NHR
6/12/14
Item No. 30

AN ORDINANCE 2014-06-12-0433

AUTHORIZING REVISIONS TO THE AIRLINE OPERATING PERMIT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, on July 26, 1984, City Council approved Ordinance No. 59073 which authorized the City Manager to grant an Airline Operating Permit at San Antonio International Airport on a month-to-month basis to airlines operating without a long-term lease in the terminal building or cargo areas or those providing weekly or seasonal air service; and

WHEREAS, pursuant to adoption of Ordinance 2011-11-17-0972, City Council authorized amendments to the Airline Operating Permit to align it with the new Airline Lease Agreement; and

WHEREAS, this Ordinance authorizes further revisions to the standard Airline Operating Permit to revise the indemnification language for both Commercial Airliners and Small Aircraft Operators to reflect current industry standards and to adjust the amounts for general liability insurance for Small Aircraft Operators under 60,000 pounds gross take-off weight; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is hereby authorized to execute Airline Operating Permits for Commercial Airliners and Small Aircraft Operators at San Antonio International Airport in the form substantially the same as the document set out in **Attachment 1**. The term of the Airline Operating Permits shall remain month-to-month.

SECTION 2. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 12th day of June, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**30 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41)**
Date:	06/12/2014
Time:	09:30:08 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing revisions to the Airline Operating Permit to update the insurance requirements and indemnification sections at the San Antonio International Airport. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x			x	
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

ATTACHMENT 1

AIRLINE OPERATING PERMIT

THIS AGREEMENT, entered into by and between the City of San Antonio, a Texas home-rule municipal corporation, (hereinafter referred to as "City") being the duly and lawfully constituted owner and operator of the San Antonio International Airport, acting by and through its City Manager or her designee pursuant to Ordinance No. 59073 enacted July 26, 1984, and _____ Airlines, Inc., a corporation doing business in Texas acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors, (hereinafter referred to as "Airline"); and

WHEREAS, City has the right to license the use of property on the Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline is a corporation primarily engaged in business of air transportation by aircraft for the carriage of persons, property, and mail; and

WHEREAS, Airline desires to use certain facilities and to exercise certain rights and privileges at San Antonio International Airport in connection with the operation of its Air Transportation business, and City is willing to agree to such use, rights and privileges as set forth herein;

NOW, THEREFORE, the City and Airline for and in consideration of the covenants and mutual agreements hereinafter contained do hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

The following words, terms and phrases wherever used in this Agreement shall for the purposes of this Agreement have the following meanings:

1.1 Affiliate means any air carrier that either (a) is wholly owned by Airline, or any parent airline that wholly owns Airline, or any sister airline wholly owned by the same company that wholly owns Airline provided that Airline shall be responsible for the operations at the Airport of such Affiliate, including payment of all related rents, fees, and charges incurred by such Affiliate or (b) conducts all or a portion of its air carrier operations at the Airport during the Term of this Agreement under Airline's name or a derivative thereof only with respect to such operations conducted under Airline's name or a derivative thereof and only if Airline shall have agreed, in writing, to be responsible for such operations, including payment of all related rents, fees, and charges and operates aircraft in Airline's livery and has Airline's flight numbers.

1.2 Agreement means this Airline Operating Permit between the City and Airline, as the same may be amended from time to time.

1.3 Air Transportation means the carriage of persons, property, cargo, or mail by aircraft to and from the Airport.

1.4 Aircraft Arrival means any and all landings by Airline but shall exclude any landings of aircraft that returns after take-off for emergency or precautionary reasons.

1.5 Airfield means the airfield at the Airport, including runways, taxiways, taxilanes, and apron areas (other than the Apron Area, other leased apron areas, and common use cargo aprons), navigational aids, hazard designation and warning devices, airfield security roads and fencing, blast fencing, lighting, runway protection zones and safety areas for landing, taking off, and taxiing of aircraft, avigation easements, land used in connection therewith or acquired for such purpose, and facilities, the acquisition, construction, or installation cost of which is wholly or partially paid by City.

1.6 Airport means the San Antonio International Airport owned and operated by the City of San Antonio.

1.7 Apron Area means the areas at the Airport dedicated to the parking, servicing, and ground handling of aircraft at the Terminal Building, all as shown on the Airport's Terminal Layout, Exhibit B.

1.8 Baggage Handling System means the areas and non-TSA equipment at the Airport associated with the consolidated baggage handling system (BHS) and related areas designed to automatically transfer checked baggage from airline-monitored inputs to a Transportation Security Administration (TSA) operated inline checked baggage inspection system with sortation capabilities to automatically transfer checked baggage inspection system cleared bags to designated baggage makeup carousels for pickup by Airline and other airline personnel.

1.9 Commercial Airline means a commercial airline service employing aircraft of more than 60,000 pounds gross take-off weight.

1.10 Common Use Area means space managed by City that may be made available to Airline from time to time for use in common with other airlines, as assigned by the Director, subject to applicable Rules and Regulations

1.11 Director means the person holding the position of Aviation Director of the City or any other person designated by the Director, the City Manager, or the City Council to exercise functions with respect to the rights and obligations of the Director.

1.12 Deplaned Passengers means the total number of passengers deboarding aircraft (operated by or for Airline) in San Antonio.

1.13 Enplaned Passengers means the total number of passengers boarding aircraft (operated by or for Airline) in San Antonio.

1.14 Exclusive Use or Exclusive Use Space means the space in the Terminal Building at the Airport assigned by the Director to Airline for its use and occupancy to the exclusion of all others.

1.15 FAA means the Federal Aviation Administration of the United States Government or any federal agency or agencies succeeding to its jurisdiction.

1.16 Fiscal Year means the twelve (12) month period beginning October 1 of any year and ending September 30 of the following year, or any other period adopted by City for its financial affairs.

1.17 Hazardous Materials means any and all substances, materials, wastes, pollutants, oils, or governmental regulated substances or contaminants as defined, designated or regulated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under the Environmental Laws as herein defined. Examples of Hazardous Materials include but are not limited to, asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste.

1.18 Loading Bridges means any passenger loading bridges serving aircraft at the Terminal Building

1.19 Leased Premises mean the Exclusive Use Space, Preferential Use Space, Common Use Space, and Loading Bridges leased by an airline.

1.20 Landed Weight means the maximum gross certificated landed weight, in thousand (1,000) pound units, that Aircraft Arrivals operated by Airline is authorized by the FAA to land at the Airport, as recited in each Airline's flight manual governing that aircraft type. For all landing fee computations, said sum shall be rounded up to the nearest thousand (1,000) pound unit.

1.21 Non-Exclusive Use Premises means those Terminal Building areas assigned to carriers on a non-exclusive basis and used by Airline

1.22 Preferential Use shall mean a right or use having priority, but not exclusivity, over a use by other airline.

1.23 Small Aircraft Operator means a commercial operator which employs only aircraft of less than 60,000 pounds gross take-off weight.

1.24 Terminal Building means the landside Terminal Building, Concourse A, and Concourse B.

ARTICLE II
TERM

This Agreement shall commence upon execution of this Agreement by City's authorized representative, and continue on a month-to-month basis until such time as either party provides to the other party in writing at least thirty (30) days' notice of cancellation/termination.

ARTICLE III
USE OF AIRPORT AND RELATED FACILITIES

3.1 Airline Rights and Privileges

Subject to the provisions of this Agreement and the Airport's Rules and Regulations (as established by Ordinance and/or promulgated by the Director), Airline, shall be entitled to use such premises as shall be designated by the City on a non-exclusive basis, along or in conjunction with others and as may be changed from time, and may use such designated areas for the following purposes:

3.1.1 The operation of its Air Transportation business including all activities reasonably necessary to such operation.

3.1.2 The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, delivering fuel to aircraft, repairing, maintaining, conditioning, servicing, parking, storing, and testing of aircraft or other equipment of or operated by Airline or others provided, however, that Airline shall use its best efforts to promptly remove any of its disabled aircraft from runways, taxiways, and aprons and shall place any such disabled aircraft only in such storage areas as may be designated by the City and may store such disabled aircraft only for such length of time and upon such terms and conditions as may be established by the City. In the event Airline should fail to remove any of its disabled aircraft as expeditiously as possible, the City may, but shall not be obligated to, cause the removal of such disabled aircraft. Airline agrees to reimburse the City for all costs due to Airline's failure to remove such disabled aircraft in accordance with this paragraph.

3.1.3 The sale of air transportation tickets, documentation of shipments, handling of reservations, and loading and unloading of persons, property, cargo, baggage, and mail at the Airport in the operation of an Airline's Air Transportation business.

3.1.4 The training at the Airport of employees of Airline. Training is to be limited to that incidental to Airline's Air Transportation business at the Airport. Flight training and testing of aircraft and other equipment shall be undertaken by Airline only with the prior written approval of the Director, and to the extent permitted by, and subject to, the Rules and Regulations.

3.1.5 The purchase of Airline's requirements of fuel, lubricants, propellants, personal property, services, food, beverage, catering services, other passenger supplies, and any other

materials and supplies used by Airline that are incidental to the operation of Airline's Air Transportation business. Nothing herein shall restrict City from requiring a permit and levying a charge on any person or company for conducting non-Air Transportation business (food, beverage, commissary supplies, services) at the Airport.

3.1.6 The sale, disposal, and exchange of Airline's aircraft, engines, accessories and other equipment, and materials or supplies, provided that such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only such functions as are incidental to the operation of its Air Transportation business at the Airport.

3.1.7 The servicing by Airline, or its suppliers of materials or furnishers of services, of aircraft and other equipment operated by Airline, including the provision of line maintenance or other materials or supplies, at locations designated by City. If Airline is serviced by third party, as provided for in this Agreement, then City reserves the right to require such supplier to secure a permit from City to conduct such activity at the Airport and to agree to observe all reasonable rules and regulations promulgated by City relative to the type of operation, including vehicular movement upon any of the Airport roadways, service drives, ramps, and grounds.

3.1.8 The installation and operation of identifying signs, posters, and graphics at Airline's sole cost and expense in locations designated by City. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal Building. All such signs of whatever number, size, design, color, nature or location shall require the written approval of the City prior to their installation.

3.1.9 The installation, maintenance, and operation of such radio, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that: (i) the location of such equipment and facilities shall be subject to the prior written approval of the Director; (ii) the use and location of such equipment and facilities shall not conflict with other similar equipment and facilities at the Airport; and (iii) the use and location of such equipment and facilities on the Airport shall be subject to the payment of standard rental rates established for such use. In the event of such interference, City may require removal, relocation, or modification at the sole cost of Airline to eliminate such interference.

3.1.10. The installation, maintenance, and operation of computer data lines, non-revenue generating wi-fi networks, telephone communications equipment, associated cables, associated conduits, and telephone communications switchgear and support computers at suitable locations on the Airport as may be necessary or convenient in the opinion of Airline for its operations; provided that: (i) the location of such equipment shall be subject to the prior written approval of the Director; (ii) the use and location of such equipment shall not interfere with the use of other similar equipment on the Airport; (iii) the use and location of such equipment, except for cables, on the Airport shall be only in premises for which rents, fees and charges are being timely paid by Airline pursuant to this Agreement; (iv) all cables

are installed in conduits, and when such cables are no longer needed, they are promptly removed by Airline without damage to the space and the conduits are also promptly removed by Airline if so required by the Director; and (v) all installation and/or removal is performed in accordance with the Airport's Physical Telecommunications Infrastructure & Security Policy and the Premises Distribution System Policy for the Terminal Building, as each may be amended from time to time.

3.1 11 In the event Airline agrees to ground handle any portion of the operations of another airline, Airline shall provide City advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the provisions of the foregoing sentence, Airline shall not agree to ground handle another airline without the prior written permission of City if such airline does not have in force an operating agreement with the City. Nothing herein shall restrict City from levying a nondiscriminatory concession fee for Ground Handling Services on any person or company (including Airline when Airline is providing these services to other non-Affiliated airlines). Airline's insurance, as required in this Agreement, shall provide insurance for such Ground Handling Services.

3.2 - Exclusions and Reservations

3.2.1 The City may from time to time temporarily or permanently close, consent to the closing of, or request the closing of any roadway and any other area at the Airport presently or hereafter used as such.

3.2.2 City may prohibit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the current Federal Aviation Administration approved Airport Layout Plan or other engineering evaluations performed subsequent to the then current Airport Layout Plan.

3.2.3 In connection with the exercise of Airline's rights under this Agreement, Airline or any of its agents, employees, directors, officers, contractors, invitees, licensees, or representatives shall not do any of the following:

3.2.3.1 Do anything that may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, air conditioning system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, if any, installed or located on or within the premises of the Airport.

3.2.3.2 Do anything that may invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.

3.2.3.3 Keep or store, at any time, flammable or combustible liquids except in storage facilities especially constructed for such purposes in accordance with federal, State, and City laws, including the Uniform Fire Code and the International Building Code. For purposes of this Agreement, flammable or combustible liquids shall have the same

definitions as set forth in the Uniform Fire Code, as that Code may be amended from time to time.

3.2.3.4 Do anything that may be in conflict with 14 CFR Part 139 Airport Certification as that regulation may be amended from time to time, or jeopardize the operating certificate of the Airport.

3.2.3.5 Do anything that may be in conflict with 49 CFR Part 1542 Airport Security or the TSA-approved security plan for the Airport.

3.2.3.6 Permit any amusement machine, vending machine, public pay telephone, facsimile machine, copy machine, or other machine operated by coins, tokens, or credit cards to be installed or maintained in any publicly accessible area without the express written determination of the Director. Airline or its nominee may, however, install, maintain, and operate vending machines in Airline's Exclusive Use Space, if any, not accessible to the public for the purpose of providing and making available foods, beverages and sundry food items to Airline's employees only.

3.2.3.7 Provide commercial ground transportation services to any person upon payment of any fee or charge. However, Airline is expressly excluded from the requirements of any Rules and Regulations promulgated, so long as this ground transportation is provided free of any fee or charge to any passenger (as a result of irregular operations) or employee.

3.2.3.8 Perform aircraft engine run-ups, unless these are performed at locations and during time periods approved in writing in advance by the Director.

3.2.4 Airline shall not sell food or beverages to the public or to its employees and passengers nor shall Airline in any manner otherwise provide for the sale of food and beverages at the Airport, excepting vending machines complying with Article 3.2.3.6. Distribution of food and/or beverages (at no cost to the public) by Airline in passenger holdrooms shall be permitted only with advance written approval of the Director.

3.2.5 City reserves the exclusive right to itself, its agents, and its franchisees to operate all concession services (including, but not limited to, food/beverage and news/gift concessions, specialty retail shops and carts, vending machines, pay telephones, facsimile machines, and other voice and data telecommunications systems, advertising displays, baggage lockers, and baggage carts) in the Airport.

3.2.6 This Agreement shall in no way prevent City from charging others including, but not limited to, members of the general public, passengers, customers, suppliers, agents and contractors of Airline for use of the Airport facilities owned by City.

3.2.7 Any and all rights and privileges not granted to Airline in this Agreement are hereby reserved for and to the City.

ARTICLE IV
FEES AND CHARGES

4.1 Airline shall pay City fees and charges, as established by City, for the rights, licenses, and privileges granted hereunder during the term of this Agreement, and shall file periodic reports as specified herein. If City publishes both signatory and non-signatory rates in its fee structure, Airline shall pay the non-signatory rate where applicable.

4.1.1 **Terminal Building Rents.** Airline shall pay the City monthly for premises in the Terminal Building, including Non-Exclusive Premises, as may be appropriate.

4.1.2 **Loading Bridge Fees.** Airline shall pay City a monthly fee for use of City-owned passenger Loading Bridges.

4.1.3 **Baggage Handling System Use Fees.** Airline shall pay City a monthly fee for Airline's use of the Baggage Handling System in the Terminal Building.

4.1.4 **Apron Area Fees.** Airline shall pay City for use of the Apron Area monthly.

4.1.5 **Landing Fees.** Airline shall pay City for its use of the Airfield monthly.

4.1.6 **Gate Use Charges.** Airline shall pay City for its use of the City Gates and non-preferential use of other airline's Gate, unless otherwise agreed to by the parties, and ticket counters.

4.1.7 **FIS Charges.** Airline shall pay City for its use of the City's FIS (Federal Inspection Service).

4.1.8 **Other charges.** City reserves the right to assess, and Airline agrees to pay, reasonable charges for the use of City-provided facilities and equipment, including, but not limited to, telecommunications trunk equipment charges, employee parking facilities, Common Area Use, RON, escorting services, and the issuance of security identification badges.

4.2 Time of Payment

The following sets forth the time of Airline payments of rents, fees, and charges to City.

4.2.1 Rents and fees for Terminal Building premises, Gate Usage, Loading Bridge Fees, and Apron Areas, shall be due and payable, without deduction or setoff, in monthly installments in advance on or before the first day of each month.

4.2.2 Landing Fees, City Gate Charges, FIS Fees and Remain Over Night (RON) charges for each month of operations shall be due and payable without deduction or setoff within fifteen (15) days after transmittal of an invoice, given that Airline's monthly statistical report as required in Section 4.5 below shall be received by the City within ten (10) days after the last day of the month after such month of operations.

4.2.3 Airline shall faithfully collect and promptly remit to City (without notice or demand by City and in accordance with 14 CFR 158 Passenger Facility Charges as this regulation may be amended from time to time) the proceeds of the City's Passenger Facility Charge so long as the City has an approved Passenger Facility Charge in effect.

4.2.4 Rents, fees, and charges not described in paragraphs 4.2.1, 4.2.2, and 4.2.3 above shall be due and payable within thirty (30) days after transmittal of a monthly invoice therefore by City. City will provide such invoice within thirty (30) days of activity for which charge is generated.

4.2.5 The acceptance of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline or preclude Airline from later demonstrating that Airline's report was inaccurate and that a lesser amount was properly owed (and to recover any such overpayment).

4.2.6 In establishing the rents, fees, and charges set forth in this Agreement, City is anticipating timely payment of such rents, fees, and charges. Untimely payment of these rents, fees, and charges jeopardizes the operation of the Airport. Therefore, in the event that rents, fees, and charges are not paid timely by Airline, the Director is authorized and directed to seek any necessary legal and administrative remedy to obtain collection of the unpaid rents, fees, and charges and to assure timely payment of future rents, fees, and charges. These remedies shall be in addition to late fees required herein and may include any of the following:

4.2.6.1 Seeking administrative relief through appropriate federal agencies, including the FAA.

4.2.6.2 Equitable and judicial remedies.

4.2.6.3 Such other legal and administrative remedies as permitted by law.

4.2.7 Failure to send a timely invoice does not relieve Airline from any obligation of payment.

4.3 Payments

4.3.1 Rents, fees, and charges shall be paid in United States Dollars by wire, electronic funds transfer, or check payable to San Antonio International Airport the City of San Antonio, which shall be delivered or mailed, postage prepaid, to City of San Antonio, Aviation Department, Accounting Section, 457 Sandau Road, San Antonio, TX 78216 or which may be paid by wire transfers to accounts of the Airport designated in writing by the Director.

4.3.2 To arrange payment by wire or electronic funds transfer, Airline shall contact the Aviation Department's Accounting Section at (210) 207-7242 for further information.

4.4 Late fees on Overdue Payments. Without waiving any other right available to City in the event of a default in Airline's payment of any rents, fees, and charges under this Agreement, including Passenger Facility Charge proceeds, in the event that Airline is delinquent for a period of thirty (30) calendar days or more from the date when such payment is due to City, Airline shall pay City late fees thereon, from the date such rents, fees, or charges become payable to the date of payment at the rate of one and one-half percent (1.5%) per month; provided, however, that if the maximum rate then provided by law is less than 1.5% per month, then the rate shall be such maximum legal rate. City may, but is not obligated to, provide Airline with a written reminder when invoiced rents, fees, or charges have not been received within thirty (30) calendar days of transmittal of the invoice therefore.

4.5 Monthly Activity Reports

4.5.1 Airline shall furnish to the Director, on or before the tenth (10th) day of each month, an accurate verified report detailing its operations for the previous month on forms prescribed by the Director. Said report shall include, but shall not be limited to:

4.5.1.1 Airline's total number of Aircraft Arrivals and departures, by type of aircraft and Maximum Gross Landing Weight of each type of aircraft

4.5.1.2 The total number of domestic and international enplaning and deplaning passengers

4.5.1.3 The total weight of freight, mail, and other cargo, enplaned and deplaned, domestic and international, for such month

4.5.1.4 The total number of turns on all gates by gate used

4.5.1.5 The total number of times Airline parked aircraft overnight at all gates

4.5.1.6 The total number of times Airline parked aircraft at RON Parking Positions.

The Monthly Activity Reports can be submitted electronically at AirlineMonthlyReports@sanantonio.gov. The City reserves the right to periodically audit these reports to verify the accuracy of the information.

4.5.2 Failure to furnish reports. If Airline fails to furnish City with the report(s) described above, Airline's Landing Fees and Common Use Fees shall be determined by assuming that the total Landed Weight for Airline and its Enplaned/Deplaned passengers during the preceding month was one hundred twenty-five percent (125%) of the month for which such figure is available or other available data. Any necessary adjustment in such Landing Fees or Common Use Fees shall be calculated after an accurate report is delivered to the Director by

Airline for the month in question, and resulting surpluses or deficits shall be applied to Airline's Landing Fees and Common Use Charges for the next succeeding month. An accounting fee of $100 for each occurrence will be charged to Airline and shall be payable by Airline for the additional services required by City pursuant to this paragraph.

4.6 Performance Guarantee

4.6.1 To guarantee Airline's faithful performance of all terms and conditions contained herein, including but not limited to the timely payment of all rents, fees, and charges, Airline shall remit to City prior to Airline's use of the space or the commencement of Airline's operations or activities in regard to the Airport and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect City, a Performance Guarantee in the amount of:

4.6.1.1 Airline's estimated rents for Exclusive Use Space, Preferential Use Space, and Non-Exclusive Use Space for two (2) months

4.6.1.2 Airline's estimated Loading Bridge Fee for two (2) months

4.6.1.3 Airline's estimated Common Area Use Fees for two (2) months (as determined using activity data for the most recent six (6) months calendar month to determine Airline's obligation using the Common Use Formula)

4.6.1.4 Airline's estimated Landing Fees for two (2) months, (determined on the basis of Airline's estimated landed weight each year times two-twelfths at the actual Landing Fee rate effective for the Fiscal Year. Either Airline or its Affiliate will also include a Performance Guarantee for the Affiliate.

4.6.2 The Performance Guarantee may be adjusted by City annually, or more frequently, if there is a material change to the amount required in this Section 5.14 from the Airline. Such Performance Guarantee shall be in the form of a Letter of Credit, Bond, or other instrument satisfactory to City, in a form acceptable to the Director. Performance Guarantee must provide that it shall remain in full force and effect for a period extending three (3) months following termination of this Agreement.

4.6.3 In the event City is required to draw down or collect against Airline's Performance Guarantee for any reason, Airline shall, within ten (10) business days after City's written demand, take such action as may be necessary to replenish the existing Performance Guarantee to its original value or to provide a replacement Performance Guarantee from another source so that the aggregate of Performance Guarantee (s) is equal to two (2) months' estimated rents and landing fees payable by Airline as described above.

4.6.4 In the event that any such Performance Guarantee shall be for a period less than the full period required above or if the Performance Guarantee will be cancelled, Airline shall

provide a renewal or replacement Performance Guarantee for the remaining required period so that there is no interruption in coverage.

4.6.5 Upon Airline's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and the Federal Judgeship Act of 1984 or any successor statute, as such may be amended, supplemented, or replaced, City, by written notice to Airline given at any time within ninety (90) days of the date such event becomes known to City, may impose or re-impose the Performance Guarantee requirements on Airline. In such event, Airline shall provide City with the required Performance Guarantee within ten (10) days from its receipt of such written notice and shall thereafter maintain such Bond in effect until the expiration or termination of this Agreement.

4.6.6 If Airline shall fail to obtain or keep in force such Performance Guarantee required hereunder, such failure shall be grounds for immediate termination of this Agreement. City's rights under this Article shall be in addition to all other rights and remedies provided to City under this Agreement.

4.6.7 Airline and City agree that this Agreement constitutes an 'unexpired lease' for the purposes of Section 365 of the United States Bankruptcy Code (Title 11 U.S.C.) subject to assumption or rejection, and subject to the terms and conditions of assumption or rejection, as provided in said Section 365. Furthermore, Airline and City agree that if Airline provides a Performance Guarantee in the form of a Contract Bond or irrevocable letter of credit, such Performance Guarantee provided by Airline is not 'property of the estate' for purposes of Section 541 of the United States Bankruptcy Code (Title 11 U.S.C.), it being understood that any Performance Guarantee is the property of the third (3rd) party providing it (subject to City's ability to draw against the Performance Guarantee) and that all Passenger Facility Charges, less the allowable collection fees, collected by Airline with respect to Enplaned Passengers at the Airport are the property of City.

ARTICLE V
ADJUSTMENT OF RATES FOR FEES AND CHARGES

5.1. Rates for fees and charges in accordance with the City's then current schedule of fees and charges shall be reviewed at least annually and may be adjusted as necessary effective October 1 of each Fiscal Year (or upon the first day of each new Fiscal Year) or as otherwise approved by Ordinance, and at any other time that unaudited monthly Airport financial data indicates that total fees and charges payable pursuant to the then current rate schedules are estimated and anticipated by City to vary by more than ten (10) percent from the total fees and charges that would be payable based upon the use of actual financial data to date for that Fiscal Year.

5.2 Adjustments to fees and charges pursuant to this Article V shall apply and shall be paid by Airline as directed by City without the necessity of formal amendment of this Agreement.

5.3 If adjustment of fees and charges is not completed by the City on or prior to the end of the Fiscal Year, the fees and charges then in existence shall continue to be paid by Airline until

adjustment is concluded. At the time such adjustment is concluded, appropriate revisions shall be made to adjust fees and charges paid to date in said Fiscal Year to the amounts that would have been paid had the new rates been effective at the beginning of said Fiscal Year.

ARTICLE VI
DAMAGE OR DESTRUCTION

6.1 Partial Damage. If any part of Airport premises directly and substantially affecting the use herein authorized by Airline shall be partially damaged by fire or other casualty, but said circumstances do not render said premises untenantable as reasonably determined by City, the same may be repaired to usable condition with due diligence by City as hereinafter provided with no abatement whatsoever in applicable fees and charges.

6.2 Substantial Damage. If any part of Airport premises directly and substantially affecting the use herein authorized by Airline shall be so extensively damaged by fire, or other casualty, as to render any portion of said premises untenantable but capable of being repaired, as reasonably determined by City, the same may be repaired by City should City so elect. In such case, the fees and charges payable hereunder with respect to use of affected premises shall be paid up to the time of such damage and shall thereafter be abated equitably until such time as such premises may be restored adequately for Airline's use.

6.3 Damage Not Repairable. If any part of Airport premises directly and substantially affecting the use herein authorized by Airline shall be damaged by fire or other casualty, and is so extensively damaged as to render any portion of said premises incapable of being repaired as reasonably determined by City, City shall be under no obligation to replace or reconstruct such premises. The fees and charges payable hereunder shall be paid up to the time of such damage and thereafter shall cease until such time as replacement or reconstructed premises may be available for use by Airline provided, however, that City shall have no duty to provide such replacement or reconstructed premises.

ARTICLE VII. INDEMNIFICATION AND INSURANCE

7.1 – **Indemnification**

7.1.1 **LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and its elected and appointed officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LESSEE's activities under this LEASE, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the**

rights or duties under this LEASE. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LESSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

7.1.2 The provision of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LESSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LESSEE known to LESSEE related to or arising out of LESSEE's activities under this LEASE and shall see to the investigation and defense of such claim or demand at LESSEE's costs. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LESSEE of any of its obligations under this paragraph.

7.1.3 All personal property placed in the Leased Premises shall be at the sole risk of Lessee. City shall not be liable, and Lessee waives all claims for any damage either to the person or property of Lessee or to other persons: (i) due to the Leased Premises, or any part of appurtenances thereof, becoming out of repair; (ii) arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current (unless caused by the sole negligence or willful misconduct of City or its elected officials, employees, officers, directors, volunteers and/or representatives); (iii) from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; or (iv) due to the happening of any accident in or about the Leased Premises. Lessee shall save and hold harmless City from any claims arising out of damage to Lessee's property or damage to Lessee's business, including subrogation claims by Lessee's insurers.

7.2 <u>Insurance</u>

7.2.1 Airline shall procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement.

7.2.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Airline from liabilities that might arise out of this Agreement. Airline is free to purchase such additional insurance as Airline determines necessary.

7.2.3 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

7.2.4 **Minimum Scope and Limits of Insurance.** Airline shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

7.2.4.1 **Airport Premises Liability – Occurrence Form**

7.2.4.1.1 Policy shall include bodily injury, property damage and broad form contractual liability coverage.

Commercial Airline Policy Limits:

• General Aggregate	$300,000,000
• Products – Completed Operations Aggregate	$300,000,000
• Personal and Advertising Injury	$25,000,000
• Each Occurrence	$300,000,000
• Fire Damage (Damage to Rented Premises)	$1,000,000

Small Aircraft Operator Policy Limits:

• General Aggregate	$50,000,000
• Products – Completed Operations Aggregate	$50,000,000
• Personal and Advertising Injury	$25,000,000
• Each Occurrence	$50,000,000
• Fire Damage (Damage to Rented Premises)	$1,000,000

7.2.4.1.2 The policy shall be endorsed to include the following additional insured language: **"The City of San Antonio shall be named as an additional insured with respect to liability arising out of the use and/or occupancy of the property subject to this Agreement."**

7.2.4.1.3 Policy shall not contain any restrictions of coverage with regard to operations on or near airport premises.

7.2.4.2 **Aircraft Liability – including coverage for owned aircraft and non-owned aircraft**

7.2.4.2.1 Policy shall include bodily injury and property damage coverage, including passenger liability.

Commercial Airline Policy Limits:

- Each Occurrence $300,000,000

Small Aircraft Operator Policy Limits:

- Each Occurrence $50,000,000

7.2.4.2.2 The policy shall be endorsed to include the following additional insured language: **"The City of San Antonio shall be named as an additional insured with respect to liability arising out of the use and operation of Airline's aircraft while on Airport Premises."**

7.2.4.3 **Automobile Liability**

7.2.4.3.1 Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles driven on the airside of the airport.

- Combined Single Limit (CSL) $5,000,000

7.2.4.3.2 Policy shall not contain any restrictions of coverage with regard to operations on or near airport premises.

7.2.4.4 **Worker's Compensation and Employers' Liability**

7.2.4.4.1

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$1,000,000
Disease – Each Employee	$1,000,000
Disease – Policy Limit	$1,000,000

7.2.4.4.2 Policy shall contain a **waiver of subrogation** against the City of San Antonio.

7.2.4.5 **Property Insurance**

7.2.4.5.1

Coverage for Airline's tenant improvements	Replacement Value
Coverage on building **(required if Airline is sole occupant)**	Replacement Value

7.2.4.5.2 Property insurance shall be written on an all risk, replacement cost coverage, including coverage for flood and earth movement.

7.2.4.5.3 The City of San Antonio shall be named as a loss payee on property coverage for tenant improvements.

7.2.4.5.4 If property coverage on the building is required, the City of San Antonio shall be named as a loss payee.

7.2.4.5.5 Policy shall contain a waiver of subrogation against the City of San Antonio.

7.2.5 **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:

7.2.5.1 On insurance policies where the City of San Antonio is named as an additional insured, the City of San Antonio shall be an additional insured to the full limits of liability purchased by the Airline even if those limits of liability are in excess of those required by this Agreement.

7.2.5.2 The Airline's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

7.2.5.3 Provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy.

7.2.6 **Notice of Cancellation.**

7.2.6.1 Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, non-renewed, canceled, or contain a material change except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to City's Aviation Department, Properties Division.

7.2.6.2 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Airline shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Airline's performance should there be a lapse in coverage at any time during this contract. Failure to provide and maintain the required insurance shall constitute a material breach of this Agreement.

7.2.7 **Acceptability of Insurers.** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Texas and with an "A.M. Best" rating of not less than A- (VII). The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Airline from potential insurer insolvency.

7.2.8 **Verification Of Coverage.**

7.2.8.1 Airline shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

7.2.8.2 All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

7.2.8.3 All certificates required by this Agreement shall be sent directly to City's Aviation Department, Properties Division. The City Department, Agreement Number and location description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Agreement at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

7.2.8.4 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Airline shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Airline shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Aviation Department/Properties Division
9800 Airport Blvd.
San Antonio, TX 78216

7.2.9. **Approval.** Any modification or variation from the insurance requirements in this Agreement must have prior approval from the City's Aviation Department in consultation with the City's Risk Management Division. Such action will not require a formal contract amendment, but may be made by administrative action.

ARTICLE VIII
CANCELLATION BY CITY: EVENTS OF DEFAULT BY AIRLINE

8.1 Events of Default by Airline. Each of the following shall constitute an "Event of Default by Airline":

8.1.1 Airline fails to pay fees and charges when due, and such default continues for a period of ten (10) days after receipt of written notice from City of such nonpayment.

8.1.2 Airline fails after the receipt of written notice from City to keep, perform or observe any term, covenant or condition of this Agreement (other than as set forth in 8.1.A above) and such failure continues for fifteen (15) days after such receipt.

8.1.3 Airline shall become insolvent, shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

8.1.4 An Order for Relief shall be entered at the request of Airline or any of its creditors under the federal bankruptcy or reorganization laws or under any law or statute of the United States or any state thereof.

8.1.5 A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Airline and shall not be dismissed within thirty (30) days after the filing thereof.

8.1.6 By or pursuant to or under the authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency, or officer, receiver, trustee, or liquidator shall take possession or control of all or substantially all of the property of Airline and such possession or control shall continue in effect for a period of fifteen (15) days.

8.1.7 Airline shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.

8.1.8 The rights of Airline hereunder shall be transferred to, pass to, or devolve upon, by operations of law or otherwise, any other person, firm, corporation, or other entity, as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceedings or occurrence described in paragraphs C through G of this Section 8.1.

8.2 Remedies for Airline's Default. Upon the occurrence of an Event of Default by Airline, Airline shall remain liable to City for all arrearages of fees and charges payable hereunder and for

all preceding breach(es) of any covenant herein contained. City, in addition to the right of termination and to any other rights or remedies it may have at law or in equity, shall have the right of reentry and may remove all Airline persons and personal property. Upon any such removal, Airline property may be stored in a public warehouse or elsewhere at the cost of, and for the account of Airline. Airline shall pay to City all costs, fees, and expenses incurred by City in the exercise of any remedy upon an Event of Default by Airline.

ARTICLE IX
ASSIGNMENT

Airline shall not, directly or indirectly, assign, sell, hypothecate or otherwise transfer this Operating Permit.

ARTICLE X
SUBORDINATION TO BOND COVENANTS

This Agreement and all rights granted to Airline hereunder are expressly subordinated and subject to the liens and provisions of any pledge, transfer, hypothecation, or assignment made (at any time) by City to secure Airport bond financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of the bond ordinance authorizing the issuance of Airport bonds by the City of San Antonio. City may amend or modify the bond ordinance or make any change thereto that does not materially adversely affect Airline rights under this Agreement. Conflicts between this Agreement and the bond ordinance shall be resolved in favor of the bond ordinance.

ARTICLE XI
GOVERNMENT INCLUSION & FURTHER SUBORDINATION

11.1 Federal and Other Governmental Authority Funds. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States government, or other governmental authority, relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of Federal funds or other governmental authority funds for the development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds.

11.2 Nondiscrimination

11.2.1. As a condition of the use of Airport services and facilities, Airline shall be subject to the following:

11.2.1.1 In the event facilities are constructed, maintained, or otherwise operated on the space assigned to Airline for a purpose for which a U.S. Department of Transportation (USDOT) program or activity is extended or for another purpose

involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, USDOT, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended from time to time.

11.2.1.2 As a party to this contract, Airline understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

11.2.1.3 In the construction of any improvements on, over, or under the space assigned to Airline, and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, or handicap shall be excluded by Airline from participation in, denied the benefits of, or otherwise be subject to discrimination.

11.2.1.4 Airline shall use the premises assigned to it in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964," and as such regulations may be amended.

11.2.1.5 Airline shall insert the substance of the provisions of these paragraphs on nondiscrimination in any lease, agreement, or contract by which Airline grants a right or privilege to any person, firm, or corporation to render accommodations or services to the public on the space assigned to it at the Airport.

11.2.2 Breach of Nondiscrimination. In the event of a breach of any of the nondiscrimination covenants set forth above, City will have the right to terminate Airline's right to use Airport services and facilities and to re-enter and repossess the space and the facilities thereon that had been assigned to Airline, and hold the same as if such assignment had never been made. This provision, regarding the termination of Airline's rights to use Airport services and facilities, shall not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, are followed and completed, including the expiration of appeal rights, by either Airline or City.

11.2.3 Fair and Equal Furnishing of Services. As a condition of the use of Airport services and facilities, Airline shall furnish its accommodations or services on a fair, equal, and not unjustly discriminatory basis to all users thereof, and it shall charge fair, reasonable, and not unjustly discriminatory prices for each unit or service. In the event of noncompliance with this paragraph, City may terminate Airline's right to use Airport services and facilities.

11.2.4 Affirmative Action Program. As a condition of the use of Airport services and facilities, Airline shall undertake an affirmative action program as required by FAA regulations, Title 14, Code of Federal Regulations, Part 152, Subpart E, entitled "Nondiscrimination in Airport Aid Program," or as otherwise approved by the FAA, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, or handicap be excluded from participation in any employment activities covered in such Subpart E. Airline shall not exclude any person on such grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Airline shall require that its covered suborganizations provide assurances to Airline that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.

11.2.5 Minority Business Enterprise. As a condition of its use of Airport services and facilities, Airline shall comply with the requirements of Title 49 of the Code of Federal Regulations, Part 23, and entitled "Participation by Minority Business Enterprise in Department of Transportation Programs" as this Part may be amended from time to time.

11.3 Compliance with Environmental Laws

11.3.1 Airline shall comply with all applicable federal, State, and local statutes, ordinances, regulations, rules, or codes now or hereafter in effect during the Term of this Agreement, as same may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment (including the ambient air, ground water, surface water and land use, including substrata soils), and shall include, but not be limited to: the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300(f) *et seq.*; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 *et seq.*; and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 *et seq.*; the Clean Air Act as amended, 42 U.S.C. 7401 *et seq.*; the Clean Water Act, 33 U.S.C., Section 1251, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 *et seq.*; the Solid Waste Disposal Act [SWDA], 42 U.S.C. Sections 6901 et seq.; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C., Section 651-678; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901 *et seq.*; and their State counterparts; and all substances defined as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated pursuant to such laws (collectively, "Environmental Laws").

11.3.1.1 Any fines, penalties, or remediation costs that may be levied against the City by the Environmental Protection Agency or the Texas Commission on Environmental Quality (TCEQ) or any other governmental agency for Airline's failure to comply with the Environmental Laws as required herein shall be reimbursed to the City by Airline.

11.3.1.2 Airline shall prevent the presence, use, generation, release, omission, discharge, storage, disposal or transportation of any hazardous materials by Airline on, under, in, above, to, or from the Airport or any other areas or facilities subject to this Agreement, other than in strict compliance with all applicable Environmental Laws.

11.3.1.3 Airline acknowledges that the Airport has represented that the Airport is subject to the National Pollutant Discharge Elimination System (NPDES) program and its regulations relating to stormwater discharges, 40 CFR Part 122, for operations that occur at the Airport. Airline further acknowledges that it is familiar with these NPDES stormwater regulations, and that it shall conduct operations at the Airport in compliance with applicable provisions of 40 CFR Part 122 or any applicable NPDES permit, as either may be amended from time to time.

11.3.1.4 City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit, as well as to ensure safety and minimize costs. Airline acknowledges that it may be necessary to minimize the exposure of stormwater to materials generated, stored, handled, or otherwise used by Airline as defined in the federal stormwater regulations, by implementing and maintaining applicable "Best Management Practices" as defined in 40 CFR, Part 122.2 and as implemented in any applicable NPDES permit, as either may be amended from time to time.

11.3.1.5 Airline acknowledges that City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals thereto, to the extent affecting Airline's operations at the Airport, are incorporated by reference into this Agreement. City shall promptly notify Airline of any notices received by City from TCEQ or other regulatory agency regarding actual or proposed changes to City's permit.

11.3.1.6 City and Airline acknowledge that each must maintain a NPDES stormwater discharge permit in a form and content prescribed entirely by TCEQ or appropriate regulatory agency. City and Airline acknowledge that City has the obligation to prepare a stormwater pollution prevention plan (SWPPP) and submit such to TCEQ or appropriate regulatory agency. City and Airline acknowledge that Airline may prepare its own SWPPP or subscribe to the SWPPP of the City. City shall provide Airline with written notice of City's NPDES stormwater discharge permit requirements (including any modifications thereto) that are applicable to Airline's operations and that Airline shall be obligated to perform from time to time at the Airport including, but not limited to: certification of non-stormwater discharges; implementation of "good housekeeping" measures or Best Management Practices applicable to Airline's operation; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline, within thirty (30) days of receipt of such written notice, shall notify City in writing if it disputes any of the NPDES stormwater discharge permit requirements it is being directed to undertake. If Airline does not provide such timely notice, it is deemed to assent to undertake such requirements applicable to Airline's operations. If Airline provides City with written notice, as required above, that it disputes such NPDES

stormwater discharge permit requirements, City and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to City notices required pursuant to this paragraph unless Airline has a good faith basis to do so.

11.3.1.7 City and Airline agree to make available for inspection to each other upon request any non-privileged information collected and submitted to any governmental entity or entities pursuant to applicable NPDES stormwater regulations.

11.3.1.8 Airline agrees to participate, to the extent reasonably practical, in any reasonable manner requested by City in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

11.3.1.9 Upon reasonable notice (except in cases of emergencies when notice shall not be required) based on the circumstances and without materially disrupting Airline's operations and in the presence of the Airline or a representative of the Airline, City shall have the right at any time and from time to time to enter upon Airline's Leased Premises for purposes of inspection to ensure that Airline is complying with the Agreement without such inspection constituting a trespass.

11.3.1.10 Airline shall not dispose of any waste material or any product used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers, or any waste or recycling receptacle at the Airport unless such waste material or products are disposed of in full and complete compliance with all federal (including the Environmental Protection Agency) State of Texas, and City of San Antonio laws for disposal of these waste materials and products. Airline shall not store waste in violation of Environmental Laws.

11.3.1.11 The triturator facility is an airport facility built specifically to grind aircraft lavatory waste prior to entry of such waste into the sanitary sewer system. Prior to any other waste disposal including waste disposal in contravention of this section or which could have a corrosive or degrading effect on the facility, Airline is required to obtain prior written approval of the Director and a waste water pre-treatment permit if such is necessary or required by law. The written approval of the Director shall not relieve Airline of full responsibility and liability for the disposal of any waste materials or products. The Director may withhold approval for any reason under this provision.

11.3.2 All such remedies of City with regard to environmental requirements as set forth herein shall be deemed cumulative in nature and shall survive termination of this Agreement

ARTICLE XII.
MAINTENANCE RESPONSIBILITIES

Airline will conduct its operations in a neat, clean, and sanitary manner. Airline shall promptly clean all facilities used by Airlines, and dispose of all trash is such facilities, after the same have been used by Airline, at Airline's cost and expense.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1 Rights Non-Exclusive. Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement are "non-exclusive" and City reserves the right to grant similar privileges to other airlines.

13.2 Airport Security. Airline shall comply with all applicable regulations relating to Airport security and prevent or deter unauthorized persons that may be subject to the control of the airline from obtaining access to the air operations area of the Airport.

13.3 Amendment. This Agreement, together with the authorizing City ordinance(s), constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of the Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

13.4 Non-waiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions herein to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

13.5 Severability. If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid, or unenforceable, it is agreed that the remainder of the Agreement shall not be affected thereby.

13.6 Governing Law. This Agreement is to be read and construed in accordance with the laws of the State of Texas and City. The parties hereto agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas shall be the proper forum for any actions brought hereunder. This Agreement shall be construed under and in accordance with the laws of the State of Texas except where state law shall be preempted by any rules, laws or regulations of the government of the United States of America.

13.7 Compliance with Law. Airline agrees to observe and comply with all applicable current and future Federal, State, City, and municipal laws, statutes, ordinances, and regulations, including such ordinances, resolutions, and rules and regulations as City may from time to time promulgate or adopt relative to the use of any property owned by City, including the premises that are the subject of this Agreement and the conduct of persons in, on, and about such City property.

13.8 Agent for Service of Process. It is expressly understood and agreed that if the Airline is not a resident of the State of Texas, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation not licensed to do business in Texas, then in any such event, Airline does designate the Secretary of State, State of Texas, its agent for the purpose of service of process in any court action between it and the City arising out of or based upon this

Agreement, and the service shall be made as provided by the laws of the State of Texas for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, and as an alternative method of service of process, Airline may be personally served with such process out of this State by the registered mailing of such complaint and process to the Airline at the address set forth herein. Any such service out of this State shall constitute valid service upon Airline as of the date of mailing to respond thereto.

13.9 Partnership or Agency. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto.

13.10 Taxes, Assessments, and Licenses. Airline shall at its own expense obtain all permits, licenses, approvals and certificates and pay all taxes, assessments, fees and charges required by any regulation or any law of the City, County of Bexar, State of Texas, the United States or other governmental body with regard to the business to be conducted by Airline on the Airport pursuant to the terms of this Agreement.

13.11 Approval by City. Whenever this Agreement calls for approval by the City, such approval shall be evidenced by the written approval of the Director or his designee. Any approval required by either party to this Agreement shall not be unreasonably withheld or delayed.

13.12 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

13.13 Headings and Titles. The headings of the several articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

13.14 Incorporation of Exhibits. All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

13.15 Notices.

13.15.1 Notices required herein may be given by registered or certified mail by depositing the same in the United States mail, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy – two (72) hours after deposit of same in the mail.

13.15.2 Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to City shall be delivered as follows:

Aviation Director
City of San Antonio
San Antonio International Airport
9800 Airport Boulevard
San Antonio, TX 78216

13.15.3 Notices to Airline shall be deemed sufficient if in writing and mailed (registered, certified or nationally recognized courier mail such as FedEx, UPS, or DHL), postage prepaid, addressed to Airline at the following address:

_____
_____
_____
_____
_____
_____

13.15.4 If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

13.16 Place of Payment. Rents, fees, and charges shall be paid in United States Dollars by wire, electronic funds transfer, or check payable to San Antonio International Airport the City of San Antonio, which shall be delivered or mailed, postage prepaid, to City of San Antonio, Aviation Department, Accounting Section, 457 Sandau Road, San Antonio, TX 78216 or which may be paid by wire transfers to accounts of the Airport designated in writing by the Director.

To arrange payment by wire or electronic funds transfer, Airline shall contact the Aviation Department's Accounting Section at (210) 207-7242 for further information.

13.17 Entire Agreement. This instrument contains the entire agreement between the Airline and City. It is further understood and agreed by Airline that City and City's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Airline against City for, and City shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with the City to be in writing and adopted by ordinance.

13.18 The individuals executing this agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

13.19 The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

13.20 Time is of the Essence. Time is of the Essence in this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Airline Operating Permit this the _____ day of _____, 20____.

AIRLINE:

_____
Signature

_____
Printed Name

_____
Title

CITY OF SAN ANTONIO

BY:_____
City Manager

APPROVED AS TO FORM:

_____
City Attorney