

**FIRST AMENDMENT TO
AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE**

THIS FIRST AMENDMENT TO THE AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE (“Amendment”), made and entered into this 1st day of October, 2022 by and between THE CITY OF SAN ANTONIO, TEXAS (hereinafter referred to as the “CITY”) and _____, a corporation organized and existing under and by virtue of the laws of the State of _____, (hereinafter referred to as “AIRLINE”);

W I T N E S S E T H:

WHEREAS, CITY and AIRLINE previously entered into an Airline Use Operating Agreement and Terminal Building Lease with a term commencing October 1, 2020, and which, as extended pursuant to the provisions therein, expired on September 30, 2022 (the “Agreement”);

WHEREAS, Section 17.31 of the Agreement states that no amendment, modification, or alteration of the terms of the Agreement shall be binding unless agreed upon by the parties in writing and duly executed, and, for amendments that substantially alter the material terms of the Agreement, authorized by City Council by passage of an ordinance thereto;

WHEREAS, CITY and AIRLINE have been negotiating in good faith for a new airline use and lease agreement that would govern AIRLINE’s use of and operations at San Antonio International Airport (the “Airport”) and supersede and replace the Agreement (the “New AULA”);

WHEREAS, the parties agree that additional time is needed to negotiate and finalize the New AULA;

WHEREAS, CITY believes that it is in the best interests of CITY and the Airport to extend the Agreement for an additional two (2) years so that CITY may proceed with certain capital projects while the parties finalize the New AULA, subject to the terms and conditions stated below;

WHEREAS, CITY and AIRLINE agree to extend the Agreement, on the terms and conditions stated below, for an additional two (2) years per this Amendment (such 2-year period, commencing October 1, 2022 and ending September 30, 2024, the “Extension Term”);

WHEREAS, the Federal Aviation Administration (“FAA”) requires airport contracts to contain certain mandatory and discretionary provisions pursuant to “Required Contract Provisions for Airport Improvement Program and for Obligated Sponsors” issued by the FAA June 19, 2018, as amended from time to time;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, CITY and AIRLINE **DO HEREBY MUTUALLY AGREE**, each for itself and its successors and assigns, as follows:

1. The above recitals are true, correct and are an integral part of this Amendment.
2. The Agreement is hereby extended to midnight on September 30, 2024, on the same terms and conditions of the Agreement except:
 - a. Section 3.7 (*Right to Preferential Use of Gates*) is hereby revised as follows:

Airline is herein granted the Preferential Use, but not the Exclusive Use, of its assigned Gate(s). The preferential rights of Airline and other airlines to use Gates shall be governed by the provisions hereof and in accordance with the Rules and Regulations, which includes the City's Common Use Passenger Processing System and Gate Use Operating Procedures (Gate Use Procedures).

- b. The following language from Section 8.2 (*Additional Terminal or New Concourse Construction*) is stricken in its entirety:

Ninety (90) days prior to the end of the initial twelve (12) month deferral period, if the City still desires to construct the new terminals or concourses the City shall repeat the Capital Improvement coordination process described above for the new terminals or concourses construction. If, concurrence on the previously deferred new terminals or concourses construction is again specifically withheld, in writing, by the MII during the immediately preceding Fiscal Year as above provided, the new terminals or concourses construction will be deferred an additional twelve (12) months.

- c. The following language from Section 8.2 (*Additional Terminal or New Concourse Construction*) is hereby revised as follows:

After ~~twenty-four~~ twelve months of deferral, the City may construct the new terminals or concourses. When such facilities are available for airline operations, the City may include all capital, operating and maintenance costs and expenses of such new terminals or concourses, in the rents, fees, and charges of Airline and other airlines using the facilities constructed.

- d. The following language from Section 8.2 (*Additional Terminal or New Concourse Construction*) is hereby revised as follows:

- b. Constructing projects or project elements involving the renovating, renewing, improving, and incrementally expanding the Terminal Building are not subject to the one-year ~~two-year~~ deferral described in this Section 8.2.

- e. Section 17.9 (*Favored Nations*) is hereby revised as follows:

Airline shall have the same rights and privileges and pay the same City-established fees and charges, not to exceed those established under the provisions of this Agreement as periodically revised under the terms hereof, with respect to the use of the Airport as are granted to or charged any other airline executing a similar use and lease agreement with City for use of the Airport. The previous sentence notwithstanding, the City may waive or reduce any fees and charges set under this Agreement pursuant to a City-approved Air Service Incentive Plan (ASIP) for a period not to exceed two years. The City shall give Signatory Airlines an opportunity to review and comment on any proposed updates and/or revisions to such ASIP. It is

understood that rents and fees are set as established in this Agreement and to the extent permitted under applicable federal law therefore may vary among lessees on account of the different premises to be leased. For the avoidance of doubt, the cost of the aforementioned waivers and reductions of fees and charges shall not be included as a component of any of the Airline fees or charges that are presented in Exhibit D (“Rates and Fees Schedule”).

- f. Exhibit J (*Federal Nondiscrimination Requirements*) to the Agreement is hereby deleted in its entirety and superseded and replaced by **Attachment A** to this Amendment, and the terms and conditions contained therein are herewith made a part of this Amendment and the Agreement.
3. CITY and AIRLINE further agree that the capital improvements listed in the attached **Attachment B** (“Pre-Approved CIP”) shall not be subject to the deferral provisions of Section 8.1 (*Capital Improvement Coordination with Airline*) or Section 8.2 (*Additional Terminal or New Concourse Construction*), provided, however, that the combined net cost of all such improvements combined does not exceed \$130 million total (“Threshold”). If the estimated net cost of a capital improvement listed on **Attachment B** would cause CITY to exceed such Threshold, that capital improvement shall be subject to coordination with the Airlines pursuant to Section 8.2 (*Additional Terminal or New Concourse Construction*).
4. CITY and AIRLINE acknowledge and agree that it is their mutual desire to finalize the form of the New AULA and execute same prior to the expiration of the Extension Term and agree to work together in good faith to achieve same.
5. All other terms and conditions of the Agreement shall remain in effect during the Extension Term, and through midnight on September 30, 2024.
6. The AIRLINE representative signing below has the power and authority to execute this Amendment and such AIRLINE shall be bound hereby.

[Signature Page(s) to Follow]

IN WITNESS WHEREOF, the parties hereto have subscribed their names the day and year first above written.

CITY OF SAN ANTONIO, TEXAS:

Erik Walsh
City Manager

Approved as to form:

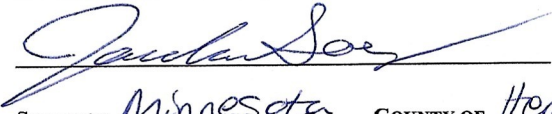
City Attorney

AIRLINE:


By: BLAINE PETERS

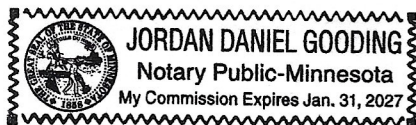
Title: REGIONAL DIRECTOR CRE

Notary of Airline Signature:



STATE OF Minnesota COUNTY OF Hennepin

SIGNED IN BEFORE ME THIS 22nd DAY OF November 2022



ATTACHMENT A

FEDERAL NONDISCRIMINATION REQUIREMENTS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter collectively referred to as “Airline”) agrees as follows:

1. **Compliance with Regulations:** Airline will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** Airline, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Airline of Airline’s obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Airline will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Airline is in the exclusive possession of another who fails or refuses to furnish the information, Airline will so certify to the City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Airline’s noncompliance with the Non-discrimination provisions of this contract, the City will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Agreement, in whole or in part.
6. **Incorporation of Provisions:** Airline will include the provisions of paragraphs one through six of this Attachment A, Section (A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Airline will take action

with respect to any contract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, Airline may request City to enter into any litigation to protect the interests of the City. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. Airline for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. Airline for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Airline will furnish its services in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

E. General Civil Rights Provision. Airline agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex (including gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Airline transfers its obligation to another, the transferee is obligated in the same manner as Airline. This

provision obligates Airline for the period during which the property is owned, used or possessed by Airline and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, the City will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. Airline agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which Airline grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

ATTACHMENT B

PRE-APPROVED CIP

SAN ANTONIO INTERNATIONAL AIRPORT

PRE-APPROVED CIP

Project Number	Project Name	Project Purpose/Scope	Est. Cost ¹	Est. FY23-24 CPE Impact ²	Potential Funding Sources ³	Project Est. Start Date ⁴
33-00344	Executive Program Manager	This project includes program management support for the overall Terminal C program to support delivery of the program.	\$7.5M	\$0	AIG AIF/CIF	October 2022
33-00345	Program Management/Construction Management	This project includes extension of staff for additional Project Management support to deliver projects under the Terminal C program.	\$42.3M	\$0	AIG AIF/CIF	January 2023
33-00346	Master Architect	This project includes the program design oversight of a Master Architect to coordinate elements of the projects under the Terminal C program.	\$39.8M	\$0	AIF/CIF	February 2023
33-00347	Relocation of Employee Parking	This project includes the design and construction of a new, approx. 1,200 parking spot, employee parking lot.	\$730k	\$0	AIF/CIF	January 2023
33-00348	Relocation of RON Aircraft Parking	This project includes the design and construction of new RON parking positions on the south and west RON ramps to accommodate the Terminal C program.	\$1.1M	\$0	AIF/CIF	January 2023
TBD	Demolition of Hangar 4	This project includes the design of demolition to accommodate Terminal C program.	\$700k	\$0	AIF/CIF	September 2023
TBD	Demolition and Relocation of Public Safety Offices	This project includes the design, demolition, and construction of a new facility to accommodate Public Safety Offices in a centralized location.	\$450k ⁵	\$0	AIF/CIF	September 2023
TBD	Demolition and Relocation of Badge and ID Office	This project includes the design, demolition, and construction of a new facility to accommodate Badge and ID Office in a centralized location.	\$420k ⁵	\$0	AIF/CIF	September 2023
33-00340	Terminal A Ground Load Facility	This project will include the design and construction of a ground load terminal facility	\$37M	TBD ⁶	ATP PFC AIF/CIF	January 2023

1. Estimated costs based upon Advanced Terminal Planning, Strategic Development Program and Ground Load Facility ROM study. Amounts subject to revision.
2. Costs to be capitalized and will not impact Airline Rate Base during the term of this agreement.
3. Potential funding sources may and will change as grants are awarded/received. Actual receipt of funds from the potential sources are not assured. Funding sources shown are as follows: Airport Infrastructure Grant (AIG), Airport Interim Financing (AIF), Capital Improvement Fund (CIF), Airport Terminal Program Grant (ATP) and Passenger Facility Charges (PFC)
4. Project start dates are approximate and are subject to change. For construction projects, start date indicates the beginning of design, not construction.
5. Amounts shown are for demolition only. Relocation and construction costs still to be determined.
6. Potential/estimated rate impact not yet known and will be based upon date of beneficial occupancy of the facility, grants received and other funding matters.