NHR
11/12/15
Item No. 21

AN ORDINANCE 2015-11-12-0948

AUTHORIZING REVISIONS TO THE AIRLINE OPERATING PERMIT TO ALLOW NON-SIGNATORY AIRLINES TO LEASE SPACE UNDER AN AIRLINE OPERATING PERMIT AND TERMINAL BUILDING LEASE AGREEMENT 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 and Ordinance No. 2014-06-12-0433, 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 allow non-signatory airlines to lease space under a form of Airline Operating Permit and Terminal Building Lease Agreement on a month-to-month basis; **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 an Airline Operating Permit and Terminal Building Lease at San Antonio International Airport in the forms substantially the same as the document set out in **Attachment 1.** The term of the Airline Operating Permit and Terminal Building Lease shall be 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 November, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**21 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25A, 25B)**
Date:	11/12/2015
Time:	12:21:40 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing revisions to the Airline Operating Permit to allow non-signatory airlines to lease space under the Airline Operating Permit and Terminal Building Lease Agreement rather than in a separate agreement at the San Antonio International Airport. [Carlos Contreras, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

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

Attachment 1

AIRLINE OPERATING PERMIT
AND
TERMINAL BUILDING LEASE

THIS AIRLINE OPERATING PERMIT AND TERMINAL BUILDING LEASE ("AGREEMENT"), is 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, Ordinance No. 2011-11-17-0972 enacted November 17, 2011, Ordinance No. 2014-06-12-0433 enacted June 12, 2014, and Ordinance _____ enacted _____, 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"); whose initial addresses are as follows:

City	Airline
Aviation Director	_____
City of San Antonio	_____
9800 Airport Blvd.	_____
San Antonio, Texas 78216	_____
	_____
	_____

WHEREAS, City has the right to license the use of property and to lease 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 the 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, through the Aviation Director, 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 Air Transportation means the carriage of persons, property, cargo, or mail by aircraft to and from the Airport.

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

1.4 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.

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

1.6 Airport Layout Plan is defined in **Subsection 6.2.2** and depicted on **Exhibit C**.

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 A.**

1.8 Aviation Director means the Aviation Director of the City of San Antonio or his designee.

1.9 Baggage Handling System ("BHS") means the areas and non-TSA equipment at the Airport associated with the consolidated 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 baggage makeup carousels for pickup by Airline and other airline personnel.

1.10 City Gate means a gate not leased to a carrier under an Airline Operating Agreement and Terminal Building Lease authorized pursuant to Ordinance No. 2011-11-17-971 enacted November 17, 2011.

1.11 Commencement Date is defined in **Article II – Term**.

1.12 Common Use Area means space managed by City for the use of Airline that may be made available to Airline from time to time for use in common with other airlines, including, but not limited to passenger security screening areas, baggage handling systems, bag make-up areas, tug lanes, domestic baggage claim areas, and exit lanes, as assigned by the Director, which Common Use Area is subject to applicable Rules and Regulations.

1.13 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.

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

1.15 DOT means the United States Department of Transportation, and any federal agency succeeding to its jurisdiction.

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

1.17 Environmental Laws is defined in **Section 17.3.1.**

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

1.19 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.

1.20 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.

1.21 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.

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

1.23 Leased Premises is defined in **Article III**.

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

1.25 Rules and Regulations means the Airport Rules and Regulations as authorized by City Ordinance.

1.26 Sign means any advertising sign, billboard, identification sign or symbol, or other similar device, regardless of content.

1.27 Small Commercial Airline means a commercial operator which employs only aircraft of less than 60,000 pounds gross take-off weight.

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

1.29 Trade Fixtures means, but shall not be limited to, any signs (electrical or otherwise) used to identify Airline's business; all shelves, bins, racking, machinery and equipment used in connection with Airline's required or permitted activities pursuant to this Agreement, whether or not such machinery or equipment is bolted or otherwise attached to the Leased Premises; and all other miscellaneous office equipment, furnishings, and personal property of Airline.

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

ARTICLE II. TERM

This Agreement shall commence upon execution of this Agreement by City's authorized representative ("**Commencement Date**"), 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. DESCRIPTION OF LEASED PREMISES

City, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Airline, does hereby lease unto Airline, and Airline does hereby accept from City, the following property (hereinafter the "**Leased Premises**") in the Terminal Building, located within San Antonio International Airport in San Antonio, Bexar County, Texas, and more specifically shown in **Exhibits B-___, B-___, and B-___** which are attached hereto and made a part of this Agreement:

[description of Leased Premises including square footage]

ARTICLE IV. RENTS, FEES AND CHARGES

4.1 Airline shall pay City rents, 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, which non-signatory rates are adjusted by City as needed on October 1st of each year, and at any time during the year that rates are also changed for signatory airlines.

4.1.1 **Terminal Building Rents.** Airline shall pay the City monthly for Leased Premises in the Terminal Building.

4.1.2 **Gate Use Charges.** Airline shall pay City for its use of City Gates and non-preferential use of other airlines' Gate(s), unless otherwise agreed to by the parties.

4.1.3 **Ticket Counter Charges.** Airline shall pay City for its use of ticket counters monthly.

4.1.4 **Common Use Area Fees.** Airline shall pay a monthly fee for its use of Common Use Areas.

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

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

4.1.7 **Administrative Fees.** Airline shall pay, each month, an Administrative Fee equal to 15% of the monthly Ticket Counter Charges, Common Use Area Charges, and Gate Use Charges.

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, Remain Overnight ("RON"), escorting services, and the issuance of security identification badges.

4.1.9 **Airline Consortium Charges**. Airline shall separately contact the Airline Consortium (Article 12 of the Airline Operating Agreement and Terminal Building Lease authorized pursuant to Ordinance No. 2011-11-17-971 enacted November 17, 2011), if required, to enter an agreement with the Airline Consortium for payment of fees, if applicable. By signing this Agreement, Airline is a non-signatory, non-voting member of the Airline Consortium.

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 Leased Premises 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 Gate Use Charges, Ticket Counter Charges, Common Use Area Fees, FIS Charges, Landing Fees, Administrative Fees, and other 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 C.F.R. 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 **Subsections 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 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 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 other address as notified by the Director, or payment may be remitted 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 rights 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 one and one-half percent (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/PFC Quarterly 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 Airline shall submit quarterly reports of Passenger Facility Charges collected, which 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.

4.5.3 Failure to Furnish Reports. If Airline fails to furnish City with the report(s) described above, Airline's Landing Fees and Common Use Area 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 Area 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 Area Fees for the next succeeding month. An accounting fee of $100 per month 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 tender to City prior to Airline's use of the Leased Premises 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 Leased Premises for two (2) months;

4.6.1.2 Airline's estimated Gate Use charges for two (2) months;

4.6.1.3 Airline's estimated Ticket Counter use charges for two (2) months:

5.6.1.4 Airline's estimated Common Use Area 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 Area Formula);

4.6.1.5 Airline's estimated FIS Charges for two (2) months;

4.6.1.6 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).

4.6.1.7 Airline's estimated Administrative Fees for two (2) months.

Either Airline or its Affiliate shall also tender 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 change to the amount required in this **Section 4.6** from the Airline. Such Performance Guarantee shall be in the form of a letter of credit, surety bond, or other instrument satisfactory to City, in a form acceptable to the Director. The Performance Guarantee must provide that it shall remain in full force and effect for a period extending not less than 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) equals two (2) months' estimated rents and fees payable by Airline as described in **Section 4.6.1** 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 applicable federal bankruptcy laws 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 surety 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 property of City and not "property of the estate".

ARTICLE V. ADJUSTMENT OF RATES FOR RENTS, FEES AND CHARGES

5.1. Rates for rents, fees and charges in accordance with the City's then current schedule of rents, 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 rent, 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 rents, 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 rents, 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 rents, fees and charges is not completed by the City on or prior to the end of the Fiscal Year, the rents, 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 rent, fees and charges paid to date in said Fiscal Year retroactively to the amounts that would have been paid had the new rates been effective at the beginning of said Fiscal Year.

ARTICLE VI. USE OF AIRPORT AND RELATED FACILITIES

6.1 Airline Rights and Privileges

Subject to the provisions of this Agreement and the Airport's Rules and Regulations, Airline by paying all rents, fees, and charges due, 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:

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

6.1.2 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.

6.1.3 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.

6.1.4 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.

6.1.5 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.

6.1.6 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.

6.1.7 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 the Director. 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.

6.1.8 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. The installation and operation of identifying Signs, posters, and graphics on Airline's Leased Premises within public view is 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 City's graphic standards and the Rules and Regulations, and in compliance with all applicable laws and ordinances.

6.1.9 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.

6.1.10 The installation, maintenance, and operation of passenger clubs, lounges, or VIP rooms, 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.

6.1.11 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.

6.1.12 Nothing herein shall restrict City from requiring a permit and levying a charge on any person or company for conducting business at the Airport. Furthermore, City intends to levy a charge for business conducted at the Airport, including Airline's provision of non-Air Transportation services to others, except for ground transportation services provided free of any fee or charge.

6.1.13 The storage and parking of equipment, cargo, and vehicles, but only at such locations as specifically designated by the Director.

6.1.14 The maintenance and repair of equipment and vehicles, but only at such locations as specifically designated by the Director.

6.1.15 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.

6.2 Exclusions and Reservations

6.2.1 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.

6.2.2 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 FAA approved Airport Layout Plan attached hereto as **Exhibit C ("Airport Layout Plan")** or other engineering evaluations performed subsequent to the then current Airport Layout Plan.

6.2.3 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:

6.2.3.1 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.

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

6.2.3.3 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.

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

6.2.3.5 Do anything that may be in conflict with 49 C.F.R. Part 1542 Airport Security or the TSA-approved security plan for the Airport.

6.2.3.6 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 authorization of the Director. Airline or its nominee may, however, install, maintain, and operate vending machines in Airline's Leased Premises, 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.

6.2.3.7 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.

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

6.2.3.9 Airline shall not enter into activities that compete with City in City's development of any non-airline revenue from Airport passengers, tenants, and other users. Should Airline engage in non-airline business activities not specifically permitted in this Agreement, the City may levy a non-discriminatory fee.

6.2.4 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 6.2.3.6.** 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.

6.2.5 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.

6.2.6 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.

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

6.3 Security. Airline understands and agrees that it shall fully indemnify, defend, and hold harmless 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 C.F.R. Part 1542 Airport Security or any successor regulations related to airport security.

ARTICLE VII. DAMAGE OR DESTRUCTION

7.1 Partial Damage. If any part of the Leased 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 Leased 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 rent, fees and charges.

7.2 Substantial Damage. If any part of the Leased 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 Leased 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 rent, 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.

7.3 Damage Not Repairable. If any part of the Leased 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 Leased Premises. The rent, 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 Leased Premises may be available for use by Airline provided, however, that City shall have no duty to provide such replacement or reconstructed Leased Premises.

ARTICLE VIII. INDEMNIFICATION AND INSURANCE

8.1 **Indemnification**

8.1.1 **AIRLINE 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 AIRLINE's activities under this LEASE, including any acts or omissions of AIRLINE, any agent, officer, director, representative, employee, consultant or subcontractor of AIRLINE, 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 AIRLINE 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.

8.1.2 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. AIRLINE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or AIRLINE known to AIRLINE related to or arising out of AIRLINE's activities under this LEASE and shall see to the investigation and defense of such claim or demand at AIRLINE's costs. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving AIRLINE of any of its obligations under this paragraph.

8.1.3 All personal property placed in the Leased Premises shall be at the sole risk of Airline. City shall not be liable, and Airline waives all claims for any damage either to the person or property of Airline 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. Airline shall save and hold harmless City from any claims arising out of damage to Airline's property or damage to Airline's business, including subrogation claims by Airline's insurers.

8.2 **Insurance**

8.2.1 No later than the Commencement Date, Airline shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "Airline Operating Permit and Terminal Building Lease" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

8.2.2 The City reserves the right to review the insurance requirements of this Article during the term 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 whereby City may incur increased risk.

8.2.3 Airline's financial integrity is of interest to the City; therefore, subject to Airline's right to maintain reasonable deductibles in such amounts as are approved by the City, Airline shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Airline's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Airport Premises Liability Insurance to include coverage for the following: Large Commercial Airlines: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Fire Damage (Damage to Rented Premises) Small Commercial Airlines: a. Premises/Operation b. Products/Completed Operations c. Personal/Advertising Injury d. Fire Damage (Damage to Rented Premises)	a), b)--For Bodily Injury and Property Damage of $300,000,000 per occurrence; $300,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage c. $25,000,000 d. $1,000,000 a). b).—For Bodily Injury and Property Damage of $50,000,000 per occurrence: $50,000,000 General Aggregate or its equivalent in Umbrella or Excess Coverage c. $25,000,000 d. $1,000,000
4. Business Automobile Liability	Combined Single Limit for Bodily Injury and

a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Property Damage of $5,000,000 per occurrence
5. Aircraft Liability—including coverage for owned and non-owned aircraft: a. Large Commercial Airlines: b. Small Commercial Airlines:	 a.$300,000,000 b. $50,000,000
7. *Property Insurance: For physical damage to the property of AIRLINE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of one hundred percent (100%) of the cost of Airline's property

8.2.4 Airline agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Airline herein, and provide a certificate of insurance and endorsement that names the Airline and the City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Airline. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

8.2.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Airline shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Airline shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Aviation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

8.2.6 Airline agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

8.2.7 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 to maintain the required insurance shall constitute a material breach of this Agreement.

8.2.8 In addition to any other remedies the City may have upon Airline's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Airline to stop work hereunder, and/or withhold any payment(s) which become due to Airline hereunder until Airline demonstrates compliance with the requirements hereof.

8.2.8 Nothing herein contained shall be construed as limiting in any way the extent to which Airline may be held responsible for payments of damages to persons or property resulting from Airline's or its subcontractors' performance of the work covered under this Agreement.

8.2.9 It is agreed that Airline's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.2.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

8.2.11 Airline and any subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE IX. ADJUSTMENT TO LEASED PREMISES

The parties hereto agree and recognize that the space in the Terminal Buildings is in high demand and that City must retain the right to allot such space in a manner deemed by City, in its sole judgment, necessary to maximize the usage and allotment of such space. Accordingly, the parties agree that City, acting by and through its Aviation Director and at his sole discretion, may recapture terminal building space at any time during the term of the Agreement if such space is

necessary for airline and/or airport operational considerations. City shall provide to Airline at least thirty (30) days' advance written notice of the need for such recapture. In the event that Airline shall request that terminal building space leased hereunder be adjusted, reconfigured, enlarged or reduced, City, acting by and through its Aviation Director in his sole discretion, may agree in writing to Airline's request and adjust the rent due, subject to the terms and conditions of this Agreement. Should any relocation, adjustment, reconfiguration, enlargement or reduction of the Leased Premises occur as set forth in this paragraph, then, and in such event, a writing shall be executed by and between Airline and City, acting through the Aviation Director, to reflect the terms and conditions relating thereto. Such writing, upon execution thereof by Airline and the Aviation Director, shall be filed or recorded with the City Clerk and shall automatically become part of this Agreement.

ARTICLE X. PRIVILEGES AND CONDITIONS

10.1 In addition to the rights and privileges granted Airline in **Article VI, Use of Airport and Related Facilities** set forth above, City hereby grants to Airline the following general, non-exclusive privileges, uses and rights, subject to the terms, conditions and covenants herein set forth:

10.1.1 The general use by Airline of all common Airport facilities and improvements, which are now, or may hereafter be, connected with or appurtenant to said Airport, except as hereinafter provided. "Common Airport facilities" shall include all necessary roadways, sidewalks, terminal facilities, restrooms and other common or public facilities appurtenant to said Airport.

10.1.2 The right of ingress to and egress from the Leased Premises, over and across common or public roadways serving the Airport for Airline, its agents, servants, patrons, invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now, or may hereafter, apply at the Airport.

10.2 The granting and acceptance of this Agreement is conditioned upon compliance with the covenant that the right to use said common Airport facilities, in common with others so authorized, shall be exercised subject to and in accordance with the laws of the United States, State of Texas and City of San Antonio, the rules and regulations promulgated by their authority with reference to aviation and navigation, and all reasonable and applicable rules, regulations and ordinances of City, now in force or hereafter prescribed or promulgated by charter authority or by law.

10.3 City reserves the right to enter the Leased Premises at any reasonable time upon notice to Airline for the purpose of inspecting same or verifying that fire, safety, sanitation regulations and other provisions contained in this Agreement are being adhered to by Airline; however, notice to Airline shall not be required for City to enter the Leased Premises in the event of an emergency.

ARTICLE XI. AS IS ACCEPTANCE AND CONDITION OF PREMISES

11.1 Airline has had full opportunity to examine the Leased Premises. Except for environmental matters not caused by or reasonably discoverable by Airline prior to the commencement of this Agreement, Airline's taking possession of the Leased Premises shall be conclusive evidence of Airline's acceptance thereof in an "AS IS" condition, and Airline hereby accepts same in its present condition as suitable for the purpose for which leased.

11.2 Airline agrees that no representations respecting the condition of the Leased Premises and no promises to improve same, either before or after the execution hereof, have been made by City or its agents to Airline, unless contained herein or made a part hereof by specific reference.

ARTICLE XII. CONSTRUCTION BY AIRLINE

12.1 Airline shall not perform or construct any alterations or improvements to the Leased Premises unless approved in writing by the Aviation Director. Before any such identified alterations or improvements are performed or constructed, the Parties shall reduce to a writing the terms for performing the alterations of improvements. Prior to the commencement of construction, Airline shall procure any and all additional approvals of the construction documents required by any federal, state or municipal authorities (including other departments of the City), agencies, officers and departments having jurisdiction thereof, and shall obtain any and all requisite building or construction licenses, permits or approvals. Construction shall comply with applicable building code requirements and with applicable regulations promulgated by any federal, state or municipal agency or department having jurisdiction thereof. Airline will obtain at its expense all required permits from City of San Antonio. Airline specifically agrees that it shall hold City completely harmless from and against any and all claims, causes of action or liabilities, whether actual or potential, associated with any construction undertaken by Airline hereunder.

12.2 Payment & Performance Bonds. Airline shall, with the execution and delivery of the Lease, furnish and file with City, in the amounts required in this **Article XII**, the surety bonds described herein. Each surety bond shall be signed by Airline, as the Principal, as well as by an established corporate surety bonding company as surety. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign and shall include:

12.2.1 Performance Bond. A good and sufficient bond in an amount equal to one hundred percent (100%) of the total cost of the construction contract amount, guaranteeing the full and faithful execution of the work and performance of the Project in accordance with the Construction Documents and all other contract documents, including any extensions thereof, for the protection of City. A performance bond obtained by the Contractor is acceptable so long as it names both Airline and City as beneficiaries. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of Final Completion or acceptance of the Project by City.

12.2.2 Payment Bond. A good and sufficient bond in an amount equal to 100% of the total construction contract amount, guaranteeing the full and prompt payment of all

claimants supplying labor or materials in the prosecution of the Project work, and for the use and protection of each claimant.

12.3 The cost of any renovations, construction, alterations or improvements upon the Leased Premises shall be borne and paid for solely by Airline. Except as may be otherwise set forth herein, City has no financial or other obligation of any kind under this Agreement, other than the renting to Airline of the premises which are the subject hereof for the term and consideration hereinbefore set forth.

ARTICLE XIII. LIENS PROHIBITED

13.1 Airline shall not suffer or permit any mechanics' or other liens to be filed against the fee of the Leased Premises, or against Airline's leasehold interest in the land, buildings or improvements thereon, by reason of any work, labor, services or materials supplied, or claimed to have been supplied, to Airline or to anyone holding the Leased Premises, or any part thereof, through or under Airline.

13.2 If any such mechanics' lien or materialmen's lien described in **Section 13.1** above shall be recorded against the Leased Premises, or any improvements thereon, Airline shall cause the same to be removed or, bonded around pursuant to the terms of the Texas Property Code. In the alternative, if Airline, in good faith, desires to contest the same, it shall be privileged to do so; however, in such case, Airline hereby agrees to indemnify and save City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to sale of the property or execution of such judgment.

ARTICLE XIV. CANCELLATION BY CITY: EVENTS OF DEFAULT BY AIRLINE

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

14.1.1 Airline fails to pay rent, 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.

14.1.2 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 **Section 14.1.1** above) and such failure continues for fifteen (15) days after such receipt.

14.1.3 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.

14.1.4 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.

14.1.5 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.

14.1.6 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.

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

14.1.8 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 14.1.

14.1.9 Airline shall voluntarily discontinue its operations at the Airport for a period of sixty (60) consecutive days.

14.2 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 rent, fees and charges payable hereunder and for all preceding breach(es) of any covenant herein contained. City, in addition to the right of termination of the Agreement, and to any other rights or remedies it may have at law or in equity, shall have the right to terminate Airline's right of possession and 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 XV. ASSIGNMENT

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

ARTICLE XVI. 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 XVII.
GOVERNMENT INCLUSION & FURTHER SUBORDINATION

17.1 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.

17.2 Nondiscrimination

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

17.2.1.1 In the event facilities are constructed, maintained, or otherwise operated on the space assigned to Airline for a purpose for which a United States Department of Transportation ("DOT") 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, 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.

17.2.1.2 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.

17.2.1.3 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.

17.2.1.4 Airline shall use the premises assigned to it in compliance with all other requirements imposed by or pursuant to Title 49, C.F.R. 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.

17.2.1.5 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.

17.2.2 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 C.F.R. Part 21, are followed and completed, including the expiration of appeal rights, by either Airline or City.

17.2.3 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.

17.2.4 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, C.F.R. 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, C.F.R. Part 152, Subpart E, to the same effect.

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

17.3 Compliance with Environmental Laws

17.3.1 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 Airport Rules and Regulations, the City and Airport Sustainability Plans, Facility Usage Rules, Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sections 136 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Sections 300(f) *et seq.*; the Oil Pollution Control Act of 1990, 33 U.S.C. Sections 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. Sections 2601 *et seq.*; the Clean Air Act as amended, 42 U.S.C. §§ 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Sections 1251, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 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. Sections 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").

17.3.1.1 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.

17.3.1.2 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.

17.3.1.3 Airline acknowledges that the Airport and its tenants are subject to the Texas Pollutant Discharge Elimination System (TPDES) program and its regulations relating to stormwater discharges, 40 C.F.R. Part 122, for operations that occur at the Airport. Airline further acknowledges that it is familiar with these TPDES stormwater regulations, and that it shall conduct operations at the Airport in compliance with applicable provisions of 40 C.F.R. Part 122 or any applicable TPDES permit, as either may be amended from time to time.

17.3.1.4 City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any TPDES 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 C.F.R. Part 122.2 and as implemented in any applicable TPDES permit, as either may be amended from time to time.

17.3.1.5 Airline acknowledges that City's TPDES 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.

17.3.1.6 City and Airline acknowledge that each must maintain a TPDES 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") for Airport common areas and submit such to TCEQ, San Antonio Water Systems, or appropriate regulatory agency. City and Airline acknowledge that Airline must either prepare its own SWPPP or subscribe to the SWPPP of the City. The City will not accept certificates of non-exposure from entities which operate on the Airfield. City shall provide Airline with written notice of City's TPDES 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; sampling and testing of Airline's operations area; 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 TPDES 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 TPDES 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. If no agreement is reached between Airline and City regarding the parties' respective performance of SWPPP duties, City reserves the right to exclude Airline from participation in the City's SWPPP.

17.3.1.7 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 TPDES stormwater regulations.

17.3.1.8 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.

17.3.1.9 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, if possible, 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.

17.3.1.10 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. Airline shall not dispose of Hazardous Materials in Airport waste receptables.

17.3.1.11 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.

17.3.2 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 XVIII. MAINTENANCE RESPONSIBILITIES

18.1 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.

18.2 Airline shall replace or substitute any Trade Fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements; and

18.3 Airline shall at all times keep the Leased Premises, its buildings, improvements, Trade Fixtures, equipment and personal property, in a clean and orderly condition and appearance, including, but not limited to, the following:

18.3.1 repair any damage caused by Airline to the Leased Premises or the Airport, in connection with the scope of the Agreement and/or caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon, or by any other reason whatsoever; and

18.3.2 keep and maintain all vehicles and equipment operated by Airline on the Airport in safe condition, good repair and insured, as required by this Agreement; and

18.3.3 replace broken or cracked plate glass, paint/repaint structures upon the Leased Premises and, where applicable, mow the grass; and

18.3.4 provide and use suitable covered metal receptacles for all garbage, trash and other refuse; assure that boxes, cartons, barrels or similar items are not piled in an unsightly, unsafe manner, on or about the Leased Premises; provide a complete and proper arrangement, satisfactory to the Aviation Director, for the adequate sanitary handling and disposal away from the Airport, of all trash, garbage and refuse caused as a result of Airline's activities.

18.3.5 furnish janitorial service for the Leased Premises, keeping them in a neat, orderly, sanitary and presentable condition, free of trash, rubbish or other debris. Airline shall remove, at Airline's own expense, from all Leased Premises all waste, garbage and rubbish and agrees not to deposit same on any part of Airport, except that Airline may deposit same temporarily on its Leased Premises or in space designated by City in connection with collection for removal.

18.4 The adequacy of the performance of the foregoing maintenance and repair by Airline shall be determined by the Aviation Director, whose reasonably exercised judgment shall be conclusive. Should Airline refuse or neglect to undertake any such maintenance or repair, or if City is required to perform any maintenance or repair necessitated by the negligent acts or omissions of Airline, its employees, agents, assignees, subtenants or licensees, then City shall have the right, but not the obligation, to perform such maintenance or repair on behalf of and for Airline. The costs of such maintenance or repair, plus a fifteen percent (15%) overhead charge, shall be reimbursed by Airline to City no later than ten (10) days following receipt by Airline of written demand from City for same. In cases not involving maintenance or repair requiring exigent action, City shall provide Airline a written request that Airline perform such maintenance or repair, at least thirty (30) days before City effects such maintenance or repair on behalf of Airline.

ARTICLE XIX. TITLE

It is expressly understood and agreed that any and all items of personal property owned, placed or maintained by Airline on the Leased Premises during the term hereof shall be and remain Airline's property. Provided that Airline is not in default under this Agreement, it may remove or cause to be removed all such items from the Leased Premises; however, Airline, at its own expense, shall leave, repair, and/or restore the Leased Premises to the same or better condition as prior to the installation of Airline's personal property bolted, attached, or otherwise affixed to the Leased Premises. At City's sole election, any personal property items remaining on the Leased Premises upon expiration of the term hereof, shall then belong to City without payment of consideration therefore, and City may dispose of any and all such personal property items in its sole discretion, without notice to Airline.

ARTICLE XX. SIGNS

Airline shall neither erect Signs nor distribute advertising matter upon Airport premises, without the prior written consent of the Aviation Director.

ARTICLE XXI. CONFLICT OF INTEREST

21.1 Airline acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

21.2 Pursuant to the subsection above, Airline warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Airline further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XXII. MISCELLANEOUS PROVISIONS

22.1 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. It is understood and agreed that nothing herein contained shall be construed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Leased Premises.

22.2 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.

22.3 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.

22.4 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.

22.5 Airport Access License/Permit. City reserves the right to establish a licensing or permit procedure for vehicles requiring access to the Airport operational areas and to levy directly

against Airline or its suppliers a reasonable regulatory or administrative charge to recover the cost of any such program for issuance of such Airport access license or permit.

22.6 Compliance with Part 77, Title 14, C.F.R. Airline agrees to comply with the notification and review requirements covered in Part 77, Title 14, C.F.R., FAA Regulations, in the event future construction of a building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

22.7 Reservations re: Airspace and Noise There is hereby reserved to City, its successors, and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises.

22.8 Inspection of Books and Records. City, at its expense and on reasonable notice, shall have the right from time to time to inspect and copy the books, records, and other data of Airline relating to the provisions and requirements hereof, provided such inspection is made during regular business hours.

22.9 Independent Contractor. Airline is not an employee or agent of City by reason of this Agreement, or otherwise. Airline shall be solely responsible for its acts and omissions arising from or relating to its operations or activities at Airport, or lease of property herein.

22.5 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.

22.6 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.

22.7 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.

22.8 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.

22.9 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.

22.10 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.

22.11 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.

22.12 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.

22.13 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.

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

22.15 Notices.

22.15.1 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.

22.15.2 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

22.15.3 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:

_____
_____
_____
_____
_____
_____

22.15.4 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.

22.16 Net Agreement. It is the intent and purpose of the City and Airline that all rental payable by Airline herein shall be absolutely net to the City so that this Lease Agreement shall yield to City the entire rent specified, in each year of this Agreement, free of any charges, assessments, impositions or deductions of any kind or character which may be charged, assessed, or imposed on or against Airline or the Leased Premises, without abatement, deduction or set-off by Airline.

22.17 Noise Control. Airline, for itself and each of its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, subtenants, invitees, or suppliers shall not conduct any operation or activity on the Leased Premises, or elsewhere at Airport, in which the sound emitting therefrom is of such volume, frequency or intensity at such time as to constitute a nuisance. The Aviation Director shall have the sole and exclusive authority to determine what constitutes a nuisance under the provisions of this Agreement except that operations and activities having noise levels not in violation of federal, State, or local governmental standards shall not be deemed a nuisance.

22.18 Vehicular and Equipment Parking. Vehicular and equipment parking in areas other than the Leased Premises by Airline, its officers, representatives, agents, employees, guests, patrons, volunteers, contractors, subcontractors, licensees, suppliers or other invitees shall be restricted to such areas at Airport as are designated by the Airport Director.

22.19 Governmental Immunity. City does not waive any available governmental immunity or defenses under Texas law by entering into this agreement.

22.20 Quiet Enjoyment. Upon payment by Airline of the rents, fees, and charges as herein required, and subject to performance and compliance by Airline with the covenants, conditions, and agreements on the part of Airline to be performed and complied with hereunder, Airline shall peaceably have and enjoy the rights, uses, and privileges of the Leased Premises granted herein.

22.21 Entire Agreement. This instrument contains the entire agreement between the Airline and City regarding the subject matter hereof. Furthermore, any and all prior agreements between the Airline and City, including any Airline Operating Permit(s) and/or leases, are hereby terminated as of the Effective Date of this Agreement. 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.

22.22 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.

22.23 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.

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

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

AIRLINE:

_____
Signature

_____
Printed Name

_____
Title

CITY OF SAN ANTONIO

BY:_____
City Manager

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A
Airport Terminal Layout

EXHIBIT B
Leased Premises

EXHIBIT C
Airport Layout Plan