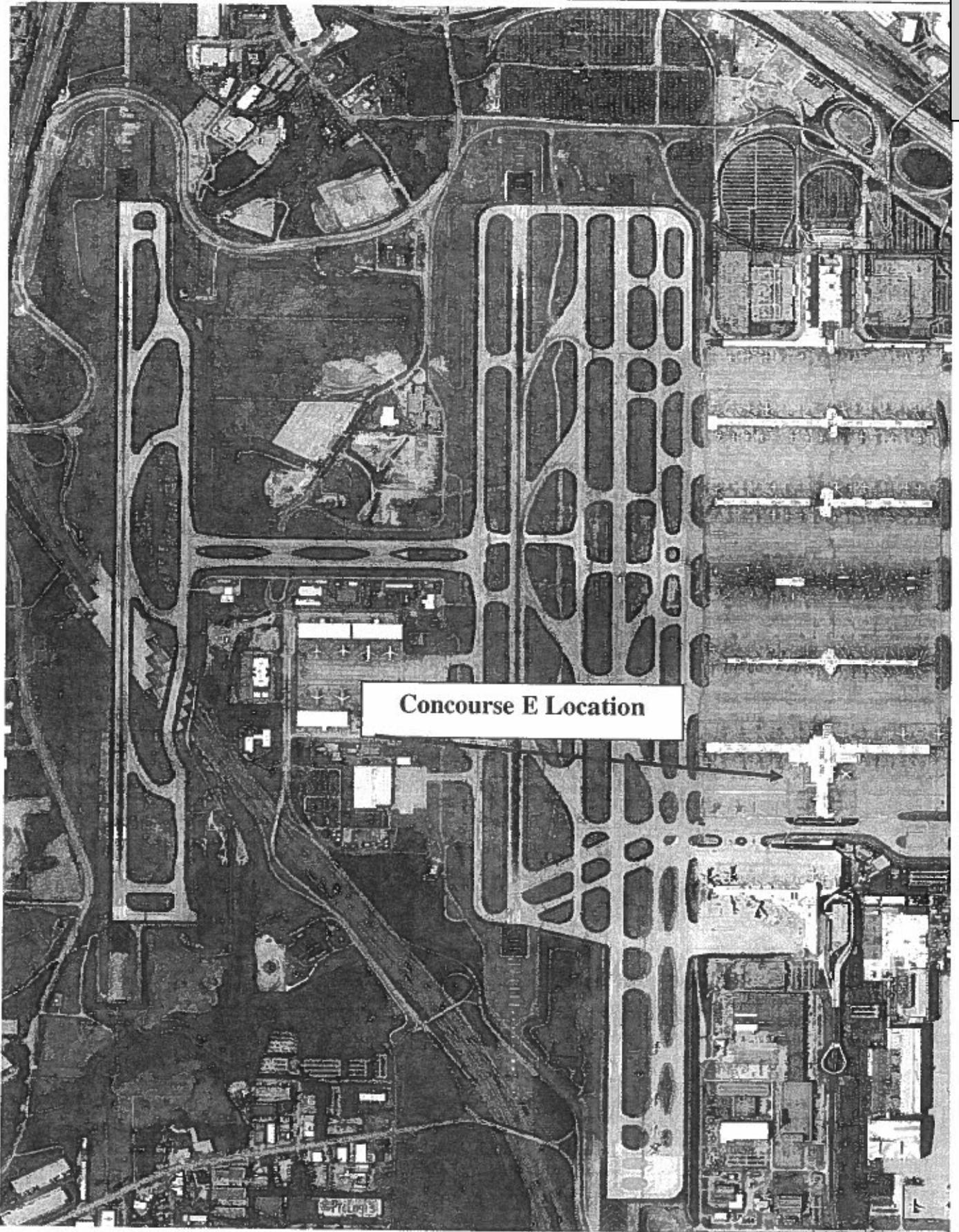
Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. **Method of Cost Recovery:** Rental revenues

Examples:

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.

This Legislative Request Form Was Prepared By: Robin Boyd





50a

50d

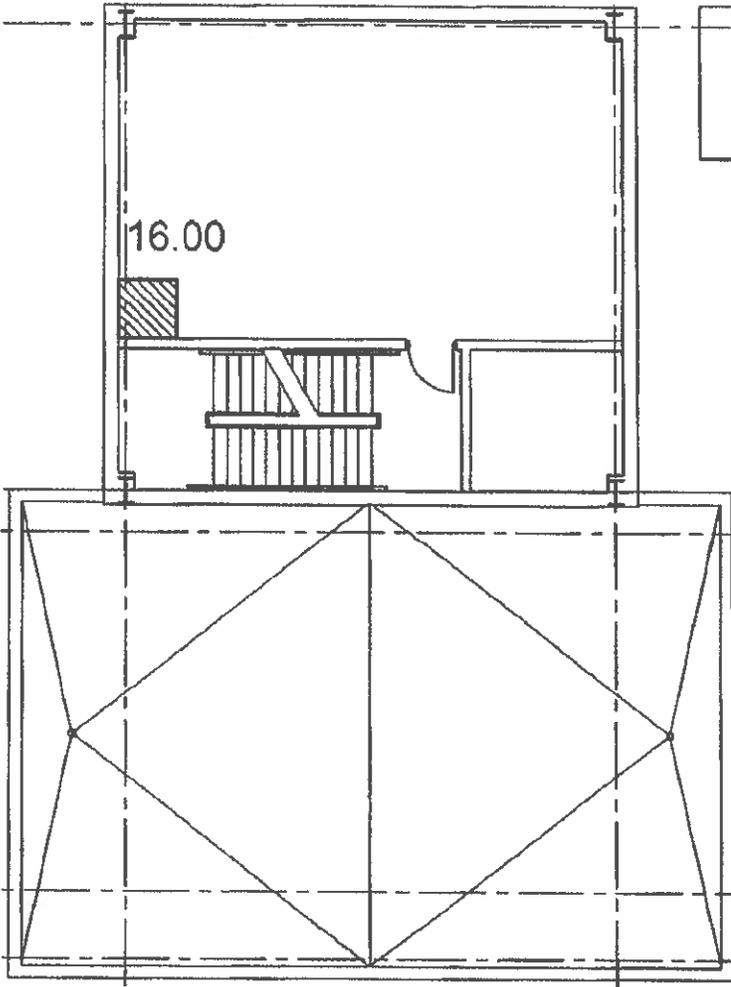
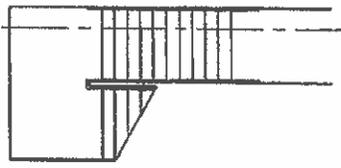
W.3

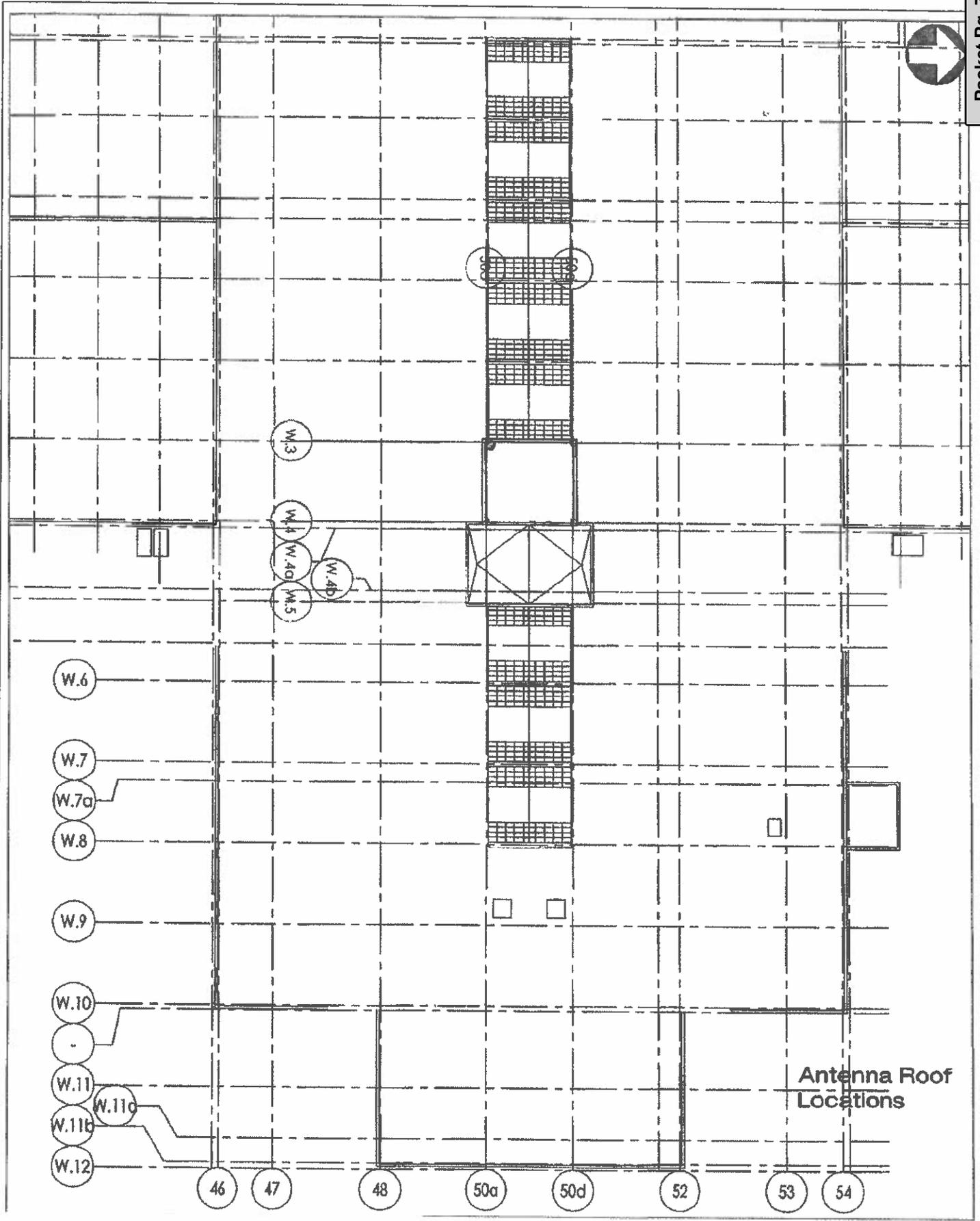
W.4

W.5

16.00

Leased Area
16.00 sf





TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Anita Williams

Contact Number: 404-530-6600

Originating Department: Aviation

Committee(s) of Purview: Transportation

Chief of Staff Deadline: 04/23/14

Anticipated Committee Meeting Date(s): 04/14/14

Anticipated Full Council Date: 05/19/14

Legislative Counsel's Signature: Richard Rubin *Richard Rubin* Senior Assistant City Attorney

Commissioner's Signature: RB *[Signature]*

Chief Financial Officer: N/A

Chief Information Officer Signature (for IT Procurements) N/A

Chief Procurement Officer Signature: N/A

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PASSUR AEROSPACE, INC. COVERING THE OCCUPANCY AND USE OF INTERIOR BUILDING SPACE AND ROOFTOP AREAS LOCATED AT CONCOURSE E AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)

Mayor's Staff Only

Received by CPO: _____
(date)

Received by LC from CPO: _____
(date)

Received by Mayor's Office: 4.24.14 *[Signature]*
(date)

Reviewed by: [Signature]
(date)

Submitted to Council: _____
(date)

Legislative White Paper

Committee of Purview: Transportation

Caption:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH PASSUR AEROSPACE, INC. COVERING THE OCCUPANCY AND USE OF INTERIOR BUILDING SPACE AND ROOFTOP AREAS LOCATED AT CONCOURSE E AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT; AND FOR OTHER PURPOSES.

Council Meeting Date: 05/19/14

Legislation Title: Lease Agreement with Passur Aerospace, Inc.

Requesting Dept.: Aviation

Contract Type: Airline Support Tenant Lease

Source Selection: N/A

Bids/Proposals Due: N/A

Invitations Issued: N/A

Number of Bids/

Proposals Received: N/A

Bidders/Proponents: N/A

Background:

Approval from the City Council for the Mayor to execute a lease agreement between the City of Atlanta and Passur Aerospace covering the occupancy and use of space located on the Fifth Level and Rooftop of Concourse E at Hartsfield-Jackson Atlanta International Airport.

Passur Aerospace, Inc. (Passur) currently occupies approximately 16 square feet of space on the 5th Level of Concourse E for their transmitter and related antennas. Passur has expressed a desire to continue to occupy this space for the purposes of providing telecommunications services and has requested to enter into a new lease with the City of Atlanta.

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Fiscal Impact: N/A

Term of Contract: Three years

Method of Cost Recovery: Rental Revenues

Approvals:

DOF: N/A

DOL: Yes

Prepared By: Anita Williams

Contact Number: 404-382-2313