

September 30, 2016

**BY EMAIL AND OVERNIGHT MAIL**

Joe Hebert  
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Dear Mr. Hebert:

The City of Atlanta (“City”), as owner and operator of Hartsfield-Jackson Atlanta International Airport (the “Airport” or “ATL”), previously submitted to the FAA an initial competition plan as required by Section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. 106-181, as well as two updates as required by FAA policy, all of which have been approved. The FAA approved the City’s last competition plan update on May 10, 2011.

Earlier this year, the City reached an agreement with the airlines serving the Airport on the form of a new Airport Use and Lease Agreement (“AULA”). Apart from certain provisions which took effect as of July 1, 2016 and allow the City to commence a \$6.2 billion capital improvement program that includes construction of 15 new gates, the new agreement will not go into effect until October 1, 2017. The City is currently in the process of executing the AULA with the each of the signatory airlines, which triggers the need to submit an update to the City’s competition plan.

The City understands that in order to satisfy FAA’s competition plan update requirements, we must: (A) submit a copy of the new AULA; (B) provide a written description of the changes in lease terms; (C) if the City has not followed a recommendation from FAA in its review of the City’s preceding competition plan update, explain how it achieves the same result as the FAA’s recommended practice and respond to any other questions raised by FAA; and (D) make its update publicly available in accordance with 49 USC § 47107(a)(15). This letter addresses each of these requirements.



As detailed below, the new AULA contains numerous changes from and enhancements to the existing agreements that will foster competition and growth at ATL. This includes improvements in the City's ability to accommodate new entrants and incumbent expansion, optimize utilization of its passenger terminal facilities, and control capital investments at the Airport. We are confident that the FAA will concur that these enhancements will improve the competitive landscape at the Airport.

#### **A. Copy of the New AULA.**

There are two forms of the new AULA. Signatory Airlines have the option of signing a new AULA with a 5-year or a 20-year term. A copy of each is attached. The airlines' rights under these agreements are identical, except that those airlines that are willing to make a 20-year commitment to the Airport have the right to participate in Majority-in-Interest ("MII") votes on certain new capital projects and also have the right to retain their preferential use gates (and other leased terminal facilities) for the full 20-year term (subject to the gate recapture and accommodation provisions that are summarized in Section B.1, below). Airlines that execute the 5-year AULA will not participate in MII votes nor have the right to retain their leased premises for more than five years.

These two options give airlines that are unwilling or unable to make a 20-year commitment the ability to obtain Signatory Airline status, with all of its attendant benefits (including revenue sharing). Airlines that make the 20-year commitment receive a commensurate right to use the leased facilities for the entire term. The MII rights also provide reasonable protections against long-term financial risk without unduly constraining the City's ability to make capital improvements (see Section B.6, below).

#### **B. Changes Since the Last FAA Approval**

The existing AULA is actually two separate agreements, one for the use of the airfield that was originally executed in 1967 and another for the lease and use of the Central Passenger Terminal Complex that was originally executed in 1977 and most recently amended and restated in 2010 ("Existing Agreements"). There are different forms of agreements for hubbing airlines, non-hubbing airlines and airlines using only the international terminal. The Existing Agreements are all set to expire on September 20, 2017.

The City and the airlines took advantage of the opportunity presented by a new agreement to consolidate and modernize their agreements. The Existing Agreements have been consolidated into a single AULA that applies to all airlines, whether hubbing or non-hubbing, domestic or international.

As detailed below, after extensive negotiations with all of the airlines serving ATL, the new AULA includes a number of new provisions aimed at increasing capacity at the Airport, optimizing the efficient use of terminal facilities, and promoting competition.

As a result, the new AULA enhances opportunities for new entrants to provide service and for incumbents to expand their operations at the Airport.

To facilitate the FAA's review, the City is presenting its description of the new AULA following the format and categories listed in FAA Order 5100.38D, Table X-3.

## **1. Availability of Gates and Related Facilities**

The basic structure of gate use rights at ATL remains unchanged: there will be Preferential Use Gates in the domestic concourses, Common Use Gates with Priority Use Rights in the international concourses, and Common Use Gates in both the domestic and international concourses. There will be no exclusive use gates. *See* AULA Section 4.02 and related definitions. However, the City and the airlines have agreed to a number of provisions that will improve the City's ability to maximize gate utilization and to make gates available for use by new entrants and the expansion of incumbents:

### *Accommodation on Preferential Use Gates (AULA Sections 5.03.D-F):*

The new AULA clarifies, streamlines and strengthens the rights of the City to accommodate airlines on Preferential Use Gates. Under the Existing Agreements, an airline seeking accommodation on another airline's Preferential Use Gates was required to first reach out to all Signatory Airlines before turning to the City and seeking forced accommodation. While this was an incremental improvement from the previous arrangement, the City and airlines agreed that that the accommodation provisions could be improved.

Under the new AULA, a requesting airline may go directly to the City and request accommodation. If a Common Use Gate or a Common Use Gate with Priority Use Rights is unavailable and the Signatory Airlines do not voluntarily accommodate the requesting airline, then the City has the right to accommodate that airline on a Preferential Use Gate if a gate is available. The requesting airline that is accommodated will retain its right to use the gate during the scheduled time until the requesting airline discontinues the flight or a Common Use Gate or Common Use Gate with Priority Use Rights becomes available. The requesting airline cannot be displaced by the accommodating airline altering its flight schedule.

The new AULA further streamlines the process by eliminating the need for requesting and accommodating airlines to negotiate and execute a separate agreement. Instead, issues such as the requesting airline's insurance requirements and indemnification of the accommodating airline are addressed in the agreements that those airlines have with the City (either the AULA or an operating agreement). Moreover, the fee for accommodation is set by the AULA, not the accommodating airline. The fee is equal to City's charge for use of a Common Use Gate with no premium or administrative add-on charge.

*Recapture of Preferential Use Gates (AULA, Section 5.03.C):*

The new AULA retains recapture rights in the event that an airline is underutilizing its gates. The Minimum Gate Utilization Standard is 600 departing seats/day/gate and applies to all Preferential Use Gates (the Existing Agreements contains different standards for hubbing and non-hubbing airlines). A uniform standard ensures that all airlines are treated similarly and that all gates are being fully utilized. Additionally, the Minimum Gate Utilization Standard is calculated to take into account relative gate size using a concept called Standard Aircraft Gate Equivalents or SAGE. SAGE provides for an effective weighting of each gate based on the aircraft utilizing that gate, ensuring gates accommodating smaller or larger equipment are treated fairly in the utilization calculation.

*Common Use Gates:*

The City and the airlines both understand the need to increase and maintain the availability of Common Use Gates at ATL. As the most traveled airport in the world, with passengers exceeding 100 million in 2015, ATL faces unique challenges in balancing the need for common use availability with the reality of serving existing demand. The City considered short-term solutions such as taking away fully utilized Preferential Use Gates from incumbents and converting them to Common Use Gates. Since the City would then have to use the new common use gates to accommodate the airline they were just taken from (or lose the flights) the City determined that this was not fair, effective or in the best interests of the City and the travelling public. Instead, long-term solutions to build new gates were needed. The new AULA accomplishes this in several ways:

- The parties adopted a unique provision that allows the City to build additional Common Use Gates any time available capacity on Common Use Gates falls below a certain threshold (the City Common Use Gate Requirement). The City Common Use Gate Requirement is triggered if the City has three or fewer Common Use Gates with average utilization that goes over 300 departing seats/day. This threshold acts as an early warning system, signaling that the City's Common Use Gates are trending towards full utilization. It gives the City time to build additional gates before reaching full capacity on the existing Common Use Gates (*AULA, Section 11.02.A.8*). The City is unaware of any similar provision in another airport-airline agreement and believes that it provides a powerful tool for the City to achieve its common use goals.
- The City has the right to immediately begin the process of constructing a new concourse, Concourse G, which will add 10 new gates to the Airport (*AULA, Exhibit D, Pre-approved Projects*).

- The City reaffirmed its right to build five new gates with the Concourse T expansion and, recapture gates on other concourses made available by air carriers moving to the new Concourse T gates(*AULA, Section 5.03.B(2)*).

*Common Use Gates with Priority Use Rights:*

The City has expressly made Common Use Gates with Priority Use Rights available to all carriers on a non-discriminatory basis. The new AULA also includes express recapture provisions that will allow the City to recapture Common Use Gates with Priority Use Rights and convert them to pure Common Use Gates. Finally, the new AULA clarifies the City's right to utilize Common Use Gates with Priority Use Rights at any time they are not being utilized by the priority use right holder. Both Common Use Gates and Common Use Gates with Priority Use Rights are subject to the City's Common Use Regulations (which are separate from the AULA and, as a result, can be revised without potential veto by individual Signatory Airlines).

**2. Leasing and Subleasing Arrangements**

The new AULA does not materially change subleasing arrangements. The City continues to have the right to review and approve all subleases, which will allow the City to prevent sublease arrangements that are unfair or anti-competitive (*AULA, Section 20.01.A*). Moreover, the City is confident that the new, streamlined accommodation provisions described above will provide a viable alternative to voluntary accommodation. This alternative will give airlines more incentive to voluntarily accommodate new entry and expansion on reasonable terms.

**3. Gate Use Requirement**

The relevant changes to gate use requirements have been summarized in Section B.1, above.

**4. Gate Assignment Policy**

The new AULA does not materially change gate assignment policies. In the international terminal, the priorities for assignment by the City on Common Use Gates and Common Use Gates with Priority Use Rights have been preserved (*AULA, Section 6.01.A*).

As noted above, the general rules for Common Use Gate assignment and priorities will remain in the Common Use Regulations. The City anticipates revising the current Common Use Regulations prior to October 1, 2017 when the new AULA gate provisions will take effect.

The priorities for selecting accommodation on Preferential Use Gates have been clarified so that an objective measure, gate utilization, is the primary consideration while other,

supplemental considerations (such as flight schedules, type of gate and hub connectivity) have been carried over from the existing agreements (*AULA, Section 5.03.E(3)*).

## **5. Financial Constraints (see generally Title VIII)**

Rates and charges have been greatly simplified under the new AULA. The existing agreements contain a number of complicated formulas for airfield and terminal charges. These cumbersome provisions have been largely eliminated.

For use of the airfield, there is a single landing fee. While non-signatory airlines pay a premium, it is nominal (5%). The primary change in the terminal is the use of equalized rental rates: all airlines will pay the same rental rate no matter which concourse they utilize. The airlines bear the risk of vacancy throughout most of the terminal (including all airline rentable space and concessions space). The City will also recover costs, such as certain police and fire costs, that it has not recovered from the airlines in the past. On balance, the new rates and charges are easier to understand, more consistent with contemporary industry practice and favorable to the City.

The new methodology produces higher rates and charges. To partially offset this, the new AULA uses revenue sharing to strike a reasonable balance between retaining sufficient revenues to support the City's ability to maintain and build new airport capacity and the airlines' concerns over increased costs. Revenue sharing was designed to ensure that the City would retain enough revenues to fund its portion of the \$6.2 billion capital improvement plan that has been pre-approved by the airlines (see Section B.6 below) and also retain substantial revenues that the City may use to fund additional projects during the term as the need arises. The City will share a higher proportion of net revenues with the airlines during the first few years of the new agreement to smooth the transition to the new rate structure. The revenue share will be in the form of a concessions revenue credit (in recognition of the airlines' commitment to take on vacancy risk in that space) and a per-passenger credit. However, starting in Fiscal Year 2022 when the capital improvement program ramps up, the revenue share will be reduced (from 70% to 50% of concessions revenue and from \$0.60 to \$0.40 for the per-passenger credit) in order to preserve the ability of the City to pay for its share of the program.

The City has also agreed to share "excess funds" (funds in the City's Renewal and Extension ("R&E") Fund over \$150 million) with the airlines in the event that, after the City has funded all core airport operations projects (including aeronautical facilities, cargo facilities, airport safety and security projects, parking and roadways), it will share a portion of remaining funds with the airlines (the "R&E Fund Credit"). This balances the airlines' concerns over costs with the City's desire to fund non-core commercial development projects such as hotels and office parks that enhance the City's ability to be self-sustaining. All forms of revenue sharing are capped by various constraints to ensure that the City retains sufficient revenues to meet its obligations and financial goals.

Although leased space has been the primary driver for revenue sharing under the existing agreement, the new agreement will utilize enplaned passengers as the basis for calculating and distributing the revenue share to the airlines. Passengers are the primary driver of non-aeronautical revenues and sharing on this basis rewards those carriers that maximize revenues at the Airport.

## **6. Airport Control over Capacity**

The new AULA will make it possible for the City to embark on a \$6.2 billion capital improvement program at ATL while substantially enhancing the City's control over the capital program through increased MII exemptions and a streamlined project implementation process.

### *Pre-Approved and Exempt Capital Improvement Program (AULA, Exhibits D and P)*

Through the new AULA, the airlines have either approved or exempted from MII review a \$6.2 billion capital improvement program that includes, among other projects:

- The construction of the T-North gates;
- The construction of a new Concourse G, which will add 10 new gates;
- The construction of a new sixth runway;
- Annual allowances for capital renewal and replacement in the airfield and terminals ranging from \$3.5 million to \$46.7 million a year; and
- Substantial renovation and expansion of public parking facilities.

### *MII Exemptions (AULA, Section 11.02)*

The new AULA also clarified and expanded the projects that are exempt from MII review, including the following:

- As required by 49 U.S.C. § 40117(f), projects to the extent such the project is financed by PFCs or PFC-backed bonds;
- Projects funded by the City that will not increase the airline rate-base;
- Each year, up to three projects with less than an aggregate of \$15 million in airline rate-based capital costs (escalated over the term of the agreement);
- Mandated and emergency repair projects;
- Projects necessary to enhance terminal capacity in order to meet current or reasonably anticipated demand for additional terminal space or related facilities if financed by an air carrier or through PFCs or City funds; and
- Projects necessary to meet the City Common Use Gate Requirement (*see* Section B.1 above).

### *Airline Review of Additional Capital Improvement Projects and Capital Improvement Project Implementation (AULA, Sections 11.03 and 11.04)*

The new AULA has a “negative MII” instead of a “positive MII” that will streamline the MII process and make it easier for the City to move forward with new proposals that require MII review.

The new AULA retains project review procedures under the existing AULA that have provided for meaningful and efficient airline input into the implementation of capital improvement projects. However, the new agreement limits further MII review to instances where project changes will materially increase airline rate-based costs, the scope of the project has changed so that defined project objectives cannot be met or the City proposes to accelerate the beneficial date of occupancy (and, therefore, the date that the project costs will hit the airline rate base).

The new AULA also removed a potential bottleneck in the project review committee structure. The process could have been interpreted as allowing a single airline to block approved projects in the event of a dispute over project changes. If that occurs under the new AULA, the changes will be sent out for an MII vote.

### **C. Response to FAA Recommendations Not Followed by the City and Questions Raised by FAA in the Prior Competition Plan Approval**

The City and the airlines serving ATL last amended and extended the existing agreements in 2009 and 2010. The City discussed the amendments extensively with the FAA before and after submitting competition plan updates. As reflected in FAA’s approval of the updates, the City responded satisfactorily to all questions raised by FAA and adopted or otherwise addressed to FAA’s satisfaction all of the FAA’s recommendations.

The new AULA in many ways improves upon all of the provisions that previously raised concerns for FAA, including the City retaining substantial revenues to support capital investment, the development of an innovative, long-term solution to the problem of common use gate availability (the City Common Use Gate Requirement), improving the ability of the City to accommodate requesting airlines on Preferential Use Gates, and retaining and improving gate recapture provisions which will ensure that Preferential Gates are being fully utilized or, if not, returned to the City.

### **D. Public Availability**

The AULA and this document are posted at [www.atl.com](http://www.atl.com) under the following link:  
<http://www.atl.com/business-information/real-estate>



The City appreciates the time and effort that FAA has already spent discussing the new AULA with the City. Please let me know if you have any questions about this competition plan update. We look forward to FAA's approval. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Smith". The signature is stylized and cursive.

Michael L. Smith, Esq.  
Deputy General Manager

cc: Andrea Toney, FAA Headquarters  
Steve Hicks, FAA Airport District Office  
Aimee McCormick, FAA Airport District Office  
Troy Butler FAA Airport District Office  
Dan Gordon, Chief Operating Officer  
Roosevelt Council, Interim Aviation General Manager  
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