

1.	INTRODUCTION.....	1
1.1.	Statement of Policy.....	1
1.2.	General Provisions and Definitions.....	1
1.3.	Conflicts with Existing Agreements	1
2.	LEASING LAND OR IMPROVEMENTS	2
2.1.	Application	2
2.2.	Approval Process	2
2.3.	Competitive Proposal Process.....	3
2.4.	Demonstrating Immediate Need.....	5
2.5.	Public Disclosure.....	5
3.	AGREEMENTS.....	6
3.1.	General/Introduction.....	6
3.2.	Use of Leased Premises	6
3.3.	Subleasing.....	7
3.4.	Transfer of Interest.....	8
3.5.	Term	9
3.6.	Improvements	10
3.7.	Responsibilities	11
3.8.	Condemnation.....	11
3.9.	Relocation.....	12
4.	RENTS AND FEES.....	13
4.1.	General/Introduction.....	13
4.2.	Establishment of Fair Market Rents	13
4.3.	Adjustment of Rents.....	15
4.4.	Establishment and Adjustment of Fees	15
4.5.	Payment of Rents, Fees, or Other Charges	16
4.6.	Bookkeeping and Records	17
5.	APPENDIX.....	18
5.1.	Establishment of Fair Market Value.....	18
5.2.	Appraiser Qualifications	18
5.3.	Dispute Resolution	19

1. INTRODUCTION**1.1. Statement of Policy**

- 1.1.1. This Lease/Rates and Charges Policy (Policy) sets forth the parameters for occupying or using Airport land and Improvements and outlines the process that will be used by the Municipalities, as the owners of the Chicago Executive Airport (Airport) and the Board, as the sponsor of the Airport, to establish and adjust the rents, fees, or other charges associated with such occupancy or use.
- 1.1.2. Any entity wishing to occupy or use Airport land and/or Improvements at the Airport shall be given a reasonable opportunity to compete, without unjust discrimination, for the occupancy or use of available Airport land or Improvements subject to the Primary Guiding Documents.
- 1.1.3. No entity shall occupy or use Airport land and/or Improvements at the Airport unless such entity has executed an Agreement with the Board authorizing such occupancy or use.
- 1.1.4. No entity shall engage in a Commercial Aeronautical Activity at the Airport unless the entity has obtained a Permit from the Airport Manager authorizing such Activity in accordance with the General Aviation Minimum Standards.
- 1.1.5. The right of use of the Airport infrastructure and any land and/or Improvements other than that leased exclusively to an Operator is non-exclusive.

1.2. General Provisions and Definitions

- 1.2.1. This Policy includes all provisions provided in the General Provisions and Definitions of the Primary Guiding Documents.
 - 1.2.1.1. The General Provisions and Definitions document can be obtained from the Airport Manager's office.

1.3. Conflicts with Existing Agreements

- 1.3.1. This Policy is not retroactive. This Policy shall not affect the current term or conditions of any existing Agreement properly executed prior to the date of adoption and approval of this Policy, unless provided for in the Agreement in which case this Policy shall be effective consistent with the Agreement.
 - 1.3.1.1. Within this Policy, *existing Agreements* refer to those Agreements that are currently in effect at the Airport and in which specific land and/or Improvements (Leased Premises) and/or Activities are defined and a termination date is specified.
 - 1.3.1.2. *New Agreements* refer to Agreements with: (1) entities who are not leasing land and/or Improvements and/or engaging in an Activity at the Airport on the date this Policy is adopted or (2) to new Agreements with an existing Operator for additional land and/or Improvements and/or Activities at the Airport.

2. LEASING LAND OR IMPROVEMENTS

2.1. Application

- 2.1.1. Any entity desiring to enter into an Agreement with the Board to occupy or use land or Improvements at the Airport shall submit a written application to the Airport Manager.
 - 2.1.1.1. Non-commercial Applicants need only to complete those portions of the application form relevant to the proposed occupancy of Airport land or Improvements.
 - 2.1.1.2. Operator shall notify the Airport Manager within a minimum of twelve months prior to the expiration date of the Operator's existing Agreement whether Operator desires to enter into a new Agreement (subject to the provisions of this Policy, the Primary Guiding Documents, or any other directives issued by the Municipalities or Board) or plans on allowing the existing Agreement to terminate upon the expiration date.
 - 2.1.1.2.1. If the Airport Manager does not receive notification from the Operator, the Airport Manager shall make the appropriate plans for the termination of the Agreement.
- 2.1.2. At the time of and as part of its application, the Applicant shall submit all of the information requested on the application form and, thereafter, shall submit any additional related information that may be required or requested by the Airport Manager in order to properly evaluate the application.
 - 2.1.2.1. A non-refundable application fee (as identified in the Airport's Rates and Fees Schedule) shall be submitted with application.

2.2. Approval Process

- 2.2.1. The application and all accompanying materials that are necessary to facilitate an analysis of the Applicant's proposal shall be submitted to the Airport Manager for review.
 - 2.2.1.1. Incomplete applications that do not provide the information necessary to make a meaningful assessment of the costs and the benefits of committing Airport land or Improvements to the Applicant shall be rejected.
 - 2.2.1.2. Applications that do not comply with the provisions of this Policy, the Primary Guiding Documents, and any other applicable directives of the Municipalities or Board shall be rejected.
 - 2.2.1.3. Applications that are inconsistent with the Master Plan, the Airport Layout Plan, the Airport Business Plan, other plans associated with the Airport, and/or are deemed not in the best interests of the Municipalities or Board shall be rejected.
 - 2.2.1.4. In addition, the application may be rejected for the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.
 - 2.2.1.5. If during the application process, another qualified entity submits an application for the same land and/or Improvements, the Airport Manager shall determine whether to negotiate with both entities or issue an RFP, in which case the Competitive Proposal Process described in this Policy under Section 2.3 shall be followed.
- 2.2.2. Within two months of receiving an application, the Airport Manager shall convey the terms and conditions that have been established (by the Board) for the occupancy or use of the land and/or Improvements at the Airport to the Applicant or convey to the Applicant the reasons for denying the application.
- 2.2.3. Within one month of receiving this information from the Airport Manager, the Applicant shall indicate whether or not the terms and conditions established (in accordance with this Policy, the Primary Guiding Documents, or any other directives issued by the Municipalities or Board) by the Board are acceptable to the Applicant.
- 2.2.4. If the terms and conditions presented by the Airport Manager are not acceptable, the Applicant shall present to the Airport Manager the terms and conditions that are acceptable to the Applicant.

- 2.2.4.1. If the terms and conditions can not be negotiated (are not acceptable to both parties) within three months from the time the information is presented to the Airport Manager by the Applicant, the Airport Manager may initiate the Competitive Proposal Process as described in this Policy under Section 2.3.
- 2.2.5. Once the Airport Manager and the Applicant have reached a Memorandum of Understanding regarding the key terms and conditions of the Agreement including, but not limited to, the identification of the land or Improvements that shall be leased or developed, the proposed investment, the length of the term, and the rents, fees, and other charges that shall be paid, the Applicant shall pay an earnest money deposit in an amount equal to ten percent (10.0%) of the total rents, fees, and other charges (total compensation) proposed to be paid to the Board in the first year of the proposed Agreement and submit a written letter of acceptance of the key terms and conditions of the Agreement as evidence of good faith to proceed with the preparation of the Agreement within one month of reaching a Memorandum of Understanding.
- 2.2.6. The Memorandum of Understanding, earnest money deposit, and written letter of acceptance shall then be submitted to the Board for review and approval.
- 2.2.7. Once the Memorandum of Understanding is approved by the Board, an Agreement shall be prepared by the Airport Manager for review by the Applicant.
 - 2.2.7.1. Once the Board accepts a Memorandum of Understanding, an earnest money deposit, and a written letter of acceptance from an Applicant during public session, the Airport Manager may not negotiate with any entity (other than the Applicant) and/or issue an RFP for the same land and/or Improvements.
- 2.2.8. Once the Applicant executes the Agreement, the Agreement shall be presented to the Board for approval.
 - 2.2.8.1. Once the Board approves the Agreement, the earnest money deposit shall be replaced by a security deposit in the form of cash or letter of credit in the amount equal to twenty five percent (25.0%) of the annual rents, fees, and other charges established by the Agreement.
 - 2.2.8.2. If the Board does not approve the Agreement, the earnest money shall be returned to the Applicant within 30 days.

2.3. Competitive Proposal Process

- 2.3.1. If land or Improvements are or become available at the Airport, the Airport Manager may issue a Request for Proposal (RFP) seeking competitive proposals from entities who wish to occupy or use such land or Improvements.
- 2.3.2. If an RFP is issued, the Airport Manager shall advertise the opportunity using local and industry mediums in accordance with established practices and legal requirements. The advertisement shall:
 - 2.3.2.1. Provide a description of the opportunity including identification of the land and/or Improvements that are available for occupancy or use and the products, services, and/or facilities that are required, permitted, and/or desired.
 - 2.3.2.2. Indicate if a qualifications based approach shall be used to evaluate proposals.
 - 2.3.2.3. Provide instructions to proposers for obtaining the RFP document.
 - 2.3.2.4. Identify the date, time, and place for submitting sealed proposals.
 - 2.3.2.5. State the Board's right to reject any and all proposals.
- 2.3.3. The Airport Manager may also, but is not obligated to, mail the RFP directly to those entities who have expressed interest, may be interested, or that the Board may wish to attract.

- 2.3.4. The RFP document shall (as appropriate):
 - 2.3.4.1. Provide an overview of the Airport, the market, and the opportunity (products, services, and/or facilities required and/or desired);
 - 2.3.4.2. Identify the location of the land and/or Improvements;
 - 2.3.4.3. Indicate the expected timeframe for occupancy or use of the land and/or Improvements;
 - 2.3.4.4. Outline the submission and selection process, state the proposer's responsibilities, and provide a schedule for the process;
 - 2.3.4.5. Provide instructions to proposers regarding the content and format of the proposal;
 - 2.3.4.6. Provide all required forms, statements, and affidavits;
 - 2.3.4.7. Provide a draft of the proposed Agreement;
 - 2.3.4.8. Convey the evaluation and/or selection criteria that will be utilized by the Board;
 - 2.3.4.9. Indicate if proposals will be evaluated based upon the qualifications and experience of the proposer and the proposed products, services, and/or facilities;
 - 2.3.4.10. Indicate that the proposer's financial plan including all proposed rents, fees, or other charges shall be provided under separate cover;
 - 2.3.4.11. Identify the minimum rent for the land and/or Improvements;
 - 2.3.4.12. Identify the minimum fees and charges for engaging in Aeronautical Activities at the Airport;
 - 2.3.4.13. State the grounds for denial or disqualification and withdrawal;
 - 2.3.4.14. Indicate the place, date, and time for submission of proposals;
 - 2.3.4.15. Indicate the place, date, and time the pre-proposal conference will be held;
 - 2.3.4.16. Require that a proposal bond or guarantee an the amount equal to ten percent (10%) of the total rents, fees, or other charges proposed to be paid to the Board in the first year of the proposed Agreement be submitted with the proposal.
 - 2.3.4.16.1. The proposal bond or guarantee shall be in the form and manner generally acceptable in the industry and acceptable to the Airport Manager and shall remain in effect for 180 days.
 - 2.3.4.17. Require that the prospective Operator complete all proposal forms, statements, and affidavits.
- 2.3.5. The RFP process, procedures, and requirements shall be discussed at the pre-proposal conference and prospective Operators shall be given the opportunity to ask questions or convey concerns to the Airport Manager during the conference.
 - 2.3.5.1. The RFP document shall be available for distribution at least two weeks prior to the date of the pre-proposal conference.
 - 2.3.5.2. Questions and answers exchanged during the pre-proposal conference shall be documented and distributed to all entities having received an RFP.
- 2.3.6. The Airport Manager will receive and open the proposals at the designated place, date, and time.
 - 2.3.6.1. The contents of the proposal will not be available for public review. Only the names of the prospective Operators will be made available to the public at the time the proposals are opened.
 - 2.3.6.2. Proposals received after the stated deadline will not be considered and will be returned unopened.
- 2.3.7. The Board will then review (for compliance with the RFP specifications), evaluate, and rank the proposals.
 - 2.3.7.1. The Board may require interviews with prospective Operators.
- 2.3.8. The Board has the right to reject any and all proposals, to advertise for new proposals, and to modify the proposal process.
 - 2.3.8.1. The Board shall be under no obligation to make any award or to make an award to the proposer specifying the highest compensation to the Board.

- 2.3.9. Upon completion of the review and evaluation process, the Board shall select the proposal that is in the best interest of the Board and Municipalities. The Board will then negotiate an Agreement with the selected prospective Operator utilizing the process beginning in Section 2.2.5 of this Policy. If an Agreement cannot be reached with the selected prospective Operator, in the sole discretion of the Board, the Board may negotiate with any other prospective Operator or reject all proposals.

2.4. *Demonstrating Immediate Need*

- 2.4.1. Any entity seeking to occupy or use land and/or Improvements at the Airport must demonstrate that the entire land area(s) and/or Improvement(s) seeking to be occupied or used will be Immediately utilized.

2.5. *Public Disclosure*

- 2.5.1. Applicants should be aware that the Municipalities, as governmental entities, are subject to Illinois Statute Chapter 5 Act 140/7 (Freedom of Information Act), which gives the public the right to examine documents of a government agency and observe the agency's public meetings.
- 2.5.1.1. However, if Applicants appropriately identify proprietary, privileged, or confidential trade secret and commercial or financial information provided to the Board that if disclosed may cause competitive harm, the Municipalities or Board shall not release such information unless required to by law. In such case, the Municipalities or Board will notify the Applicant before releasing such information.
- 2.5.1.2. Further, any additional information, other than that outlined in Section 2.5.1.1, provided by an Applicant and if such information were disclosed and it would frustrate procurement or give an advantage to any entity proposing to enter into an Agreement with the Board, the Municipalities and Board shall not release such information until an award or final selection is made.

3. AGREEMENTS**3.1. General/Introduction**

- 3.1.1. Prior to occupying or using land and/or Improvements at the Airport, an Operator will be required to enter into an Agreement with the Board that will recite the terms and conditions under which the Operator shall occupy or use land and/or Improvements at the Airport.
- 3.1.2. This Policy does not represent a complete recitation of the provisions to be included in the Agreement and the provisions contained in any Agreement shall not be deemed or construed to modify this Policy.
- 3.1.3. The Agreement shall convey one or more of the following privileges: (1) the privilege of using the Airport in common with others who are authorized to do so; (2) the privilege of occupying and/or exclusively using specifically designated land and/or Improvements at the Airport; and/or (3) the privilege of providing products, services, and/or facilities to the public at the Airport.

3.2. Use of Leased Premises

- 3.2.1. Aeronautical Use (Commercial)
 - 3.2.1.1. The Agreement will identify the aviation products, services, and facilities that shall be provided by the Operator (required), may be provided without permission of the Board (optional), or may be provided with permission of the Board (additional). The products, services, and facilities that must and/or may be provided by the Operator shall meet the minimum requirements set forth in the Minimum Standards. Failure to meet the Minimum Standards and obtain a Permit from the Airport Manager before providing additional products, services, and/or facilities shall be considered a default under the Agreement.
- 3.2.2. Aeronautical Use (Non-Commercial)
 - 3.2.2.1. For non-commercial use of Airport land and/or Improvements, the Agreement shall stipulate that the Operator shall not offer or provide commercial products, services, or facilities (or engage in Commercial activities). Failure to refrain from engaging in Commercial Aeronautical Activities shall be considered a default under the Agreement.
- 3.2.3. Non-Aeronautical Use
 - 3.2.3.1. While leasing Airport land and/or Improvements for non-aeronautical activities is not generally favored by the Municipalities or the FAA, the Municipalities recognize that secondary non-aeronautical use of land and/or Improvements that does not interfere with the primary aviation use of such land and/or Improvements and is not in violation of FAA regulations may be beneficial to the development of the Airport.
 - 3.2.3.1.1. If such use is contemplated, the Municipalities must be able to determine that the land and/or Improvements will not be needed for aeronautical activities, including Airport development, during the term of the proposed Agreement.
 - 3.2.3.1.2. Leasing Airport land or Improvements for non-aeronautical activities shall be subject to the prior written approval of the FAA.
- 3.2.4. Restrictions
 - 3.2.4.1. Airport land and/or Improvements shall not be occupied or used for any purpose that is contrary to (in order): (1) the best interests of the Board; (2) the safe, effective, and efficient operation of the Airport including the health, safety, and general welfare of the public and the Aircraft (or other property) located at the Airport; (3) the goal of financial self-sufficiency for the Airport; (4) the future development of the Airport; and (5) Airport Assurances.

3.3. Subleasing**3.3.1. Subleasing Privileges Permitted in the Agreement**

- 3.3.1.1. The Board may enter into an Agreement with an Operator that permits subleasing of space for Aircraft parking (Tiedown and/or hangar space) and/or subleasing of office, shop, or other designated areas subject to the Operator obtaining the prior written consent of the Board.
 - 3.3.1.1.1. Operators may enter into month-to-month agreements for Aircraft parking (Tiedown and/or hangar space) without obtaining the written consent of the Board.
- 3.3.1.2. If the Board permits subleasing in the Agreement with the Operator, a standard sublease form, which is consistent with the Agreement between the Board and the Operator and approved by the Board, may be used by the Operator to facilitate the consent process.
 - 3.3.1.2.1. The standard sublease form shall be submitted to the Airport Manager for review. If acceptable to the Airport Manager, the proposed standard sublease form shall be sent to the Board for review and approval.
 - 3.3.1.2.2. The Operator shall not be required to pay the Board any portion of the revenues generated or profits earned relating to permitted and approved subleasing activities.
 - 3.3.1.2.3. Sublease must be submitted to Airport Manager for review and consent within 10 business days of execution by Sublessee. Sublease business terms may be redacted prior to submission to Airport Manager.
 - 3.3.1.2.4. The Airport Manager may reject a sublease for any of the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.
 - 3.3.1.2.5. Sublessee may occupy the premises before the Airport Manager provides written consent at Operator's and Sublessee's risk of Airport Manager rejecting sublease.
- 3.3.1.3. If the approved standard sublease form is not used, the proposed sublease agreement shall be submitted to the Airport Manager for review. Sublease business terms may be redacted prior to submission to Airport Manager.
 - 3.3.1.3.1. If the proposed sublease agreement is acceptable to the Airport Manager, the agreement and any required documentation shall be sent to the Board for review and approval.
 - 3.3.1.3.2. The Operator shall reimburse the Board for reasonable attorney's fees and expenses incurred by the Board directly relating to the review and approval of the proposed sublease agreement.
 - 3.3.1.3.3. The Airport Manager and Board may reject a sublease for any of the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.
 - 3.3.1.3.4. Sublessee may not occupy the premises before the Board provides written consent.

3.3.2. Subleasing Privileges Not Permitted in the Agreement

- 3.3.2.1. If the Board does not permit subleasing in the Agreement with the Operator, the Operator must obtain the written approval of the Board prior to subleasing. It is anticipated that any Activity that is not consistent with the Airport's Master Plan, the Airport Layout Plan, Airport Business Plan, other plans associated with the Airport, and/or is not deemed in the best interests of the Airport will not be approved by the Board.
- 3.3.2.2. The proposed sublease agreement shall be submitted to the Airport Manager for review.
 - 3.3.2.2.1. If acceptable to the Airport Manager, the proposed sublease agreement shall be sent to the Board for review and approval.
 - 3.3.2.2.2. The Board may reject a sublease for any of the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.

- 3.3.2.3. If an Operator subleases without advance written approval of the Board, Operator shall pay the Board fifty percent (50%) of the sublease revenue in excess of the rents and fees paid to the Board for the same subleased premises.
 - 3.3.2.3.1. The Board may audit the Operator's financial records to determine the amount that shall be paid to the Board. The Operator shall have the burden of proof if the amount determined by the Board is disputed.
- 3.3.2.4. The Operator shall reimburse the Board and Municipalities for reasonable attorney's fees and expenses incurred by the Board and Municipalities directly related to subleasing that is not permitted in the Agreement.
- 3.3.2.5. A sublessee may not occupy the premises before the Board provides written approval.
- 3.3.3. Sublessee Obligations
 - 3.3.3.1. Sublessees shall comply with all Regulatory Measures including this Policy, the Primary Guiding Documents, and any other directives issued by the Municipalities or Board; maintain all required insurance standards and coverages as stipulated in the Minimum Standards; and pay all required fees or other charges.
 - 3.3.3.2. A Sublessee who is desirous of engaging in Commercial Aeronautical Activities at the Airport must obtain a Commercial Aeronautical Activity Permit prior to engaging in such Activities as stipulated in the Minimum Standards.
- 3.3.4. Sublease Stipulations
 - 3.3.4.1. Unless otherwise stated in the written consent, all sublease agreements shall be subject to all of the terms and conditions of the Agreement between the Board and the Operator governing the land and/or Improvements being sublet by the Operator.
 - 3.3.4.2. Subleasing premises without the written consent of the Airport Manager or Board shall be considered a default.
 - 3.3.4.3. Any sublease made contrary to the requirements of this Policy shall be null and void.
 - 3.3.4.4. Subleasing of Airport land and/or Improvements for non-aeronautical activities is not generally favored by the Municipalities or the FAA and shall be subject to the prior written approval of the FAA. It is anticipated that the Board will not approve subleasing for this purpose.

3.4. *Transfer of Interest*

- 3.4.1. Assignment
 - 3.4.1.1. An Operator shall not assign an Agreement, any part of an Agreement, any interest in an Agreement, or any rights or obligations the Operator has under an Agreement without the prior written consent of the Board.
 - 3.4.1.1.1. If an Operator is desirous of such assignment, the Operator shall submit a written request to the Airport Manager and the request shall be accompanied by a written application completed by the Assignee.
 - 3.4.1.1.2. If the application is acceptable, the Airport Manager shall submit the application (and a recommendation) to the Board for approval.
 - 3.4.1.1.3. The Airport Manager or Board may reject a request for assignment for any of the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.
 - 3.4.1.1.4. At the time an assignment is approved (written consent is provided by the Board), the Operator shall reimburse the Board for reasonable attorney's fees and expenses incurred by the Board directly relating to the assignment.
 - 3.4.1.1.5. The Assignee shall satisfy all criteria set forth in this Policy, the Primary Guiding Documents, or any other directives issued by the Municipalities or Board.
 - 3.4.1.2. Any assignment made without the prior written consent of the Board shall be null and void and considered a default.

- 3.4.1.3. Consent of the Board is not required in connection with: (1) the merger, consolidation, or reorganization of the Operator with any Affiliate of the Operator; (2) the sale of all or substantially all of the assets of the Operator to any Affiliate of the Operator; or (3) assignment to any Affiliate of the Operator.
- 3.4.2. Change in Majority Ownership
 - 3.4.2.1. Any change in the majority ownership of an Operator or operating entity is subject to the prior written consent of the Board.
 - 3.4.2.1.1. If an Operator is desirous of changing the majority ownership of the operating entity, the Operator shall submit a written Application to the Airport Manager.
 - 3.4.2.1.2. If the application is acceptable, the Airport Manager shall submit the application (and a recommendation) to the Board for consent.
 - 3.4.2.1.3. The Airport Manager or Board may reject a request for change in majority ownership for any of the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.
 - 3.4.2.1.4. At the time the change in majority ownership is approved (written consent is provided by the Board), the Operator shall reimburse the Board for reasonable attorney’s fees and expenses incurred by the Board directly relating to the change in majority ownership.
 - 3.4.2.2. Any change in majority ownership without the prior written consent of the Board shall be considered a default.
- 3.4.3. Encumbrances
 - 3.4.3.1. An Operator shall not mortgage, pledge, assign as collateral, encumber or in any manner transfer, convey, or dispose of the Improvements leased, occupied, or used by the Operator or any interest therein without the prior written consent of the Board.
 - 3.4.3.1.1. If an Operator is desirous of encumbering the Operator’s leasehold or any portion thereof, the Operator shall submit a written request to the Airport Manager and the request shall be accompanied by a written application.
 - 3.4.3.1.2. If the application is acceptable, the Airport Manager shall submit the application (and a recommendation) to the Board for consent.
 - 3.4.3.1.3. The Airport Manager or Board may reject a request for assignment for any of the reasons identified in Section 1.21 (Grounds for Denial) of the General Provisions and Definitions.
 - 3.4.3.1.4. At the time an encumbrance is approved (written consent is provided by the Board), the Operator shall reimburse the Board for reasonable attorney’s fees and expenses incurred by the Board directly relating to the encumbrance.
 - 3.4.3.2. Any encumbrance made without the prior written consent of the Board shall be considered a default.

3.5. Term

- 3.5.1. The term of the Agreement shall be commensurate with the amount of capital investment made by the Operator in Leased Premises Improvements and/or related Improvements at the Airport in accordance with the following guidelines:

Type of Operator	Aircraft/Service Category	Required Capital Investment* (Per Year of Lease Term)
FBO	All	\$15,000 per acre
SASO ¹ (w/ hangar)	All	\$39,000 per acre
SASO (w/o hangar)	All	\$24,000 per acre
SASO (Aircraft Storage Operator)	All	\$20,000 per acre
Non-Commercial Hangar Operator	All	\$36,000 per acre

*based upon Marshall and Swift 2004 estimated construction costs applied to Activities Minimum Standard requirements.

¹ Excluding Aircraft Storage Operator

- 3.5.2. The capital investment required shall be based upon the type of Operator and the category of Aircraft being serviced or operated. If a hangar is constructed, the required capital investment shall be based upon the highest category of Aircraft that the hangar is capable of accommodating.
- 3.5.3. Notwithstanding circumstances beyond the control of the Operator and if the Board agrees in writing that such circumstances were beyond the control of the Operator, all Leased Premises Improvements shall be completed and occupied or used by the Operator within 24 months of the commencement date of the Agreement.
 - 3.5.3.1. The required capital investment amounts shall be adjusted annually in accordance with the change in the CPI (Consumer Price Index for All Urban Consumers, All Items - All Urban Consumers (base year 1982-84=100) for the Chicago area, published by the Bureau of Labor Statistics of the United States Department of Labor.).
- 3.5.4. When capital investment is made, the term of an Agreement shall not be greater than 40 years.
- 3.5.5. When no capital investment is made, the term of an Agreement shall be at the discretion of the Board, but not greater than 20% of the base term of the previous Agreement (if an existing Operator) or 5 years, whichever is less.
 - 3.5.5.1. The Board shall not be obligated to automatically grant a term of any duration if no capital investment is made.
- 3.5.6. When an Operator makes additional capital investment in Leased Premises Improvements and/or related Improvements at the Airport during the term of an existing Agreement, the term of such Agreement may be extended by the Board based upon the level of capital investment made by the tenant in accordance with the guidelines set forth above.
 - 3.5.6.1. In the event of any such Agreement extension, the Agreement shall be amended to conform to this Policy, all applicable Primary Guiding Documents, and any other directives issued by the Municipalities or Board that are in effect at the time of such amendment.
 - 3.5.6.2. In no event shall the remaining term of an existing Agreement plus the term of any extension thereto exceed 40 years.
 - 3.5.6.3. Title to original Improvements shall vest in the Municipalities at the end of original term stipulated in the original Agreement (prior to its extension).
- 3.5.7. Any option periods shall be considered part of the Agreement term.
- 3.5.8. In the event that the Board construct all or part of the capital improvements, the Board may amortize all or part of the costs of such Improvements over the term of the Agreement granted to the Operator. The Board shall utilize a maximum amortization period of 15 years. If the Improvements are constructed for the exclusive use of an Operator, the Operator may be involved in the design process.

3.6. Improvements

- 3.6.1. All Improvements made by an Operator shall comply with all applicable Regulatory Measures including all the requirements set forth by the Board.
- 3.6.2. Unless otherwise stated in an Agreement, ownership of all permanent Improvements shall revert to the Municipalities upon the expiration of the term of the Agreement. The Board shall retain the right to require the Operator to demolish and/or remove any permanent Improvements and return the Leased Premises to its original condition (and character) ordinary wear and tear accepted; provided that the removal or demolition of all or substantially all permanent Improvements shall be determined by the Municipalities.

3.7. Responsibilities

- 3.7.1. Board
 - 3.7.1.1. Unless otherwise stated in an Agreement, all Agreements shall reflect Triple Net terms with the Board responsible for maintenance of all public Airport infrastructure and common areas including runways, taxiways, public apron areas, roadways, nav aids, and associated land areas.
- 3.7.2. Operator
 - 3.7.2.1. Unless otherwise stated in an Agreement, the Operator shall be responsible, at its cost, for all maintenance of land and/or Improvements situated on the Leased Premises including all structural components, all exterior and interior maintenance, landscaping, janitorial, trash removal, snow removal, and sweeping.
 - 3.7.2.2. The Operator shall be responsible for arranging and paying for all utilities (which must be separately metered), shall maintain all insurance coverages at or above the policy limits set forth in the Minimum Standards, and shall remain current on all taxes and/or assessments charged by any applicable government entity or agency including Leased Premises (or possessory interest tax), personal property, income, or any other business taxes.
 - 3.7.2.3. The failure of an Operator to maintain the land and/or Improvements and/or pay all utilities, insurance, and taxes shall be considered a default under the Agreement.

3.8. Condemnation

- 3.8.1. In the event of a full condemnation action (eminent domain or taking), the Board shall engage an appraiser to determine the fair market value of the leasehold interest held by the Operator. The appraiser shall meet the qualifications set forth in Section 5.2 (Appraiser Qualifications) and follow the process set forth in Section 5.1 (Establishment of Fair Market Value).
- 3.8.2. The Agreement shall terminate on the date the physical taking occurs in the same manner as if the date of taking were the date originally fixed in the Agreement for the expiration of term. Upon termination of the Agreement, the Board shall pay the Operator the appraised fair market value less any adjustment for amounts due to the Board.
 - 3.8.2.1. If the Operator disagrees with the value conclusion reached by the appraiser, the Operator shall have the right to initiate the dispute resolution process set forth in Section 5.3 (Dispute Resolution).
- 3.8.3. In the event of a partial condemnation (which would not prevent or materially interfere with the use of the Leased Premises for the purpose for which it is then being used), the Agreement shall not terminate, but the rents due to the Board during the unexpired portion of the Agreement shall be reduced proportionately based upon the square footage of the Leased Premises.
- 3.8.4. In the event of a full or partial condemnation by an Agency other than the Board, the Board and the Operator shall each be entitled to receive or retain separate awards or a portion of lump sum awards as may be allocated to each party based upon the respective interests held by each party in any condemnation proceeding.
- 3.8.5. Condemnation shall follow all applicable Regulatory Measures (including the FAA) for condemnation proceedings and any appraisal report shall meet the requirements of such Regulatory Measures. If there is any inconsistency between this Policy and such Regulatory Measures, then the Regulatory Measures shall prevail.

3.9. Relocation

- 3.9.1. In the event that relocation is deemed necessary (e.g., to correct deviations from Part 77, to ensure use consistent with the Airport's Land Use Plan, to facilitate future development of the Airport consistent with the ALP), the Board shall provide land and/or Improvements that are comparable to the land and/or Improvements currently being occupied and/or used by the Operator.
 - 3.9.1.1. Such land and/or Improvements shall be leased to the Operator at the same rent and under the same terms and conditions as stipulated in the current Agreement.
- 3.9.2. If comparable Improvements are not available, the Board shall buyout the Operator's interest in any Improvements that have been made by the Operator in the amount determined by an appraiser who meets the qualification standards set forth in this Policy. The Board shall engage the appraiser to determine the value of the Operator's Improvements using the Cost Approach.
- 3.9.3. If the Operator disagrees with the fair market value conclusion reached by the appraiser, the Operator shall have the right to initiate the dispute resolution process set forth in Section 5.3 (Dispute Resolution) of this Policy.
- 3.9.4. The Board shall pay all reasonable relocation costs and expenses associated with moving the Operator.
- 3.9.5. Relocation shall follow all applicable federal, FAA, and Illinois Regulatory Measures for relocation proceedings and any appraisal report shall meet the requirements of such Regulatory Measures. If there is any inconsistency between this Policy and such Regulatory Measures, then the Regulatory Measures shall prevail.

4. RENTS AND FEES

4.1. General/Introduction

- 4.1.1. The Board recognizes their obligation to make all Airport land and Improvements productive and obtain fair market rents. In addition, under the Airport Assurances, the Municipalities and Board are required to maintain a rent and fee structure that makes the Airport as self-sustaining as possible. To this end, the Board, through Agreements and Permits with Operators and by other means that may be available to the Board shall endeavor to recover the cost of developing, operating, and maintaining the Airport through rents, fees, and other charges.
- 4.1.2. All Agreements shall adequately compensate the Airport for the rights and privileges granted to an Operator. It is the policy of the Airport to seek terms and conditions that, while being reasonable and not unjustly discriminatory, provide the greatest return to the Airport.
- 4.1.3. Every Operator on the Airport shall be subject to the same rates, fees, and other charges as are uniformly applicable to other Operators utilizing the same or similar land and/or Improvements at the Airport for the same or similar use or purpose.
 - 4.1.3.1. It is recognized that Operators seldom lease land and/or Improvements that have the same attributes, uses, and/or values. As a result, the Board may charge different rates to similar users of the Airport as long as such rates are not unjustly discriminatory.
 - 4.1.3.2. It is further recognized that Agreements reached through negotiation or a competitive proposal process may generate rents, fees, or other charges that may be higher than those being generated by similar Operators and/or uses.

4.2. Establishment of Fair Market Rents

- 4.2.1. Fair Market Rent for aeronautical properties (land and/or Improvements) at the Airport shall be determined by market rent study, by comparative analysis (of rents being charged for comparable properties at the Airport), by negotiation, or by the competitive proposal process, as follows.
 - 4.2.1.1. By definition, aeronautical properties include, but are not necessarily limited to, unimproved land, improved land (with infrastructure and/or utilities provided to the lease line), asphalt or concrete paved Apron areas, Vehicle parking areas, terminal buildings, office and shop facilities, hangars, and other support buildings or related facilities.
- 4.2.2. Market Rent Study
 - 4.2.2.1. The objective of the market rent study is to establish rental rates for aeronautical properties at the Airport based upon a comparative analysis of the rents being charged for similar aeronautical properties (and/or activities) at similar (comparable) airports. The process that shall be used to establish Fair Market Rent for aeronautical properties (land and/or Improvements) at the Airport is set forth below.
 - 4.2.2.2. The Board shall engage an aviation consultant or utilize a Board/Municipality employee who meets the qualifications set forth in this Policy to conduct a market rent study to determine the Fair Market Rent for the aeronautical property under study.
 - 4.2.2.2.1. The consultant/employee shall have working knowledge of the aviation industry including airports and general aviation (FBOs, SASOs, and non-commercial aviation operations) as appropriate for the work being performed and shall demonstrate familiarity with FAA rules, regulations, and policies pertaining to setting rents for airport (aeronautical) properties.
 - 4.2.2.2.2. If utilizing a consultant, the consultant shall have performed a minimum of five (5) market rent studies involving aeronautical properties within the past five years and shall provide to the Board a list identifying the location, type, and extent of the analysis performed.

- 4.2.2.3. The consultant/employee shall develop a profile of the Airport and the Leased Premise(s) (land and/or Improvements) under study. The profile shall be utilized to identify comparable airports and similar Leased Premises at those airports. Rents and related information shall then be obtained (from the comparable airports identified) and analyzed to derive the Fair Market Rent for the land and/or Improvements under study.
- 4.2.2.4. In identifying comparable airports, factors to be considered include, but are not necessarily limited to, the following: infrastructure (number, configuration, and capacity of runways and taxiways); approaches (precision versus non-precision); presence or absence of control tower; number and type of aviation businesses including the number of fuel providers; amount of land that is available for aviation development (and related land use considerations); type of market; number and type of airports in the market; and activity levels (based Aircraft, Aircraft operations, and fuel volumes).
- 4.2.2.4.1. The Airport Manager may suggest airports that the Airport Manager believes should be considered as comparable airports based upon the factors set forth in Section 4.2.2.4.
- 4.2.2.4.2. The Operator shall also have the opportunity to suggest airports that the Operator believes should be considered as comparable airports based upon the factors set forth in Section 4.2.2.4.
- 4.2.2.4.3. Only those airports that are considered comparable by the consultant/employee shall be used to determine Fair Market Rent for the Leased Premises under study.
- 4.2.2.5. In identifying similar Leased Premises at comparable airports, the consultant shall consider factors including, but not necessarily limited to, the following: use (commercial versus noncommercial); size; location – streetside and airside access (to/from the Leased Premises and airport infrastructure); and type, quality, and condition of land and/or Improvements.
- 4.2.2.5.1. Only those land or Improvements that are considered most similar by the consultant shall be used to determine the Fair Market Rent for the land and/or Improvements under study. Any disparities with respect to the factors listed above shall be carefully considered and clearly addressed by the consultant.
- 4.2.2.6. To ensure consistency in the determination of rents for aeronautical land or Improvements at the Airport, the Board may categorize and group similarly situated land or Improvements by use and attributes. In determining Fair Market Rent for the land or Improvements under study, the consultant shall use such categorizations and groupings with consideration given to the functional utility or limitations of the land and/or Improvements (if any). This shall include, but not necessarily be limited to, any limitations or restrictions on the development of the land and/or Improvements, the availability of utilities, and the ability of the land and/or Improvements to support the Aircraft that normally frequent the Airport.
- 4.2.2.7. The consultant/employee shall consider land and/or Improvements located at the Airport that are similar to the land and/or Improvements under study and shall also consider general real estate market conditions and trends in the Chicago area.
- 4.2.2.8. Rents being charged for similar aeronautical land and/or Improvements at comparable airports shall, to the extent possible, be considered by component such as unimproved land, improved land (with infrastructure and/or utilities provided to the lease line), asphalt or concrete paved apron areas, Vehicle parking areas, and Improvements (terminal building, hangar, office, and shop space).
- 4.2.2.9. If the rents being charged for similar aeronautical land or Improvements at comparable airports are being impacted by the fees being charged at comparable airports or if fees are being charged in lieu of rent, the relationship between the rents and fees at comparable airports shall be considered and addressed by the consultant/employee.

- 4.2.3. Comparable Properties on-Airport
 - 4.2.3.1. Rents can also be established for land and/or improvements by utilizing rents for comparable land and/or Improvements located at the Airport whereby said rents were established through an Agreement with the Board within the last six months.
 - 4.2.3.2. In this case, each of the elements under Section 4.2.2.5 shall be considered by the Board in determining Fair Market Rent.
- 4.2.4. Negotiation/Competitive Proposal Process
 - 4.2.4.1. Rents can also be established by negotiation or through the competitive proposal process.

4.3. Adjustment of Rents

- 4.3.1. Methodology
 - 4.3.1.1. All rents shall be adjusted annually throughout the term of the Agreement beginning May 1, 2005. All adjustments shall be effective on May 1st.
 - 4.3.1.2. Rents shall be adjusted utilizing the following mechanisms. Rents shall initially be adjusted on May 1, 2005 (and every 5 years thereafter) by market rent study. On May 1, 2006 and each year thereafter for four consecutive years (each year between market rent studies), rents shall be adjusted based upon the change in the Consumer Price Index (CPI).
- 4.3.2. Consumer Price Index (CPI)
 - 4.3.2.1. Consumer Price Index shall mean Consumer Price Index for All Urban Consumers, All Items - All Urban Consumers (base year 1982-84=100) for the Chicago area, published by the Bureau of Labor Statistics of the United States Department of Labor.
 - 4.3.2.1.1. If the CPI is changed so that the base year differs from that identified in 4.3.2.1, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.
- 4.3.3. Market Rent Study
 - 4.3.3.1. Under this approach, rents for aeronautical land and/or Improvements (and/or activities) at the Airport shall be established by analyzing the rents being charged for similar aeronautical land and/or Improvements (and/or activities) at similar (comparable) airports.
 - 4.3.3.1.1. The market rent study shall be performed by a qualified aviation consultant or Board/Municipality employee (who meets the qualification standards set forth in Section 4.2.2.2.1 and 4.2.2.2.2. of this Policy) using the methodology set forth in Section 4.2.2 of this Policy.
 - 4.3.3.2. Rents shall not be adjusted to an amount less than the base rents paid by the Operator.

4.4. Establishment and Adjustment of Fees

- 4.4.1. Fees shall be established by the Municipalities in order to assist with the recovery of the costs associated with the development, operation, and maintenance of the Airport.
 - 4.4.1.1. Costs shall include, but not necessarily be limited to, all operating, maintenance, and development costs, debt service, capital outlays, reserves, and amortization.
 - 4.4.1.2. All revenues including rents shall be deducted from costs and the difference in the form of fees shall be charged to Airport users on a proportionate basis.

- 4.4.2. Fees may include, but are not necessarily limited to, fuel flowage fees, transient aircraft fees, and/or permit fees.
- 4.4.2.1. Fuel Flowage Fees
- 4.4.2.1.1. Based and transient Aircraft owners/operators shall pay a fuel flowage fee based upon the number of gallons delivered to the Aircraft.
- 4.4.2.1.2. Commercial Operators who provide fueling services at the Airport shall be responsible for the collection of the fuel flowage fee from the consumers served and for payment to the Chicago Executive Airport (in care of the Airport Manager's office).
- 4.4.2.1.3. All other Operators or entities shall report fuel volumes and pay the fuel flowage fee directly to the Board.
- 4.4.2.2. Transient Aircraft Fees
- 4.4.2.2.1. Transient Aircraft owners/operators shall pay a landing fee based upon Maximum Takeoff Weight (MTOW).
- 4.4.2.2.2. Commercial Operators who provide services to transient Aircraft owners/operators shall be responsible for the collection of landing fees from all consumers served and for payment to the Chicago Executive Airport (in care of the Airport Manager's office).
- 4.4.2.2.3. All other Operators or entities shall pay landing fees directly to the Chicago Executive Airport (in care of the Airport Manager's office).
- 4.4.2.3. Commercial Aeronautical Activity Permit Fees
- 4.4.2.3.1. At the time the Commercial Aeronautical Activity Permit application is submitted to the Airport Manager, the Operator shall pay a one time fee (based upon the type of Activity) as identified in the Airport's Rates and Fees Schedule.
- 4.4.2.3.2. The Operator shall notify the Airport Manager in writing within fifteen (15) days of any change to the information submitted in the Application.
- 4.4.2.3.3. If the Operator fails to keep the information submitted in the application current, the Operator shall pay a fine as set forth in the Airport's Rates and Fees Schedule.
- 4.4.2.4. Temporary or Special Use Permit
- 4.4.2.4.1. At the time a Temporary or Special Use Permit Application is submitted to the Airport Manager, the Operator shall pay a fee (based upon the type of Activity) as identified in the Airport's Rates and Fees Schedule.
- 4.4.3. Fees shall be adjusted each year based upon the Airport's fiscal year budget for the Airport.
- 4.4.3.1. All adjustments shall be effective on May 1st.
- 4.4.3.2. Any deficits shall be carried forward and considered when establishing fees for the following year. Any surplus or any portion of any surplus may be used for capital Improvements or carried forward for consideration in establishing fees for the following year.
- 4.4.4. The Municipalities and Board reserve the right to use other methodologies and/or establish and/or charge additional (or other) rents, fees, or other charges for the use and/or occupancy of Airport land and/or Improvements (and/or engaging in activities at the Airport).

4.5. Payment of Rents, Fees, or Other Charges

- 4.5.1. No Operator shall be permitted to occupy or use land and Improvements unless the Operator is current (not in default and beyond the point at which the default can be cured) in the payment of all rents, fees, or other charges accruing to the Board under any and all Agreements.
- 4.5.2. An Operator's failure to remain current in the payment of all rents, fees, or other sums accruing to the Board will be grounds for termination of the Agreement authorizing the occupancy or use of land or Improvements at the Airport.

- 4.5.3. The Board may, at their option, enforce the payment of any rent, fee, or other charge assessed by the Board by any legal means available to the Board under any Agreement or as provided by Illinois law.
- 4.5.4. All rents, fees, or other charges assessed by the Board not paid within 10 days of being due shall be assessed a 10% late fee.

4.6. *Bookkeeping and Records*

- 4.6.1. Records must be kept to verify amounts due to the Board for rents, fees, or other charges applicable to the Operator's occupancy or use of land or Improvements and/or engaging in Activities at the Airport. The Board or their representatives shall be entitled to have access to such records upon reasonable notice. The Board reserves the right to audit such records.

5. APPENDIX

5.1. *Establishment of Fair Market Value*

- 5.1.1. The Board shall engage an appraiser who meets the qualifications set forth in Section 5.2 (Appraiser Qualifications) of this Policy to conduct an appraisal to determine Fair Market Value.
 - 5.1.1.1. The appraiser shall use current appraisal methods that are appropriate for the appraisal of aeronautical properties (land and/or Improvements).
 - 5.1.1.1.1. To determine Fair Market Value, the appraiser shall consider all three recognized appraisal methods: Cost Approach, Market Data or Sales Comparison Approach, and Income Capitalization Approach. Although application of all three approaches shall not be required, the appraiser must adequately explain the omission of any method.
 - 5.1.1.1.2. At a minimum, the appraiser shall utilize the Income Capitalization Approach (direct capitalization technique) to derive the Fair Market Value of the property under study. Integral to this process, the appraiser shall conduct an analysis of rents, fees, or other charges for similar aeronautical properties (and/or activities) at comparable airports.
 - 5.1.1.1.3. The appraiser shall consider each of the factors delineated in Section 4.2.2.3 through 4.2.2.8 (Establishment of Fair Market Rent) of this Policy including, but not limited to, identification of comparable airports, identification of similar properties at comparable airports, property groupings, comparable on-airport properties, market conditions and trends, component rents, and impacts of fees on rents.
 - 5.1.1.1.4. All rents, fees, or other charges used in the appraisal process shall be obtained from and confirmed by either the lessor or lessee.
 - 5.1.1.2. The appraiser shall use an appropriate and justifiable rate of return for airport-based properties (land and/or Improvements).
 - 5.1.1.2.1. The capitalization rates utilized by the appraiser shall be obtained through reasonable and acceptable methods and must be adequately discussed in the appraisal report.
 - 5.1.1.3. The property shall be appraised assuming that highest and best use is aviation-related. It shall also be assumed that the property will continue to be part of an operating airport and that access to the infrastructure and amenities of the Airport shall continue to be available.
 - 5.1.1.4. In addition, the appraisal shall meet the Uniform Standards of Professional Appraiser Practice (USPAP).

5.2. *Appraiser Qualifications*

- 5.2.1. Appraisals shall be performed by an appraiser who shall be a Member, Appraisal Institute (MAI) or similarly designated and equally qualified appraiser who shall be certified by a recognized appraisal organization.
- 5.2.2. The appraiser shall hold a State Certified General Real Estate Appraiser License issued by the Illinois Office of Banks and Real Estate.
 - 5.2.2.1. Out-of-state appraisers may perform appraisals provided that the appraiser obtains a temporary practice permit issued by the Illinois Office of Banks and Real Estate prior to being awarded an appraisal contract.
- 5.2.3. Any appraiser selected to perform an appraisal of aeronautical land and/or Improvements shall have working knowledge of the aviation industry including airports, air carriers, and general aviation (FBOS, SASOs, and non-commercial aviation operations) as appropriate for the work being performed and shall demonstrate familiarity with FAA rules, regulations, and policies pertaining to valuing airport (aeronautical) properties.

- 5.2.4. The appraiser shall have performed a minimum of five (5) aeronautical property appraisals within the last five years and shall provide a list to the Board identifying the locations and the types of appraisals performed. Appraisals of non-aeronautical properties for the purpose of airport acquisition shall not meet these requirements.

5.3. Dispute Resolution

- 5.3.1. If an Operator disagrees with the Fair Market Rent (or Fair Market Value) conclusion reached by the aviation consultant (or appraiser), the Operator may engage a second consultant (or appraiser) who shall meet the qualifications set forth in this Policy to conduct an independent market rent study (or appraisal).
- 5.3.1.1. All fees and expenses associated with the work of the second consultant (or appraiser) shall be paid by the Operator.
- 5.3.2. If the conclusions of the two (2) market rent studies (or appraisal) reflect a variance of ten percent (10%) or less, the results of both market rent studies (or appraisals) shall be averaged to determine the Fair Market Rent (or Fair Market Value).
- 5.3.3. If the variance exceeds ten percent (10%) and an Agreement cannot be reached between the Board and the Operator regarding Fair Market Rent (or Fair Market Value) based upon the conclusions of the first and second consultants (or appraisers), the first and second consultants (or appraisers) shall mutually select a third aviation consultant (or appraiser) who shall meet the qualifications standards set forth in this Policy and who shall make a determination regarding Fair Market Rent (or Fair Market Value).
- 5.3.3.1. If the first and second consultants (or appraisers) are unable to agree upon the third consultant (or appraiser), the Board shall appoint a third consultant (or appraiser) who meets the qualification standards set forth in this Policy to make a determination regarding Fair Market Rent (or Fair Market Value).
- 5.3.4. The third consultant (or appraiser) shall review the results of both market rent studies (or appraisals) conducted by the first and second consultants (or appraisers) and may request a hearing at which both the first and second consultants (or appraisers) shall provide such additional information and/or clarification regarding their studies as the third consultant (or appraiser) may request.
- 5.3.5. The third consultant (or appraiser) shall make a final determination based upon the data contained in the two (2) market rent studies (or appraisals) and any additional information provided by the first and second consultants (or appraisers).
- 5.3.5.1. The third consultant (or appraiser) shall have the right to gather, analyze, and consider additional data as the third consultant (or appraiser) deems appropriate. The decision of the third consultant (or appraiser) regarding Fair Market Rent (or Fair Market Value) shall be accepted by the Board and the Operator and shall be legally binding upon both parties.
- 5.3.6. All fees and expenses associated with the work of the third consultant (or appraiser) shall be paid equally by the Board and the Operator.
- 5.3.7. During any period when there is disagreement between the Board and the Operator regarding a rent adjustment, the Operator shall be responsible for the payment of the adjusted rent as recommended by the consultant first engaged by the Board. Once the disagreement is resolved, any difference between the rent paid and the finally determined rent shall be paid to the Board or refunded or credited to the Operator (as appropriate).