

AN ORDINANCE 2010-06-17-0556

**ADOPTING A RATES AND CHARGES POLICY FOR USE OF FACILITIES  
AND SERVICES AT THE SAN ANTONIO INTERNATIONAL AIRPORT.**

\* \* \* \* \*

**WHEREAS**, the Aviation Department historically has negotiated a uniform airport-airline use and lease agreement with airlines for air service operations at San Antonio International Airport, and fees collected through such an agreement fund the operation of the Airport and the repayment of Airport bond obligations; and

**WHEREAS**, the Aviation Department and the airlines have been in negotiations for an airport-airline use and lease agreement to replace the current agreement that will expire on September 30, 2010, and if a new agreement is not in place by said date, the City must have in place a methodology for setting rates and charges for the use of airport facilities; and

**WHEREAS**, the attached Rates & Charges Policy provides a methodology for setting the rates and charges for use of airport facilities by air service operators that do not have an agreement with the City for the use of airport facilities covered by the Policy; and

**WHEREAS**, it is contemplated that, upon completion of negotiations of a new airport-airline use and lease agreement, the Rates & Charges Policy may be amendment by City Council to incorporate the negotiated terms; **NOW THEREFORE:**

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

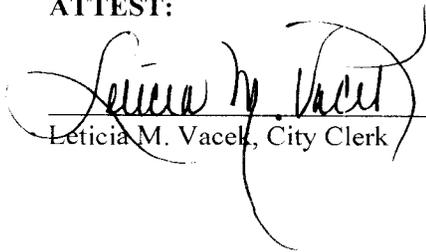
**SECTION 1.** A Rates & Charges Policy, set out in substantially final form in the document defined in **Attachment I** to this Ordinance, is hereby adopted for San Antonio International Airport and in some instances will apply to Stinson Municipal Airport.

**SECTION 2.** This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

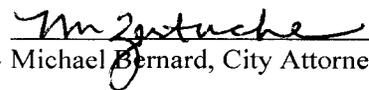
**PASSED AND APPROVED** this 17<sup>th</sup> day of June, 2010.

  
M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL  
 ACTION**

City of San Antonio



## Agenda Voting Results - 27

<b>Name:</b>	6, 7, 8, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26A, 26B, 26C, 26D, 26E, 27, 29, 30, 32A, 32B, 32D, 32E, 33, 35, 36, 37, 39, 40, 41, 42						
<b>Date:</b>	06/17/2010						
<b>Time:</b>	02:23:40 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance adopting a Rates and Charges policy for use of facilities and services at the San Antonio International Airport located in Council District 9. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

**Item No. 27**  
**06/17/2010 Agenda**  
**Ordinance Attachment I**

RENTS, FEES, AND OTHER CHARGES FOR USE OF FACILITIES AND SERVICES  
WITHIN SAN ANTONIO INTERNATIONAL AIRPORT BY PERSONS IN THE AIR  
TRANSPORTATION BUSINESS

Air Transportation Operators Rents, Fees, and Other Charges Policy

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## ARTICLE 1. POLICY

The City hereby adopts the following fiscal policy (“Policy”) for the operation of the Airport. The following method to establish and periodically adjust the rents, fees and other charges to be paid by those airlines engaged in air transportation to and from the Airport which are without agreements with the City that grants defined operating privileges at the Airport in exchange for the payment of specified rents, fees and other charges:

- a. The cost of operating, maintaining and developing the Airport will be paid solely with Airport Revenue, approved Passenger Facility Charges, Customer Facility Charges (if applicable) and such government grants as may be received by the City and lawfully used for such purposes, without the use of ad valorem taxes or other City general fund revenue or pledges, so as not to place any burden on taxpayers or residents of the City.
- b. The City will fix, establish, maintain and collect such rents, fees, and other charges for the use and occupancy of Airport facilities and services and revise the same from time to time whenever necessary to satisfy the requirements of any Bond Ordinance.
- c. In establishing the rents, fees, and other charges set forth in this Policy, it is the primary intent of the City that its rents, fees, and other charges as set forth in this Policy be fair and reasonable under the circumstances existing at the Airport. It is further the intent of the City to comply with all applicable federal laws and regulations concerning the establishment of an airport’s rents, fees, other charges, and any adjustments thereto; the permissible uses of airport funds; and the collection and use of revenue from approved Passenger Facility Charges.
- d. In furtherance of this Policy and in accordance with the authority conferred upon the City by the laws of the State of Texas, the City shall establish and periodically adjust as required, its rents, fees, and other charges for the use and occupancy of Airport facilities and services.

## ARTICLE 2. DEFINITIONS

As used in this Policy the terms identified shall have the meanings indicated unless the context clearly indicates otherwise. Words used in this Policy in the present tense include the future as well as the present. Words used in the masculine gender include the feminine and neuter. The singular number includes the plural and the plural includes the singular. The word person includes a business or corporation as well as a natural person. Additional words and phrases used in this Policy shall have the meanings set forth in the Master Ordinance and any supplemental Ordinances (as defined below) or, if not so set forth, shall have their usual and customary meaning.

“**Aircraft Arrivals**” means any and all landings by aircraft of all Airlines at any airport in the Airport but shall exclude any landings by general aviation aircraft or by aircraft owned or operated by the U.S. Government.

“**Airline**” means any business providing Air Transportation to or from the Airport. The term Airline includes Airline affiliates. An Airline affiliate means any air carrier that either (a) is wholly owned by the Airline, or any parent airline which wholly owns the Airline, or any sister airline which is wholly owned by the same company which wholly owns the Airline provided

that Airline shall be responsible for the operations at the Airport of such affiliate including payment of all related 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 the Airline's name or a derivative thereof only with respect to such operations conducted under the Airline's name or a derivative thereof and only if Airline shall have agreed to be responsible for such operations, including payment of all related fees and charges.

**“Airport Gate Use, Assignment and Scheduling Procedures”** means those procedures established by the Director governing the use of Gates at the Airport as may be amended from time to time.

**“Airport”** means San Antonio International Airport.

**“Airport Cost Centers”** means the following direct cost centers to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rents, fees and other charges associated with various Airport areas or facilities as they now exist or as they may hereafter be reconstructed, modified, changed or developed:

1. **“Airfield Area”** means the airfield at SAT, 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, clear zones and safety areas for landing, taking off and taxiing of aircraft, aviation easements, land utilized in connection therewith or acquired for such purpose, and facilities, the acquisition, construction or installation cost of which is wholly or partially paid by the City.
2. **“Apron Area”** means the areas at SAT dedicated to the parking, servicing, and ground handling of aircraft at the Terminal Building.
3. **“Baggage Handling System Area”** means the areas at SAT containing the consolidated Baggage Handling System (BHS) and related areas designed to automatically transfer checked baggage from airline-monitored inputs to a TSA-operated inline Checked Baggage Inspection System with sortation capabilities to automatically transfer Checked Baggage Inspection System-cleared bags to designated makeup carousels for pickup by airline personnel.
4. **“Loading Bridges”** means any passenger loading bridges serving aircraft at the Terminal Building.
5. **“Landside Terminal Building”** means the portion of the Terminal Building, and associated curbside entrance areas including, but not limited to, passenger ticketing areas, TSA screening areas, baggage checking areas, baggage claim areas all as shown on the Airport’s Terminal Layout Exhibit on file in the Director’s office.
6. **“Concourse A”** means the portion of the Terminal Building in which the “A” Aircraft Gates are located. Concourse A consists of the secure area containing the airline holdrooms, concession areas, and public circulation areas all as shown on the Airport’s Terminal Layout Exhibit on file in the Director’s office.

7. **“Concourse B”** means the portion of the Terminal Building in which the “B” Aircraft Gates are located. Concourse B consists of the secure area containing the airlines holdrooms, concession areas, and public circulation areas all as shown on the Airport’s Terminal Layout Exhibit on file in the Director’s office.
8. **“Other Buildings and Areas”** means all other facilities that are not included in the other direct cost centers at SAT, including air cargo buildings, areas occupied by the FAA, the fuel storage facility, areas for the sales and service of aircraft, and general aviation hangars, buildings, and aprons.
9. **“Parking”** means the public parking garage and associated access ramps, surface lots (hourly, daily and economy), and other automobile parking areas; employee parking lots; and taxicab service area at the Airport.
10. **“Reliever Airport”** means Stinson Municipal Airport and any other aviation facility as may be from time to time owned or operated by the City and designated by the City to be part of the Airport. (Each of which shall have a separate sub-cost center).

A current descriptive diagram of the above-described Cost Centers shall be maintained at the office of the Director.

**“Airport Purpose”** means any action or undertaking by the City directly or indirectly related to the development and preservation of the Airport for air commerce.

**“Airport Revenue”** means all income, receipts, earnings and revenues received by or accrued to the City from the ownership or operation of the Airport, excluding, except to the extent deposited in the Revenue Fund: (a) gifts, grants and other funds which are restricted by their terms to purposes inconsistent with the payment of Operating Expenses or payment of Obligations; (b) net proceeds and other insurance proceeds, to the extent the use of such net proceeds or other proceeds are restricted by the terms of the policy under which they are paid to a use inconsistent with the payment of Operating Expenses or the payment of Obligations; (c) except as and to the extent included in calculations under the Master Ordinances, any Transfer; (d) any Special Facility Revenue; (e) any gain from the sale, exchange or other disposition of capital assets of the Airport; (f) any released revenues; (g) any unrealized gains on securities held for investment by or on behalf of the City; (h) any gains resulting from changes in valuation of any Swap; (i) any unrealized gains from the write-down, reappraisal or revaluation of assets; (j) the proceeds of Obligations; (k) Facilities Construction Credits; (l) Passenger Facility Charges; (m) Customer Facility Charges; (n) Grant Funds; (o) investment income derived from any moneys or securities which may be placed in escrow or trust to defease Obligations; (p) any arbitrage earnings which are required to be paid to the United States of America pursuant to Section 148 of the Code; and (q) interest earnings or other investment earnings on any account in the Construction Fund established by any Supplemental Ordinance unless otherwise provided in such Supplemental Ordinance.

**“Air Transportation”** means the carriage of persons, property, cargo or mail by aircraft.

**“Annual Debt Service”** means, with respect to any outstanding or contemplated Obligations, the amount of principal and interest on such Obligations accrued and expected to accrue during the

Fiscal Year, excluding interest payable from capitalized interest and principal and interest payable from Available Revenues as specified by the City.

**“Airport Budget”** means the Airport capital and operating budgets prepared, and periodically revised and updated, by the Director and submitted to the City Manager, and approved/adopted by the San Antonio City Council prior to the commencement of the Fiscal Year in which it is to apply.

**“Available Revenues”** means for any period of time, the amount of Available CFC Revenues, Available Grant Revenues and Available PFC Revenues to be received by the City during such period.

**“Available CFC Revenues”** means, for any period of time, the amount of Customer Facility Charges specified in a Supplemental Ordinance for payment of Obligations.

**“Available Grant Revenues”** means, for any period of time, the amount of Grant Funds specified in a Supplemental Ordinance for payment of Obligations.

**“Available PFC Revenues”** means, for any period of time, the amount of Passenger Facility Charges specified in a Supplemental Ordinance for payment of Obligations.

**“Bonds”** means any bonds or certificates of obligation issued in accordance with a Master Ordinances or any supplemental Ordinance.

**“Bond Reserve Fund”** means the fund(s) by that name established by the City for the Airport.

**“Bond Ordinance”** means the Master Ordinances and any supplemental Ordinances, heretofore or hereafter adopted, amendatory or supplemental thereto, authorizing the issuance of Bonds and Obligations which are payable from or secured by all or any part of the gross revenues of the Airport, grant funds, Customer Facility Charges or Passenger Facility Charges.

**“Capital Improvement”** means any single item having a net cost in excess of three hundred thousand dollars (\$300,000.00) and a useful life in excess of five years, acquired, purchased or constructed to improve, maintain or develop the Airport, as well as any extraordinary or substantial expenditure whose object is to preserve, enhance or protect the Airport.

**“Capital Outlay”** means equipment and capital outlays for individual items costing less than three hundred thousand dollars (\$300,000.00) and with a useful life of five years or less.

**“Capital Improvement Fund”** means the fund by that name established by the City for the Airport.

**“Common Use Space”** means space managed by the City which may be made available to Airlines from time to time for use in common with other Airlines, as assigned by the Director, subject to applicable Rules and Regulations and Airport Gate Use, Assignment and Scheduling Procedures.

**“Common Use Formula”** means a formula that is used to prorate charges for a particular commonly used facility, service or space as follows: Twenty (20%) percent of the charges are

prorated equally among all Airline users leasing space under a lease and use agreement of the facilities, service or space. Eighty (80%) percent are prorated according to the ratio of the number of each Airline's enplaning passengers at the Airport to the total number of enplaning passengers of all Airlines using such facilities, service or space. For prorating, the City will use the most recent six months of information that is available. For purposes of the Joint Use Formula, the term Airline includes the affiliates of Airlines.

**"Construction Fund"** means the fund by that name established by the City for the Airport.

**"Customer Facility Charges"** means charges collected by the City or to be collected by the City in respect of any component of the Airport and interest earnings thereon.

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

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

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

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

**"Gate"** means those portions of the Terminal Building comprised of a passenger holdroom and associated Apron Area and Loading Bridge.

**"Maintenance and Operating Expenses"** means the reasonable and necessary costs and expenses of operating, maintaining and administering the Airport, determined in accordance with Generally Accepted Accounting Principles, excluding: (a) amortization of intangibles or other bookkeeping entries of a similar nature; (b) amortization and depreciation of Airport facilities and assets; (c) charges for the payment of principal, Redemption Price, Purchase Price, interest or other payments on any Obligations; (d) any items chargeable to a capital account; (e) any loss from the sale, exchange or other disposition of capital assets of the Airport; (f) any unrealized losses on securities held for investment by or on behalf of the City for the Airport; (g) any losses resulting from changes in valuation of any Swap; (h) any unrealized losses from the write-down, reappraisal or revaluation of assets including investments for "other than temporary" declines in book value; (i) any extraordinary losses; (j) any loss resulting from extinguishment of indebtedness; (k) the costs and expenses of operating, maintaining and administering any Special Facility, and (l) any Capital Outlays.

**"Maintenance and Operating Reserve Account"** means the account in the Maintenance and Operating Account by that name established by the City for the Airport.

**"Maintenance and Operating Reserve Requirement"** means an amount equal to twenty-five percent (25%) of the amount included in the then current annual Airport Budget for Maintenance

and Operating Expenses that is required to be maintained in the Maintenance and Operating Reserve Account under the Bond Ordinance.

**“Maximum Gross Landing Weight”** means the maximum certificated weight, in thousand (1,000) pound units, that each aircraft operated by an Airline is authorized by the FAA to land at airports in the Airport, as recited in each Airline’s flight manual governing that aircraft type.

**“Net Revenues”** means, for any period, the Airport Revenue during such period less the Maintenance and Operating Expenses during such period.

**“Obligations”** means any obligation of the City, including any bond issued pursuant to a Master Ordinance and any supplemental Ordinance or issuing instrument, as applicable.

**“Passenger Facility Charge”** means charges collected by the City pursuant to the authority granted by 49 U.S.C. Section 40117 and 14 CFR Pt. 158, as amended from time to time, in respect of any component of the Airport and interest earnings thereon, net of amounts that collecting air carriers are entitled to retain for collecting, handling and remitting such passenger facility charge revenues.

**“Preferential Aircraft Parking Position”** means the nonexclusive use, to which an airline has priority over other users, as applicable, of an Apron Area, or portion thereof, at the Airport designated or allocated by the Director to Airline for Airline’s use for the parking of aircraft owned or operated by Airline.

**“Preferential Use”** means the nonexclusive use, to which an Airline has priority over all other users, subject to the provisions of this Policy as applicable, in common with others and subject to applicable Rules and Regulations and Airport Gate Use, Assignment and Scheduling Procedures.

**“Preferential Use Space”** means that space that is not Exclusive Use Space, or Common Use Space to which an Airline has been given the privilege of Preferential Use.

**“Remote Overnight” or “RON”** means those aircraft parking positions designated for the parking of aircraft that cannot be accommodated at Gates.

**“Rentable Space”** means the total amount of space available for rent in the Terminal Building to airlines, concessions or any other rent-paying tenants as may be adjusted and/or weighted during the course of any Fiscal Year for changes in space classifications.

**“Reserve Guaranty”** means a policy of insurance or surety bond or a letter of credit or other financial arrangement issued by a reserve guaranty provider with respect to any debt service reserve requirement.

**“Revenue Fund”** means the fund by that name established by the City for the Airport.

**“Rules and Regulations”** means those rules and regulations promulgated by the City or Director governing conduct on, and operations at, any airport within the Airport and use of any of the facilities of the Airport, but shall not include those rules and regulations from which an Airline is expressly excluded from compliance by City or Director.

“**San Antonio International Airport**” means San Antonio International Airport as it presently exists and as it may be changed from time to time in the future.

“**Stinson**” means Stinson Municipal Airport.

“**Special Facilities**” means any property, real or personal, incident or related to the Airport, which is financed by the issuance of obligations that are not directly or indirectly secured or payable from Net Revenues.

“**Terminal Building**” means the Landside Terminal Building, Concourse A and Concourse B.

“**Total Landed Weight**” means the sum of the Maximum Gross Landing Weight for all Airline Aircraft Arrivals over a stated period of time. Said sum shall be rounded up to the nearest thousand (1,000) pound unit for all landing fee computations.

“**TSA**” means the Transportation Security Administration of the United States Government or any federal agency or agencies succeeding to its jurisdiction.

### **ARTICLE 3. DISPOSITION OF AIRPORT REVENUE**

#### **Disposition of Airport Revenue and Passenger Facility Charge Proceeds**

- a. All Airport Revenue shall be deposited, applied and allocated in the funds and accounts in the manner and according to the priority provided for in the applicable Bond Ordinance(s).
- b. All Passenger Facility Charge proceeds shall be deposited, applied and allocated in a manner consistent with applicable federal laws and regulations. If Passenger Facility Charge proceeds are pledged to repay Bonds, then those proceeds shall be deposited, applied and allocated in the funds and accounts in the manner and according to the priority provided for in the applicable Bond Ordinance(s).
- c. All Customer Facility Charge proceeds shall be deposited, applied and allocated in a manner consistent with applicable state laws and regulations. If Customer Facility Charge proceeds are pledged to repay Bonds, then those proceeds shall be deposited, applied and allocated in the funds and accounts in the manner and according to the priority provided for in the applicable Bond Ordinance(s).

### **ARTICLE 4. USES**

#### **Permissible Uses**

Subject to the terms and provisions of this Policy, any Airport Gate Use, Assignment and Scheduling Procedures and any Rules and Regulations, an Airline, by paying all rents, fees and charges, shall be entitled to the use, in common with other duly authorized users, of the Airport for the sole purpose of providing Air Transportation. Such use may include the following purposes:

- a. The operation of an Air Transportation business including all activities reasonably necessary to such operation.

- b. 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 an Airline or others, including the right to provide or handle all or part of the operations or services of such others. For operations handled by an Airline on behalf of others or service provided to others, the Airline shall pay the City a nondiscriminatory fee as established by the Director based on the gross revenues derived by that Airline from such others. Services provided by third-party contractors will be subject to the nondiscriminatory fee. This fee, however, shall not apply to an Airline providing services to its affiliates.
- c. The sale of tickets, documentation of shipments, handling of reservations, and the loading and unloading of persons, property, cargo, baggage, and mail at the Airport in the operation of an Airline's Air Transportation business.
- d. The training at the Airport of employees of Airline. Training is to be limited to that incidental to an Airline's Air Transportation business at the Airport. Flight training and testing of aircraft and other equipment shall be undertaken by an Airline only with the prior written approval of the Director, and to the extent permitted by, and subject to, the Rules and Regulations.
- e. The purchase of an Airline's requirements of personal property, services, food, beverage, other passenger supplies, and any other materials and supplies used by the Airline that are incidental to the operation of the Airline's Air Transportation business. Nothing herein shall restrict the City from requiring a permit and levying a charge on any person or company for conducting non-Air Transportation business at the Airport.
- f. The sale, disposal and exchange of an Airline's aircraft, engines, accessories and other equipment, and materials or supplies (excepting fuel and lubricants), provided that (i) such items are not otherwise available on the Airport from a vendor other than another Airline, and (ii) such right shall not be construed as authorizing the conduct of a separate regular business by an Airline, but as permitting an Airline to perform only such functions as are incidental to the operation of its Air Transportation business.
- g. The servicing by an Airline, or by its suppliers of materials, or furnishers of services, of aircraft and other equipment operated by the Airline, including the provision of line maintenance, or other materials or supplies, on Exclusive Use Space or Preferential Use Space or at assigned Preferential Aircraft Parking Positions or other locations designated by the Director.
- h. The installation and operation of identifying signs, posters, and graphics on an Airline's assigned space subject to the prior written approval of the Director. Such signs shall be substantially uniform in size, type and location with those of other airlines, consistent with the City's graphic standards and the Rules and Regulations, and in compliance with all applicable laws and ordinances.
- i. 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 an Airline for its operations; provided that: (1) the location of such equipment and facilities shall be subject to the prior written approval of Director; (2) the use and location of such equipment and facilities shall not conflict with other similar equipment and facilities at any airport in the Airport; and (3) the use and location of such equipment and facilities on the Airport, shall be subject to payment of standard rental rates established for such use.

- j. The installation, maintenance and operation of passenger clubs, lounges or VIP rooms in an Airline's Exclusive Use Space or Preferential Use Space, provided that such right shall not be construed as authorizing the conduct of a separate regular business by an Airline, but as permitting an Airline to perform only such functions as are incidental to the operation of its Air Transportation business. An Airline may sell food, beverages, merchandise or any other item only in its clubrooms or VIP rooms and may do so only if the Airline pays the City the same percentage fees as the City receives from its concessionaires of food, beverages, merchandise or other items at the Airport. An Airline may provide without charge food, beverages, merchandise or any other item only in its clubrooms or VIP rooms. An Airline shall not provide food, beverages, merchandise or any other item in any areas outside its clubrooms or VIP rooms unless prior written permission to provide such items is obtained from the Director.
- k. The installation, maintenance and operation of computer data lines, 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 an 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 any airport in the Airport; (iii) the use and location of such equipment, except for cables, on the Airport shall be only in Exclusive Use Space, Preferential Use Space, or Common Use Space for which rents, fees and charges are being timely paid by the Airline pursuant to this Policy, (iv) all cables are installed in conduits, and when such cables are no longer needed they are promptly removed by the Airline without damage to the space and the conduits are also promptly removed by the 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 Terminal B, as each may be amended from time to time.
- l. Nothing herein shall restrict the City from requiring a permit and levying a charge on any person or company for conducting business at the Airport. Furthermore, the City intends to levy a charge for business conducted at any airport in the Airport, including an Airline's provision of non-Air Transportation services to others, except for ground transportation services provided free of any fee or charge.
- m. The storage and parking of equipment, cargo and vehicles but only at such locations as specifically designated by the Director.
- n. The maintenance and repair of equipment and vehicles but only at such locations as specifically designated by the Director.

### **Restrictions**

In connection with the exercise of an Airline's rights under this Policy, it is unlawful for an Airline or any of its agents, employees, directors, officers, contractors, invitees, licensees, or representatives to do any of the following:

- a. 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.

- b. Do anything that may invalidate or conflict with any fire or other casualty insurance policies covering any airport in the Airport or any part thereof.
- c. Dispose of any waste material or any product used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers 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 and City laws for disposal of these waste materials and products. Prior to any disposal of waste materials or products, Airline shall first obtain the written approval of Director to such disposal method. 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.
- d. 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 Uniform Building Code. For purposes of this Policy, 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.
- e. Do anything that may be in conflict with FAR Part 139, as that regulation may be amended from time to time, or jeopardize the operating certificate of the Airport.
- f. Do anything that may be in conflict with the TSA-approved security plan for the Airport.
- g. 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 of the Airline's Exclusive Use Space, Preferential Use Space, or Common Use Space without the express written determination of the Director that such machine is necessary to the operation of the Airline's Air Transportation business.
- h. Provide commercial ground transportation services to any person upon payment of any fee or charge.
- i. Notwithstanding Section h above, an Airline may provide ground transportation services free of any fee or charge to its employees or passengers. For purposes of providing ground transportation, each 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 or employee.

### **Airline Space**

- a. The Director shall assign and reassign space in and about the Terminal Building as the Director in his or her discretion determines is necessary for each Airline's operations at the Airport and in accordance with each Airline's needs, after considering the relative space needs of the traveling public and all Airlines operating at the Airport, and as provided in any applicable Airport Gate Use, Assignment and Scheduling Procedures. Assigned space may include Exclusive Use Space, Preferential Use Space, and Common Use Space.
- b. In addition to the assignments made pursuant to Section (a) above, the Director may, in his or her discretion, assign and reassign aircraft parking and loading positions, including Preferential Aircraft Parking Position(s) and Common Use Space, on a nonexclusive basis as the Director determines is necessary for each Airline's operations and the overall operation of the Airport.

- c. In making a space or position assignment, the Director shall specify the term for which the use is authorized. In no event shall the Director assign space and positions under the provisions of this Policy for terms exceeding a month-to-month periodic tenancy. The Director is authorized to terminate an Airline's use or tenancy in any particular space.
- d. The Director may authorize other Airlines to use an Airline's Apron Area and Preferential Use Space when such facilities are determined by the Director, consistent with any applicable Airport Gate Use, Assignment and Scheduling Procedures, not required for the Airline's scheduled flight activities. The Director shall give reasonable notice to the Airline's representative of any such authorization. In such event, any charges collected by the City from an accommodated Airline shall be credited to the account of the Airline to which such space is then assigned on a Preferential Use basis.

### **Security of Exclusive Use Space, Common Use Space and Preferential Use Space**

By use and occupancy of its Exclusive Use Space, Common Use Space, and Preferential Use Space on Airport premises, an Airline understands and agrees that it shall fully indemnify, defend and hold harmless the City, its elected representatives, officers, agents, volunteers and employees from and against all penalties, fines or demands of any kind (including, but not limited to, costs of investigation, attorney fees, court costs and expert fees) arising out of Airline's acts or omissions resulting in alleged violations of 49 CFR Part 1542 or any successor regulations related to airport security.

### **Employee Parking Facilities**

An Airline shall have the right to the use vehicular parking facilities at the Airport for its employees employed at that airport, in common with employees of other Airlines and airport-related services. Use of the employee parking facilities is subject to the payment of such employee parking fees as established from time to time by the City. Such facilities shall be located in an area designated by the Director. An Airline shall, on request of the Director, provide verification that it is only providing parking for its employees employed at the airport or non-based employees where these employees park their vehicles.

## **ARTICLE 5. TIME OF PAYMENT OF RENTS, FEES AND OTHER CHARGES**

### **Time of Payment**

- a. Rents for Exclusive Use Space, Preferential Use Space, and Preferential Aircraft Parking Position(s) in the Terminal Building and Preferential Loading Bridge Use Fees shall be due and payable, without deduction or setoff, in monthly installments in advance on or before the first day of each month without invoice from the City.
- b. Landing Fees, rents for the use of Common Use Space, and RON charges for each month of operations shall be due and payable without deduction or setoff, within ten (10) days after the last day of the month after such month of operations.
- c. An Airline shall faithfully collect and promptly remit to the City (without notice or demand by the City and in accordance with FAR Part 158 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.

- d. Rents, fees and charges not described in subsections (a), (b) and (c) of this Section shall be due and payable within thirty (30) days after transmittal of an invoice therefore by the City.
- e. In establishing the rents, fees and charges set forth in this Policy, the City is anticipating timely payment of these 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 an 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 liquidated damages required herein and may include any of the following:
  1. Seeking a review of the Airline's credit rating from one or more nationally recognized credit rating agencies;
  2. Seeking administrative relief through appropriate federal agencies including the FAA;
  3. Equitable and judicial remedies; or
  4. Such other legal and administrative remedies as are permitted by law.

### **Payments**

Rents, fees and charges shall be paid by wire, electronic funds transfer, or check payable to the City of San Antonio which shall be delivered or mailed, postage prepaid, to Aviation Department, Accounting Section, 9800 Airport Blvd., San Antonio, TX 78216 or may be paid by wire transfers to accounts of the Airport designated in writing by the Director.

To arrange payments by wire or electronic funds transfer, Airline shall contact the Aviation Department's Accounting Section at (210) 207-3450 for further information.

### **Liquidated Damages on Overdue Payments**

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

### **Performance Guarantee**

In order to guarantee the timely payment of all rentals and fees provided for herein, Airline shall remit to City prior to the Airline's use of the space or the 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 the City, a Performance Guarantee in the amount of: (a) Airline's estimated Landing Fees for three months (as determined on the basis of Airline's published flight schedule as of that date times the actual Landing Fee rate effective as of that date); (b) Airline's estimated Exclusive Use Space, Preferential Use Space, Common Use Space rentals for three months (as determined on the basis of Airline's actual assigned space as of that date times the actual rental rates effective as of that date, using activity data for the most recent calendar month

to allocate Common Use Space costs), and (c) three months of PFCs as estimated by the City. The Performance Guarantee may be adjusted by City as Airline's flight activity and space rental commitment increases or decreases.

Such Performance Guarantee shall be in the form of an irrevocable letter of credit, or other Performance Guarantee satisfactory to City, in a form similar to Exhibit A approved by the Director. Document(s) evidencing this deposit must provide that the same shall remain in full force and effect for a period extending three months following termination of the Airline's use of the space or the Airline's operations or activities in regard to the Airport.

If payments required to be made by Airline under the terms of this Policy or payment of Passenger Facility Charge proceeds are not made, City shall have the right to take, and use so much of such Performance Guarantee as may be necessary to make such payment in full and to exercise any other legal remedies to which it may be entitled, after notice.

## **ARTICLE 6. MONTHLY ACTIVITY REPORT**

### **Required Monthly Activity Reports**

Each 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: (1) the Airline's total number of Aircraft Arrivals and departures, by type of aircraft and Maximum Gross Landing Weight of each type of aircraft; (2) the total number of domestic and of international enplaning and deplaning passengers; (3) the total weight of freight, mail and other cargo, enplaned and deplaned, domestic and international, for such month; (4) the total number of turns on Common Use Gates; (5) the total number of times Airline parked aircraft overnight at Common Use Gates; and (6) the total number of times Airline parked aircraft at Remote Overnight (RON) Parking Positions. The acceptance by Director of any payment made by an Airline pursuant to one of the Airline's reports shall not preclude the City from verifying the accuracy of the Airline's report or from recovering any additional payment actually due from the Airline in the event that the report is inaccurate.

### **Failure to Furnish Report**

If an Airline fails to furnish the City with the report required by Article 6, the Airline's Landing Fee shall be determined by assuming that the total Landed Weight for the Airline during the preceding month was one hundred twenty-five (125) percent of the total Landed Weight for the most recent month for which such figure is available or other available data. Any necessary adjustment in such Landing Fee shall be calculated after an accurate report is delivered to the Director by the Airline for the month in question, and resulting surpluses or deficits shall be applied to the Airline's Landing Fee for the next succeeding month. An accounting fee of fifteen (15) percent of the amount due as shown on such statement, or such lesser accounting fee as may be determined by the Director to be sufficient to reimburse City, shall be payable by the Airline for the additional services required by the City pursuant to this Section.

## **ARTICLE 7. CITY RECORDS**

### **Revenues and Expense Records**

The City shall establish an Airport accounting system and shall maintain accounting records that document the following items: (1) Annual Airport Revenue, (2) Operating Expenses, (3) Capital Outlays, (4) Annual Debt Service, (5) amortization and (6) Capital Improvements and other expenses incurred by the City for the improvement, renovation or enhancement of the Airport as they may be charged directly or allocated to each Airport Cost Center.

#### **Allocation of Capital Funds Records**

The City shall further maintain records evidencing the allocation of all capital funds to each Airport Cost Center. Included in the allocation to each Airport Cost Center shall be its proportionate share of the expenses of any Bond issuance, capitalized interest, and funding of special funds, determined with reference to the allocation of costs funded through securities or other capital fund sources.

### **ARTICLE 8. CALCULATION OF RENTS, FEES AND OTHER CHARGES**

#### **Annual Calculations**

For each Fiscal Year, beginning with the 2011 Fiscal Year, the Terminal Building Rental Rate, the Aircraft Parking Position Fee, the Remote Overnight (RON) Fee, the Loading Bridge Use Fee, the Preferential Use Gate Fee, the Common Use Gate Fee, the Baggage Handling System Use Fee and the Landing Fee rate shall be calculated by the Director as provided in Article 8 of this Policy. Any such calculation of rents, fees and other charges shall be effective on the first day of the applicable Fiscal Year or the first day of the month during the Fiscal Year following a mid-year rate adjustment.

By August 1 of each year, or as soon as practical thereafter, the Director shall provide each Airline then currently engaged in Air Transportation at the Airport with a complete copy of the proposed Airport Budget and exhibits showing proposed rates and charges, calculated in accordance with Article 8 of this Policy, for the succeeding Fiscal Year. The Director shall, upon request by any such Airline, consult with such Airlines concerning the proposed Airport Budget and the proposed rates and charges.

By October 1 of each year, or as soon as practical thereafter, the Director shall make any revisions to the proposed rates and changes as the Director determines, in his or her sole discretion, to be warranted as a result of consultation with the Airlines or otherwise, and shall provide written notice to each Airline then currently engaged in Air Transportation at the Airport of new rates and charges to be effective on October 1 of that year.

#### **Calculation of Landside Terminal Building Rental Rates**

- a. Each year the City shall calculate the Landside Terminal Building Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Landside Terminal Building.
  2. The total of Capital Outlays allocable to the Landside Terminal Building.
  3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Landside Terminal Building or such other amount as may be required by a Bond Ordinance.

4. The amount of any deposit to the Maintenance and Operating Reserve Account allocable to the Landside Terminal Building required by a Bond Ordinance.
  5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Landside Terminal Building.
  6. The amount required to replenish any Bond Fund allocable to the Landside Terminal Building.
  7. Any other expenses allocable to the Landside Terminal Building not included above.
- b. The average annual Landside Terminal Building rental rate per square foot shall then be calculated by dividing the Landside Terminal Building Requirement by the total amount of Landside Terminal Building Rentable Space.
  - c. The rents for all Exclusive Use Space and Preferential Use Space assigned to any Airline shall be computed as the product of the Landside Terminal Building rental rate and the total amount of square footage of such space assigned to the Airline.
  - d. The rents for all Common Use Space in the Landside Terminal Building shall be computed based on the Common Use Formula

**Calculation of Concourse A Rental Rates**

- a. Each year the City shall calculate the Concourse A Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Maintenance and Operating Expenses allocable to the Concourse A.
  2. The total of Capital Outlays allocable to the Concourse A.
  3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Concourse A or such other amount as may be required by a Bond Ordinance.
  4. The amount of any deposit to the Maintenance and Operating Reserve Account allocable to the Concourse A.
  5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Concourse A.
  6. The amount required to replenish any Bond Fund allocable to the Concourse A.
  7. Any other expenses allocable to Concourse A not included above.
- b. The average annual Concourse A rental rate per square foot shall then be calculated by dividing the Concourse A Requirement by the total amount of Concourse A Rentable Space.
- c. The rents for all Exclusive Use Space and Preferential Use Space assigned to any Airline shall be computed as the product of the Concourse A rental rate and the total amount of square footage of such space assigned to the Airline.
- d. The rents for all Common Use Space in Concourse A shall be computed based on the Common Use Formula.

### **Calculation of Concourse B Rental Rates**

- a. Each year the City shall calculate the Concourse B Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Operating Expenses allocable to the Concourse B.
  2. The total of Capital Outlays allocable to the Concourse B.
  3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Concourse B or such other amount as may be required by a Bond Ordinance.
  4. The amount of any deposit to the Operating Reserve Account allocable to the Concourse B required by a Bond Ordinance.
  5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Concourse B.
  6. The amount required to replenish any Bond Fund allocable to the Concourse B.
  7. Any other expenses allocable to Concourse B not included above.
- b. The average annual Concourse B rental rate per square foot shall then be calculated by dividing the Concourse B Requirement by the total amount of Concourse B Rentable Space.
- c. The rents for all Exclusive Use Space and Preferential Use Space assigned to any Airline shall be computed as the product of the Concourse B rental rate and the total amount of square footage of such space assigned to the Airline.
- d. The rents for all Common Use Space in the Concourse B shall be computed based on the Common Use Formula.

### **Calculation of Apron Area Fees**

- a. Each year the City shall calculate the Apron Area Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  1. The total of direct and indirect estimated Operating Expenses allocable to the Apron Area.
  2. The total of Capital Outlays allocable to the Apron Area.
  3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Apron Area or such other amount as may be required by a Bond Ordinance.
  4. The amount of any deposit to the Operating Reserve Account allocable to the Apron Area required by a Bond Ordinance.
  5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Apron Area.
  6. The amount required to replenish any Bond Fund allocable to the Apron Area.
  7. Any other expenses allocable to the Apron Area not included above.
- b. The Apron Area Fee shall then be calculated by dividing the Apron Area Requirement by the total linear feet in the Apron Area

- c. The rents for any Preferential Use Space assigned to an Airline on a Preferential Use basis shall be computed as the product of the Apron Area Fee and the linear feet assigned to the Airline.
- d. The rents for any Remote Overnight (RON) parking positions used by an Airline shall be assessed on the basis of daily use by an Airline. Aircraft parking at any Common Use Gate shall be subject to the RON fee if they remain overnight at the gate.

**Calculation of Loading Bridge Fee**

- a. Each year the City shall calculate the Loading Bridge Requirement for the applicable Fiscal Year by totaling the following amounts:
  - 1. The total of direct and indirect estimated Operating Expenses allocable to the Loading Bridges.
  - 2. The total of Capital Outlays allocable to the Loading Bridges.
  - 3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Loading Bridges or such other amount as may be required by a Bond Ordinance.
  - 4. The amount of any deposit to the Operating Reserve Account allocable to the Loading Bridges required by a Bond Ordinance.
  - 5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Loading Bridges.
  - 6. The amount required to replenish any Bond Fund allocable to the Loading Bridges.
  - 7. Any other expenses allocable to the Loading Bridges not included above.
- b. The Loading Bridge Fee shall then be calculated by dividing the Loading Bridge Requirement by the total number of Loading Bridges at the Terminal Building. The rents for all Loading Bridges associated with Gates assigned to an Airline on a Preferential Use basis shall be computed as the product of the Loading Bridge Fee and the number of Loading Bridges so assigned to the Airline.
- c. The Loading Bridge Fee for Airline's owning their own Loading Bridge(s) will not include Annual Debt Service on any Bonds allocable to the Loading Bridges.

**Calculation of Baggage Handling System Area Use Fee**

- a. Each year the City shall calculate the Baggage Handling System Area Use Fee Requirement for the applicable Fiscal Year by totaling the following estimated amounts:
  - 1. The total of direct and indirect estimated Operating Expenses allocable to the Baggage Handling System Area.
  - 2. The total of Capital Outlays allocable to the Baggage Handling System Area.
  - 3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Baggage Handling System Area or such other amount as may be required by a Bond Ordinance.

4. The amount of any deposit to the Operation and Maintenance Reserve Account allocable to the Baggage Handling System Area required by a Bond Ordinance.
  5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Baggage Handling System Area.
  6. The amount required to replenish any bond fund that is allocable to the Baggage Handling System Area.
  7. Any other expenses allocable to the Baggage Handling System Area not included above.
- b. The rent for the space occupied by the Baggage Handling System calculated by multiplying average annual Terminal Building rental rate per square foot times the amount of space occupied by the Baggage Handling System Area.
  - c. The Baggage Handling System Area Requirement shall be prorated among all Airlines monthly using the Common Use Formula.

#### **Calculation of Landing Fee Rate**

- a. Each year the City shall calculate the Airport Landing Fee Requirement for the applicable Fiscal Year by totaling the following amounts:
  1. The total of direct and indirect estimated Operating Expenses allocable to the Airfield Area.
  2. The total of Capital Outlays allocable to the Airfield Area.
  3. An amount equal to 1.25 times the Annual Debt Service on all Bonds allocable to the Airfield Area or such other amount as may be required by a Bond Ordinance.
  4. The amount of any deposit to the Operating Reserve Account allocable to the Airfield Area required by a Bond Ordinance.
  5. The estimated amount of any assessment, judgment or charge (net of insurance proceeds) to become payable by the City relating directly to the Airport, or its operation, allocable to the Airfield Area.
  6. The amount required to replenish any Bond Fund allocable to the Airfield Area.
  7. Any other expenses allocable to the Airfield Area not included above.
- b. From this total, the City shall deduct the estimated fuel flowage fees and RON fees allocable to the Airfield Area to yield the Net Airfield Requirement.
- c. The Landing Fee rate per one thousand (1,000) pound unit is then calculated by dividing the Net Airfield Requirement by Total Landed Weight.
- d. The Landing Fee for each Airline shall be calculated by multiplying the Airline's portion of the Total Landed Weight for the month by the Landing Fee rate then in effect.

#### **Mid-year Adjustment**

If it appears to the City, on the basis of information it is able to accumulate during the course of any Fiscal Year, that the budgeted expenses or projected levels of Airline activity it has used to calculate the rentals, fees and charges set forth above are likely to vary significantly from actual

results, the City may make adjustments to such rentals, fees and charges at mid-year or at such other time during the Fiscal Year as the need for such an adjustment becomes apparent to the City. The City shall provide the Airlines with at least thirty (30) days advance written notice of any adjustments to be made under this Section.

#### **Annual Adjustments-to-Actual**

After the audit of Fiscal Year 2011 and each subsequent fiscal year, the City shall recalculate the rentals, fees and charges set forth herein on the basis of actual expenses, Airline activity and other factors affecting the prescribed calculations and shall determine the amount of any overpayment (credit) or underpayment (deficit) due to or from each Airline. Any resulting credit will be applied to the Airline's rents and fees; any resulting deficit will be invoiced to and payable by the Airline.

#### **Calculation of Other Rents, Fees and Charges**

Rates for all other rents, fees and charges to be paid by an Airline engaged in Air Transportation to and from an airport in the Airport shall be set by ordinance or resolution of the City Council at such rates as the City Council determines from time to time are consistent with all applicable federal, State of Texas and City statutes, regulations, rules and policies.

### **ARTICLE 9. AIRLINE'S RESPONSIBILITIES**

#### **Responsibilities**

By use and occupancy of space at the Airport, an Airline understands and agrees that it shall, at its sole expense and in a manner acceptable to the City:

- a. Maintain its Exclusive Use Space in the condition prevailing in first-class office space.
- b. Maintain its assigned, designated and allocated space in a neat, clean and orderly condition, free from litter, debris, refuse, petroleum products or grease which result from the activities of its officers, representatives, agents, employees, passengers, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers; and remove all oil and grease spillage that is attributable to Airline's aircraft, equipment or operations.
- c. Perform ordinary preventive maintenance and upkeep and nonstructural repair of all facilities located in its Exclusive Use Space and Preferential Use Space in the Terminal Building.
- d. Immediately repair any damage in any other space at the Airport caused by the Airline, its officers, representatives, agents, employees, passengers, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers.
- e. Pay as additional rent to the City the cost of utilities consumed by the Airline with the cost determined, at the option of the City, by either meters or according to formulas developed by the City which allocate, on a nondiscriminatory basis, such costs among the utility users. This requirement of payment of additional rent shall not apply to Terminal Building heating and air conditioning utilities or to Cargo Building electrical power and Cargo Building heating and air conditioning utilities where provided by the City. Terminal Building heating and air conditioning utilities shall be paid by Airlines as a component of Terminal Building rent.

- f. If an Airline fails to fulfill its obligations under this Section, the City may fulfill such obligations for the Airline after giving the Airline reasonable notice. If the City fulfills any obligation(s) for an Airline pursuant to this Section, then the City shall recover from that Airline all its costs incurred in fulfilling such obligation(s) plus a fifteen (15) percent administrative charge as additional rent. The Airline shall pay this additional rent within thirty (30) days of the transmittal of an invoice from the City for such additional rent.

### **Alterations and Improvements**

An Airline shall make no alterations, additions, improvements to, or installations on the space assigned or allocated to it by the City without the prior written approval of the Director and without obtaining all applicable permits.

## **ARTICLE 10. INSURANCE AND INDEMNIFICATION**

### **Insurance**

By use and occupancy of space on Airport premises, an Airline understands and agrees that it shall, at its sole expense and in a manner acceptable to the City, purchase and maintain in force the following insurance coverage for itself and its officers, agents, employees, passengers, guests, patrons, contractor's, subcontractor's, licensees, subtenants, invitees, and supplier, Airline shall maintain in full force and effect the forms of insurance specified under this Section. All such insurance hereunder shall be maintained with insurance underwriters who have a A.M. Best's rating or equivalent of A- (VII) or who have been approved by the Director in consultation with the City's Risk Manager.

All liability insurance policies shall provide coverage that includes, or has the same substantive effect as, the following wording:

1. "The City of San Antonio and each of its officers, agents, elected representatives, volunteers, and employees, in their respective capacities as such, shall be additional insured's hereunder with respect to the products, premises and operations of the named insured."
2. "It is agreed that this insurance policy shall apply as primary and any insurance and/or self-insurance as may be maintained by the City of San Antonio or its officers, agents, elected representatives, volunteers, and employees shall apply in excess of and shall not contribute with insurance provided by this policy."
3. "This insurance shall not be materially changed, altered, canceled or non-renewed until after thirty (30) days advance written notice has been given to the City of San Antonio except that only ten (10) day notice shall be required in the event of cancellation due to non-payment of premium."

At least ten (10) calendar days prior to the Airline's use of the space or the 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 the City, Airline shall furnish City with evidence of all insurance policies negotiated. Prior to the expiration of any then-current policy of insurance, Airline shall deliver to City evidence showing that such insurance coverage has been renewed. At least five calendar days prior to the date of cancellation or reduction of coverage, as received in the written notice from the insurer, Airline shall deliver to Director evidence showing reinstatement or other provision for the required insurance.

All such evidence shall be in the form of certificates of insurance satisfactory to Director, accompanied by a certified true copy of an endorsement to each policy containing the language required by this Section and, if applicable, cross-liability coverage.

- a. Aircraft liability insurance and comprehensive form general liability insurance, covering bodily injury, personal injury, property damage, cross-liability, products/completed operations liability, premise liability, and contractual liability, with a liability limit of not less than three hundred million dollars (\$300,000,000.00) combined single limit per occurrence, on occurrence form policy. Said limit shall be reduced to one hundred fifty million dollars (\$150,000,000.00) where Airline's maximum seating capacity on any airplane operated by Airline is thirty (30) or less. With respect to coverage for products/completed operations and personal injury, except with respect to passengers, a sublimit of not less than twenty-five million dollars (\$25,000,000.00) per occurrence, and in the annual aggregate, shall be permitted with the approval of the Director. Said aircraft liability shall be applicable to owned, non-owned, and hired aircraft.
- b. Automobile liability insurance with a liability limit of not less than ten million dollars (\$10,000,000.00) for all owned, non-owned, and hired vehicles operated by or on behalf of Airline at the Airport, including any additional or replacement vehicles.
- c. Liquor liability insurance for Airline serving alcoholic beverages in an amount not less than ten million dollars (\$10,000,000.00) per occurrence.
- d. Hangar Keeper's liability insurance or other appropriate insurance in an amount adequate to cover any aircraft or non-owned property in the care, custody and control of Airline at the Airport, but in any event in an amount not less than one hundred fifty million dollars (\$150,000,000.00) per occurrence.
- e. Employer's liability insurance in an amount not less than one million dollars (\$1,000,000.00) per occurrence.
- f. Airline shall likewise maintain workers' compensation insurance or evidence of self-insurance, in accordance with the laws of the State of Texas, covering all its employees who may from time to time be at the Airport in such capacity. Airline shall require each of its agents, licensees, subcontractors, and suppliers of the leased premises to maintain such workers' compensation insurance covering their employees coming on Airport premises in connection with Airline's operations hereunder. The workers' compensation policy(s) required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the City, its officers, agents, elected representatives, volunteers, and employees. Upon request by Director, Airline shall furnish Director with evidence of such workers' compensation insurance in a form acceptable to City.
- g. Environmental/Pollution Liability Insurance with a limit of not less than five million dollars (\$5,000,000.00) including coverage for Third Party Pollution Liability, Remediation coverage, and offsite cleanup. Satisfaction of the requirement Environmental/Pollution Liability insurance with a limit for Environmental/Pollution Liability may be made by securing a policy of insurance for this coverage or providing to the City a letter on company letterhead stating that Airline is self-insured for this coverage.
- h. The minimum limits of the insurance herein required may become inadequate during an Airline's use of the space or the 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 the City. The City hereby reserves the right to review all coverages and amounts and request adjustments as necessary in the City's reasonable discretion. .

- i. If at any time Airline fails to obtain or maintain in force the insurance required herein, such failure shall constitute an incurable default permitting City, at its option, to immediately terminate the Airline's use of the space or the 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 the City. Notice shall be deemed prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit. Accident or property damage claims in an amount less than one thousand dollars (\$1,000.00) shall be excluded from the requirements of this Section.
- j. If any claim for damages is filed with Airline or if any lawsuit is instituted against Airline, Airline shall give prompt and timely notice thereof to Director, provided that claims and lawsuits subject to such notice are only those that arise out of or are in any way connected with Airline's or its officers', representatives', agents', employees', passengers', guests', patrons', contractors', subcontractors', licensees', subtenants', invitees', or suppliers' use of the leased premises or Airline's operations or activities in regard to the Airport or Airport and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect City. Notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of a claim or ten (10) calendar days following the date of service of process of a lawsuit. Accident or property damage claims in an amount less than one thousand dollars (\$1,000.00) shall be excluded from the requirements of this Section.
- k. If any claim for damages is filed with City or if any lawsuit is instituted against City, City shall give prompt and timely notice thereof to Airline, provided that claims and lawsuits subject to such notice are only those that arise out of or are in any way connected with the operation of the Airport or Airport by City and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect Airline. Notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of a claim or ten (10) calendar days following the date of service of process of a lawsuit. Accident or property damage claims in an amount less than one thousand dollars (\$1,000.00) shall be excluded from the requirements of this Section.
- l. The time limitations set forth above are mandatory. If the notice required to be given by these Sections is not given within the time limitations set forth therein, then the party giving the notice shall not be precluded from establishing that the notice actually given was timely under the circumstances of the particular claim or lawsuit, unless by the failure to give such notice within the applicable time period, the other party has been prejudiced in its ability to consider such claim or to respond to, or properly defend, such lawsuit. If the other party is so prejudiced by a late notice, then the late notice shall not be deemed to be prompt and timely.

### **Indemnification**

By use and occupancy of space on Airport premises, an Airline agrees to fully indemnify, defend and hold harmless the City, its elected representatives, officers, agents, volunteers and employees from and against all liabilities, losses, costs, suits, claims, judgments, expenses, fines or demands of any kind (including, but not limited to, costs of investigation, attorney fees, court costs and expert fees) resulting from any injury, damage or death to any person or property, of any nature whatsoever, arising out of or alleged to arise out of: (1) the Airline's use of the Airport; (2) the

occupancy by the Airline of Airport premises or facilities; or (3) the operations or activities of the Airline, or any of its officers, representatives, agents, employees, passengers, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers on Airport premises leased, used or occupied by Airline, its officers, representatives, agents or employees. The Airline shall not be liable for any injuries, death, or damages to the extent that such injury, death, or damage is caused by the negligence of the City, its elected representatives, officers, agents, volunteers or employees. Where negligence of the City, its elected representatives, officers, agents or employees, is determined to have been contributory, principles of comparative negligence as applied in the State of Texas shall be followed and the City and the Airline shall bear the proportionate cost of any loss, damage or liability attributable to its own negligence.

## **ARTICLE 11. FEDERAL, STATE AND LOCAL REGULATIONS**

### **Rules and Regulations**

- a. Except as otherwise provided, the Director is charged with the responsibility of administering the provisions of this Policy, and shall be authorized from time to time to promulgate and enforce such rules or regulations and Airport Gate Use, Assignment and Scheduling Procedures consistent with the purposes, intent, and express terms of this Policy as he or she deems necessary to implement such purposes, intent and express terms. All such rules and regulations and Airport Gate Use, Assignment and Scheduling Procedures so promulgated shall not be inconsistent with any legally authorized rule or regulation of the FAA, or any other federal or state agency, which is binding in law on an Airline, as the same now are or may from time to time be amended or supplemented.
- b. It shall be unlawful for an Airline, or any of its officers, representatives, agents, employees, passengers, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers, to violate, or to cause another person to violate, any rule or regulation promulgated by the Director regarding operation of the Airport.

### **Compliance with Law**

- a. An Airline shall not use any space on Airport premises or permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of the Airline's use and occupancy of space on Airport premises, comply with all applicable ordinances, laws, and rules and regulations of any city, City or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof that may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder of Airport premises.
- b. At all times during the term of the Airline's use and occupancy of space on Airport premises, an Airline shall, in connection with its activities and operations on Airport premises:
  1. Comply with and conform to all existing and future statutes and ordinances, and the rules and regulations promulgated there under, of all federal, state, and other governmental bodies of competent jurisdiction that apply to or affect, either directly or indirectly, the Airline or the Airline's operations and activities on Airport premises.

2. Obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment, or any other license necessary for the conduct of the Airline's business on Airport premises.

### **Nondiscrimination**

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

- a. In the event facilities are constructed, maintained or otherwise operated on the space assigned to the Airline for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, 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.
- b. No person on the grounds of race, color, national origin, sex or physical handicap shall be excluded by Airline from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities assigned to an Airline.
- c. In the construction of any improvements on, over, or under the space assigned to an Airline, and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, or physical handicap shall be excluded by the Airline from participation in, denied the benefits of, or otherwise be subject to discrimination.
- d. An 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.
- e. An Airline shall insert the substance of the provisions of this Section in any lease, agreement or contract by which the 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.

### **Breach Of Nondiscrimination**

In the event of breach of any of the nondiscrimination covenants set forth above, the City shall have the right to terminate an Airline's right to use Airport services and facilities and to reenter and repossess the space and the facilities thereon which had been assigned to the Airline, and hold the same as if such assignment had never been made. This provision regarding the termination of an 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 an Airline or the City.

### **Fair and Equal Furnishing of Services**

As a condition of the use of Airport services and facilities, an 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 non-compliance with this Section, the City may terminate an Airline's right to use Airport services and facilities.

#### **Affirmative Action Program**

As a condition of the use of Airport services and facilities, an 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 otherwise approved by the FAA, to ensure that no person shall on the grounds of race, creed, color, national origin, sex, or physical handicap be excluded from participation in any employment activities covered in such Subpart E. An 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. An Airline shall require that its covered sub organizations provide assurances to the Airline that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, as required by Title 14, Code of Federal Regulations, Part 152, Subpart E, to the same effect.

#### **Minority Business Enterprise**

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

#### **Rights of Federal Government**

Any use of Airport services and facilities by an Airline shall be subject to whatever right the U.S. Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of any airport in the Airport or the exclusive or nonexclusive use of any airport in the Airport by the United States during the time of war or national emergency.

#### **Subordination of Policy**

The use of Airport services and facilities by an Airline, pursuant to this Policy, is subordinated to the City's existing and future obligations or agreements with or to the federal government.

### **ARTICLE 12. MISCELLANEOUS**

#### **Delivery of Notices**

Any notice required in this Policy shall be in writing and served personally or sent by registered or certified mail, postage prepaid or by courier service such as DHL, FedEx, or UPS. Any notice mailed pursuant to this Section shall be presumed to have been received by the addressee five business days after deposit of same in the mail, unless sent by courier service.

#### **Self-Ticket Machines**

Airline self-ticket machines shall only be installed, operated or maintained with the prior written approval of the Director, and will be installed within the Airline's Exclusive Use Space or Preferential Use Space in specific locations as approved by the Director.

**Severability**

If one or more Clauses, Sections, or Articles of this Policy shall be held to be unconstitutional, illegal, or invalid by a court of competent jurisdiction, such decision shall not affect the validity of any of the remaining provisions of this Policy.

**Headings**

The headings of the Articles and Sections of this Policy are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Policy and shall not be construed to affect in any manner the terms and provisions of this Policy or of its interpretation.

**Authority of Director**

All rights and obligations of the City under this Policy may be exercised by the Director or his designee, unless specifically provided otherwise or required by law.

**Space Assignments**

The Director shall have the right to enlarge, reduce, relocate, and recapture any and all space assigned pursuant to this Policy to accommodate or facilitate construction in the Airport.

**Application—Exclusions**

- a. This Policy shall not apply to an Airline which has entered into a valid written agreement with the City for the use and occupancy of Airport services and facilities and for the payment of rents, fees and other charges for that use and occupancy.
- b. This Policy shall be operative and applicable to an Airline during any period in which such Airline is not covered by a valid written agreement with the City of San Antonio for the use and occupancy of Airport services and facilities and for the payment of rents, fees and other charges for that use and occupancy.

**No Right of Assignment**

Any rights or licenses to use Airport facilities pursuant to this Policy are neither assignable nor transferable.

**Letter of Credit Example**

**CLEAN IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_**

BENEFICIARY

City of San Antonio  
c/o Aviation Department  
9800 Airport Boulevard  
San Antonio, Texas 78216

At the request of \_\_\_\_\_ A \_\_\_\_\_, we \_\_\_\_\_ B \_\_\_\_\_, hereby open this CLEAN IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_ C \_\_\_\_\_ in your favor up to an aggregate of USD \_\_\_\_\_ D \_\_\_\_\_ (\$ \_\_\_\_\_) available by your draft(s) on us at sight.

We warrant to you that all of your drafts under this CLEAN IRREVOCABLE LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION OF YOUR DRAFT(S) drawn on us and presented to us at the office via courier, located at \_\_\_\_\_ E \_\_\_\_\_, \_\_\_\_\_ E \_\_\_\_\_ on or before the expiration set forth below or future expiration date as indicated below. Our obligation under this Letter of Credit is the individual obligation of the Bank, in no way contingent upon reimbursement with respect thereto or upon our ability to perfect any lien or security interest.

All drafts must be marked "Drawn Under \_\_\_\_\_ B \_\_\_\_\_ Letter of Credit No. \_\_\_\_\_ C \_\_\_\_\_ dated \_\_\_\_\_, 20 \_\_\_\_\_." Partial Drawings under this Letter of Credit are permitted.

Drafts must be accompanied by a statement from the City Manager of the City of San Antonio, or her designee, stating that "\_\_\_\_\_ A \_\_\_\_\_ has not performed certain terms, conditions or covenants contained in San Antonio International Airport Agreement No. \_\_\_\_\_ by and between the City of San Antonio and \_\_\_\_\_ A \_\_\_\_\_ or mandated by City of San Antonio Ordinance for operating at San Antonio International Airport Facilities.

This CLEAN IRREVOCABLE LETTER OF CREDIT expires at the close of business on \_\_\_\_\_ F \_\_\_\_\_, 20 \_\_\_\_\_. This CLEAN IRREVOCABLE LETTER OF CREDIT shall be automatically extended without amendment for additional periods of one (1) year from the present or each future expiration date unless we have notified you in writing not less than sixty (60) days before such date that we elect not to extend the Letter of Credit for such additional period, such notice to be sent by registered or certified mail to you at the address herein. Upon receipt by you of such notice you may draw on us at sight for the balance remaining in this Letter of Credit within the then applicable expiration date, no statement required.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

All correspondence and any drawing hereunder are to be directed to \_\_\_\_\_, Customer Inquiry Number is (XXX) XXX-XXXX.

\_\_\_\_\_  
Bank Officer /Representative

LEGEND:

- A – INSERT APPLICANT NAME, E.G. AIRLINE’S NAME
- B – INSERT NAME OF ISSUING BANK
- C – INSERT L/C IDENTIFICATION NUMBER
- D – INSERT DOLLAR VALUE OF INSTRUMENT
- E – INSERT EXACT ADDRESS OF BANK OFFICE WHERE DRAFT MUST BE PRESENTED
- F – INSERT EXPIRATION DATE OF AGREEMENT PLUS SIXTY DAYS