



GOVERNMENT OF PUERTO RICO
PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY

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DATE: December 21, 2023

TO: Hon. Pedro Pierluisi Urrutia
Governor
La Fortaleza
San Juan, Puerto Rico

FROM: Public-Private Partnerships Authority

SUBJECT: Compliance Report for the year 2019, in relation to the Luis Muñoz Marín International Airport Lease Agreement executed by and between the Puerto Rico Ports Authority and Aerostar Airport Holdings, LLC.

Please acknowledge receipt of the Compliance Report.



[Stamp: OFFICE OF THE CHIEF OF STAFF, THE FORTALEZA

Time: [hw: 2:26 pm]

DEC 21 2023

Name:

Signature:

CC: Hon. José L. Dalmau Santiago, President - Senate of Puerto Rico
Hon. Rafael Hernández Montañez, Speaker - House of Representatives; and Joint Committee on Public-Private Partnerships of the Legislative Assembly of Puerto Rico.

pep

I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Annual Compliance Report for 2019

LUIS MUÑOZ MARÍN INTERNATIONAL AIRPORT LEASE AGREEMENT

Roberto Sánchez Vilella Government Center (Minillas), Ave. De Diego, Parada 22, San Juan, PR 00907 | PO Box 42001, San Juan, PR 00940-2001



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December 18, 2023

To the Honorable Governor, President of the Senate
and Speaker of the House of Representatives of the
Commonwealth of Puerto Rico

**ANNUAL COMPLIANCE REPORT FOR 2019 REGARDING THE
LUIS MUÑOZ MARÍN INTERNATIONAL AIRPORT
PUBLIC-PRIVATE PARTNERSHIP**

I. Introduction

Section 10(d) of Act No. 29-2009, also known as the "Public-Private Partnerships Act" (hereinafter "Act No. 29"), imposes on the Public-Private Partnerships Authority (hereinafter "Authority") the responsibility to monitor the performance of contractors under public-private partnership contracts (hereinafter "Partnership Contracts") and to submit to the Governor and the Legislative Assembly of Puerto Rico an annual report on the development of current public-private partnership projects.

We refer to the Luis Muñoz Marín International Airport Lease Agreement, dated July 24, 2012 (hereinafter, "Agreement"), between the Puerto Rico Ports Authority (hereinafter, "Ports") and Aerostar Airport Holdings, LLC (hereinafter, "Aerostar" or the "Lessee"). Said Agreement imposes on Aerostar the responsibility to operate, maintain and make improvements to the Luis Muñoz Marín International Airport (hereinafter, "Airport") in accordance with certain standards and requirements set forth therein.

This is the fourth annual compliance report ("Report") rendered in compliance with the Authority's responsibility under Section 10(d) of Act No. 29 and covers Aerostar's performance during 2019.

The Agreement constitutes a public-private partnership, authorized, among other governmental entities, by the Federal Aviation Administration (hereinafter "FAA"), subject to its evaluation.



II. Background of the Transaction

As required by Act No. 29, prior to the commencement of the process for the awarding of the Agreement, the Authority ordered a Desirability and Convenience Study to determine whether it was advisable to establish the partnership. Said study concluded that it was desirable and convenient to initiate the procedure to establish the partnership.¹ Thus, the processes of request for qualifications, statements of qualifications and request for proposals were initiated to select the private entity with which the partnership would be established.²

On July 19, 2012, the Partnership Committee appointed to evaluate the proposals received, rendered a report (hereinafter, "Committee Report"), detailing the objectives for the establishment of the partnership, describing the processes carried out by the Authority and informing the selection of Aerostar and the reasons for such selection.³ As required by Act No. 29, the Partnership Committee Report and the Agreement were submitted to the Board of Directors of the Authority and the Board of Directors of Ports for their approval. The Authority Board of Directors approved both documents on July 17, 2012 through Resolution No. 2012-17. The Ports Board of Directors approved them on July 18, 2012, through Resolution No. 2012-028. Once approved, the Committee's Report and the Agreement were forwarded to the executive officer to whom the Governor had delegated the authority to approve the partnership. The Governor approved both documents on July 19, 2012. Ports and Aerostar signed the Agreement on July 24, 2012. Subsequently, on February 26, 2013, the FAA endorsed the Agreement and, consequently, the financial closing of the transaction took place on February 27, 2013.

III. Agreement Summary

The Agreement is a lease by which Ports granted Aerostar the right to operate, manage, maintain, develop and rehabilitate the Airport for a term of forty (40) years. We emphasize that, in a lease agreement which, in turn, constitutes a Partnership Agreement under Act No. 29, the title to the Airport is neither assigned nor transferred.

During the term of the lease, Aerostar must operate, maintain and make improvements to the Airport in accordance with the standards, specifications, policies, procedures and processes

¹ See the Desirability and Suitability Study, included as Schedule A of the 2013-2015 Luis Muñoz Marín International Airport Public-Private Partnership Compliance Report dated May 12, 2016 (hereinafter, "2013-2015 Airport Compliance Report"), accessible at the following website: <https://www.p3.pr.gov/es/projects/>.

² For more details of the process, see the Airport's 2013-2015 Compliance Report.

³ See the Partnership Committee Report included in Schedule C of the Airport's 2013-2015 Compliance Report.



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set forth in the Agreement. The Agreement also provides that Aerostar may sublease the non-aeronautical areas of the Airport, according to the agreed terms, and retain for itself the revenues and payments corresponding to the subleased facilities. The main purpose of the lease, as stipulated in the Agreement, is to operate the Airport in a reliable and safe manner and, through its operation, to promote, facilitate and improve the commerce, tourism and economic development of Puerto Rico.

a. Operation and Maintenance

The Agreement grants Aerostar the right to use and operate the Airport as a public airport. Aerostar, for its part, undertook to operate and maintain the Airport according to the operational standards and other requirements stipulated in the Agreement, and to carry out certain works and improvements during the term of the Agreement, bearing all costs associated with these efforts.

Specifically, Aerostar is responsible for operating the Airport in compliance with Section 139 of Title 14 of the Code of Federal Regulations (*14 C.F.R Part 139*) - known as the *Part 139 Airport Operating Certificate* (also referred to as, the "Part 139 Operating Certificate"), whereby the FAA requires the adoption of certain operational and safety standards to ensure the safe operation of the Airport. In addition, Aerostar assumed the responsibility to operate and maintain the Airport in compliance with the requirements of the *Airport Investment Partnership Program* (AIPP)⁴ which is the program that replaced the FAA's privatization pilot program under which the Agreement was approved and under which funds or grants are awarded for the execution of improvements and projects at the Airport.

b. Airlines and Other Charges

The Agreement establishes the maximum rates that Aerostar may charge airlines at the Airport. The details of the computation of these rates are contained in the Use Agreement that Aerostar executes with all airlines operating at the Airport. The rate and other charges are computed based on certain occupancy and/or usage information that the airlines submit to Aerostar in periodic reports.

Aerostar is also granted the power to collect and retain revenues from charges or fees levied on Airport concessionaires, including providers of food and beverages, retailers and ground transportation providers, among other revenues related to the activities carried out at the airport's facilities.

⁴ Under the 1996 Reauthorization Act, codified at 49 U.S.C. §47134, the FAA was authorized to establish the privatization pilot program, but limited to five airports. With the 2012 Reauthorization Act, the number was increased from five to ten. Finally, through the 2018 Reauthorization Act, the limitation on the number of airports was removed, concluding the pilot program to become the Airport Investment Partnership Program.



c. Lease Payments

The Agreement provided for an advance payment and subsequent annual payments. The upfront payment was in the amount of \$615 million at the time of financial closing of the Agreement. In addition, Aerostar committed to make the following annual payments:

Years	Payment
1-5	Fixed payments of \$2.5 million per year, up to the 5th year
6-30	Variable payments equal to 5% of the Airport's gross revenues per year, through year 30.
31-40	Variable payments equal to 10% of the Airport's gross revenues

d. Police and Fire Services

Until the date of its amendment on October 2, 2015, Section 3.17 of the Agreement provided that Ports was responsible for providing police, fire and emergency services at the level necessary to comply with federal security requirements and the Airport Security Plan approved by the Federal Transportation Security Administration ("TSA"). It also provided that all other security-related services would be the responsibility of Aerostar. However, subject to certain conditions, Aerostar was to reimburse Ports for all expenses and costs related to the provision of the aforementioned services. For these expenses, Ports and Aerostar established a budget of \$2.8 million for the first year of the Agreement. The parties agreed to establish an annual budget at the beginning of each year for these purposes.

Section 3.17 of the Agreement was amended by amendment to the Agreement and by the "*Transition Services Agreement*" executed on October 3, 2015 (Transition Services Agreement) to transfer the responsibility for the provision of these fire and security services from Ports to the Lessee, thereby eliminating the requirement for reimbursement to Ports and annual budget development for these purposes.

That is, prior to October 2015, Ports was responsible for the provision of police and firefighter services, while it was responsible for reimbursing Ports for the costs incurred for these services, subject to the budget agreed upon by the parties.



e. Reimbursement for monitoring expenses

Under the Agreement, Ports retains the right to monitor that the operation and maintenance of the Airport is performed in accordance with the terms and conditions of the Agreement and in compliance with applicable laws and regulations. For these purposes, Aerostar is contractually obligated to reimburse Ports up to a maximum of \$250,000.00 per year (subject to an annual increase for inflation) for expenses incurred by Ports in monitoring Aerostar's compliance with the terms and obligations of the Agreement.

f. Improvements

Aerostar is obligated to make certain upgrades during the term of the Agreement. These upgrades are classified and identified as follows: (1) those identified in the Agreement as *General Accelerated Upgrades* because they were to be completed within the first eighteen (18) months following the closing of the transaction; (2) the improvements agreed in the Use Agreement with the airlines; and (3) the capital improvements required or necessary according to the agreed operational standards.

IV. Compliance Report

The compilation of information for the preparation of this report was based on the nine (9) information requirements that were notified for the preparation of the Audit Report covering the years from 2013 to 2020. Specifically, seven (7) formal information requirements or requests were sent to Aerostar and two (2) to Ports. The documents provided in response to such requests were evaluated and requests for additional information or clarification were made through e-mails, telephone conferences and face-to-face meetings coordinated for follow-up or as a result of questions that arose after the evaluation of the documents submitted in response to the information requests.

The following is a summary of the status of compliance as of 2019, in light of the requirements set forth in the Agreement. The compliance analysis is mainly based on the information submitted by Aerostar and on data obtained through external information sources, such as the official websites of the agencies concerned.

To facilitate the understanding of the report, the compliance assessment was based on the classifications identified and described below:

1. **Compliance** - The assignment of this rating means that the Lessee fully complied with the requirement as set forth in the Agreement.



2. **Partial Compliance** - This classification is assigned when it is determined that although the Lessee did not fully comply with the evaluated requirement, it substantially complied with it. This classification may be assigned when the requirement is composed of several conditions, elements or parameters, and although not all of them were met, most of them were met. For example, this category can be assigned when there is a requirement for action at a certain time and the Lessee executes the action it was obliged to execute, but does so late. However, the determination of Partial Compliance would not apply when time is a determining factor in the execution of the required action. This is due to the consequences that could result from untimely performance. There are obligations where the time of performance is an essential part of the obligation due to the implications that late performance may have.
3. **Non-compliance** - this classification is assigned when the Lessee does not comply with the evaluated requirement or when it fails to comply with the majority of the elements, conditions or parameters that make up the evaluated requirement.

A. Annual Payment

Article 2 of the Agreement includes the annual payments for the rights granted in the lease. As set forth in Section 2.1(c) of the Agreement, from year six (6) through year thirty (30), Aerostar is required to make an annual variable payment equal to five percent (5%) of the gross "Airport Revenues". The term **Airport Revenues** is defined in the Agreement as all dues, rents, rates, fees, revenues and any other charges imposed for the use of the Airport facilities, excluding government (state or federal) grants and *Passenger Facility Charge* ("PFC") revenues.^{5,6} This amount shall be paid within thirty (30) days after the delivery of the audited financial statement required by Section 8.1(c)(ii) of the Agreement, which provides that the statement shall be submitted to Ports within 120 days after the end of the reporting year (normally, the year ends on December 31).

⁵ PFC is a charge authorized under federal law, 49 U.S.C. §40117. The Agreement defines PFC as "the Passenger facility charge as authorized under 49 U.S.C. §40117, or any predecessor or successor Law, and as approved by the FAA from time to time with respect to the LLM Airport Facility." This charge is used to subsidize the construction and development of FAA-approved projects to improve the safety and capacity of commercial airports, among other things.

⁶ Refer to Section 1.1 of the Agreement for definitions, "Airport Revenues".



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Aerostar presented evidence of having made the annual variable payment for 2019 within the stipulated term.⁷ In addition, it provided a copy of the financial statement for that year.⁸ It also provided information on the basis for the computation of the annual variable payment for this year.⁹ According to the explanation provided, the computation of the payment for 2019 was made as follows:

Total operating income for 2019	\$135,546,938.90
Utility reimbursement (electricity)	(1,051,660.97)
(water)	(571,700.14)
Portion of the business interruption insurance payment by Hurricane Maria. ¹⁰	(2,821,249.00)
Total revenues subject to revenue sharing	135,102,328.79
	5%
Portion of revenue sharing corresponding to Ports	\$6,755,116.44

It should be noted that, in the financial statements prepared beginning in 2019, Aerostar adopted FASB ASC 606, which modifies the way in which the company's revenues are presented. In summary, under such instruction, an estimate of annual revenues is made for the full term of the Agreement. In other words, a total revenue projection is made for the term of the Agreement (based on existing contracts and other sources of revenue) and this amount is prorated for the years of the Agreement. We also note that in its revenue report, Aerostar includes the amount of money it collects from the payment of utilities from its tenants. For this reason, when computing revenues subject to the revenue share agreement, this amount is deducted from such revenues.

In accordance with the foregoing, on May 27, 2020 Aerostar made a payment to Ports in the amount of **\$6,755,116.44** by wire transfer.

Pursuant to the stipulations of the Agreement and the evaluation of the documents provided, Aerostar is considered in **Compliance** with the Annual Variable Fee Payment for the year evaluated.

B. Operation

⁷ See **Schedule A**, evidence of wire transfer dated May 27, 2020 for the amount of \$6,755,116.44 for the variable annual payment for 2019.

⁸ See **Schedule B**, Evidence of Delivery of 2019 Financial Statement.

⁹ See **Schedule C**, Explanation on the basis of computation for the 2019 variable annual payment.



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Article 3 of the Agreement establishes the general terms for the operation of the Airport. Specifically, Section 3.3(b), Article 6 and Schedule 12 of the Agreement require Aerostar to operate the Airport in a manner consistent with: (i) the standards, specifications, policies, procedures and processes set forth in Schedule 12 to the Agreement (the "Operating Standards"); (ii) the Use Agreement among Aerostar, Ports and the signatory airlines (the "Use Agreement"); and (iii) applicable law, including the Part 139 Operating Certificate, the Airport Certification Manual under said Part 139 ("*Part 139 Certification*") and the TSA-approved Airport Security Program.

In this report, we evaluate Lessee's compliance with the Operating Standards as they substantially cover the Lessee's obligations to operate the Airport in compliance with the above sources of obligation.

Operating Standards

The Operating Standards, the Airport Certification Manual¹⁰ and the Airport Emergency Plan form the catalog of minimum requirements with which the Lessee must comply for the effective and safe operation and maintenance of the Airport. The Operating Standards require the Lessee to prepare an operational plan following the parameters, metrics and reports established in the aforementioned documents. In compliance with this obligation (Article 6 of the Agreement and Section 3.4 of the Use Agreement), in 2015 the Lessee prepared and submitted its Operating Plan dated November 2014.¹¹ This, in turn, included the following plans:

1. Facilities Standards Plan (revised February 2016).¹² This plan sets out the legal/regulatory requirements and actions to be taken to ensure the proper maintenance and safety of airport facilities. Excluded from this plan are airfield facilities.
2. Airfield Operating Standards Plan (revised February 2016)¹³. This includes minimum guidelines and parameters for managing the airfield in a manner that minimizes deterioration and unforeseen damage to its structures and systems to ensure continued safe operation.

¹⁰ See **Schedule D**, *Airport Certification Manual* effective July 31, 2014 through May 17, 2019. This manual provides the specifications for compliance with Part 139 Certification. This manual was revised and approved by the FAA on May 18, 2019.

¹¹ See **Schedule E**, Operating Plan and evidence of its submission to Ports.

¹² See **Schedule F**, *Facilities Standards Plan V. 2.1-2016*.

¹³ See **Schedule G**, *Airfield Operating Standards Plan Revised 02-2016*.



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3. Capital Asset Management Plan. This is the planning document in which the Lessee identifies the development and execution of actions aimed at the maintenance and preservation of the Airport's assets and fiscal responsibility in their management.
4. Environmental Sustainability Plan. This identifies the legal/regulatory requirements for sustainable planning in the operation, development or renovation of Airport facilities. The Lessee is required to adopt certain design and construction standards for this purpose.
5. Safety and Safety Management Systems Plan (revised April 2015)¹⁴. This plan establishes the minimum requirements for the safe operation of the airport (including parameters to ensure the safety of employees and the public).
6. Wildlife Hazard Management Plan. This document defines the standards and procedures for the management and/or mitigation of wildlife hazards.
7. Airport Security Program (revised July 2017)¹⁵. This document identifies the roles and responsibilities of the Lessee, the involvement of law enforcement agencies, and the resources to be employed to ensure the security of the Airport.
8. Airport Emergency Management Plan. This plan outlines the essential emergency response actions.
9. Customer Service Management Plan (revised May 2017)¹⁶. This details the measures that the Lessee will employ to achieve high quality customer service.

To measure the implementation and execution of the above plans, Section 1.2.5 of the Operating Standards requires the Lessee to prepare and submit the following reports on an annual basis:

1. Operational Performance Report
2. Facilities Conditions Assessment
3. Air Traffic Summary
4. Capital Improvement Program
5. Sustainability Report
6. Safety Assessment Report
7. Emergency Report (if applicable)
8. Level of Service Report

¹⁴ See **Schedule H**, *Safety and Safety Management Systems Plan, April 7, 2015 Final*.

¹⁵ See **Schedule I**, letter of transmittal of *Airport Security Program* and evidence of approval by TSA. Re: Note, for security reasons the document cannot be shared.

¹⁶ See **Schedule J**, *Customer Service Management Plan*.



The summary of the findings of most of these reports is contained in the Lessee Annual Report ("LAR"). The Facility Condition Assessment report and the Capital Improvement Program are presented in separate reports. The LAR is, in essence, the report on the Lessee's operational performance.

The following is a summary of the findings and the rating assigned per report:

Table 1: Compliance with Operating Standards

Report	Compliance Status	Comments
<i>Operational Performance Report</i>	PC	Not all metrics evaluated in the report were met. Specifically, the agreed metrics were not met for the following parameters in the Passenger Terminal Operation: <i>Maximum Queue Time, Loading Bridges, Passenger Transportation System</i> and <i>Terminal Climate</i> . The Maximum Waiting Time for baggage claim and security was not met. For incidents related to <i>Cargo Bridges, System for Passenger Transportation</i> and <i>Terminal Climate</i> , the established metrics for response time were not met, although this was slightly better compared to 2018. On the other hand, compliance with the repair time for these metrics decreased by 3% (85% v. 88%).
<i>Facilities Conditions Assessment</i> ¹⁷	PC	As required by the Operating Plan and Operating Standards, the engineering firm contracted for the assessment indicated that Aerostar had addressed the findings of the previous year's FCA. It also identified the capital improvement projects completed and those in progress. However, we did not identify in the report the prioritization ranking of the projects as required by the Operating Standards. We also did not identify certain elements within the functional areas, such as: the environmental systems, aircraft parking apron and cell phone lots.
<i>Air Traffic Summary</i>	PC	Based on the information included in the LAR, Aerostar did not meet all of the required metrics for the <i>Commercial Activity</i> category. Aerostar did not collect or provide the required data on Peak Hour Passengers.

¹⁷ **Schedule K**, Executive Summary of the 2020 Facility Conditions Assessment prepared by DC Engineering Group, PSC, pertaining to the 2019 v. 2018 LAR.



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Capital Improvement Program	PC	The section corresponding to the CIP included in the 2019 LAR did not include all the information required by the Operations Plan and Operational Standards. It only included a list of projects and their cost estimates.
Sustainability Report	C	
Safety Report	C	
Security Report	C	
Emergency Report	C	
Level of Service Report	CP	<p>According to the information reported, Aerostar partially fulfilled this obligation, because although it conducted the survey with most of the parameters, it did not use the agreed rating method and did not survey for all the required components. It also did not report the number of clients surveyed, nor the percentage obtained per rating.</p> <p>We note that, on average, the level of service for the functional areas evaluated is rated as Good. It was observed that passengers surveyed for this year gave a better rating in almost all areas surveyed, compared with data obtained from the 2018 surveys.</p>
Legend: C = Compliant • PC = Partially Compliant • NC = Non-Compliant • N/A = Not Applicable		

After evaluating the 2019 LAR¹⁸, Aerostar is considered to be in **Partial Compliance** with the operational requirements set forth in the reports detailed above.

C. Licenses and Certifications

Article 3.4(c) of the Agreement requires the Lessee to obtain, renew and maintain in effect all certifications, licenses and other authorizations necessary for the operation of the Airport and to carry out its responsibilities under the Agreement. Aerostar advised that it holds all certifications, licenses and other authorizations required for the operation of the Airport. It was requested to submit evidence that it has the certifications, licenses and other authorizations required for the operation of the Airport, including, but not limited to, the following: use permit, sanitary license and certification from the Puerto Rico Fire Department, among others.

The following is a summary of the permits and authorizations provided, with an indication of their compliance status in the year under evaluation.

Table 2: Compliance with Permits and Authorizations for 2019

Permit	Compliance Status	Comments
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¹⁸ Schedule L, 2019 Lessee Annual Report (LAR) v. 2018.



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Emission Source Operation Permit	C	For this year, the Lessee submitted the corresponding request for modification to the Operating Permit dated January 9, 2019, to include six (6) emergency generators and included copy of the payment slip and the corresponding receipt for the total amount of \$1,541, covering the modification to the operating permit and the corresponding emissions. In addition, it provided evidence of the modification to the Operating Permit Number PFE-LC-16-0215-0123-II-O, issued by the agency on February 14, 2019, effective until April 29, 2020, which authorizes the use of 22 electricity generators.
Tree Cutting, Pruning and Planting Permits	N/A	Aerostar indicated that between 2016-2020, it did not require authorization from the Department of Natural and Environmental Resources for this permit because it only performed minor maintenance pruning. This information could not be confirmed by the Ports.
Use Permit	C	Valid. Permit has no expiration date.
Fire Prevention Certification	PC	No evidence was produced of having obtained the certifications for all the areas in use, as these arise from the Use Permit.
Environmental Health Certifications and Sanitary License¹⁹	PC	Renewed with an issue date of March 14, 2018 and effective until March 14, 2019. Lessee submitted evidence of its renewal as of April 11, 2019, so the license was expired by one month, since the one corresponding to the 2018- 2019 expired on March 14, 2019. Therefore, since the renewal was issued on April 11, 2019, Lessee is considered in Partial Compliance with this obligation for the year under evaluation.
Multi-Sector General Permit for Runoff Waters	C	Through an external search, it was identified that Permit PRR053267 is linked to the Airport and the same is valid from February 27, 2016 to June 3, 2020. Aerostar provided a "Notice of Intent ²⁰ ", with information certified as of February 15, 2019 by Danaly Cruz, Aerostar's environmental supervisor, which evidences the effort carried out to inform that it is the new operator of the facility.

¹⁹ **Schedule M**, Evidences the renewal of Sanitary License under No. 0000460211, with issuance date of April 11, 2019 and effective until April 10, 2020.

²⁰ Through the *Notice of Intent*, the EPA is alerted to the development of an industrial activity that generates runoff water and requests authorization to discharge such water into a nearby water body under a general discharge permit.



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Wastewater Discharge Authorization	PC	This authorization expired on April 27, 2015 and it was not until August 8, 2016 that Aerostar requested its renewal (more than one year from the renewal date). In addition, no evidence was presented of the efforts made before the AAA to renew or obtain the permit in a timely manner.
Waste Oil Storage Facility Permit	N/A	No data was provided on this permit. It was only reported that Aerostar does not store used oil. However, as part of the transaction an agreement was signed for the transfer of this permit. This could not be corroborated with Ports.
Airport Operation Certificate	C	This certificate has no expiration date. Evidence of periodic inspections by the Federal Transit Administration of the U.S. Department of Transportation has been provided.
Merchant Registration Certificate	C	Obtained on January 9, 2017 with an expiration date of June 30, 2019. Lessee obtained renewal of its Merchant Registration Certificate Number 0538968-0278 on July 1, 2019 effective until June 30, 2021.
Recycling plan	PC	No evidence was provided that the Recycling Plan had been submitted to the Solid Waste Authority or that the necessary documentation had otherwise been submitted to obtain that agency's certificate of compliance. In the 2019 LAR, Aerostar reported an increase in solid waste recycling from 294,260 lbs. in 2018 to 698,540 lbs.
Department of Customers Affairs Public Parking Operation	C	Aerostar obtained the renewal for License Number SJ-14623-EST for Public Motor Vehicle Parking Area Business in Puerto Rico, issued on February 26, 2019, with an expiration date of February 27, 2020.
Legend: C = Compliant • PC = Partially Compliant • NC = Non-Compliant • N/A = Not Applicable		

D. Cash Reserves to Cover Operations and Debt

Section 3.8 of the Agreement requires Aerostar to maintain certain cash reserves related to the Airport's indebtedness and projected operating expenses for the current year. In particular, the Agreement requires Aerostar to maintain cash reserves in an amount equal to the aggregate of the debt payable and twenty-five percent (25%) of the Airport's projected operating expenses for the year.



Aerostar has evidenced its compliance with such requirement on a quarterly basis by means of an *Officer's Certificate* issued by a corporate officer. The Authority requested Aerostar to report the amount it had on deposit in each of the reserve accounts and to confirm that such amounts are equal to or greater than the amounts required under Article 3.8 of the Agreement. Aerostar confirmed that it maintains reserves that meet the requirements of Article 3.8 of the Agreement and indicated that the reserve account balances for 2019 were as follows:

Table 3: Compliance with Cash Reserves

Type of Reserve	Quantity Reserved
Operating Reserve	\$18,346,000
Debt Reserve	\$32,199,710

In addition, Aerostar provided copy of the *Officer's Certificate* for the year 2019.²¹ Accordingly, the Lessee is considered to be in **Compliance** with this obligation for the year under evaluation.

E. Payment of Taxes

Section 3.11(a) of the Agreement provides that Aerostar must be current with all of its tax obligations, including, without limitation, its liability for the payment of income taxes, property taxes, if any, municipal license taxes and sales and use tax ("SUT"). Regarding the latter tax liability, section 4010.01 (nn) (2)(C) of the Puerto Rico Internal Revenue Code excludes from the definition of *Taxable Services*, for SUT purposes, services provided by the Government of Puerto Rico. The term "Government of Puerto Rico," as defined by the Internal Revenue Code, "shall include persons acting or operating in or on behalf of it." Consistent therewith, in the "Closing Agreement," entered into between Ports, Aerostar and the Treasury Department, in December 2012 as a consequence of the Agreement, it was reiterated that Aerostar would not be subject to the payment of SUT on the charges it collects as a result of the Agreement. In addition, said agreement also provided that the initial payment and the annual payments for the Lease would also be exempt from the payment of SUT.

²¹ See **Schedule N**, *Officer's Certificate* of Aerostar's principal financial officer certifying compliance with Section 3.8 of the Agreement and Section 8.1(d) of the Use Agreement for all quarters of 2019.



I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

Aerostar reported that it is in compliance with all the tax obligations described above and provided the Authority with copies of the following certifications: (i) certification of debt and certification of filing of income tax returns from the Department of the Treasury; (ii) certification of debt from the Municipal Revenue Collection Center; (iii) certification of municipal license debt from the Municipality of Carolina; (iv) certification of sales and use tax debt from the Department of the Treasury; and (v) certification of filing of personal property tax returns.²²

Table 4: Compliance with Tax Obligations

Tax obligation	Compliance Status	Comments
Income Tax Returns	C	A certified copy and/or evidence of filing of Aerostar's income tax returns for the year 2019 was provided. In addition, through Certifications of Debt, issued by the Treasury Department, we corroborated that Aerostar had no debts for any concept for the period under evaluation.
Municipal License /Business Volume Statements	C	A copy of the Business Volume Statements for the year 2019 was provided. In addition, Aerostar presented its Municipal License for the year 2019-2020.
Municipal Construction Taxes (sample)	C	Evidence of the corresponding non-exempt payment was presented for the sampled projects to which the excise tax was applicable.
Movable Property Tax Return	C	Certifications on the filing of personal property tax returns and "no debt" were submitted. The certification provided on November 6, 2019, shows that Aerostar filed the personal property tax returns for the year 2019. A copy of the personal property tax returns for the referred year was also reviewed.
Sales and Use Tax	C	Certification of exemption from payment of SUT and filing of tax returns was provided.
Legend: C = Compliant • PC = Partially Compliant • NC = Non-Compliant • N/A = Not Applicable		

In consideration of the foregoing, according to the evidence presented, the Lessee is considered to be in **Compliance** with its tax obligations for this year.

²² See **Schedule N**, documentation evidencing payment of taxes for 2019 and exemption from payment of SUT.



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F. Payments for Air Rescue, Fire & Security Services

Section 3.17 of the Agreement provides that Ports is responsible for providing police, fire and emergency services at the level necessary to comply with federal security requirements and the TSA-approved Airport Security Plan. All other security-related services will be the responsibility of Aerostar. However, subject to certain conditions, Aerostar was to reimburse Ports for all expenses and costs related to the provision of such services. For these expenses, Ports and Aerostar established a budget of \$2.8 million for the first year. For the second year, the parties agreed that the budget would be \$2.8 million plus an increase based on the applicable Consumer Price Index ("CPI").

Section 3.17 of the Agreement was amended by the *Transition Services Agreement* entered into by the parties at the closing of the Agreement to provide for certain payments by Aerostar to Ports for air rescue and firefighting services, among others. The amendment agreed between Ports and Aerostar provides for a transition process whereby Aerostar would take over these services, eliminating the payment obligation under the Agreement prospectively.

Aerostar evidenced that the firefighter personnel payroll expenses for 2019 amounted to **\$1,368,797.44**. In addition, it provided copies of invoices regarding the acquisition of vehicles, equipment and improvements made to the facilities used for the provision of these services.²³

On the other hand, security services include police, perimeter security and law enforcement officers. Aerostar indicated that it relies on the following suppliers for the provision of these services and provided invoices and evidence of payments made to each²⁴:

- St. James Security Services, Inc.
- Ranger American of Puerto Rico, Inc.
- Carolina Municipal Police
- Puerto Rico Police Bureau (LEOs)

In consideration of the foregoing, Lessee is considered to be in **Compliance** with this obligation for the year under evaluation.

²³ See **Schedule O**, various invoices and other documents submitted by Aerostar to evidence the expenses incurred for air rescue, fire and security services.

²⁴ *Id.*



G. Capital Improvements

Article 4 of the Agreement provides for Lessee's obligation to carry out Capital Projects.²⁵ Specifically, it requires it to carry out the Capital Projects defined in Schedules 13 and 17 of the Agreement; the former on improvements to be developed promptly after closing, referred to as, "General Accelerated Upgrades", and the latter on capital improvements agreed with certain airlines, prior to closing, referred to as, "Airline Capital Improvements". In addition, it sets forth the Lessee's obligation to undertake such other capital improvements or projects as may be required, from time to time, during the term of the Agreement to maintain the Airport in optimum condition and in compliance with Operating Standards and applicable laws and regulations.

Consistent with the aforementioned Article 4, Article 6 of the Use Agreement reiterates the obligations of the Lessee with respect to the Capital Projects, for the benefit of and in agreement with the Signatory Airlines. In its section 6.1, the Use Agreement requires the Lessee the "diligent" execution of the "Initial Capital Projects", identified in its Schedule "J". In addition, in its section 6.2, it refers to the commitments for the development of projects funded with the PFCs (PFC Commitments) at the time of Closing, which are identified in its Schedule "K". The Use Agreement sets forth the agreements and processes for the development of other Capital Projects, such as those proposed by Lessee or those that are mandated by law or regulation.

In summary, the following are the primary sources for the execution and development of capital projects or improvements by the Lessee:

- 1) "General Accelerated Upgrades" - eight (8) improvements defined in Schedule 13 of the Agreement, the development of which was to commence within three (3) months, after closing and be completed (substantially) within eighteen (18) months, thereafter;
- 2) "Airline Capital Improvements" - improvements to the facilities of three airlines to which Ports was bound by agreements prior to the Agreement or closing and which, if Ports had not completed at the time of closing, the Lessee would assume responsibility for completing them.
- 3) "Initial Capital Projects" - 22 projects defined in Schedule "J" of the Use Agreement or Schedule "F" of the Transition Plan, which were to be developed with haste, since, as agreed by Lessee and the Signatory Airlines, were necessary

²⁵ Capital Projects involve any purchase, capital lease (as such term is defined in the Agreement), development, improvement or renovation of a fixed asset used in the operation of the Airport. See Article 1, Section 1.1 of the Agreement.



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to improve the condition of the Airport to an optimal one, in accordance with the Operating Standards.

- 4) "PFC Commitments" - projects or improvements authorized to be executed with PFC funds. These are improvements or projects for which FAA authorization was requested for development with these funds;
- 5) "Capacity Enhancement Plan" or "CEP" - a plan consisting of three (3) phases to reconfigure and increase terminal capacity or space at the Airport. This plan was agreed to in the Transition Plan and is subject to the provisions of the Use Agreement.
- 6) The "Capital Improvement Program" or "CIP" is a planning document required by the Capital Asset Management Plan required by the Operating Standards. It identifies the projects or improvements needed to maintain the Airport in optimal condition, which, in turn, arise from the annual evaluation of the condition of the Airport's facilities.

Below, we discuss Lessee's compliance with its obligation to develop and complete capital improvements and/or projects. However, for this report, we limit ourselves to discussing Aerostar's compliance with the improvements and projects it was required to implement, develop or complete during the year under evaluation.

Initial Capital Projects

As described above, twenty-two (22) projects were identified under this category. Their execution schedule was established in the Transition Plan²⁶, which provided that they would be completed between 2012 and 2015. Below is the status on the development of the projects under this category that were worked on during 2019:

Table 5 Status of Initial Capital Projects as of 2019

No.	Project Name	Start date (estimated or actual)	Status as of 2019	Estimated/ final cost	Comments
1.	<i>Repair of Taxiway N Concrete Surfaces</i>	February 2017	In progress	\$26.4M	The project was significantly delayed in its execution.
2.	<i>Construction of Pedestrian Walkway from Garage to Terminal "A."</i>	June 2022	Pending start	\$4M	The project was significantly delayed in its execution. The project is expected to be completed during the third quarter of 2023.

²⁶ See **Schedule P**, Exhibit F of the Transition Plan and CEP.



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3.	<i>Repair Existing Ramp, Apron and Taxiway Concrete Surfaces</i>	December 2014	In progress	\$380K	The project had a significant delay in its execution. The project consisted of replacing deteriorated pavement on the ramp, apron and taxiway north of the American Airlines gates.
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As can be seen from the table above, as of the end of 2019, Lessee had not completed all 22 projects comprising the *Initial Capital Projects*, despite having agreed that they would be executed promptly after closing. By 2019, two (2) of the 22 projects were completed, two (2) were in progress and one (1) was still pending commencement. Therefore, Lessee is considered to be in **Partial Compliance** with this obligation.

PFC Commitments

Projects paid for, partially or totally, with *PFC* funds. According to the information on the FAA's website, as of December 31, 2019, *PFC* funds totaling \$594,010,551 were approved for the Airport. These funds expire on September 1, 2027.²⁷

We have no information on projects financed in whole or in part with *CBP* funds. for the year under evaluation.

Capacity Enhancement Plan or "CEP"

As described above, the CEP is comprised of several projects and improvements aimed at increasing the Airport's capacity through the reconfiguration or development of its spaces. The plan was divided into three phases that were delineated in Schedule E of the Transition Plan.²⁸ Some of the CEP projects are also part of the *Initial Capital Projects*.

According to information provided by the Lessee, the CEP was completed in July 2018 with the project identified as *Terminal A FIS*.²⁹

²⁷ Federal Aviation Administration, Passenger Facility Charge (PFC) Monthly Reports for 2019, https://www.faa.gov/sites/faa.gov/files/airports/pfc/monthly_reports/2019/airports.pdf

²⁸ See **Schedule P**

²⁹ See **Schedule Q**, Interlink-Hunt Contractor's Certification of Work and Projects Performed as Part of the CEP.



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Capital Improvement Program: Capital Projects

Consistent with the Operating Standards, Section 4.4.6 of the Operating Plan requires that, based on the annual *Facilities Condition Assessment* (FCA) and *Air Traffic Summary* (ATS), a Capital Improvement Plan (CIP) is to be prepared annually, which identifies and prioritizes projects needed in the short, medium, and long term to address the findings of the FCA and any other planning studies. The CIP must prioritize the projects, identify those eligible for FAA funding, and identify the environmental requirements necessary for implementation. In addition, the Lessee must submit it to Ports, annually, for approval.

According to the Plan of Operations, the CIP must contain the following information:

1. Executive summary;
2. Introduction and background;
3. Summary of the methodology used to prioritize the projects and a description of the studies or work carried out to identify the projects;
4. Recommendations for capital improvements to be made in the next five (5) years, with detailed information on projects projected to be completed in the first year of the CIP.

The Lessee included the table illustrated below in the CIP section of the 2019 LAR. It did not include all of the required information, only a listing of the projects, without specification of the year in which they are proposed to be developed, and their estimated cost. Therefore, the Lessee is in **Partial Compliance** with this obligation.



Table 6 2019 Capital Improvement Program

Capital Improvement Program ("CIP")

The following is the Five-Year Capital Improvement Program, which outlines the near, intermediate, and long-term projects planned to improve the Airport:

Description	Total Project Cost	Project Timeframe (Years)
1 CO-GEN	\$ 59,900,000	2021-2023
2 Expansion Jet Aviation	\$ 500,000	2020
3 Central Sector Lighting and Parking	\$ 350,000	2020
4 ICE Office Facilities	\$ 1,700,000	2020
5 Terminal D Reconstruction	\$ 10,400,000	2020
6 Terminal D FIS Reconstruction	\$ 2,500,000	2020
7 Security Access Doors	\$ 200,000	2020
8 AOCC/EOC Upgrades	\$ 1,000,000	2020
9 Apron 6 Slab Replacement (Design/Construction)	\$ 7,186,000	2020
10 Apron 6 Slab Replacement (Phase 2)	\$ 3,000,000	2024
11 Cargo Services Building Rehabilitation	\$ 1,809,000	2023
12 Reconstruction of Taxiway H	\$ 3,693,000	2020
13 Obstruction Removal (Runways 8, 10, 26, ROFA and TOFA)	\$ 13,000,000	2020-2021
14 Parking Bridge	\$ 3,000,000	2022
15 Reconstruction of Taxiway N	\$ 7,000,000	2020
16 Rehabilitation of Terminal Apron Floodlights	\$ 1,176,000	2020
17 Rebuild of Jose A. Tony Santana Ave.	\$ 4,000,000	2021
18 Reconstruction of Taxiway S	\$ 7,500,000	2021
19 Reconstruction of Runway 8/26	\$ 54,496,000	2021-2022
20 Rehabilitation and Strengthening of Apron 2 & 3 (Desing and Construction)	\$ 11,400,000	2023-2024
21 Runway 10/28 PCC Rehab and Joint Seal	\$ 816,000	2020
22 Reconstruction of Taxiway N1 (Construction)	\$ 3,700,000	2022
23 Catering Building Demolition	\$ 400,000	2021
24 Widen Taxiway J6	\$ 6,400,000	2023-2024
25 Taxiway S3, S4 and S5 Geometry Improvements	\$ 4,500,000	2021-2022
26 Convenience Stores	\$ 195,000	2020
27 Management Parking Office Remodeling	\$ 200,000	2020
28 Car Rental Return Access Lane	\$ 190,000	2020
29 Restrooms in Car Rental Building	\$ 118,000	2020
30 Others	\$ 577,000	2020
Total:	\$ 210,906,000	

*This CIP is subject to change and may be modified and/or amended at Aerostar's sole discretion.

Below is a table of the capital projects that were in progress during the year under evaluation.

Table 7 Capital Projects to 2019

Project	Itinerary Transition Plan	Start Date	Date Comp.	Est./ Final Cost	Status as of 2019	Comments
1 Repair of Taxiway N Concrete Surfaces	Jan -15 - Dec. -16	Feb-17		\$26.4M	In progress	Exhibit "F" of the Transition Plan, indicates that Aerostar included the project in its 5-year capital improvement plan.



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3	<i>Repair Existing Ramp, Apron and Taxiway Concrete Surfaces</i>	Oct. 13 - Sept. 14	Dec-14		\$380K	In progress	The project consists of the replacement of deteriorated pavement on the ramp, apron and taxiway north of the American Airlines gates. According to <i>Exhibit "F"</i> of the Transition Plan, the project depended on the final development of the CEP.
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It should be noted that the two projects identified above are also part of the *Initial Capital Projects*. We have no information on other projects or capital improvements initiated or in progress during the year under evaluation.

H. Reports and Notifications

Article 8(a) of the Agreement also imposes on Aerostar the obligation to submit to Ports the following reports, periodically: (i) incident management and notifications (emergencies); (ii) environmental incident management and notifications; (iii) financial reports; and (iv) all reports that the airlines are required to submit to Aerostar under the Use Agreement. The Authority requested Aerostar to submit copies of such reports and to confirm that such reports have been submitted to Ports in a timely manner and in compliance with the other requirements set forth in the Agreement.

The Agreement also requires the sending of notices of non-compliance with laws or regulations (Section 11.1) and for breach of contract, claims (including labor) disputes or litigation related to the Airport or its operation (Section 3.14), among other notices, including those related to incidents of Adverse Actions (see discussion in the section on Adverse Actions and Compensation) and notices of termination.

Notifications of emergencies, claims or non-compliance

Sections 8.1 (a), 3.14 and 11.1 of the Agreement establish the following criteria and circumstances for notification in cases of emergency, claims or breaches of contract:

- **Promptly** notify Ports of any significant (material) emergency when it becomes aware of the emergency;
- Report significant airfield accidents or incidents occurring on Airport premises **within 24 hours of becoming aware of the incident**;



- **Promptly** notify the other party when it becomes aware that it is in breach of the Agreement (including the Operating Standards and the Use Agreement, among other contractual obligations);
- **Promptly** notify the other party upon becoming aware of a significant (material) claim, proceeding or dispute (including labor) or litigation;
- Notify Ports, **within seven (7) days**, of having received notice from a Governmental Authority that Lessee may have violated any applicable law or regulation.

Regarding these types of notifications, we identified a communication from Aerostar to Ports dated January 21, 2020, regarding two letters of inquiry forwarded by the FAA.³⁰ Pertinent to the year under evaluation, 2019, the communication included a copy of the FAA's letter to Aerostar dated December 23, 2019, regarding an investigation of an incident that occurred on December 22, 2019, describing the incident as the detour of a pedestrian into a restricted area and, advising that the incident could constitute a violation of 14 C.F.R. Part 139 (Case No. 2020SO800028). According to communication from the FAA on March 11, 2020, this investigation was closed by the agency, after concluding that no violation of federal regulations was established.

From the documents provided, there is no other communication to Ports regarding the December 22, 2019 incident that, according to the FAA itself, may have constituted a violation of applicable federal regulations. Considering that the FAA's letter of December 23, 2019 warns about a possible violation of federal regulations, Aerostar had seven (7) days to notify Ports. As appears from the documents provided, it notified Ports almost a month later, in contravention of the term provided for this purpose in the Contract.

In addition, the LAR 2019³¹, in its section on operational performance reporting in the "Airfield", refers to five (5) incidents of unauthorized incursions, the details of which are included in Annex "B" of said report. According to the annex, all incidents were notified to the Ports by certified mail. Below is the list of the referred notifications, as cited in the report.

1. TSA Case No. 2019SJU0084

a. TSA Letter of Investigation sent to PRPA via certified mail 7017-0190-0000- 1085- 8173 on July 15, 2019 and received on July 22, 2019.

b. TSA Letter of Correction sent to PRPA via certified mail 7018-0360-0001-7727- 7547 on August 16, 2019 and received on August 23, 2019.

³⁰ See **Schedule R**, Letter from Aerostar to Ports dated January 21, 2020 re: FAA investigations.

³¹ See Appendix B to **Schedule L** (LAR 2019 v. 2018), at p. 37.



2. *TSA Case No. 2019SJU0087*
 - a. *TSA Letter of Correction sent to PRPA via certified mail 7017-0190-0000-1085-8173 on July 15, 2019 and received on July 22, 2019.*
3. *TSA Case No. 2019SJU0089*
 - a. *TSA Letter of Investigation sent to PRPA via certified mail 7017-0190-0000-1085-8173 on July 15, 2019 and received on July 22, 2019.*
 - b. *TSA Warning Notice sent to PRPA via certified mail 7018-0360-0001-7727-7547 on August 16, 2019 and received on August 23, 2019.*
4. *TSA Case No. 2019SJU0093*
 - a. *TSA Letter of Investigation sent to PRPA via certified mail 7017-0190-0000-1085-8210 on July 18, 2019 and received on July 23, 2019.*
 - b. *TSA Warning Notice sent to PRPA via certified mail 7018-0360-0001-7727-7646 on September 25, 2019 and received on September 30, 2019.*
5. *FAA Case No. 2020SO800028*
 - a. *FAA Letter of Investigation sent to PRPA via certified mail 7018-0360-0001-7727-7837 on January 21, 2020 and received on January 27, 2020."*

Of these notifications, we did not have access to the letters sent by TSA. Consequently, we were unable to assess their exact date and whether they warned of possible violations of applicable laws or regulations, or whether they relate another type of reportable incident under the category under evaluation. The Lessee claimed that it did not produce these notices because the documents include Sensitive Security Information. Therefore, we are unable to determine whether, upon receipt, Aerostar notified Ports in a timely manner pursuant to the Lease.

On the other hand, and consistent with previous years, the 2019 LAR included in Annex "J" ("*SJU Alerts*") the Alerts and Cancellation Notifications corresponding to the year 2019. It does not appear that the alerted incidents resulted in emergency incidents, which triggered the requirement for timely notification to the Ports.

In light of the above, the Lessee is considered in **Partial Compliance** with this category of notification for 2019, because, although it notified, it did so almost one month after the incident.

Environmental Incident Reports and Notifications

Pursuant to Section 8.1(b) of the Agreement, on "*Environmental Incident Management and Notifications*", the Lessee shall notify Ports:



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- Promptly after becoming aware of the discharge or spill (accidental or otherwise) of any reportable quantity (as that term is defined in applicable environmental law) of Hazardous Substances and the location where the incident occurred, the time, the agencies involved, the damage that has occurred and the corrective measures taken or to be taken; and
- If the environmental incident was initially communicated verbally, then prompt written notice must be given when the Lessee becomes aware of the incident.

For this type of notification and report, Aerostar reported that for the year under evaluation, there were no environmental incidents that would have required notification and report, according to the Agreement and applicable environmental laws. To corroborate this assertion, the LAR for 2019 v. 2018 was reviewed, from which no environmental incident arose for the reported year.

Financial Reports

Pursuant to Section 8.1(c) of the Agreement, Lessee shall deliver to Ports the following financial reports in one of the following formats:

- Unaudited Reports - Within 60 days after the end of each six-month period following the first day of each year ("*Reporting Year*"), the Lessee shall deliver a copy of the unaudited statements of account and the statements of related unaudited revenues, changes in equity and cash flow for the six-month period;
- Audited Reports - Within 120 days after the end of each reporting year, the Lessee shall deliver copies of the above financial information, but audited, prepared in accordance with applicable accounting standards and certified by Lessee's chief financial officer; or
- In the alternative (to the documents described above), Lessee may elect to submit a copy of the audited financial statement that the Lessee is required to submit to the FAA, annually, as part of its compliance with the Operating Certificate.

The Lessee provided a copy of the financial statements audited by PwC and evidence of their submission to Ports.³² Therefore, the Lessee is considered in **Compliance** for this category for 2019.

Reports required under the Use Agreement

Pursuant to Section 8.1(d) of the Agreement, the Lessee shall provide Ports with copies of all reports that the Airlines are required to provide to the Lessee pursuant to the Use Agreement,

³² See **Schedule B**, 2019 Audited Financial Statements and evidence of remittance to Ports.



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including traffic projections, traffic results and environmental reports. This, immediately upon receipt or within five (5) business days of receipt.

The following are the reports that the Airlines are required to deliver to Aerostar under the Use Agreement and that, by virtue of the above-mentioned section of the Agreement, Aerostar is required to deliver a copy to Ports.

Pursuant to Sections 5.1 (a) and (b) of the Use Agreement, each Airline must provide Aerostar with reports containing information about its operations. Specifically, each Airline must submit the following:

- Annually ("*Term Year*"), within 90 days prior to the beginning of the year, an Annual Report with the following information: (i) total Maximum allowable gross takeoff weight ("*MAGTOW*") of the aircraft that the Signatory Airline or its affiliates will land at the Airport that year; (ii) the number and *MAGTOW* of the Landing Revenue of the Signatory Airline and its affiliates; (iii) the number of Deplaned Passengers and Endplaned Passengers of Signatory Airline and its affiliates; (iv) any other information required by Lessee in order to determine or calculate Signatory Airlines' payments and contributions under the Use Agreement.
- Monthly, within 20 days after the end of the month, a Monthly Report of the actual operations of the Signatory Airline and its affiliates, certified and signed by an authorized representative of the Signatory Airline with the following information: (i) the number and *MAGTOW* of Landing Revenues of Signatory Airline and its affiliates; (ii) the number of "*Deplaned Passengers and Endplaned Passengers*" of Signatory Airline and its affiliates; and (ii) any other information required by Lessee to determine or calculate Signatory Airlines' payments and contributions under the Use Agreement.

In addition, Section 7.2 (e) of the Use Agreement provides for the Signatory Airline to notify Aerostar upon receipt of legal notice of any accident or event occurring at the Airport arising out of or related to the Signatory Airline's performance under the Use Agreement and resulting in bodily injury, personal injury or property damage.

Finally, Section 9.2 (a) and (d) of the Use Agreement requires Signatory Airlines to forward to the Lessee copies of any reports or notifications required under applicable environmental laws. Subsection "(d)" specifically requires Signatory Airline to notify Aerostar of any claim, notice or action relating to any spill of hazardous substances into the environment arising out of the Signatory Airline's use or occupancy of the Airport.



In summary, the following are the reports and notices that the Signatory Airlines submit to Aerostar pursuant to the Use Agreement and that in compliance with Section 8.1 (d) of the Agreement, Aerostar must in turn refer to Ports:

- MAGTOW Annual Report
- MAGTOW Monthly Report
- Legal notices of incidents related to Signatory Airlines
- Report or notifications of environmental accidents related to Signatory Airlines.

For this year, Lessee provided emails referencing the submission to Ports of monthly operating reports submitted by the Airlines, for the months of January through December 2019.³³ However, it did not provide a copy or evidence of the submission to Ports of the MAGTOW Annual Report. Nor did it provide notifications of legal or environmental incidents reported by the Airlines. It argued that they were not provided because no such incidents had occurred.

Therefore, Lessee is considered in **Partial Compliance** with this obligation for the year under evaluation for not having demonstrated compliance with submission of the MAGTOW Annual Report to Ports.

The following is a summary of Lessee's compliance with its reporting and notification obligations.

Table 8: 2019 Notifications and Reports

Notifications/ Reports	Compliance Status	Comments
Notification of Emergencies and Incidents Significant, Claims or Non-compliance	PC	Late notification of a letter of inquiry sent by the FAA, regarding an incident that occurred on December 22, 2019 which warned of a possible violation of federal regulations.

³³ **Schedule S**, several e-mails sent to Port personnel related to the airlines' Monthly Self Reports.



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Notification and Reporting of Environmental Incidents	N/A	Aerostar indicated that there are no notifications, since there were no environmental incidents that would have required notification and reporting.
Financial Reports (Interim, Non-Interim Audited, Audited)	C	Provided the 2019 Audited Financial Report and evidence of its submission to Ports.
Reports Required by the Use Agreement	PC	Aerostar did not provide a copy or evidence of the submission of the MAGO Annual Report to Ports.

Legend: C = Compliant • PC = Partially Compliant • NC = Non-Compliant • N/A = Not Applicable

I. Insurance

Section 13 of the Agreement provides for the Lessee’s obligation to obtain, renew and maintain certain insurance policies for the operation of the Airport. Section 13.1 of the Agreement provides for the type of policy and the coverages that the Lessee is obliged to maintain, at its own cost, or ensure that they are maintained, during the term of the Agreement or during any extension. The types of insurance and their coverages or limits are as follows:

1. Employment practices liability - minimum of \$5,000,000, per incident;
2. Workers' compensation insurance according to the applicable limits of the State Insurance Fund Corporation;
3. Commercial General Liability (Primary and Excess) - minimum of \$200,000,000 per incident and \$400,000,000 in the aggregate, for bodily injury (including death), and property damage;
4. Automobile Liability (Primary and Excess) - minimum of \$1,000,000 per incident and \$5,000,000 in the aggregate for bodily injury and property damage;
5. Builder's risk - with cover consistent with the market for public airports;
6. Professional liability - minimum of \$5,000,000, per incident and \$5,000,000, in the aggregate; provided that engineers/architects working on construction projects shall maintain coverage of not less than the total construction cost of the project;
7. Property with coverage based on the full replacement cost of all loss, damage or destruction to the Airport;



8. Pollution liability - minimum of \$5,000,000, per incident and \$25,000,000, in the aggregate;
9. Business interruption insurance - for a minimum of six (6) months of estimated income from the date of the incident;
10. Owner's contractors liability insurance - minimum of \$2,000,000, per incident;
11. Machinery and Boiler Insurance - for machinery or equipment breakdown covering, at a minimum, the replacement cost plus 10%; and
12. Fiduciary liability - minimum of \$3,000,000 per incident.

The policies identified in items (3)(4)(5)(7)(8)(9)(11), above must include Ports as an additional insured and all must be issued by insurers rated at least A(VII) or better by A.M. Best or equivalent rating from another rating agency, unless Ports waives this requirement. The above coverages may be adjusted for inflation every five years from closing.

Aerostar certified that it has all insurance required in the Agreement and submitted copies of the required policies and endorsements.³⁴ Below is a summary of its compliance with these policies for 2019:

Table 9: Insurance 2019

No.	Type of Insurance Policy	Status of Compliance	Comments
1.	Employment Practices Cover	C	
2.	State Insurance Fund Policy	C	Policy Certification issued on July 13, 2018, valid until June 30, 2019 (the document does not indicate the expiration date for each semester covered by the policy). The Certification that follows was issued on September 13, 2019 with validity until June 30, 2020. According to these documents, there is a period of just over two months without cover.
3.	General Commercial Insurance	C	
4.	Business Auto Insurance	C	
5.	Construction Liability	C	
6.	Professional Liability	C	
7.	Property Insurance	C	
8.	Legal Liability Insurance for Pollution	C	

³⁴ See **Schedule T**, Aerostar Policy Renewal Program 2019-2020.



I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

9.	Business Interruption Coverage	C	
10.	Owner Protection for Liability for Contractor	C	
11.	Cover for Heavy Machinery and Equipment	C	
12.	Fiduciary Liability	C	

J. Compliance with Certain General Obligations

In this section, we evaluate Aerostar's compliance with certain general obligations set forth in the Agreement. Specifically, those related to: reimbursement for monitoring expenses (Art. 8), compliance with state and federal laws (Art. 11), adverse actions (Art. 14 and 15) and restrictions on future transfers (Art. 17), among others.

Reimbursement for Monitoring Expenses, Article 8 of the Agreement

Section 3.1(a) of the Agreement provides that Ports reserves the right to enforce Aerostar's compliance in the use and operation of the Airport. Consistent with this reservation of rights, in Section 8.3 of the Agreement, Ports further reserves the right to conduct inspections, audits or compliance evaluations, particularly with respect to the operation and maintenance of the Airport, with Ports being the entity with expertise in these matters. Section 8.5 of the Agreement grants Ports the authority to require Aerostar to reimburse Aerostar for the costs incurred in such inspections or audits, up to a maximum of \$250,000.00.

The assessment of compliance with this obligation was based on invoices and evidence of payments provided by Ports and Aerostar. Ports produced a list of the invoices it submitted to Aerostar. In the invoices and evidence of payments submitted by Aerostar, the reimbursement for monitoring expenses for 2019 totals \$187,661.00.³⁵

The documentation provided shows the monitoring efforts by Ports and Aerostar's compliance with the reimbursement of these expenses.

Therefore, the Lessee is considered to be in **Compliance** with this obligation for the year under evaluation.

Compliance with Applicable Laws and Regulations, Article 11 of the Agreement

Article 11 of the Agreement reiterates the Lessee's general obligation to comply with all laws and regulations in force or that may be enacted in the future that apply to the entity and to

³⁵ See **Schedule U**, Invoices and evidence of payment for monitoring expenses.



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the operation of the Airport and its facilities. Compliance with some of these applicable laws and regulations is discussed in other parts of this report, such as: the section on permits, certifications and authorizations and the section on contributions, among others. For this reason, in this part of the report we analyze compliance with some subsections of Article 11, which addresses ethical obligations, discrimination, sexual harassment and the Americans with Disabilities Act (ADA), among others. It is stipulated that failure to comply with any of these laws could result in termination of the Agreement.

To verify Aerostar's compliance with some of these applicable laws and regulations, we requested specific documents and information about them. Below is a summary of the findings.

Table 10: Compliance with certain Special Laws as of 2019

Applicable Law or regulations	Reference	Compliance Status	Comments
Sexual Harassment Policy	Section 11.3 (c) of the Contract - mandates development and implementation of a policy against sexual harassment, with an express warning about the consequences of engaging in such acts.	C	A copy of the sexual harassment policy (effective for the evaluation period) included in the employee handbook, sample sexual harassment training attendance sheets and sample acknowledgements of receipt of the employee handbook were provided.
Disadvantaged Business Enterprise Program (DBE)	Section 11.13 of the Agreement - mandates the establishment of programs to support Disadvantaged Business Enterprise ("DBE") businesses; especially for concessionaires.	C	A copy of a "DBE Uniform Report" was provided for the years 2016 -2019. In addition, a list of participating grantees in the program for the years 2013 to 2020 was provided.
Investment in Puerto Rican Industry Act	Section 11.5 of the Agreement - requires compliance with Act No. 14-2004, as amended, regarding the acquisition of goods and services produced in Puerto Rico.	C	A list of its local suppliers of services and goods was produced containing 19 suppliers.

Inclusion of relevant clauses in subcontracts	Section 11.3 (e) and 11.8- require Aerostar to include in its contracts with suppliers and contractors clauses pertaining to its obligations under Art. 11 and Section 9.3 (tax obligations)	C	A sample of the Lessee's contracts signed with suppliers and contractors was evaluated to confirm the inclusion of the relevant clauses in such contracts.
Legend: C = Compliant • PC = Partially Compliant • NC = Non-Compliant • N/A = Not Applicable			

Adverse Actions, Art. 14 and 15 of the Agreement

Articles 14 and 15 of the Agreement provide for actions that may have adverse effects on one of the contracting parties, the process for notification of such actions and the compensation agreed upon when such an event occurs. Article 14.1 of the Agreement defines *Adverse Action* as an action that occurs when Ports or any governmental entity takes any action or actions during the term of the Agreement that has an adverse and significant effect on the market value of Aerostar's rights, benefits and obligations with respect to the Airport.

Article 14 requires Aerostar to provide Ports with an *AA Preliminary Notice* within 90 days from the date it became aware of the Adverse Action.

During 2019, there were no Adverse Actions.

Events of Default, Art. 16 of the Agreement

Article 16 of the Agreement defines what constitutes an event of default by each party and defines the remedies or consequences, depending on the type of default. Section 16.1 of the Agreement identifies and describes events of default by Lessee and Section 16.2 identifies events of default by Ports. In essence, the following events shall constitute events of default by both parties as set forth in the aforementioned sections:

- i. non-compliance with significant (material) obligations or requirements of the Agreement (including operating standards) or with the final adjudication decision of a dispute submitted to the dispute resolution mechanism (Art. 19), if such non-compliance remains uncured 90 days after a notice to that effect has been sent by the affected party;

- ii. (applicable to Lessee only) failure to comply with a directive in a final adjudication of a submitted dispute and the dispute resolution mechanism, when such failure creates a situation that endangers (significantly) the safety of the Airport's operations, or significantly affects its continued operation, or failure to pay past due debts to Ports, if such failures are not remedied within 10 business days after notice to that effect;
- iii. if any significant matter of a work plan, approved by the other party to remedy any non-compliance, is breached;
- iv. (applicable to Lessee only) non-compliance with performance requirements of the operational standards on three or more occasions in a calendar month, if such non-compliance remains unremedied for a period of 30 days from notice to that effect;
- v. the transfer of all or part of the interest held in the Airport or the Agreement in contravention of Article 17 of the Agreement; and
- vi. declaration of inability to pay past due debts, filing for reorganization, liquidation or similar relief under applicable bankruptcy law, among others.

In order to assess compliance with this obligation, the parties were requested to provide a copy of the notifications sent or received under this article. Aerostar answered that during the year under evaluation it did not send or receive notifications related to the non-compliances identified in Article 16. Ports did not confirm or refute Aerostar's assertion in this regard.

Transfer of Interests in the Agreement, Art. 17 of the Agreement

Article 17 of the Agreement establishes restrictions on each contracting party for the transfer of interests in the Agreement and the transaction. As applicable to Aerostar, transfers that do not comply with Section 17.1 of the Agreement are prohibited and will be declared void *ab initio*. Ports may intervene in a proposed transfer transaction by Aerostar if it is understood that the proposed transfer will be made to a person who is not qualified to perform the obligations of the Agreement or does not have the experience or financial strength. Otherwise, all changes of control at Aerostar must be reported to federal and local regulatory agencies and must be approved by Ports and the relevant agencies, as provided in Section 8.2 of the Use Agreement.

As applicable to Ports, Ports may transfer its interest in the Airport if such transfer is made in accordance with the provisions of Section 17.4 of the Agreement.



Lessee was requested to disclose any transfer or proposed transfer under Article 17 of the Agreement. In response to our request, Aerostar replied that there had been no transfer or proposed transfer under Article 17 of the Agreement. We quote below its response:

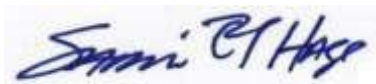
"Aerostar Airport Holdings, LLC continues to be the manager and operator of Luis Muñoz Marín International Airport. The change of one of Aerostar's parent companies does not require FAA approval. Article 17 of the Lease Agreement requires FAA approval if there is a transfer to an entity other than Aerostar; in other words, if Aerostar is not the manager and operator of the LMMIA.

Therefore, in the absence of information, we requested that they certify that during the period under evaluation there was no transfer of interests in violation of Article 17 of the Agreement. Aerostar provided the requested certification stating that, during the period under evaluation, Aerostar has not transferred, in whole or in part, its leasehold interest in the Airport in violation of Article 17 of the Agreement.³⁶

END OF DOCUMENT

I certify that the information evaluated for this report has been provided by Aerostar Airport Holdings, LLC and the Puerto Rico Ports Authority. All material and documentation have been provided to and shared with the Puerto Rico Public-Private Partnerships Authority of the Government of Puerto Rico.

HAGE Consulting Group, PSC



Samir El Hage
Principal

³⁶ See **Schedule V**, Certification issued by Aerostar regarding Article 17 of the Agreement on transfers.



I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.