



# City of Chicago



O2016-3928

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	5/18/2016
<b>Sponsor(s):</b>	Emanuel (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Amendment to Phase 1 cargo facility lease with Aero Chicago LLC at Chicago O'Hare International Airport
<b>Committee(s) Assignment:</b>	Committee on Aviation

## ORDINANCE

WHEREAS, the City of Chicago ("City"), a home rule unit of local government under the 1970 Constitution of the State of Illinois, owns and operates an airport known as Chicago O'Hare International Airport ("O'Hare") and possesses the power and authority to lease premises and facilities and to grant other rights and privileges with respect thereto; and

WHEREAS, the City and Aero Chicago, LLC ("Aero Chicago") entered into an Aero Chicago, LLC Phase I Cargo Facility Lease dated August 8, 2012 (the "Original Phase I Lease") pursuant to which the City leased to Aero Chicago a portion of O'Hare more specifically described therein (the "Original Phase I Premises") upon which Aero Chicago was given the right to construct and develop certain air cargo facilities as provided in the Original Phase I Lease; and

WHEREAS, the City and Aero Chicago have determined that it is necessary and desirable to amend the Original Phase I Lease to add certain property to the Original Phase I Premises and for other purposes as set forth in an Amendment to Aero Chicago, LLC Phase I Cargo Facility Lease (the "Amendment") attached to this ordinance as *Exhibit A*; and

WHEREAS, the City desires to enter into an Amendment with Aero Chicago substantially in the form of the Amendment attached hereto as *Exhibit A*; now therefore

### **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. The above recitals are incorporated by reference as if fully set forth here.

SECTION 2. The Mayor or his proxy is hereby authorized to execute, upon the recommendation of the Commissioner of the Chicago Department of Aviation (the "Commissioner") and the approval of the Corporation Counsel as to form and legality, an Amendment that is substantially in the form of the draft Amendment presented to this meeting that is attached hereto as *Exhibit A*, or with such changes or revisions therein as are consistent with the purposes of this ordinance and shall be approved by the Mayor, which approval shall be evidenced by the Mayor's execution of the Amendment, and any and all of such changes and revisions are hereby approved by this City Council. The City Clerk is hereby authorized and directed to attest the Amendment and to affix thereto the corporate seal of the City or a facsimile thereof.

SECTION 3. The Commissioner and such other City officials and employees as may be required are authorized to take such actions and execute such other documents as may be necessary or desirable to implement the objectives of this ordinance.

SECTION 4. This ordinance will be in full force and effect from and after its passage and approval.

**EXHIBIT A**

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**AMENDMENT TO AERO CHICAGO, LLC  
PHASE I CARGO FACILITY LEASE**

**Dated: \_\_\_\_\_, 2016**

**BETWEEN**

**CITY OF CHICAGO**

**AND**

**AERO CHICAGO, LLC**

**AERO CHICAGO, LLC PHASE I CARGO FACILITY LEASE  
CHICAGO O'HARE INTERNATIONAL AIRPORT**

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**AMENDMENT TO AERO CHICAGO, LLC PHASE I  
CARGO FACILITY LEASE**

THIS AMENDMENT TO AERO CHICAGO, LLC PHASE I CARGO FACILITY LEASE is dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016 (this "*Amendment*" or "*Agreement*"), by and between the CITY OF CHICAGO, a municipal corporation and home rule unit of local government organized and existing under Article VII, Sections 1 and 6(a), respectively, of the 1970 Constitution of the State of Illinois, as lessor under this Lease (herein referred to as the "*City*" or the "*Landlord*"), and AERO CHICAGO, LLC, a Delaware limited liability company, as lessee under this Lease (herein referred to as the "*Tenant*").

**RECITALS:**

WHEREAS, the City is a municipality and a home rule unit of local government, duly organized and validly existing under the Constitution and laws of the State of Illinois, and, in accordance with the provisions of Section 6(a) of the 1970 Constitution of the State of Illinois, is authorized to enter into a lease agreement with respect to facilities used for the receiving and storing of cargo being transported at Chicago O'Hare International Airport (the "*Airport*") upon the terms and conditions the City considers advisable;

WHEREAS, the City has the authority to lease facilities and to grant rights and privileges with respect to the Airport;

WHEREAS, the City and the Tenant previously executed and delivered that certain Aero Chicago, LLC Phase I Cargo Facility Lease dated August 8, 2012 (the "*Original Phase I Lease*"), which Original Phase I Lease provides, among other things, for a right for the Tenant to lease the Phase I Leased Premises (as defined herein) from the City in accordance with the provisions set forth therein;

WHEREAS, pursuant to an Ordinance of the City, adopted June 28, 2012 (the "*Ordinance*"), the City authorized the execution and delivery of the Original Phase I Lease as an indivisible and non-severable agreement between the City and the Tenant, and the execution and delivery of certain related agreements; and

WHEREAS, the City and the Tenant have determined that it is necessary to amend the Original Phase I Lease in order to add certain property to the Phase I Leased Premises and for other purposes as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the City and the Tenant, each binding itself, its successors and assigns, do mutually promise, covenant and agree to amend and modify the Original Phase I Lease as follows; *provided* that, in the performance of the agreements of the City herein contained, any obligation it may incur for the payment of money shall not constitute

an indebtedness or other liability of the State or of a political subdivision of the State, except the City:

*Section 1. Amendments to Definitions in Section 1.1 of the Original Phase I Lease.*

Section 1.1 of the Original Phase I Lease is hereby amended as follows:

(a) The term “*Bank Rate Adjustment Date*” is hereby amended to be the “*Base Rate Adjustment Date*.”

(b) The term “*Fuel Farm Lease*” is hereby amended in its entirety to read as follows:

“*Fuel Farm Lease*” or “*Fuel System Lease*” shall mean that certain Northeast Quadrant O’Hare Airport Fuel Farm Lease dated as of April 26, 2016 between the City, as lessor thereunder, and Aero Chicago Distribution Infrastructure, LLC, as lessee thereunder, as such Fuel Farm Lease may be amended from time to time.

(c) The term “*Fuel System*” is hereby amended in its entirety to read as follows:

“*Fuel System*” is defined in the Fuel Farm Lease.

(d) The term “*Person*” is hereby amended in its entirety to read as follows:

“*Person*” shall mean any individual, partnership, firm, trust, corporation, limited liability company or other business entity or governmental authority or political unit or agency.

(e) The term *Phase II Lease* is hereby amended in its entirety to read as follows:

“*Phase II Lease*” shall mean that certain Aero Chicago, LLC Cargo Facility Phase II Lease dated as of April 26, 2016 between the City, as lessor thereunder, and the Tenant, as lessee thereunder, as such Phase II Lease may be amended from time to time.

(f) The terms “*Phase II Base Rent*” is hereby amended in its entirety to read as follows:

“*Phase II Base Rent*” is defined in the Phase II Lease.

(g) The term “*Phase II Term*” is hereby amended in its entirety to read as follows:

“*Phase II Term*” is defined in the Phase II Lease.

(h) The term “*Utilities*” is hereby amended in its entirety to read as follows:

"Utilities" shall mean electricity, gas, water, sanitary sewer and telephone, telecommunications and other data services available to the Leased Premises.

(i) Each of the following terms are hereby amended in their entirety to delete the following terms from the Phase I Lease: "Phase II Maintenance Rent," "Phase II Maintenance Rent Commencement Date," "Phase II Base Rent Commencement Date," "Phase II Election Notice," "Phase II Election Deadline," "Phase II Construction Period," and "Phase II Termination Date."

(j) The following definitions are hereby added to Section 1.1 of the Original Phase I Lease:

"*First Lease Year Fuel Farm Combined Rent Credit Amount*" is defined in Section 4.7(d)(i) of this Lease.

"*Fuel Farm Lease Combined Rent Credits*" is defined in Section 4.7(d) of this Lease.

"*Minimum Fuel System Construction Costs*" is defined in Section 4.7(d) of this Lease.

"*Ramp*" shall mean the aircraft parking positions to be constructed on the Phase I Leased Premises.

"*Second Lease Year Fuel Farm Combined Rent Credit Amount*" is defined in Section 4.7(d)(ii) of this Lease.

*Section 2. Ramp.* Article 2 of the Original Phase I Lease is hereby amended to add the following Section 2.17 to the Original Phase I Lease:

*Section 2.17. Use of Ramp.* It is understood by the City and the Tenant that to the extent the Ramp is not being used at any time by a Cargo Facility Space Tenant or any carrier or airlines that has a contractual right to use the Ramp pursuant to a contractual relationship with a Cargo Facility Space Tenant, the Tenant agrees that it will allow, or otherwise shall request the Cargo Facility Space Tenants to allow, the Ramp to be available for use by any carrier that provides cargo service at the Airport, subject to a reasonable contractual arrangement allowing such use, which contract shall include reasonable rental provisions, an indemnification of the Tenant, the Cargo Facility Space Tenants and the City, and insurance coverage that satisfies the City's insurance requirements.

*Section 3. Phase I Base Rent Commencement Date.* Section 4.2(b) of the Original Lease is hereby amended to delete in its entirety such provision as originally set forth in the Original Phase I Lease and to replace it with the following:

(b) Subject to the provisions in Section 4.2(c) below as it relates to Section 4.2(b)(ii) below, and notwithstanding whether the Commencement Date has occurred, the

Tenant covenants and agrees to pay during the Term, and in the case where the date set forth in Section 4.2(b)(iii) below is the hereinafter defined Phase I Base Rent Commencement Date, the Tenant covenants and agrees to pay prior to the Commencement Date of the Term and during the Term, Base Rent for the Leased Premises as calculated in Exhibit B-2 attached hereto, in advance and in monthly installments equal to one-twelfth (1/12) of the aggregate amount of annual Base Rent on the first day of each calendar month (as such Base Rent shall be increased as provided in Exhibit B-2) commencing on the earlier of (herein, the "*Phase I Base Rent Commencement Date*"):

- (i) The date when the initial certificate of occupancy is issued for any warehouse portion of the Phase I Cargo Facility by the City of Chicago Department of Buildings;
- (ii) Three (3) years following receipt by the Tenant of Construction Permits for the Phase I Cargo Facility (subject to Force Majeure Delays and the provisions of Sections 4.2(c) or 13.13 below which result in a delay of the construction of the Phase I Cargo Facility);  
or
- (iii) October 1, 2017;

*provided, however*, if the Phase I Base Rent Commencement Date is not the first day of any calendar month or the Termination Date is not the last day of any calendar month, the monthly installment of Base Rent for such month shall be adjusted ratably on the basis of the number of days in the partial month for which the payment is due.

*Section 4. Deletion of References to Phase II Maintenance Rent, Phase II Base Rent and Phase II Lease.* Section 4.3 of the Original Lease is hereby amended to delete in its entirety such section as originally set forth in the Original Phase I Lease and to replace it with the following:

*Section 4.3.* [Intentionally Omitted].

*Section 5. Phase III Lease.* Section 4.4(b) of the Original Phase I Lease is hereby amended to delete in its entirety such provision as originally set forth in the Original Phase I Lease and to replace it with the following:

(b) Notwithstanding whether the commencement date for the Phase III Term has occurred, the Tenant covenants and agrees to pay during the Phase III Term, and in the case where the date set forth in Section 4.4(b)(iii) below is the hereinafter defined Phase III Base Rent Commencement Date, the Tenant covenants and agrees to pay prior to the commencement date of the Phase III Term and during the Phase III Term, base rent for the Phase III Leased Premises as calculated in Exhibit B-2 attached hereto (the "*Phase III Base Rent*"), in advance and in monthly installments equal to one-twelfth (1/12) of the aggregate amount of annual base rent for the Phase III Leased Premises on the first day of

each calendar month during the Phase III Term (as such base rent shall be increased as provided in Exhibit B-2) commencing on the earlier of (herein, the “*Phase III Base Rent Commencement Date*”):

- (i) The date when the initial certificate of occupancy is issued for any warehouse portion of the Phase III Cargo Facility by the City of Chicago Department of Buildings;
- (ii) Three (3) years following receipt by the Tenant of Construction Permits for the Phase III Cargo Facility (subject to Force Majeure Delays and the provisions of Sections 4.4(d) or 13.13 below which result in a delay of the construction of the Phase III Cargo Facility); or
- (iii) A fixed date to be agreed upon by the Tenant and the City prior to the execution and delivery of the Phase III Lease;

And on the first day of each calendar month thereafter; *provided, however*, if the Phase III Base Rent Commencement Date is not the first day of any calendar month or the Phase III Termination Date is not the last day of any calendar month, the monthly installment of Phase III Base Rent for such month shall be adjusted ratably on the basis of the number of days in the partial month for which payment is due.

It is understood by the City and the Tenant that for purposes of this Section 4.4(b), the amount of Phase III Base Rent payable commencing on the Phase III Base Rent Commencement Date shall be in the same amount as the Phase I Base Rent then payable on the Phase I Leased Premises (provided that the Phase I Term is still in effect) pursuant to Section 4.2 of this Lease and shall be in the same amount as the as the base rent payable under the Phase II Lease (provided that the Phase II Term is still in effect) and that such Phase III Base Rent shall be increased from time to time in accordance with the provisions *Exhibit B-2* attached hereto, such that the Tenant is paying Phase III Base Rent at the same rate under this Section 4.4(b) as under Section 4.2(b) of this Lease (provided that the Phase I Term is still in effect) and under the Phase II Lease (provided that the Phase II Term is still in effect) and that following the end of the Phase I Term and the Phase II Term, the Phase III Base Rent shall continue as calculated pursuant to the applicable provisions of the Phase III Lease pursuant to terms and provisions substantially the same as set forth in *Exhibit B-2* of this Lease.

*Section 6. Fuel Farm Lease Combined Rent Credits.* Section 4.7 of the Lease is hereby amended to add the following subparagraphs (d), (e) and (f) to Section 4.7:

(d) In addition to the credits against Combined Rent as set forth in Section 4.7(a) above, the Tenant shall be entitled to additional credits against Combined Rent under this Lease as reimbursement for certain costs incurred by the Tenant in connection with the construction of the Fuel System in accordance with the provisions of the Fuel System in accordance with the provisions of the Fuel Farm Lease (the “*Fuel Farm Lease*”



*Combined Rent Credits*”). Subject to confirmation of the expenditure of the construction costs incurred by the Tenant for the construction of the Fuel System, as provided in the Fuel System Lease, and provided that the construction costs of the Fuel System are not less than Three Million Three Hundred Thousand Dollars (\$3,300,000.00) (the “*Minimum Fuel System Construction Costs*”), the Tenant shall be entitled to Fuel Farm Combined Rent Credits against the payment of Combined Rent due from time to time under this Lease (subject to a reduction of the Fuel Farm lease Combined Credits pursuant to Section 4.07(e) below) as follows:

- (i) In the first Lease Year, the Fuel Farm Lease Combined Rent Credits shall be in the amount shall be in the amount of One Million Dollars (\$1,000,000.00) (the “*First Lease Year Fuel Farm Combined Rent Credit Amount*”); and
- (ii) In the second Lease Year, the Fuel Farm Lease Combined Rent Credits shall be in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the “*Second Lease Year Fuel Farm Combined Rent Credit Amount*”).
- (iv) In order to receive the Fuel Farm Lease Combined Rent Credits during the first Lease Year and the second Lease Year, the Tenant must submit to the City a Combined Rent Credit Certificate not less than thirty (30) days prior to the date when the Tenant believes it will be entitled to such credit. The Combined Rent Credit Certificate shall be accompanied by a certification of the Tenant that the construction costs of the Fuel System were not less than the Minimum Fuel System Construction Costs. During the first Lease Year, the Tenant agrees to request the First Lease Year Fuel Farm Combined Rent Credit Amount evenly over the twelve months of the first Lease Year. During the second Lease Year, the Tenant agrees to request the Second Lease Year Fuel Farm Combined Rent Credit Amount evenly over the twelve months of the second Lease Year. If the City objects to any portion of the credit which the Tenant is taking against Combined Rent on the next monthly payment date following receipt of a Combined Rent Credit Certificate, unless the City and the Tenant have agreed to the actual amount of the credit to be taken by the Tenant on such monthly payment date, the Tenant shall defer the amount of any credit against Combined Rent disputed by the City until such amount can be resolved by the City and the Tenant; *provided* that notwithstanding any other provisions of this Lease, no credit may be taken against Combined Rent (or any other Rent due hereunder) that has not been approved in writing by the City. The City’s failure to object to the proposed credit on or before the date when the credit is taken by the Tenant, shall not be deemed a waiver by the City to object to such credit at a future date. The City shall be

entitled to audit, at any time, any credit against the Tenant's payment of Combined Rent hereunder and if the City is able to reasonably determine that the Tenant was not entitled to any credit taken by the Tenant against Combined Rent or, if the Tenant cannot substantiate the amount of any such credit with appropriate documentation in the reasonable determination of the City, the Tenant shall pay the costs of the audit and shall pay any Combined Rent owing as a result of the improper credit, together with interest on such amount at the Default Rate.

(e) The Tenant and the City agree that during the first Lease Year and the second Lease Year, the First Lease Year Fuel Farm Combined Credit Amount and the Second Lease Year Fuel Farm Combined Credit Amount, respectively, shall be applied ratably on a monthly basis as credits against the monthly payment of Combined Rent due under this Lease, and thereafter, to the extent there is any Combined Rent due during any month during the first Lease Year and the second Lease Year after application of the First Lease Year Fuel Farm Lease Combined Rent Credit Amount and the Second Lease Year Fuel Farm Lease Combined Rent Credit Amount, respectively, the Tenant may request any additional Phase I Rent Credit that may be available under Section 4.7(a), in accordance with the procedures set forth in this Section 4.7(b) above.

(f) The Fuel Farm Lease Combined Rent Credits shall be increased to the extent that the City's total costs of the remediation of the Pre-Existing Conditions (as defined in the Phase II Lease) shall be less than One Million Four Hundred Thousand Dollars (\$1,400,000.00) (the "*Phase II Remediation Costs Threshold Amount*"). If the City expends less than the Phase II Remediation Costs Threshold Amount on the remediation of the Pre-Existing Conditions, the Tenant shall be entitled to an increase in the First Lease Year Fuel Farm Combined Rent Credit Amount based upon \$1.00 in increased rent credits for every \$2.00 that the total costs of the remediation of the Pre-Existing Conditions is below the Phase II Remediation Costs Threshold Amount, not to exceed the sum of Seven Hundred Thousand Dollars (\$700,000.00). Any increase in the rent credits under the provisions of this Section 4.07(f) shall be applied first to the first Lease Year of the Phase II Lease, up to a maximum of Two Hundred Thousand Dollars (\$200,000.00) and then, to the extent there are any additional increased rent credits in excess of the first Two Hundred Thousand Dollars (\$200,000.00), the remainder shall be applied to Section 4.07(d)(i) above with respect to the first Lease Year of the Phase I Lease, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00) in additional Fuel Farm Lease Combined Rent Credits.

*Section 7. Completion Certificate.* Section 5.9(a) of the Original Phase I Lease is hereby amended to delete in its entirety such provision as originally set forth in the Original Phase I Lease and to replace it with the following:

(a) Immediately after the Completion Date for the Tenant Infrastructure Improvements, the Tenant shall deliver to the City a Completion Certificate (the "Completion Certificate"), in form and substance satisfactory to the City, signed by the Authorized Tenant Representative certifying: (i) that all insurance required under this Lease has been obtained; (ii) that all construction has been completed in accordance with the provisions of this Lease and the Tenant Infrastructure Improvements Design Plans and changes, if any, approved by the City; (iii) as appropriate, that as of the Completion Date specified in the Completion Certificate (the "*Completion Date*"), the Tenant Infrastructure Improvements have been completed and placed in service and all amounts payable with respect to the construction of the Tenant Infrastructure Improvements has been paid or will be paid by a specified date; and (iv) such other matters reasonably required by the City.

*Section 8. Order of Leasing and Development of Phase II Leased Premises and Phase III Leased Premises.* Section 4.14 of the Original Lease is hereby amended to delete in its entirety such provision as originally set forth in the Original Phase I Lease and to replace it with the following:

*Section 4.14.* [Intentionally Omitted].

*Section 9. Insurance.* Section 7.2 of the Original Phase I Lease is hereby amended to delete in its entirety such provision as originally set forth in the Original Phase I Lease and to replace it with the following:

*Section 7.2. Insurance Coverage Required.* The Tenant, Contractors and Cargo Facility Space Tenants must provide and maintain at Tenant, Contractors and Cargo Facility Space Tenants own expense, or cause to be maintained, during the Term of this Lease and on any earlier date the Tenant, Contractors, and Cargo Facility Space Tenants are permitted to enter onto the Leased Premises, and until each and every obligation of the Tenants, Contractors and Cargo Facility Space Tenants contained in this Lease has been fully performed (including any time period following the Termination Date if the Tenant, Contractors and Cargo Facility Space Tenants are required to return to the Leased Premises and perform any additional work), the insurance coverages and requirements specified below, insuring all operations under this Lease, with insurance companies authorized to do business in the State of Illinois.

(a) *Insurance to be provided by Tenant.* During the Term of this Lease, the Tenant must obtain the following insurance:

(i) *Workers Compensation and Employers Liability.* Workers Compensation, as prescribed by applicable law, covering all employees who are to provide a service under this Lease, and Employers Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) for each

accident, illness or disease. The Tenant will not be required to obtain such coverage as long as it does not have employees.

(ii) *Commercial General Liability* (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury and property damage liability. Coverage must include the following: all premises and operations, products/completed operations, independent contractors, separation of insured, defense and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City and its managers, members, officers, and agents and employees shall be named as an additional insured under the policy. Such additional insured status shall be provided on ISO form CG 2038 or a similar additional insured form or a blanket endorsement providing additional insured status when required by written contract. Tenant's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

(iii) *Automobile Liability* (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Tenant must provide Automobile Liability Insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage including a MCS90 endorsement, when applicable.

(iv) *Pollution Legal Liability*. Pollution Legal Liability Insurance must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of services with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include contractual liability, defense, environmental cleanup, remediation and disposal. When policies are renewed, the policy retroactive date must coincide with or precede, start of work in connection with the Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City is to be named in the policy as an additional insured.

(v) *Property*. The Tenant must obtain All Risk Property Insurance at full replacement cost, covering all loss or damage to the Leased Premises and other property, including improvements and betterments. Coverage must include but shall not be limited to the following: extra expense, water including leakage, overflow, sewer backup and seepage, collapse, boiler and machinery, earthquake and flood. The City is to be named in the policy as a loss payee, as its interests may appear. The Tenant is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies), owned or rented by the Tenant. The Tenant is responsible for all loss or damage to the Improvements and to any of the Tenant's property at full replacement cost.

(vi) *Business Interruptions.* The Tenant must obtain and maintain or cause to be obtained or maintained "use and occupancy" insurance or "business interruption" insurance covering the loss of revenues by reason of the total or partial suspension of or interruption in the operation of the Cargo Facility caused by damage to or destruction of the Cargo Facility in an amount not less than the amount required to meet the Combined Rent for a period of not fewer than two years. The City is to be named in the policy as a loss payee with respect to the Tenant's Business Interruption insurance, as their interests appear.

(b) *Insurance to be Provided During Construction.* During the Term of this Lease and while there is any construction at the Leased Premises, or with respect to the construction of the Tenant Infrastructure Improvements and the Cargo Facility the Contractor must obtain the following insurance:

(i) *Workers Compensation and Employers Liability.* Workers Compensation, as prescribed by applicable law covering all employees who are to provide a service to the Property under this Lease and Employers Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) for each accident, illness or disease.

(ii) *Commercial General Liability (Primary and Umbrella).* Commercial General Liability Insurance or equivalent with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: all premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, separation of insured, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City and its managers, members, officers, and agents and employees shall be named as an additional insured under the policy. Such additional insured status shall be provided on ISO form CG 2038 for ongoing operations and CG 2037 or equivalent after project completion or a similar additional insured form acceptable to the City. The additional insurance coverage must not have any limiting endorsements or language under the policy such as, but not limited to, Contractor's sole negligence or the Additional Insured's vicarious liability, except as stated in CG2038. Contractor's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Subcontractors performing work for the Contractors must maintain limits of not less than Five Million Dollars (\$5,000,000) for access to the Airside and Two Million Dollars (\$2,000,000) for access to the Landside, and otherwise containing the same terms as set forth in this Section 7.2(b)(ii).

(iii) *Automobile Liability* (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractors must provide Automobile Liability Insurance with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury and property damage, including an MCS90 endorsement, when applicable. The City is to be named as an additional insured on a primary non-contributory basis.

Subcontractors performing work for the Contractors must maintain limits of not less than Five Million Dollars (\$5,000,000) for access to the Airside and Two Million Dollars (\$2,000,000) for access to the Landside, and otherwise containing the same terms as set forth in this Section 7.2(b)(iii).

(iv) *Builder's Risk*. The Contractor or the Tenant must provide All Risk Builder's Risk Insurance at replacement cost of the Improvements. The policy must include but not be limited to 1) coverage for all materials, equipment, machinery, fixtures, and labor, reasonable overhead and profit, and forms, form work and temporary structures to be "used up" in the construction, 2) coverage for loss arising out of testing, including "hot" testing, resulting damage arising out of error or omission in design, plans or specifications, and resulting damage arising out of faulty or defective workmanship or materials, freezing, and collapse coverage, 3) permission for use or occupancy of the Leased Premises while insured by the policy, 4) off-premises utility interruption and changes in ordinances or laws and resulting increased cost of construction, 5) off-premises storage of materials, materials in-transit to the job-site and extra expense, 6) flood and earthquake coverage and 7) debris removal. The City is to be included as a loss payee as its interests may appear.

The Contractors are responsible for all loss or damage to personal property (including, but not limited to, material, equipment, tools and supplies) owned, rented or used by the Contractor.

The Contractors are responsible for all loss or damage to the City's property at full replacement costs that results from the work.

(v) *Professional Liability*. When any architects, engineers, construction/project managers or other professional consultants perform work for the Property subject to this Lease, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than Two Million Dollars (\$2,000,000). When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work on this Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(vi) *Valuable Papers*. The Tenant will obtain and maintain Valuable Papers Insurance when any plans, designs, drawings, specifications and

documents are produced or used under this Lease and owned by the Tenant, Valuable Papers Insurance shall be maintained in an amount to insure any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

(vii) *Contractors Pollution Liability.* When any remediation work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from work performed with limits of not less than One Million Dollars (\$1,000,000) per occurrence. Coverage must include underground storage tanks, completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work under this Lease. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City is to be named as additional insured.

(c) *Insurance to be Provided by Cargo Facility Space Tenants.* During the Term of this Lease, and while there are Cargo Facility Space Tenants operating or occupying any portion of the Cargo Facility under Cargo Facility Space Leases or otherwise, each Cargo Facility Space Tenant must obtain the following insurance:

(i) *Workers Compensation and Employers Liability.* Workers Compensation Insurance, as prescribed by applicable law covering all employees of the Cargo Facility Space Tenants who are to provide a service to the property subject to the Cargo Facility Space Leases and Employers Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) for each accident, illness or disease.

(ii) *Commercial General Liability (Primary and Umbrella).* Commercial General Liability Insurance or equivalent with limits of not less than: (A) Two Hundred Million Dollars (\$200,000,000) per occurrence for bodily injury, personal injury, and property damage liability for Cargo Facility Space Tenants operating aircraft at the Airport; and (B) Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury and property damage liability for Cargo Facility Space Tenants not operating aircraft at the Airport. Coverages must include the following: All premises and operations, products/completed operations, explosion, collapse, underground, independent contractors, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City and its managers, members, officers, and agents and employees be named as an additional insured under the policy. Such additional insured status shall be provided on CG 2038 or a similar additional insured form. Cargo Facility Space Tenants liability insurance shall be primary without right of

contribution by any other insurance or self-insurance maintained by or available to the City.

(iii) *Automobile Liability (Primary and Umbrella)*. When any motor vehicles (owned, non-owned and hired) are used in connection with this Lease, the Cargo Facility Space Tenants must provide Automobile Liability Insurance with limits of not less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury and property damage.

(iv) *Personal Property*. The Cargo Facility Space Tenants are responsible for all loss or damage to personal property (including but not limited to material, equipment, tools and supplies), owned, rented, or used by Cargo Facility Space Tenants.

*Section 10. Amendments to Section 7.3 of the Original Phase I Lease.* Section 7.3 of the Original Phase I Lease is hereby amended to delete Section 7.3 in its entirety and to replace it with the following:

*Section 7.3. Other Provisions.*

(a) The Tenant and the Contractors must furnish the City, the Department of Finance, Risk Management Office, 333 South State Street, Room 400, Chicago, Illinois 60604, and the Department of Aviation, Real Estate and Finance Division, O'Hare Airport, 10510 West Zemke Road, Chicago, Illinois 60666, original Certificates of Insurance and all applicable endorsements evidencing the required coverage to be in force on the date of this Lease, and renewal certificates of insurance and endorsements, or such similar evidence, if the coverages have an expiration or renewal date during the term of this Lease. The Tenant and the Contractors must submit evidence of insurance on the Insurance Certificate of Coverage Form, a copy of which form is attached hereto as *Exhibit F* (or other equivalent form) upon its execution of this Lease. The receipt of any certificate does not constitute an agreement by the City that the insurance requirements in the Lease have been fully met, or that the insurance policies indicated on the certificate are in compliance with all requirements set forth in this Lease. The failure of the City to obtain certificates or other insurance evidence from the Tenant and the Contractors must not be deemed to be a waiver by the City of any requirements for the Tenant or the Contractors to obtain and maintain the specified coverages. The Tenant and the Contractors must advise all insurers of the provisions of this Lease relating to required to insurance coverages. Non-conforming insurance must not relieve the Tenant and the Contractors of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Lease, and the City retains the right to stop work until the proper evidence of insurance is provided or terminate this Lease as provided in Article 9 of this Lease.

(b) The Tenant must provide 60 days prior written notice to be given to the City and the Contractors must provide 30 days written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed (10 days if cancellation is due to non-payment of premium).



(c) Any deductibles or self-insured retentions on referenced insurance coverages must be borne by the Tenant and each of the Contractors.

(d) The Tenant hereby waives and agrees to require its insurers to waive their rights of subrogation against the City, its employees, elected officials, agents, and representatives. The Contractors will also be required to waive their rights of recovery against the City, its employees, elected officials, agents and representatives and will require their insurers to waive subrogation rights or give their respective insureds permission to waive their recovery rights in writing prior to a loss.

(e) The coverages and limits furnished by the Tenant and the Contractors in no way limit the Tenant's and Contractors' liabilities and responsibilities specified within this Lease or by law.

(f) If the Tenant maintains higher limits than the minimums shown above, the City requires, and shall be entitled to, coverages for the higher limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverages shall be available to the City.

(g) Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by the Tenant and the Contractors under the Lease.

(h) The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Lease or any limitation placed on the indemnity in this lease given as a matter of law.

(i) If the Tenant or any of its Contractors are a joint venture or limited liability company, the insurance policies must include the joint venture or limited liability company as a named insured.

(j) The Tenant and the Contractors must require all subcontractors to provide the insurance required herein, or the Tenant and the Contractor may provide the coverages for the subcontractors. All subcontractors are subject to the same insurance requirements of the Tenant and the Contractors unless otherwise specified in this Lease. The Tenant and the Contractors must ensure that the City is an additional insured on such insurance required from subcontractors, for which the additional insured status for the City is a specified requirement.

(k) If the Tenant and the Contractors or subcontractors desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

(l) Notwithstanding any provision in this Lease to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change the insurance requirements set forth in this Lease, with reasonable prior notice to, and consent of, the Tenant (which consent will not be unreasonably withheld, conditioned or delayed); provided, however, no such modification, deletion, alteration or change shall increase the amount of insurance coverage required by this Lease.

*Section 11. Casualty Provisions.* Section 7.4(b)(ii) of the Original Phase I Lease is hereby amended to delete the reference to the term "Construction Escrow Agreement" and replace it with the term "Casualty Restoration Escrow Agreement".

*Section 12. City Notice Provisions.* Section 15.01(a) of the original Phase I Lease is hereby amended to delete Section 15.01(a) in its entirety and to replace it by the following:

(a) To the City to the attention of the following:

City of Chicago  
Office of Chief Financial Officer  
Room 700  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Chief Financial Officer

with copies to:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Commissioner of Department of Aviation

and:

City of Chicago  
Department of Aviation  
10510 West Zemke Road  
Chicago, Illinois 60666  
Attention: Deputy Commissioner of Real Estate

and

City of Chicago  
Department of Law  
30 North LaSalle Street, Suite 1400

Chicago, Illinois 60602  
Attention: Deputy Corporation Counsel, Aviation, Environmental,  
Regulatory and Contracts Division  
Facsimile No.: 312-742-3832

*Section 13. Amendment of Phase I Leased Premises.* Exhibit A to the Original Phase I Lease is hereby amended to delete in its entirety Exhibit A as set forth in the Original Phase I Lease and to replace it with the Exhibit A attached to this Amendment.

*Section 14. Amendment of Exhibit B-1.* Paragraph 2(c) of Exhibit B-1 to the Original Phase I Lease is hereby amended to delete the term “*unavoidable*” in the second grammatical sentence of Paragraph 2(c) and replace it with the term “*unavailable*”.

*Section 15. Continuing Validity.* Except as expressly amended by this Amendment, the terms and provisions of the Original Phase I Lease, as modified hereby, are hereby ratified and reaffirmed by the Tenant and the City, and shall continue in full force and effect. The Tenant and the City agree that the Original Phase I Lease, as modified hereby, shall continue to be legal, valid, binding and enforceable in accordance with its terms.

*Section 16. Representations and Warranties.* The Tenant represents and warrants to the City as follows:

(a) All of the representations and warranties of the Tenant set forth in the Original Phase I Lease remain in full force and effect as if made on the date of this Amendment; no event of default under the Amended Lease has occurred and is continuing; the Amended Lease may be enforced in accordance with their terms by the City against the Tenant; the Tenant claim no defense or counterclaim against the City in connection with the enforcement of the Amended Lease and have no other claim against the Lender; and all of the statements set forth in the "Recitals" herein above are true and correct.

(b) The Tenant has full power and authority to execute, deliver and perform this Amendment and any other documents and agreements executed herewith. This Amendment and any other documents and agreements executed herewith are the legal and binding obligations of the Tenant enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

(c) No litigation, investigation or governmental proceeding is pending or, to the knowledge of the Tenant, threatened against or affecting them in any way.

(d) The execution, delivery and performance of this Amendment and the consummation of the transactions hereby contemplated will not conflict with any law, statute or regulation to which the Tenant is subject or any judgment, license, order or permit applicable to the Tenant or any indenture, mortgage, deed of trust or other instrument to which the Tenant is subject; and no consent, approval, authorization or order of any court, governmental authority or other person is required in connection with the execution, delivery or performance of this Amendment by the Tenant.

*Section 17. Miscellaneous.*

(a) Time. Time is of the essence of each provision of this Agreement.

(b) Survival. All representations and warranties of the parties contained in this Amendment will survive the execution and delivery of this Amendment.

(c) Binding Effect. This Amendment will inure to the benefit of and bind the respective successors and permitted assigns of the parties.

(d) Severability. If any provision of this Amendment is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this Amendment will not be affected thereby. It is the intention of the parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

(e) Headings. The headings used in this Amendment are for ease in reference only and are not intended to affect the interpretation of this Agreement in any way.

(f) Amendment. Neither this Amendment nor any of the provisions hereof can be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(g) Ratification. This Amendment supersedes, in all respects, all prior written or oral agreements between the Tenant, and the Lender relating to the modification of the Original Phase I Lease and there are no agreements, understandings, warranties or representations between the parties except as set forth herein.

(h) No Joint Venture. Nothing contained in this Amendment or in the Original Phase I Lease will be construed to constitute the City as a joint venturer with the Tenant or to constitute a partnership with the Tenant.

(i) Construction. The parties acknowledge that each party and each party's counsel have reviewed and revised this Amendment and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Amendment or any amendments, exhibits or schedules hereto.

I (j) Counterparts. This Amendment may be executed in one or more counterparts, of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

(k) Applicable Laws. This Amendment shall be construed in accordance with the internal laws of the State of Illinois.

(l) Final Agreement. The Original Phase I Lease, as modified hereby, represents

the entire expression of the parties with respect to the subject matter hereof on the date this Amendment is executed. The Original Phase I Lease, as modified hereby, may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten agreements between the parties. No modification, rescission, waiver, release or amendment of any of the provisions of this Amendment shall be made except by a written agreement signed by the City and the Tenant.

[ SIGNATURE PAGES TO FOLLOW ]

IN WITNESS WHEREOF, the City has caused this Amendment to be executed on its behalf by the Mayor of the City of Chicago and attested by the City Clerk of the City of Chicago, pursuant to due authorization of the City Council, and the Tenant has caused this instrument to be executed on its behalf by its constituent members and managing members.

CITY OF CHICAGO

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk  
  
(Corporate Seal)

EXECUTION OF THIS LEASE BY THE CITY OF CHICAGO  
IS RECOMMENDED BY THE COMMISSIONER OF THE  
CHICAGO DEPARTMENT OF AVIATION

By: \_\_\_\_\_  
Commissioner of the Chicago  
Department of Aviation

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Chief Assistant Corporation Counsel

Illinois agent for service of process:

AERO CHICAGO, LLC, a Delaware limited liability company

By: NE CARGO CHICAGO, LLC  
Its Managing Member

Name: CT Corporation System  
Address: 208 South LaSalle Street  
Suite 814  
Chicago, Illinois 60604

By: CALEAST AIR CARGO  
INVESTORS, LLC  
Its Managing Member

By: CALEAST INDUSTRIAL  
INVESTORS, LLC  
Its Sole Member

By: \_\_\_\_\_  
Name: John Saer  
Title: President

EXHIBIT A TO  
AMENDMENT TO AERO CHICAGO, LLC  
PHASE I CARGO FACILITY LEASE

LEGAL DESCRIPTION OF PHASE I LEASED PREMISES

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE NORTHEAST 1/4 AND THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2 OF ROSEMONT O'HARE, BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHEAST QUARTER AND PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 10, 2006 AS DOCUMENT NUMBER 0628327021, SAID POINT OF COMMENCEMENT ALSO BEING THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF THE NORTHWEST TOLLWAY (I-90) WITH THE WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 32, THENCE SOUTH  $00^{\circ} 15' 53''$  EAST ALONG THE WEST LINE OF SAID LOT 2, ALSO BEING ALONG SAID WEST LINE OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 32, A DISTANCE OF 263.07 FEET TO A BEND POINT, SAID BEND POINT BEING THE NORTHWEST CORNER OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 32; THENCE SOUTH  $00^{\circ} 20' 59''$  EAST, ALONG SAID WEST LINE OF LOT 2, ALSO BEING ALONG THE WEST LINE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 32 AND THE SOUTHERLY EXTENSION OF SAID LINES, 2764.13 FEET TO THE POINT OF BEGINNING; THENCE NORTH  $89^{\circ} 42' 17''$  EAST, 173.78 FEET; THENCE SOUTH  $00^{\circ} 16' 36''$  EAST, 745.68 FEET; THENCE SOUTH  $89^{\circ} 46' 51''$  WEST, 1.58 FEET, TO A POINT ON A NON-TANGENT CURVE; THENCE SOUTHWESTERLY ALONG A CURVE WHOSE CENTER LIES WESTERLY AND HAS A RADIUS OF 48.42 FEET, 75.99 FEET, ARC, (CHORD BEARING SOUTH  $44^{\circ} 44' 34''$  WEST, 68.43 FEET, CHORD), TO A POINT OF TANGENCY; THENCE SOUTH  $89^{\circ} 42' 17''$  WEST, 1468.37 FEET; THENCE SOUTH  $08^{\circ} 50' 30''$  EAST, 1.59 FEET, TO A POINT ON A NON-TANGENT CURVE; THENCE SOUTHWESTERLY ALONG A CURVE WHOSE CENTER LIES SOUTHERLY AND HAS A RADIUS OF 141.58 FEET, 102.45 FEET, ARC, (CHORD BEARING SOUTH  $60^{\circ} 25' 46''$  WEST, 100.23 FEET, CHORD); THENCE SOUTH  $89^{\circ} 42' 17''$  WEST, ALONG A LINE NON-TANGENT TO THE LAST DESCRIBED COURSE, 222.72 FEET; THENCE NORTH  $50^{\circ} 47' 24''$  WEST, 406.98 FEET; THENCE NORTH  $39^{\circ} 12' 36''$  EAST, 693.57 FEET; THENCE NORTH  $89^{\circ} 42' 17''$  EAST, 1588.90 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.





OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

May 18, 2016

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Aviation, I transmit herewith an ordinance authorizing an amendment to a cargo facility lease with Aero Chicago.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor



**MICHAEL R. ZALEWSKI**

**ALDERMAN, 23RD WARD  
6247 SOUTH ARCHER AVENUE  
CHICAGO, ILLINOIS 60638  
TELEPHONE: (773) 582-4444  
MZALEWSKI@CITYOFCHICAGO.ORG**

## **CITY COUNCIL**

**CITY OF CHICAGO**

**COUNCIL CHAMBER  
CITY HALL SECOND FLOOR  
121 NORTH LA SALLE STREET  
CHICAGO, ILLINOIS 60602  
TELEPHONE: 312-744-6828  
FAX: 312-744-1024**



## **COMMITTEE MEMBERSHIPS**

**AVIATION  
(CHAIRMAN)**  
**BUDGET & GOVERNMENT OPERATIONS**  
**HEALTH & ENVIRONMENTAL PROTECTION**  
**RULES & ETHICS**  
**ECONOMIC, CAPITAL & TECHNOLOGY  
DEVELOPMENT**  
**WORKFORCE DEVELOPMENT & AUDIT**  
**FINANCE**

June 22, 2016

To the President and Members of the City Council:

Your Committee on Aviation begs to leave report and recommend that your Honorable Body pass the proposed ordinance(s) transmitted herewith.

A meeting was held on June 15, 2016 in Room 201 A at City Hall to consider the following ordinance:

**O2016-3928 Amendment to Phase 1 cargo facility lease with Aero Chicago LLC at Chicago O'Hare International Airport.  
Emanuel (Mayor)**

This ordinance was passed unanimously by a viva voce vote of the members.

Respectfully submitted,

**Michael R. Zalewski  
Chairman,  
Committee on Aviation**

APPROVED  
*Joseph R. Falk*  
CORPORATION COUNSEL

APPROVED  
*Kathleen Egan*  
6/24/16  
MAYOR