

POSSIBLE MOTION

I MOVE TO APPROVE a sublease agreement between CBS and Delta Airlines, subject to Department of Transportation and Public Facilities approval and receipt of a current insurance policy to be in compliance with State of Alaska



City and Borough of Sitka

PUBLIC WORKS

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To: Mayor McConnell and Assembly Members
Mark Gorman, Municipal Administrator

From: Gary E. Baugher Jr., Maint. & Operations Supt. *GEB*

cc: Michael Harmon, Public Works Director *mtb*
Jay Sweeney, Finance Director
Robin Koutchak, Municipal Attorney

Date: March 16, 2015

Subject: Approval of Delta Airline Lease

Background

The City and Borough of Sitka owns the airport terminal building, which is built on land leased from the State of Alaska. The City and Borough of Sitka has a 30-year lease agreement with the State of Alaska.

Delta informed the City and Borough of Sitka of its intent to bring Delta Air Lines into Sitka starting May 15, 2015. It will consist of one flight that will arrive in Sitka at 6:45 pm, overnight, and then leave at 7:00 am the next morning. Delta is planning on providing this service to Sitka from May 15, 2015 to September 15, 2015.

Under the Federal Aviation Act the owner of an airport and/or terminal building is required to accommodate the incoming airline to the best of their ability.

Analysis

The new sublease term is for five (5) years and commences on April 1, 2015 to March 31, 2020, unless sooner terminated as provided herein and hereinafter be referred to as the term lease. Delta Air lines will be paying for annual use of the airport office spaces.

Fiscal Note

The terminal building sublease rate shall be \$4,767.84 per month computed at the rate of \$2.80 per square foot per month, plus the City and Borough of Sitka Sales Tax. This price is consistent across Southeast Alaska.

The sublease rate will be adjusted based on the percentage difference between "All Items" figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers", (CPI). The adjustment shall occur annually on March 1, and the tenant is required to make such adjustments on its own each year.

Recommendation:

Approve the sublease agreement between CBS and Delta Air lines. Subject to DOT&PF approval. Delta Air lines will need to provide a current insurance policy to meet the requirements from the State of Alaska.

Airline Operating Agreement
with

Delta Air Lines
and Terminal Building Sublease

CBS, Alaska

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**AIRLINE OPERATING AGREEMENT
AND
TERMINAL SUBLEASE**

This sublease (hereinafter referred to as this "Sublease") is made and entered into this ___ day of _____, by and between the CITY AND BOROUGH OF SITKA, hereinafter referred to as CBS, whose address is 100 Lincoln Street, Sitka, AK 99835, and DELTA AIR LINES, INC., hereinafter referred to as SUBLESSEE, whose address is 1030 Delta Boulevard, Atlanta, GA, 30354.

RECITALS

CBS is the lessee of the Rocky Gutierrez Airport (hereinafter referred to as "Airport") under a master lease from the STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, hereinafter referred to as STATE, and CBS, as such Lessee, has the right, pursuant to the terms of such lease from the State, to operate an airport terminal building (hereinafter referred to as "Terminal Building") and other Airport facilities situated on Japonski Island, CBS Recording District, First Judicial District, Alaska.

CBS has the authority under the terms of said State lease to enter into this Sublease, subject to the consent and approval of the STATE.

The SUBLESSEE desires to lease space in and/or adjacent to the Terminal Building at the Airport subject to all the terms, covenants, conditions and provisions of this Sublease, for the following purposes:

Regular scheduled operation of a commercial airline as a scheduled air carrier certificated under 14 CFR, Part 121 for the carriage of persons, property, cargo, mail, and other related airline operations.

The SUBLESSEE has examined the premises and is fully informed of the condition thereof.

NOW, THEREFORE, for and in consideration of the terms, conditions and other provisions hereinafter set forth, the parties agree as follows:

Section 1: Leased Premises.

CBS hereby leases to the SUBLESSEE at the rental rates and subject to all the terms, covenants, conditions and provisions set forth, the

designated space and area located within and/or adjacent to the Rocky Gutierrez Airport Terminal Building located on Japonski Island, CBS Recording District, First Judicial District, Alaska, hereinafter referred to as the "Leased Premises." The Leased Premises are described and shown on the plan of the Terminal Building floor area and area adjacent to the Terminal Building attached hereto as Exhibit "A," "Sublessee Use Areas".

Section 2: Condition of Premises.

The SUBLESSEE acknowledges that it has inspected the Leased Premises and the Terminal Building and, upon execution of this Sublease, the SUBLESSEE accepts the Leased Premises in their existing condition. CBS shall not be responsible for or be called upon to make any additional repairs and/or additions to the Leased Premises, Terminal Building or the Airport, except as set forth herein or as may be agreed upon from time to time in the reasonable discretion of CBS. CBS shall, however, be obligated to maintain the structural integrity of the building and all common and joint use areas.

Section 3: Use.

- A. The SUBLESSEE covenants and agrees that during the terms of this Sublease it will not cause or permit use of the Leased Premises for any use other than the following without the prior express written consent of CBS:

Regular scheduled operation of a commercial airline as a scheduled air carrier certificated under 14 CFR, Part 121 for the carriage of persons, property, cargo, mail, and other related airline operations.

- B. The SUBLESSEE agrees that during the term of this Sublease, the SUBLESSEE shall not cause or permit any use of the Leased Premises, or any portion thereof, in any illegal manner and that the SUBLESSEE will comply with all local, State and Federal laws, ordinances, rules and regulations applicable to the Leased Premises and/or SUBLESSEE'S operations under this Sublease.
- C. The SUBLESSEE and CBS agree that they will, at all times, conduct their business and operations at the Airport in a commercially reasonable manner.

Section 4: SUBLESSEE Use Areas.

- A. The SUBLESSEE shall be granted use of the spaces depicted on Exhibit "A" as "Sublessee Use Areas" and may only use each space for the purposes designated, unless prior written approval by the Director of Public Works is obtained, which consent shall not be unreasonably withheld, conditioned or delayed.
- B. The SUBLESSEE is granted joint use of space and facilities with others of the baggage claim area, the passenger hold room and boarding gate(s)/bridge(s) areas as depicted on Exhibit "A," "Sublessee Use Areas" attached hereto. These joint use facilities are intended for the use of Part 121 scheduled air carriers and no one scheduled air carrier has preferential status over any other for access to these facilities; however, scheduled air carriers shall have priority over non-scheduled air carriers for use of these facilities.
- C. The use of the joint use and common use facilities at the Airport shall be allocated among all Part 121 scheduled air carriers operating scheduled passenger aircraft over 100,000 pounds certificated maximum gross take-off weight, according to the following procedures:
 - 1. To the extent possible all scheduled air carriers using the joint and common use facilities shall meet and agree among themselves as to the use of the joint and common use areas to which they are entitled to access under this Sublease. If the scheduled air carriers are unable to agree to a workable use schedule, the final decision for allocating use shall be made by the Director of Public Works.
 - 2. The Director of Public Works will take the following factors into consideration when determining how the use of the joint and common use facilities will be allocated.
 - a. Number of years that the carrier has operated in Airport.
 - 1) Zero to five (0-5) years: ten (10) points
 - 2) More than five (5) years: twenty (20) points
 - b. The number of flights operated by the scheduled air carrier during the most recent six-month period.
 - 1) Zero to one hundred (0-100) flights: ten (10) points
 - 2) More than one hundred (100) flights: twenty (20) points
 - c. The number of passengers enplaned by the scheduled air carrier during the most recent six-month period.
 - 1) Zero to five thousand (0-5,000) passengers: ten (10) points

- 2) More than five thousand (5,000) passengers: twenty (20) points

Each of the above equally weighted items will be rated for each carrier, using flight and passenger statistics computed from the most recent full six-month period in which all affected air carriers have operated. The rating factors will be prioritized again semi-annually thereafter on each June 30 and December 31 using statistics for the last six months.

The three factors will then be totaled and the carrier having the highest total score will be granted priority scheduling for the joint use facilities for the next six-month period.

- D. CBS reserves the right to authorize non-scheduled aircraft to use CBS's joint use facilities whenever they are not required for scheduled air carrier's use provided that CBS requires the non-scheduled aircraft to push back and clear the boarding bridge at least 30 minutes prior to the published arrival time for a Scheduled Air Carrier's aircraft configured to use the boarding bridge.
- E. Regardless of published schedules for scheduled air carriers, CBS shall have the right to refuse access to CBS's boarding areas or other joint use facilities by the SUBLESSEE if the SUBLESSEE has defaulted, beyond any relevant notice and cure period, on all rents or fees payable hereunder to CBS for the SUBLESSEE's use of the Airport, Terminal Building or Airport facilities.
- F. The SUBLESSEE is granted nonexclusive use, in common with others, of those areas of the Airport and Terminal Building considered common areas. This use is subject to the terms and conditions of this Sublease and to reasonable rules and regulations that may exist regarding the use of said "Common Areas." These common use areas are generally defined, but not limited to, landing areas, taxiways, aircraft apron, vehicle parking areas and the general public access and use areas of the terminal building, including, without limitation, access ways, ingress and egress points, escalators, restrooms, elevators, stairs and similar support facilities.
- G. The SUBLESSEE is granted nonexclusive use of the Apron Area at the aircraft parking positions designated for Air Carriers. The SUBLESSEE may use the parking positions to stage a reasonable amount of service equipment required for its operations, subject to the State Airport Manager's prior approval; provided, however, that the Airport Manager hereby approves the parking positions for "turn-

key” maintenance and the stocking and equipping of airplanes for commercial use.

- H. CBS grants the right of adequate ingress to and egress from the Airport and the Leased Premises to the SUBLESSEE and its officers, employees, agents, passengers, contractors, invitees, suppliers, customers and furnishers of services, subject to the terms hereof.
- I. CBS in its sole discretion shall have the right to close, relocate, reconstruct, or modify any access to space provided for the SUBLESSEE’s use after reasonable notice, so long as adequate substitute access is simultaneously provided. CBS shall give its best efforts to coordinate with the SUBLESSEE regarding the operational impact of any such modifications. The SUBLESSEE’s obligation to perform under this Sublease shall not be altered or affected by any such change in access described in this section so long as adequate substitute access is simultaneously provided.
- J. CBS shall not be responsible for damage to or theft of any vehicles or their contents belonging to SUBLESSEE, or for any claims by SUBLESSEE for any such damage or loss incurred by SUBLESSEE’s clients, customers, employees, invitees, agents, contractors, or representatives unless such damage or theft is caused by its negligence or willful misconduct.

Section 5: Services Commitment.

SUBLESSEE acknowledges that, in executing this Sublease, the SUBLESSEE agrees to provide and shall provide regular, scheduled commercial passenger air transport service at the Airport. Subject to applicable notice and cure, failure of the SUBLESSEE to provide such regular commercial passenger air transport service will be considered a material breach of and default under this Sublease, unless caused by labor strike, calamity, force majeure or other event beyond SUBLESSEE’S reasonable control. Notwithstanding the foregoing, CBS hereby acknowledges and agrees that SUBLESSEE may elect, in its sole and absolute discretion, not to operate from the Leased Premises during the period from September 8th to May 14th of each calendar year, or such other period as SUBLESSEE determines in its reasonable discretion.

Section 6: Lease Term.

The term of this Sublease shall be the period commencing April 1, 2015, and expiring at midnight on March 31, 2020, (unless sooner terminated as provided herein) and shall hereinafter be referred to as the Lease Term.

Section 7: Rent and Fees.

For use of the Leased Premises and privileges granted by this Sublease, the SUBLESSEE shall pay CBS, as minimum monthly rent, in advance, the rent as computed, determined, and calculated in Exhibit "B," "Rent and Fee Schedule," attached hereto and which shall be due on the fifth (5th) day of each month for the immediately preceding month.

Section 8: Rent and Fee Adjustments.

The Lease Rate shall be adjusted on June 30 of each year, beginning June 30, 2016. The adjustment shall be based upon the change in the previous December's Consumer Price Index (CPI) Urban Wage Earners and Clerical Workers, Anchorage.

Section 9: Passenger Facility Charges.

CBS reserves the right to impose, use and collect Passenger Facility Charges, "PFCs", subject to the terms and conditions of 14 CFR 158 - "Passenger Facility Charges" as it may be amended or replaced from time to time. SUBLESSEE acknowledges that its PFC collections: (i) are held in trust for the benefit of Airport; and (ii) are to be remitted to CBS in a timely manner.

Section 10: Rent and Fee Payment.

Rent and fees shall be paid by the SUBLESSEE to CBS in legal tender of the United States, by check, bank draft, ACH, wire or like instrument payable to the order of the City and Borough of CBS. Any amounts under this Sublease, which are not paid within ten (10) business days after the due date, shall accrue interest at the lesser of four percent (4%) and the maximum rate allowed by law.

Section 11: Lease Security

- A. The SUBLESSEE shall, upon the execution of this Sublease, furnish a corporate surety bond issued by a corporate surety authorized to conduct business in the State of Alaska an amount equal to the combined fees and rentals anticipated to be paid by the SUBLESSEE in a three-month period, to ensure the faithful performance by the

SUBLESSEE of all the terms, covenants, and conditions of this Sublease, including, but not limited to, the payment of all rent and fees and the described use of the Leased Premises. CBS shall be the named beneficiary under the bond, and the form and terms of the bond and surety shall be subject to the reasonable approval of CBS. The SUBLESSEE shall keep such bond in full force and effect at all times during the term of this Sublease and shall provide CBS with information requested by CBS relating to the status or coverage thereunder. The SUBLESSEE may deposit cash with CBS in said amount in lieu of a bond as fee security. No interest shall accrue or be paid by CBS on such cash deposit provided that such deposit shall be held in an FDIC-insured account.

- B. In the event CBS shall, during the term hereof, for whatsoever commercially reasonable reason deem it advisable that another surety or sureties be substituted in lieu of the original surety or sureties, the SUBLESSEE, whenever so required by CBS, shall furnish a new bond with such surety or sureties as approved by CBS in lieu of the bond originally furnished. Any and all such bonds must contain a provision or endorsement requiring that the surety, before canceling the bond for any reason whatsoever, give to CBS, at the Office of the Director of Public Works, not less than thirty (30) days advance written notice thereof. The amount of the bond shall, upon demand of CBS, be replenished in the event any portion is applied or withdrawn by CBS to satisfy the obligations of the SUBLESSEE provided for herein.
- C. The surety bond or cash deposit required under Section 11.A. above may be waived in writing and at the sole discretion of CBS if the SUBLESSEE has previously demonstrated faithful performance of this Sublease or another permit with CBS for a period of not less than eighteen (18) consecutive calendar months while providing regularly scheduled airline passenger service to and from the Airport during that same time.
- D. If, after a waiver of the surety bond under Section 11.C. above has been granted in writing by CBS, the SUBLESSEE commits an event of default, beyond any applicable notice and cure period or material breach of this Sublease that is not cured, fails to provide information required by this Sublease beyond any notice and cure period, or fails to pay rents, fees, or charges beyond any notice and cure period, CBS may impose or reimpose the surety bond requirements of Section 11.A., above. In such event, the SUBLESSEE shall, within forty-five (45) days after receipt of such written notice, provide CBS with the required surety bond or cash deposit.

- E. Subject to any applicable notice and cure period and the terms hereof, the failure of the SUBLESSEE to furnish to CBS, to maintain at all times, or to adjust the amount of the surety bond or cash deposit as required herein shall constitute a material breach of and default under this Sublease.

Section 12: Subject to Master Lease.

The SUBLESSEE acknowledges that CBS operates the Airport under a prime lease with the State of Alaska Department of Transportation and Public Facilities ADA-50103. The SUBLESSEE acknowledges that this Sublease is subject to the terms, conditions, provision and covenants of that lease and agrees to abide by its terms, conditions and provisions, as well as those set forth herein.

Section 13: Records and Reporting by SUBLESSEE.

- A. The SUBLESSEE shall provide CBS, within thirty (30) days after the end of each month during which SUBLESSEE is operating commercial flights from the Airport and on forms supplied by CBS, the following information concerning the SUBLESSEE's operations at the Airport:
 - 1. Total number of aircraft landings by the SUBLESSEE at the Airport;
 - 2. Certificated maximum gross take-off weight of each of the SUBLESSEE's aircraft operated at the Airport;
 - 3. Total number of enplaned and deplaned passengers of the SUBLESSEE at the Airport; and
 - 4. Other statistical information that may be required by CBS to compute the fees resulting from the SUBLESSEE's operation at the Airport.
- B. Subject to the terms hereof and any applicable notice and cure periods, failure by the SUBLESSEE to provide such information in a complete and timely manner will constitute a material breach of and default under this Sublease.

Section 14: Improvements.

- A. Before beginning construction of any improvement or alteration to the Leased Premises, the SUBLESSEE shall first submit to the Director of Public Works for his/her review and preliminary approval, drawings and other available information of sufficient detail and scope to allow

for a realistic assessment of the impact to the Airport resulting from such proposed construction.

- B. Contingent upon the submittal to the Director of Public Works of written proof of approval from all appropriate governmental agencies, CBS will perform a final review and will approve or disapprove the proposed construction in writing within fifteen (15) working days after receipt of such submittals and any additional information that may be requested by CBS. CBS may require alterations to the proposed construction if it deems the project will have a substantial negative impact on the operation of the terminal building or its facilities.
- C. Construction by the SUBLESSEE or its contractors must be performed in a safe, neat manner and meet the following criteria:
 - 1. It must not unreasonably interfere with the activities of other tenants;
 - 2. It must be compatible with the architecture of the Terminal Building as determined by the Director of Public Works and/or his/her designee;
 - 3. It must be performed at no cost to CBS unless otherwise mutually agreed in writing by the parties; and
 - 4. It must comply with all applicable federal, state and local building codes and requirements.
- D. Within thirty (30) days after completion of the construction of any alteration or improvement, the SUBLESSEE shall deliver to CBS three (3) sets of as-built drawings showing the location and dimensions of the alteration or improvement, including any structural, mechanical, and electrical systems.

Section 15: Ownership of Improvements.

- A. Improvements, structures, or alterations done by the SUBLESSEE shall at once become part of the realty, building or land upon or within which they are constructed and shall become the property of CBS. They shall be surrendered with the Leased Premises at expiration of the Lease Term or termination of this Sublease, whichever first occurs.
 - 1. Improvements, structures or alterations shall include, but not be limited to, interior walls, ceilings, carpeting, finished flooring,

electrical wiring, air conditioning ducts and equipment, interior decoration or finishing.

2. Upon expiration or termination of this Sublease, CBS may require the SUBLESSEE to remove, at the SUBLESSEE's sole cost and expense, such improvements, structures, or alterations that have been constructed on the Leased Premises. Any damages caused by such removal shall be immediately repaired by the SUBLESSEE at its sole cost and to the reasonable satisfaction of the Director of Public Works.
- B. All removable furniture, furnishings, fixtures, or equipment remains vested with the SUBLESSEE at all times during the Lease Term. If not removed within thirty (30) days after the expiration or termination of this Sublease, all such items shall, at the option of CBS and at the sole cost of the SUBLESSEE, be removed and placed in storage. CBS shall not be held liable for damage to SUBLESSEE's personal property, fixtures, or any other improvements so removed and stored by CBS or its contractor. If such personal property, fixtures, or other improvements are not claimed by the SUBLESSEE within sixty (60) days of such removal by CBS or its contractor, they shall be deemed abandoned to the sole and exclusive ownership of CBS. The SUBLESSEE hereby waives any right or claim to any such deemed abandoned property.

Section 16: Signs and Advertisements.

- A. CBS shall install all signs reasonably necessary or required for the direction of pedestrian and vehicular traffic and all directional signs in the public areas of the passenger terminal. The SUBLESSEE shall not place or permit to be placed any sign, light, notice, or other display on, within or adjacent to the Leased Premises or elsewhere at the Airport without the prior written consent of the Director of Public Works, which consent shall not be unreasonably withheld, conditioned or delayed. The SUBLESSEE shall not make any change after such consent without further approval of the Director of Public Works. The SUBLESSEE shall maintain all approved signs or other items as referenced above in a neat and attractive condition and appearance.
- B. CBS may require, as a condition of approval, that the SUBLESSEE submit to the Director of Public Works for his approval in writing, drawings, sketches, design dimensions and character of such signs or other items referred to in this section.

Section 17: Radio Transmission.

The SUBLESSEE shall not install or use any radio transmitting equipment or other device that may cause interference with the radio communication system or other radio equipment at the Airport without the prior written approval of the State Airport Manager. The SUBLESSEE, at CBS's request, agrees to stop using any machine or device that interferes with any government operated transmitter, receiver, or navigation aid until the cause of the interference is eliminated.

Section 18: Insurance.

A. CBS's Insurance.

CBS will maintain comprehensive general liability and property insurance for the Airport Terminal Building, and other facilities at the Airport during the Lease Term. The insurance policy shall provide that any proceeds shall be made payable to or for the benefit of CBS. CBS shall pay the premiums for such insurance; however, the SUBLESSEE shall pay any increase in the cost of CBS's insurance in accordance with Section 19 herein.

B. SUBLESSEE's Insurance.

The SUBLESSEE shall carry and maintain, during the entire Lease Term, at the SUBLESSEE's sole cost and expense, the following types of insurance in the amounts specified below:

1. Liability Insurance.

Commercial General Liability insurance with limits of less than One Hundred Million Dollars (\$100,000,000) per occurrence, combined single limit insuring against any and all liability of the SUBLESSEE with respect to the Premises or arising out of the maintenance, use or occupancy thereof. The policies shall contain a Cross-Liability endorsement, or coverage. Coverage can be written on an aviation form if such coverage is substantially similar to the standard Commercial General Liability form.

2. Property Insurance.

The SUBLESSEE, at its cost, shall maintain on all of its personal property, fixtures, improvements, and alterations, in, on, or about the Premises, a policy of Property Insurance with

coverage written under the Special Causes of Loss form, including Theft (also known as "All Risk" Property Insurance). The proceeds of any such policy shall be used by the SUBLESSEE for the replacement of personal property or the restoration of SUBLESSEE's improvements or alterations.

3. Automobile Liability.

The SUBLESSEE, at its cost, shall maintain Business Auto Liability Insurance covering all of the SUBLESSEE's owned, non-owned, and hired vehicles used in connection with the Premises. The coverage limit under this policy shall be no less than One Million Dollars (\$1,000,000) per claim.

4. Worker's Compensation.

The SUBLESSEE shall maintain Worker's Compensation insurance in accordance with all applicable laws.

C. The SUBLESSEE's obligation to insure under this section may be satisfied by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by the SUBLESSEE.

D. The SUBLESSEE shall provide CBS with proof of insurance coverage in the form of a valid insurance policy or a certificate of insurance coverage and any endorsements or changes referenced on the policy or certificate. All insurance required by this section must comply with all of the following:

1. Name CBS as an additional insured on all policies required under B.1. and B.3. of this section;
2. Include a waiver of subrogation against CBS in the policies required under B.4. of this section; and
3. Provide that the SUBLESSEE and CBS be notified at least thirty (30) days prior to any termination, cancellation, or material changes in the insurance coverage.

E. The procuring of the policy or policies of insurance required by this Sublease will not limit the SUBLESSEE's liability hereunder or fulfill the indemnification provision and requirements and other obligations of this Sublease. Notwithstanding said policy or policies of insurance, the SUBLESSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Sublease or with the use or occupancy of the Premises.

- F. Each policy or certificate of insurance shall be deposited with CBS in a timely fashion without any lapse in coverage. CBS shall have the right to inspect SUBLESSEE's records at reasonable times to confirm that the required insurance coverage remains in force.
- G. Waiver of Subrogation.

The SUBLESSEE and CBS agree to waive their respective rights of recovery or claim against the other for any loss or damage to the Premises, the Terminal Building, or their contents, (excluding aircraft) resulting from fire or other insurable property hazards caused by the other. Notwithstanding Section 39, any fire or property insurance policies carried by either party will include a waiver of subrogation clause waiving any rights of subrogation clause against the other party to this agreement.

Section 19: SUBLESSEE's Use – Insurance Increase.

The SUBLESSEE may not use, nor authorize any of its employees, agents, contractors, representatives or other person who is subject to their direction or control, to use the Airport in any manner that will increase CBS's insurance rates or cause cancellation of any of the CBS's insurance policies. If the rate of any insurance carried by CBS is increased solely as a result of use or actions of the SUBLESSEE or its agents, the SUBLESSEE shall pay to CBS within thirty (30) days before the date CBS is obligated to pay an increased premium on the insurance, or within sixty (60) days after CBS delivers to the SUBLESSEE a certified statement from the CBS's insurance carrier stating that the rate increase was caused solely by the occupancy or activity of the SUBLESSEE or its agents on or near the Leased Premises or on the Airport, whichever is earlier. The payment shall equal the difference between the original premium and the increased premium.

Section 20: Taxes.

The SUBLESSEE shall timely pay all taxes, assessments, license fees and other charges that are imposed, levied, or assessed by the United States, the State of Alaska, CBS, city or other governmental body or agency in connection with this Sublease. This is subject, however, to the right of the SUBLESSEE to protest the same in the manner provided by law.

Section 21: Accommodation of Other Airlines.

- A. If an airline initiates or expands regularly scheduled air transportation service at the Airport and needs terminal space and facilities, CBS will require the airline to use its best efforts to make suitable arrangements for the airline's operations at the Airport by:
 - 1. Attempting to secure existing available space or facilities from CBS, or
 - 2. Attempting to obtain the use of facilities from other air carriers using the terminal.
- B. CBS will use its best efforts to accommodate the airline by:
 - 1. Attempting to accommodate the airline in existing available space or facilities for direct lease or use; or, if none is available, by
 - 2. Reviewing the feasibility of immediate construction of new space or facilities for the airline's lease or use.
- C. Upon written request from CBS, SUBLESSEE will use its best efforts to make suitable arrangements either to handle the operations of or to share its lease area with the new airline.
- D. If the efforts of the SUBLESSEE, CBS, and other air carriers do not satisfy the new airline's reasonable space requirements, CBS will, in writing, notify all of the air carriers at the Airport that all the requirements of Section 21.A, 21.B. and 21.C. have been undertaken and have failed to satisfy the requesting airline's reasonable space requirements.

Section 22: CBS's Right to Require Accommodation.

- A. If the events specified in Section 21 have occurred and sixty (60) days have elapsed since CBS has given notice and if the new airline is still unable to meet its reasonable requirements for space and facilities, CBS may require that the SUBLESSEE provide space or facilities to the airline pursuant to a sublease, assignment, use agreement, ground handling agreement, or any combination of such. The type of agreement will be discretionary with the SUBLESSEE.
- B. If the air carrier can show evidence to the satisfaction of the Director of Public Works that the proposed accommodation unreasonably interferes or is incompatible with the SUBLESSEE's use of its space and facilities for handling its own scheduled passenger and cargo operations (including the passenger flight activities of any operation

for which the SUBLESSEE is providing contract services pursuant to a written agreement), then the SUBLESSEE is under no obligation to provide accommodation.

- C. If in the determination of the Director of Public Works, the proposed accommodation does not unreasonably interfere or is not otherwise incompatible with the SUBLESSEE's use of the space and facilities for handling its scheduled passenger and cargo operations, the SUBLESSEE shall accommodate the new airline. The SUBLESSEE may charge the new airline for the SUBLESSEE's operating and capital costs related to the space and facilities and an administrative fee that does not exceed 15 percent of the SUBLESSEE's operating costs for the accommodation space. The SUBLESSEE may appeal the Director of Public Works' decision by presenting evidence to the CBS Municipal Administrator. The CBS Municipal Administrator shall review such evidence and determine whether accommodation must be made by the SUBLESSEE.
- D. If an airline requests or requires accommodation which necessitates relocation of any of the SUBLESSEE's lease area, CBS will require the new airline to pay the costs of relocation and reconstruction of the SUBLESSEE's improvements, including costs of SUBLESSEE's move and of furnishing substantially similar facilities.

Section 23: Airport Changes and Improvements.

- A. CBS hereby reserves the right and option to rebuild, remodel or otherwise effect changes in the Leased Premises and other portions of the Terminal Building and Airport as may, in CBS's sole but reasonable discretion, be necessary or advisable. CBS may, upon thirty (30) days advance written notice to the SUBLESSEE, relocate or modify all or portions of the Leased Premises (including joint use and/or SUBLESSEE use areas). CBS will provide opportunity for SUBLESSEE's comment in advance of any proposed changes to the Leased Premises.
- B. If the SUBLESSEE's Leased Premises are modified or relocated by CBS, CBS will:
 - 1. Adjust the rent or other charges allocable to that area equitably during any period that the SUBLESSEE will not have full use and benefit of the old or new areas as a direct result of the move;

2. Reimburse the SUBLESSEE for its actual verified out-of-pocket expenses at the Airport as a direct result of relocating the SUBLESSEE;
 3. Reimburse the SUBLESSEE for the unamortized portion of any properly installed tenant improvements that cannot be used at the new location, subject to the SUBLESSEE providing evidence as to the original investment and amortizations of such improvements;
 4. Provide the SUBLESSEE with substantially similar space so that the SUBLESSEE's operations are not unreasonably disrupted;
 5. Construct the demising walls and interior improvements to the SUBLESSEE's new area, including wall coverings, floors, ceilings, lighting, plumbing, electrical, heating units, air ventilation, and fixtures of similar type and quality to those on the Leased Premises being relocated; and
 6. Refinish the remainder of the Leased Premises, if any, for the functions authorized by this Sublease.
- C. In the event of relocation, this Sublease will be modified to include the SUBLESSEE's new assigned space.
- D. In the event the SUBLESSEE reasonably believes that the move will have a substantially adverse effect on its activities or business conducted in the area involved, the SUBLESSEE may terminate this Sublease as it applies to said area by giving written notice to CBS not later than twenty (20) days after CBS has notified SUBLESSEE with notice of the move or relocation. In the event of such termination, CBS shall incur no liability of any nature to the SUBLESSEE.
- E. It is further agreed that CBS, in its sole but reasonable discretion may abandon properties, facilities or services which are no longer reasonably justified or required for proper and adequate operation of the Airport.
- F. In the event that the actions taken by CBS are a result of events, damage or destruction within the provisions of Section 28 herein, the provisions of that section shall control.

Section 24: Utilities and Services.

- A. The parties agree that each shall, during the term of this Sublease, furnish, maintain, and timely pay, the utilities and other services indicated and specified as the obligation of each party listed on Exhibit "C", "Utilities and Services."
- B. CBS shall provide all utilities and janitorial services to the joint use and common use areas.
- C. If the SUBLESSEE's utility or service requirements increase during the Lease Term, the SUBLESSEE shall pay the increased cost of such utilities or services. If CBS is required to construct any new or additional utility installations, including without limitation, wiring, plumbing, conduits, and mains, resulting from the SUBLESSEE's changed or increased utility or service requirements, the SUBLESSEE shall pay to CBS the total cost of these items.
- D. CBS will not be held liable for any loss or damages sustained by the SUBLESSEE for any failure, defect, deficiency or impairment of any water supply, drainage, sewer, electrical supply, or other utility system serving the Leased Premises or the Airport unless caused by CBS's gross negligence or willful misconduct.

Section 25: Repairs and Maintenance.

- A. CBS shall assume the responsibility, cost, and expense for all repair and maintenance whatsoever of the public areas of the Terminal Building that are not otherwise identified as Joint Use Areas or SUBLESSEE use areas. Additionally, CBS shall repair and maintain all general building systems associated with the Airport Terminal Building including electrical systems, mechanical systems, structural systems, and roof systems, unless such repairs and maintenance are caused solely by the negligence or willful misconduct of SUBLESSEE, its employees and agents or as a result of any alteration or improvement made by SUBLESSEE or by others for the benefit of the SUBLESSEE. SUBLESSEE shall promptly reimburse CBS for the cost of such repair and maintenance services.
- B. SUBLESSEE acknowledges that it accepts the SUBLESSEE Use Areas and Joint Use Areas for its use in conjunction with its provision of air carrier service. Subject to Sections 24 and 25.A., SUBLESSEE shall repair and maintain its areas of use at its sole expense. Subject to Sections 24 and 25.A. CBS shall not have any obligation to repair, maintain, or restore, during the term of this Sublease, any Improvements of the Sublessee, its successors and assigns. Sublessee shall maintain any Improvements in a good workmanlike manner, whether such repair or maintenance thereof be

ordinary or extraordinary, or otherwise. For the purposes of this Sublease, Improvements shall be defined to mean all major repairs, construction, alterations, modifications, additions or replacements by Lessee, except as provided in item 1 above. SUBLESSEE shall be responsible for all repairs and maintenance responsibilities associated with jet ways and baggage conveyors, except those baggage conveyors that are owned, operated and maintained by TSA. SUBLESSEE, without limiting the generality hereof, shall: (i) keep at all times, in a clean and orderly condition and appearance, its exclusive use area in the terminal and all of the SUBLESSEE's fixtures, equipment and personal property which are located on any part of the Terminal Building, and (ii) repair any damage to paving or other surface of the aircraft parking apron caused by SUBLESSEE's operations.

Section 26: Right of CBS to Enter, Inspect and Make Repairs.

- A. CBS, or its authorized representatives, shall have the right of ingress to and egress from the Leased Premises and the right to enter any part of the Leased Premises at such times as may be reasonable, and with as little interruption to the SUBLESSEE's operations as is practical, for the following purposes:
1. To perform inspections to verify that the SUBLESSEE has complied with and is complying with the terms and conditions of this Sublease;
 2. To perform maintenance, make repairs, structural additions and/or alterations that CBS has the right or obligation to do hereunder.
- B. Except in the case of an emergency, reasonable notice will be given and CBS will coordinate with the SUBLESSEE in order to minimize interference with the SUBLESSEE's activities.

Section 27: Liens.

The SUBLESSEE shall keep the Leased Premises free of all liens, pay all costs for labor and materials arising out of any construction or improvements by the SUBLESSEE on the Premises, and hold CBS harmless from liability for any liens, including costs and attorney fees; however, CBS shall give the SUBLESSEE a reasonable opportunity to cure or bond a lien when it is contested in good faith.

Section 28: Damage or Destruction.

- A. In the event the Leased Premises, Terminal Building, structures, or the Airport, or any portion of them are damaged by fires, flood or other casualty, causing the Leased Premises to be unusable or inaccessible, CBS shall notify the SUBLESSEE within ninety (90) days of the date that the damage occurred and whether the damaged space is to be repaired. If, in CBS's determination, the damaged space is to be repaired, CBS shall repair the damage with due diligence and shall abate the rent in proportion to the amount of the Leased Premises that is damaged or unusable. CBS will do its best to provide the SUBLESSEE with any available temporary space at a rent deemed reasonable by CBS until the repairs are completed.
- B. If the cost of the restoration exceeds the amount of the proceeds received by CBS from the insurance required under Section 18, CBS may elect to terminate this Sublease, as to the space damaged or destroyed, by giving notice to SUBLESSEE within thirty (30) days after determining that the restoration costs will exceed the insurance proceeds. The SUBLESSEE may elect to pay CBS the difference between the amount of the insurance proceeds and the cost of restoration, in which event CBS shall restore the Leased Premises. Written notice must be received by CBS within thirty (30) days if SUBLESSEE elects to pay the difference.
- C. If the Leased Premises or the building and other improvements in which the Leased Premises are located are totally or partially destroyed from a risk not covered by the insurance described by Section 18, rendering the Leased Premises or the building and other improvements in which the Leased Premises are located totally or partially unusable, CBS shall have the right to terminate this Sublease by the giving of thirty (30) days prior written notice.
- D. If CBS elects to restore the Leased Premises as provided in Paragraph 28A above, CBS shall not be required to restore any of the SUBLESSEE's trade fixtures, improvements and/or personal property. Such excluded items are the sole responsibility of the SUBLESSEE to restore.

Section 29: Condemnation.

A. Entire Taking.

In the event that the entire Leased Premises are condemned by any proper authority, including a taking by inverse condemnation, this Sublease shall terminate as of the date of such taking and the entire award shall be paid to CBS. The SUBLESSEE shall be paid an amount equal to that part, if any, of the award which has been

expressly computed and made for tenant improvements and fixtures installed on the Leased Premises which the SUBLESSEE is expressly entitled to remove upon the termination of this Sublease. The SUBLESSEE shall not be compensated for consequential or severance damages including business damage, claims for lost profits, or leasehold advantage.

B. Partial Taking.

In the event that only a part of the Leased Premises are condemned by any proper authority, including a taking by inverse condemnation, this Sublease shall automatically terminate as the part taken. The rent provided herein shall be adjusted for the remainder of the Leased Premises. The rent shall be apportioned by negotiation. Further, the SUBLESSEE shall be paid an amount equal to that part, if any, of the award which has been expressly computed and made for tenant improvements and fixtures installed on the Leased Premises which the SUBLESSEE is expressly entitled to remove upon the termination of this Sublease. Notwithstanding the foregoing, if SUBLESSEE reasonably determines that the portion of the Leased Premises taken renders the remaining Leased Premises unusable for its intended purpose, then SUBLESSEE may terminate this Sublease upon thirty (30) days' prior written notice to CBS.

Section 30: Default and Termination.

A. Default.

Should default be made by the SUBLESSEE, and continue for thirty (30) days after written notice from CBS of the following (or such longer period as may be reasonably necessary to effect a cure provided that SUBLESSEE commences a cure during the thirty (30) day period and diligently pursues the same):

1. Failure to pay any rent or fee, including interest and/or assessed late penalty fees; or
2. Failure to immediately cure a default in performance of any obligation under this Sublease within thirty (30) days after written notice from CBS specifying and identifying such default in the performance of any of the other terms, covenants, conditions or provisions on the part of the SUBLESSEE to be kept or performed; then

CBS, at its own option, may terminate this Sublease forthwith by written notice to the SUBLESSEE and take such action or pursue such remedy as may be permitted by law.

B. Termination by SUBLESSEE.

The SUBLESSEE may terminate this Sublease if:

1. The SUBLESSEE is prohibited by lawful authority from using the Airport because of any deficiency or unsafe operating condition at the Airport for a period exceeding sixty (60) days. The SUBLESSEE may terminate this Sublease after the sixty (60) days by giving CBS thirty (30) days advance written notice.
2. CBS does not perform any material covenant in this Sublease for a period of sixty (60) days after written notice of default to CBS by the SUBLESSEE. CBS will be deemed to have cured the default if CBS commences to cure the default within the sixty (60) day period and diligently continues the cure to completion.

C. Termination by CBS.

Time being of the essence, CBS may terminate this Sublease immediately and exercise all rights of entry and reentry upon the Leased Premises upon the occurrence of any of the following:

1. The SUBLESSEE fails to provide regular scheduled passenger air transportation to and from the Airport as described in Section 5 of this Sublease within fifteen (15) days after SUBLESSEE'S receipt of written notice of default from CBS.
2. The SUBLESSEE or its creditors file a request for the SUBLESSEE'S relief under any state or federal insolvency, bankruptcy, reorganization, relief of debtors, or receivership statute.
3. The material restriction of CBS'S operation of the Airport Terminal Building by action of the Federal Government, or any department or agency thereof, or by the State of Delta or any agency thereof, for a period of not less than sixty (60) days.
4. A custodian, trustee, receiver, or agent, or any similar person is appointed or authorized to take charge of substantial part of the SUBLESSEE'S operations at the Airport.

- D. Termination by SUBLESSEE. On March 31 of each calendar year during the Lease Term, SUBLESSEE shall have the right to terminate this Sublease by providing written notice to CBS at least sixty (60) days prior to such termination.

Section 31: Handling and Storage of Hazardous Material.

- A. If the SUBLESSEE's employees or contractors handle fuel or any other hazardous materials on the Airport, the SUBLESSEE agrees to have properly trained personnel and adequate procedures for safely storing, dispensing, and otherwise handling fuel or hazardous materials in accordance with the Uniform Fire Code and all applicable federal, state, and local laws.
- B. If the SUBLESSEE'S employees or contractors handle fuel or any other hazardous material on the Airport, the SUBLESSEE shall develop, maintain and provide copies to the State Airport Manager and the Director of Public Works of a hazardous materials spill response plan describing the procedures and training for the SUBLESSEE's employees, agents and contractors who handle hazardous materials at the Airport. The plan must include procedures that the SUBLESSEE's employees, agents and contractors will use in the event of an accidental release of hazardous materials at the Airport. At a minimum, the plan should include a contact list of phone numbers for SUBLESSEE's key company personnel and agency personnel, an inventory list of available response equipment and supplies on hand to be used to control and clean up an accidental release, an inventory of protective clothing and devices for the safety personnel responding to a hazardous material release, the training each employee, agent and/or contractor has received before being allowed to handle hazardous materials at the Airport and how the contaminated cleanup materials are to be disposed of after a release response by the SUBLESSEE.
- C. If the SUBLESSEE'S employees or contractors handle fuel or any other hazardous material at the Airport, the SUBLESSEE shall ensure that its fueling personnel or agents have sufficient hazardous material release control and cleanup supplies, and training to control and clean up accidental releases that occur as a result of SUBLESSEE's tenancy and operations at the Airport.
- D. In the event of a release to the environment of fuel or other hazardous materials at the Airport resulting from the SUBLESSEE's activities related to the Leased Premises, the SUBLESSEE shall immediately notify the State Airport Manager, CBS, the State Department of

Environmental Conservation, U.S. Coast Guard, if required, and any other agency requiring notification. In the event of a release to the environment of hazardous materials resulting from the SUBLESSEE's activities at the Airport, the SUBLESSEE or its agent or contractor shall act promptly to contain the release, absorb spilled hazardous material, clean up the affected area, repair any damages and restore the affected area to a condition satisfactory to the State Airport Manager and otherwise comply with applicable federal, state, and local laws. The SUBLESSEE shall dispose of all contaminated control and cleanup materials in accordance with all applicable rules and regulations.

- E. The SUBLESSEE agrees to hold CBS harmless for any damage resulting from pollutants released to the environment resulting from the handling of hazardous materials at the Airport by the SUBLESSEE's employees, agents, and/or contractors. The SUBLESSEE further agrees that it is responsible for all costs for control and cleanup of any release to the environment of any hazardous materials on or near the Airport resulting from the SUBLESSEE's occupancy and activities.
- F. Unless specifically authorized by separate agreement, this Sublease or amendment hereto, the sale of aviation fuel or lubricating oil at the Airport by the SUBLESSEE is prohibited.

Section 32: Surrender of the Premises.

- A. Upon expiration or termination of this Sublease, the SUBLESSEE agrees to peaceably surrender the Leased Premises and return possession to CBS. The Leased Premises must be left in a clean, neat and presentable condition and in good repair satisfactory to CBS.
- B. Upon expiration or termination of this Sublease, and in any event not later than thirty (30) days after relinquishment of possession, or demand for removal by CBS, the SUBLESSEE shall promptly remove all of the SUBLESSEE's personal property from the Leased Premises and any fixtures or other improvements or alterations placed in or on the Leased Premises by the SUBLESSEE for which the SUBLESSEE is entitled or required to remove. The SUBLESSEE shall repair any damage caused by such removal at its sole expense and to the satisfaction of CBS.

Section 33: Insolvency and Bankruptcy.

In the event the SUBLESSEE files a voluntary petition in bankruptcy or institutes any proceedings of any kind or character under any bankruptcy or insolvency law CBS may, at its option, without notice or demand upon the SUBLESSEE, immediately cancel and terminate this Sublease. In the event of termination, CBS shall have the right to repossess the Leased Premises as well as the right to sue for and recover all rents and other sums accrued up to the time of such termination, including damages arising out of any breach on the part of the SUBLESSEE. CBS shall also have the right, without resuming possession of the Leased Premises or terminating this Sublease, to sue for and recover all rents and other sums, including damages, at any time and from time to time accruing hereunder and to exercise such other rights as may be provided by law.

Section 34: Discrimination.

The SUBLESSEE covenants and agrees that discrimination on the grounds of race, color, religion, national origin, ancestry, age, sex, or disability will not be permitted against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law. The SUBLESSEE recognizes the right of CBS to take any action necessary to enforce this provision, including actions required pursuant to any federal or state law.

Section 35: Affirmative Action.

The SUBLESSEE agrees that it will undertake any affirmative action program required by 14 CFR Part 152, Subpart E, to ensure that no person will be excluded from participation in any employment activities covered by 14 CFR Part 152, Subpart E on the grounds of race, creed, color, national origin, or sex. The SUBLESSEE agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by said subpart. The SUBLESSEE further agrees that it will require that its covered sub organizations provide assurance to CBS to the same effect that this will also undertake affirmative action programs and require assurances from their sub organizations, as required by 14 CFR Part 152, Subpart E.

Section 36: CBS's Reservation of Rights.

The rights and privileges granted to the SUBLESSEE in this Sublease are the only rights and privileges herein granted to the SUBLESSEE; and the SUBLESSEE has no easements, rights or privileges,

expressed or implied, other than those specifically herein granted by CBS.

Section 37: Assignment and Subletting.

- A. The SUBLESSEE shall not assign or sublet the Leased Premises or any part thereof without the prior written consent of CBS, which shall not be unreasonably withheld, conditioned, or delayed. Any such attempted assignment or subletting without the prior written consent of CBS shall be void and of no force or effect and may, at the option of CBS, be deemed a material breach and a basis for termination of this Sublease.

- B. CBS, at its discretion, may consent to a sublease if:
 - 1. In CBS's reasonable opinion the proposed sublease or assignment is in the best interest of the Airport's operation;
 - 2. The SUBLESSEE subleases the space for an amount not exceeding the rent CBS, charges for that space plus SUBLESSEE's maintenance and operation costs, an allowance for straight-line amortization of SUBLESSEE's improvements, and a fifteen percent (15%) administrative charge;
 - 3. The term of any sublease does not extend beyond the expiration of the term of this agreement; and
 - 4. CBS has no comparable vacant space available for lease.

- C. CBS may approve an assignment of this Sublease if all of the following conditions are met:
 - 1. In CBS's reasonable opinion the proposed assignment is in the best interest of the Airport's operation;
 - 2. The SUBLESSEE assigns the sublease to an airline qualified under Federal and State regulations to execute the agreement and capable of complying with all the requirements of this Sublease; and
 - 3. The SUBLESSEE assigns this Sublease for an amount not exceeding the rent CBS charges for that space plus the cost of the SUBLESSEE's improvements and personal property transferred as part of the assignment.

- D. Consent given on one occasion shall not be construed as, or constitute a waiver of the requirement of consent as to any subsequent or further assignment or subletting. In the event of assignment or subletting, the SUBLESSEE shall remain liable and responsible for performance of all the terms, covenants, conditions and provisions provided for in the sublease, including payment of rent and other charges herein provided and the assignee shall be required to enter into an agreement to perform all of the terms and conditions of this Sublease.
- E. The SUBLESSEE shall be entitled to assign this Sublease to an organized or incorporated business entity that the SUBLESSEE owns, controls and manages not less than seventy-five percent (75%) of the voting and ownership interest. The merger of SUBLESSEE with any other entity or the transfer of any controlling ownership interest in SUBLESSEE or the assignment or transfer of a substantial portion of the assets of SUBLESSEE, whether or not located on the Leased Premises shall not constitute a sublease or assignment to which the consent requirements of this Section are applicable.

Section 38: Subordination.

This Sublease is a subordinate in all respects to all present or hereafter issued general obligation, revenue, or other bonds, securities, or encumbrances issued in regard to the Rocky Gutierrez Airport Terminal. Subject to the SUBLESSEE further agrees that this Sublease and all rights hereunder, shall be subject and subordinate to all prior exceptions, reservations, leases, licenses, easements, restrictions, and rights-of-way of record not existing in, onto, over or affecting the Leased Premises. The SUBLESSEE agrees not to violate any such exceptions, reservations, leases, licenses, easements, restrictions, or rights-of-way. This sublease is subject to all requirements and conditions of CBS's prime lease with the State of Alaska, Department of Transportation ADA-50103.

Section 39: Indemnification.

- A. CBS shall not in any way be liable for any cost, liability, damage or injury including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed by SUBLESSEE or SUBLESSEE's agents, employees, guests or invitees.
- B. SUBLESSEE agrees to appear, defend and indemnify and save and hold harmless CBS and CBS's officers, agents and employees from any and all costs, liability, damage and expense (including costs of

suit and expenses of legal services) claimed or recovered by any person, firm or corporation by reason of injury to, or death of, any person or persons, and damage to, destruction or loss of use of any and all property, including CBS property, directly or indirectly arising from, or resulting from, any operations, works, acts or omissions of SUBLESSEE or SUBLESSEE's agents, employees, guests, invitees or contractors. The foregoing provisions concerning indemnification shall not be construed to indemnify CBS or its officers, employees, or agents for damage arising out of or resulting from the negligence or willful misconduct of CBS or CBS's officers, employees or agents. Upon filing with CBS by anyone of a claim for damages arising out of incidents for which SUBLESSEE herein agrees to indemnify and hold CBS harmless, CBS shall notify SUBLESSEE of such claim and in the event that SUBLESSEE does not settle or compromise such claim, then SUBLESSEE shall undertake the legal defense of such claim both on behalf of SUBLESSEE and on behalf of CBS. It is specifically agreed, however, that CBS at its own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against CBS for any cause for which SUBLESSEE is liable hereunder shall be conclusive against SUBLESSEE as to liability and amount upon the expiration of the time for appeal of such judgment. With respect to sublease operation hereunder, Sublessee agrees to provide the State of Alaska with the same level of indemnity as if the Sublessee were a direct Lessee under the prime lease ADA 50103.

- C. SUBLESSEE shall give CBS prompt notice of any suit, claim, action, or other matter to which Paragraph A above may apply, together with a copy of any letter by an attorney on behalf of any complainant, any complaint filed in court, and any notice or complaint by any regulatory agency. SUBLESSEE shall also use counsel acceptable to CBS in carrying out its defense obligations under this paragraph, and CBS shall also have the right, at its option and cost, to participate cooperatively in the defense of and settlement negotiations regarding any such matter, without relieving SUBLESSEE of any of its obligations under this provision. These indemnity obligations are in addition to, and not limited by, SUBLESSEE's obligation to provide insurance, and shall survive the expiration or earlier termination of this Sublease.

Section 40: National Emergencies.

In case of any national emergency declared by the federal government, neither the SUBLESSEE nor CBS may be held liable for any inability to perform any part of this Sublease resulting from the national emergency.

Section 41: Natural Disasters.

In the event any cause, which is not due to the fault or negligence of either SUBLESSEE or CBS renders the Leased Premises unusable and makes the performance of this Sublease impossible, this Sublease may be terminated by either party upon written notice to the other party. Causes include, but are not restricted to, acts of God or the public enemy, acts of the United States, fires, floods, epidemics or quarantine restrictions.

Section 42: Rights of CBS to Return Airport Operation to State of Alaska.

The SUBLESSEE expressly acknowledges that it has been informed by CBS that CBS operates the Airport Terminal pursuant to a lease with the State of Alaska. The SUBLESSEE further acknowledges and agrees that CBS in its sole discretion has the right to, and may, at any time, without liability, discuss, negotiate or arrange with the State for the termination of CBS's lease with the STATE and/or for the return of all or any portion of the Airport, or the operation thereof, and/or the Leased Premises to the State of Alaska. Such actions, whether or not such affects the SUBLESSEE, or results in the termination or modification of this Sublease, shall not constitute or be deemed to be a constructive or actual eviction of the SUBLESSEE or a breach of any express or implied covenant of quiet enjoyment or other obligation owed by CBS to the SUBLESSEE. CBS shall have the right to take such termination or other action regarding the lease with the STATE without liability or damages of any form or nature to the SUBLESSEE. If the Leased Premises are returned to the STATE, the SUBLESSEE may terminate this agreement upon the giving of at least sixty (60) days prior written notice of CBS. CBS shall provide SUBLESSEE with at least sixty (60) days' prior written notice of any such action that will result in a termination of this Sublease.

Section 43: Modification.

CBS may modify this Sublease to meet the revised requirements of federal or state grants, laws, or regulations, or to conform to the requirements of any revenue or general obligation bond covenant to which CBS is a party; provided that, a modification may not act to reduce the rights or privileges granted the SUBLESSEE by this Sublease nor act to cause the SUBLESSEE financial loss. CBS will make every reasonable effort to notify SUBLESSEE prior to any such modification to the sublease.

Any modification, amendment, or change to this Sublease is not effective unless the Administrator of the City and Borough of CBS and SUBLESSEE have affixed a notarized signature to the modification, agreement or change.

Section 44: Compliance with Rules and Regulations.

- A. CBS reserves the right to adopt, amend and enforce reasonable rules and regulations governing the Leased Premises, joint use areas and the common areas and facilities used by the SUBLESSEE in connection therewith. The SUBLESSEE shall observe, obey, and abide by all such rules and regulations heretofore or hereafter adopted or amended by CBS, provided, however, that notice of such change(s) to the rules and regulations shall be presented to the SUBLESSEE not less than thirty (30) days in advance of the proposed change(s) except where those change(s) must be quickly implemented in order to address emergency or safety related problems that may occur.
- B. In addition, the SUBLESSEE shall observe, obey and comply with all applicable rules, regulations, laws, ordinances, statutes, or orders of any governmental authority, Federal, State, or local, lawfully exercising authority over the Airport, or the SUBLESSEE's conduct of its air transportation or other business or activity at the Airport.
- C. CBS shall not be liable to the SUBLESSEE for a diminution or deprivation of possession, or of its rights hereunder, because of the CBS's exercise of any such right or authority as provided in this section. Nor shall SUBLESSEE be entitled to terminate the whole or any portion of the leasehold herein created, by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with SUBLESSEE's use and occupancy of the leasehold therein created as to constitute a termination in whole or in part of this Sublease by operation of law in accordance with the laws of the State of Alaska or as to unreasonably interfere with SUBLESSEE'S operations hereunder.
- D. Except as expressly set forth herein, CBS makes no specific warranties, express or implied, concerning the suitability of the Leased Premises for any use, including those uses authorized by this SUBLESSEE. The SUBLESSEE takes the Leased Premises subject to any and all of the covenants, terms, and conditions affecting CBS's title to the Leased Premises.

Section 45: Special Conditions.

- A. The SUBLESSEE agrees to assume full control and sole responsibility for its activities and personnel on the Leased Premises, in the Terminal Building and on the Airport. The SUBLESSEE further agrees to coordinate its activities on the Airport with State Airport Manager, if required hereunder, and to abide by all reasonable decisions and directions of said Manager regarding the use of the Airport by the SUBLESSEE and its personnel. This includes compliance with airport security procedures, security access requirements and other such operational procedures.
- B. The SUBLESSEE shall ensure that any of its employees, agents and/or contractors who operate ground vehicles or equipment that require State of Alaska Commercial Driver's License (CDL), have a current CDL on their person while operating such vehicles or equipment on any portion of the Airport.
- C. The SUBLESSEE agrees that the State of Alaska has the sole right to adjust Airport hours of operation. The SUBLESSEE agrees that requests from the SUBLESSEE for Airport services beyond normal Airport hours of operation will be handled on a case-by-case basis and special charges and fees may be assessed by CBS and/or State of Alaska for such additional services rendered by CBS to the SUBLESSEE's customers, employees, guests, invitees, contractors or agents. Notwithstanding the foregoing, CBS will provide Sublessee with thirty (30) days' advance notice of any changes in the Airport's hours of operation so that Sublessee has sufficient time to adjust its operations, if necessary.

Section 46: Miscellaneous.

A. Relationship of Parties.

Nothing herein shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties. Also, it being understood and agreed that neither method of computation of rent nor any other provision contained herein, nor any acts or the parties hereto, shall be deemed to create any relationship between the parties other than the relationship of lessee and SUBLESSEE.

B. Terminology.

Whenever the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders.

C. Non-waiver.

The failure of CBS to insist in any one or more instances upon the strict performance by the SUBLESSEE of any provision or covenant in this Sublease may not be considered as a waiver or relinquishment for the future, but the provision or covenant will continue in full force. The waiver by CBS of any provision or covenant in this Sublease cannot be enforced or be relied upon unless the waiver is in writing authorized by and signed on behalf of CBS. No waiver of default of any part of this Sublease by either party may operate as a waiver of any subsequent default of any part of this Sublease that is to be performed by other party. Consent or notice by either party may not be construed as consent or notice in the future.

D. Law Applicable.

The laws of the State of Alaska shall govern the construction, validity, performance and enforcement of this Sublease. Any legal action involving this Sublease must be filed in court in the City of Sitka or any federal matters are to be filed in U.S. District Court in Juneau, Alaska.

E. Paragraph Headings.

The headings of the several sections and subsections contained in this Sublease are for convenience only and do not define, limit or construe the contents of such sections and subsections.

F. Successors and Assigns.

Except as otherwise provided herein, the covenants, agreements and obligations herein contained shall extend to bind and insure to the benefit not only of the parties hereto but their respective personal representatives, heirs, successors and assigns.

G. Compliance with Laws and Regulations.

The SUBLESSEE shall, at the SUBLESSEE's sole cost and expense, comply with all of the requirements of all local, State, or Federal laws, ordinances, or which may hereafter be in force, pertaining to the SUBLESSEE's use or occupancy of said Leased Premises at the Airport.

H. Notice of Claims or Damages.

SUBLESSEE shall give immediate notice to CBS, in case of fire, fuel or other hazardous material spills, or accidents in or on the Leased Premises or in or near the building of which the Leased Premises are a part, or of defects therein in any fixtures or equipment.

I. Terms Construed as Covenants and Conditions.

Every term and each provision of this Sublease performable by either party shall be construed to be both a covenant and a condition.

J. Time of the Essence.

Time is of the essence of each term, condition, covenant and provision of this Sublease.

K. Entire Agreement.

The SUBLESSEE acknowledges that it has read this entire Sublease, has fully understood the provisions thereof, was satisfied therewith, and signed the same of its own free will. The SUBLESSEE further acknowledges that any prior contracts, promises, representations, or agreements between the SUBLESSEE and CBS, relating to this Sublease of the Leased Premises, are hereby extinguished; that there are no oral or written promises, representations or agreements between the SUBLESSEE and CBS. This sublease constitutes the entire and only agreement between CBS and the SUBLESSEE relating to this Sublease of the Leased Premises.

L. Severability.

In the event any provision of this Sublease is adjudicated or held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

M. Notices.

Any notice required by this Sublease must be hand-delivered or sent by certified mail to the appropriate party at the address set forth on page one (1) of this Sublease or to any other address which the parties may subsequently designate in writing. Certified activity reports required by this Sublease may be submitted via telefax provided that the original hard copy is received in the Public Works Director's Office within three (3) days of the telefax date.

N. Remedies Cumulative.

Each of the rights and remedies of the parties hereto shall be construed as cumulative and to be in addition to any other rights or remedies that may now or hereafter be provided by law or equity.

O. Interrelations of Provisions.

The basic provisions, covenants, supplements, addenda, and drawings are essential parts of this Sublease and are intended to be cooperative, to provide for the use of the Leased Premises, and to describe the respective rights and obligations of the parties to this Sublease. In case of a discrepancy, figured dimensions govern over scaled dimensions unless obviously incorrect.

P. CBS's Right to Examine Records.

The SUBLESSEE shall allow CBS to examine all books and records of the SUBLESSEE pertaining to the business authorized in this Sublease, including federal and state income tax returns thereon at any reasonable time.

Q. Contracting on More Favorable Terms

CBS covenants and agrees that in the event it enters into any sublease, lease, contract or any other agreement with any other air carriers containing more favorable terms than this Sublease, or grants to any air carrier rights, privileges, or concessions at the Airport which are not accorded SUBLESSEE hereunder, it shall advise SUBLESSEE of such action and this Sublease shall, at SUBLESSEE'S option, be amended to incorporate such rights, terms, privileges and concessions, or any of them, as part of this Sublease.

R. Quiet Enjoyment

The SUBLESSEE is entitled to quiet enjoyment of the Leased Premises subject to the terms of this Sublease.

AIRLINE OPERATING AGREEMENT

And

TERMINAL BUILDING SUBLEASE

between

State of Alaska and Delta Airlines, Inc.

APPROVAL AND CONSENT OF STATE OF ALASKA

Pursuant to Aviation Lease No. ADA-50103, the State of Alaska hereby approves of and consents to the foregoing Sublease, and the terms and conditions thereof, and further agrees that in the event the State of Alaska takes over or otherwise assumes operation of the Airport Terminal Building during the term of this Sublease, the SUBLESSEE shall be entitled to conduct the permitted use and activities pursuant and subject to all of the terms and conditions of this Sublease for the remainder of the Sublease Term, provided, however that the State of Alaska shall, in such event, be substituted in the place and stead of the CITY AND BOROUGH OF CBS, including the right to enforce all of the terms and conditions in this Sublease in the same manner, and to the same extent as could have CBS.

DATED this ____ day of _____, 2015.

State of Alaska
By and through the Department
of Transportation and Public
Facilities

By: _____

Name

Title

Exhibit B
Rent and Fee Schedule
Delta Air lines, Inc.

The following is the rent fee schedule charged the Sublessee in exchange for the privileges, facilities, and services granted in this agreement. This agreement will be adjusted annually based on the percentage difference between the "All Items figure for Anchorage, Alaska in the "Consumer Price Index for All Urban Consumers", beginning with the edition published the soonest after January 1.

	Square Feet	Lease Rate	Annual Amount	Monthly Amount
Sublessee Use Area				
Ticket Counter	369	\$33.60	12,398.40	1,033.20
Additional Office	315	\$33.60	10,584.00	882
Subtotal Sublessee Use Areas	684	\$33.60	22,982.40	1,915.20

SIT JOINT USE

	Square Feet	Annual Lease Rate	Annual Amount	20% Fixed Cost Annual	20% Fixed Cost Monthly	Cost Per Airline (2)	80% Pro-Rata Cost Annual	80% Pro-Rata Cost Monthly	Cost Per Airline based on % enplaned pax
Passenger Hold Room	1,100	\$33.60	\$36,960.00	\$7,392.00	\$616.00	\$308.00	\$29,568.00	\$2,464.00	
Boarding Gate	800	\$33.60	\$26,880.00	\$5,376.00	\$448.00	\$224.00	\$21,504.00	\$1,792.00	
Baggage Make up	900	\$33.60	\$30,240.00	\$6,048.00	\$504.00	\$252.00	\$24,192.00	\$2,016.00	
Baggage Claim Area	2,500	\$33.60	\$84,000.00	\$16,800.00	\$1,400.00	700	\$67,200.00	\$5,600.00	
Deplaning Corridor	360	\$33.60	\$12,096.00	\$2,419.20	\$201.60	\$100.80	\$9,676.80	\$806.40	
Total Airline Joint Use Areas	5,660	\$33.60	\$190,176.00	\$38,035.20	\$3,169.60	\$1,584.80	\$152,140.80	\$12,678.40	Calculated monthly

*Lease rate monthly \$2.80

20% shared equally between all air carriers		
Alaska Airlines		Delta Air lines

80% distributed between air carriers on total passenger enplanement		
*Alaska Airlines		*Delta Air lines

Joint Use Variable

1,584.80 **\$1,584.80**

\$11,410.56

\$1,267.84

*Alaska Airlines 90% of enplanement and Delta Airlines 10% of enplanements.

Total Lease Charges **\$4,767.84 monthly**

Common Use Area amount charged to Sublessee shall be based upon the 20/80 formula as follows:

20% of the total monthly amount shall be divided equally among all scheduled air carriers having the right to use the Joint Use Areas during the previous calendar month.

80% of the total monthly amount shall be multiplied by each scheduled air carriers percentage of the total enplaned passengers at the air terminal during the previous calendar month.

**EXHIBIT C
UTILITIES & SERVICES**

SITKA shall be responsible for the following Utilities and Services:

- Electricity (interior only)
- Water
- Heat
- Sewer
- Terminal Public Address System
- Garbage Service
- Lighting
- Janitorial

The services as described above are included as part of the rent described in Exhibit B.

The SUBLESSEE shall be responsible for the following Utilities & Services

- Telephone and communication equipment, including equipment to access Terminal Public Address System.

**EXHIBIT D
INSURANCE REQUIREMENTS**

A. SITKA'S INSURANCE

SITKA will maintain comprehensive general liability and property insurance for the Airport, terminal building, and other facilities at the Airport during the Lease Term. The insurance policy shall provide that any proceeds shall be made payable to or for the benefit of SITKA. SITKA shall pay the premiums for such insurance; however, the SUBLESSEE shall pay any increase in the cost of SITKA's insurance in accordance with Section H herein.

B. SUBLESSEE'S INSURANCE

The SUBLESSEE shall carry and maintain, during the entire Lease Term, at the SUBLESSEE's sole cost and expense, the following types of insurance in the amounts specified below:

1. Liability Insurance

Commercial General Liability insurance with limits of not less than Twenty-five Million Dollars (\$25,000,000.00) per occurrence combined single limit insuring against any and all liability of the SUBLESSEE with respect to the Leased Premises or arising out of the maintenance, use or occupancy thereof. The policies shall contain a Cross-Liability endorsement, or coverage. Coverage can be written on an aviation form if such coverage is substantially similar to the standard Commercial General Liability form.

2. Property Insurance

The SUBLESSEE, at its cost, shall maintain on all of its personal property, fixtures, improvements, and alterations, in, on, or about the Leased Premises, a policy of Property Insurance with coverage written under the Special Causes of Loss form, including Theft (also known as "All Risk" Property Insurance). The proceeds of any such policy shall be used by the SUBLESSEE for the replacement of personal property or the restoration of SUBLESSEE's improvements or alterations.

3. Automobile Liability

The SUBLESSEE, at its cost, shall maintain Business Auto Liability Insurance covering all of the SUBLESSEE's owned, non-owned, and hired vehicles used in connection with the Leased Premises. The coverage limit under this policy shall be no less than One Million Dollars (\$1,000,000.00) per claim.

4. Worker's Compensation

The SUBLESSEE shall maintain Worker's Compensation insurance in accordance with all applicable laws.

- C. The SUBLESSEE's obligation to insure under this section may be satisfied by appropriate amendment, rider, or endorsement on any blanket policy or policies carried by the SUBLESSEE.
- D. The SUBLESSEE shall provide SITKA with proof of insurance coverage in the form of a valid insurance policy or a certificate of insurance coverage and any endorsements or changes referenced on the policy or certificate. All insurance required by this section must comply with all of the following:
1. Name SITKA as an additional insured on all policies required under B.1. and B.3. of this section;
 2. Include a waiver of subrogation against SITKA in the policies required under B.1. and B.4. of this section; and
 3. Provide that the SUBLESSEE and SITKA be notified at least thirty (30) days prior to any termination, cancellation, or material changes in the insurance coverage. Notification need not be made for changes in the SUBLESSEE's insurance policy coverage that are deemed to have no effect on SITKA.
- E. The procuring of the policy or policies of insurance required by this sublease will not limit the SUBLESSEE's liability hereunder or fulfill the indemnification provision and requirements and other obligations of this sublease. Notwithstanding said policy or policies of insurance, the SUBLESSEE shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this sublease or with the use or occupancy of the Leased Premises.
- F. Each policy or certificate of insurance shall be deposited with SITKA in a timely fashion without any lapse in coverage. SITKA shall have the right to inspect SUBLESSEE's records at reasonable times to confirm that the required insurance coverage remains in force.

G. WAIVER OF SUBROGATION

The SUBLESSEE agrees to waive their respective rights of recovery or claim against the other for any loss or damage to the Leased Premises, the terminal building, or their contents (excluding aircraft) resulting from fire or other insurable property hazards caused by the other. Notwithstanding Section 14 (indemnity), any fire or property insurance policies carried by SUBLESSEE will include a waiver of subrogation clause waiving any rights of subrogation against the other party to this agreement.

- H. The SUBLESSEE may not use, nor authorize any of its employees, agents, contractors, representatives or other person who is subject to their direction or control, to use the Airport in any manner that will increase SITKA's insurance rates or cause cancellation of any of SITKA's insurance policies. If the rate of any insurance carried by SITKA is increased as a result of use or actions of the SUBLESSEE or its agents, the SUBLESSEE shall pay to SITKA within thirty (30) days before the date SITKA is obligated to pay an increased premium on the insurance, or within sixty (60) days after SITKA delivers to the SUBLESSEE a certified statement from SITKA's insurance carrier stating that the rate

increase was caused solely by the occupancy or activity of the SUBLESSEE or its agents on or near the Leased Premises or on the Airport, whichever is earlier. The payment shall equal the difference between the original premium and the increased premium.

SUBLEASE GUIDELINES FOR TENANTS

17 AAC 45.990(80): "sublease' means a transaction or agreement under which a lessee, permittee or concessionaire leases, rents or otherwise grants occupancy rights to all or a portion of a premises or improvements on a premises to another person; 'sublease' does not include the assignment of a lease, permit or concession"

17 AAC 45.270(a): "...a lessee, permittee, or concessionaire may not sublease all or a portion of a lease, permit or concession premises without the prior written consent of the department under 17 AAC 17.275. A sublease made contrary to the requirements of this section and 17 AAC 45.275 is void."

17 AAC 45.270(d): "A sublessee of a lease, permit or concession may not occupy the premises before the department consents to the sublease in writing."

A request for a consent to a sublease must be submitted in writing and must include:

A. SUBLEASE. The following items must be included in all subleases. Failure to provide these items may result in the State/Lessor withholding its consent to a sublease.

17 AAC 45.270(B)

1. The name, address, and telephone contact number (including a fax number) of the proposed sublessee and the existing lessee. The sublease should name DOT&PF as the Lessor, DOT&PF's tenant as the Lessee, and Lessee's tenant as the Sublessee. Appropriate e-mail addresses should be provided.
2. Emergency contact names and telephone numbers (including fax numbers) for both parties; one of these needs to be for a person located at or near the airport where the sublease is located. Also please include e-mail addresses, if available.
3. A description of property to be subleased (e.g.: "portion of Lot 1, Block 1, as shown on Exhibit A attached"). Attach exhibit showing the specific area being subleased (whether a portion of a building, land, or any combination thereof). If areas of the land or in the building are used in common with the Lessee or other Sublessees, the sublease must so state, and the exhibit must clearly show the common use areas.
4. A description of the proposed sublessee's intended use of the premises. Authorized uses must be specific and cannot authorize more than the original lease. If food, beverage, liquor or hotel/lodging sales will occur, the lease must contain related concession fee language or a sublease for these purposes will not receive DOT&PF's consent.
5. The expiration date of the sublease. The term of a sublease cannot extend past the original (prime) lease expiration date. The beginning date of a sublease must also be included. All renewals or extensions of subleases must be submitted for review and approval, and shall be treated the same as new sublease approvals.
6. A statement of the proposed sublease rent to be paid per month of occupancy.
7. A guarantee of indemnification by the Sublessee under which the Sublessee provides to the State the same level of indemnity that the Sublessee would provide to the State if the Sublessee were a direct Lessee under the lease.

8. A statement identifying the party/ies (Lessee or Sublessee) responsible for providing the State with proof of premises liability and/or products insurance coverage (as applicable per the lease requirements). Depending upon the subleased area, all parties (State, Lessee and Sublessee) may be required to be named as co-insured. Unless a sublease is for the entire premises, including all facilities maintenance, both the Lessee and the Sublessee will be required to maintain the insurance required by the lease, with both naming the State of Alaska as additional insured.

9. A statement acknowledging that the prime State lease governs over the sublease and that the Sublessee agrees to abide by all provisions and covenants of the State lease.

*Example: Mars Airlines, Inc., Lessee, and John Doe, dba Jupiter Air, Sublessee, enter into this sublease dated _____. This sublease is subject to all requirements and conditions of the Lessee's prime lease ADA-_____ with the State of Alaska, DOT&PF, Lessor. The Sublessee agrees to abide by all provisions and covenants of the prime lease.

10. A statement acknowledging that Sublessees are prohibited from subleasing without the prior written consent of both the Lessee and the Lessor. Further, a Sublessee may not assign or hypothecate a subleasehold.

11. A provision that no improvements, grading, fill, construction, etc. may take place until the Sublessee and Lessee have obtained the Lessor's approval.

12. Three originals of the executed sublease documents with notarized signatures of the Sublessee and the Sublessor.

13. If either party is a corporation, the corporate seal must be applied to the sublease, or a corporate resolution submitted; also a copy of the Certificate of Incorporation must be submitted. If an LLC, copies of the Certificate of Organization, Articles of Organization and Operating Agreement (if applicable) must be submitted.

B. INSURANCE. A binder for, or certificate of, insurance covering the operations and activities of the Sublessee to the same extent that the Sublessee would be required to maintain insurance if the Sublessee were a direct Lessee under the lease.

C. FEE. A non-refundable \$55 sublease processing fee, made payable to the State of Alaska.

17 AAC 45.275:

(c) The department will approve or deny a request under this section in writing. If the department denies the request, the department will state the reasons for the denial in writing. The department will make a determination on a request for consent to assignment, assignment for security purposes, or sublease within 60 days after the assignor or sublessor has submitted a complete request.

(d) An applicant may protest a denial of an assignment, assignment for security purposes, or sublease in accordance with 17 AAC 45.910.