

K14-036

**FIRST AMENDMENT TO
AIRLINE-AIRPORT USE AND LEASE AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
BY AND THROUGH
THE NEW ORLEANS AVIATION BOARD
AND
FEDERAL EXPRESS CORPORATION**

THIS FIRST AMENDMENT ("First Amendment") is made and entered into as of this this 18th of March, 2014, with an effective of January 1, 2014 ("**Effective Date**"), between the City of New Orleans ("**City**"), represented by Mitchell J. Landrieu, its Mayor, by and through the New Orleans Aviation Board ("**NOAB**"), represented by Cheryl Teamer, its Chairwoman, and Federal Express Corporation ("**AIRLINE**").

WHEREAS, NOAB administers, operates, and manages the Louis Armstrong New Orleans International Airport ("**Airport**") that is owned by the City; and

WHEREAS, NOAB has the legal and sole responsibility for the operation, maintenance, improvement and promotion of the Airport; and

WHEREAS, NOAB has the right to lease, license, or otherwise provide for the use of land, property and facilities of the Airport and has full power and authority to enter into this First Amendment in respect thereof subject to the approval of the New Orleans City Council; and

WHEREAS, **AIRLINE** is engaged in the business of transportation by air of persons, property, mail, parcels and/or cargo; and

WHEREAS, on January 1, 2009, **AIRLINE** previously entered into an Airline Airport Use and Lease Agreement that granted rights to certain Preferential Use Premises and Common Use Premises; and to obtain certain other rights, services and privileges in connection with the use of the Airport and its facilities ("**Agreement**"); and

WHEREAS, the parties hereto desire to amend and extend the Agreement for a period of one (1) year;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, NOAB and **AIRLINE** do hereby mutually agree to amend and extend the Agreement as set forth below:

- 1.) **Extension.** The parties hereby agree to extend the Agreement as amended for a period of one (1) year from the Effective Date through December 31, 2014 unless cancelled sooner as provided herein.
- 2.) **Amendment to Article 1.14 of the Agreement.** Article 1.14 is hereby deleted in its entirety, and replaced with the following:

1.14 Amortization Requirement. Amortization requirement shall mean the recovery or repayment of capital costs as principal and interest, in substantially equal annual installments over a fixed term for a Capital Expenditure which is not debt financed or financed by a means which cannot be recovered from user charges. The amortization

charge for any such expenditure shall be computed using NOAB's Interest Cost at the time of expenditure, and be fixed for the economic life for such Capital Expenditure, determined in accordance with generally accepted accounting practices, as the term for such amortization charges. Amortization Requirements for the NOAB's capital project costs incurred since FY 2009 and for the FY 2014 Capital Improvement Program as set forth in Article 5.05B and Exhibit G and such Capital Expenditure(s) approved by the Signatory Airlines pursuant to a MII as set forth in Articles 5.03, 5.04, and 5.05 will be included in the rentals, fees, and charges for the Air Transportation Companies upon Substantial Completion of such Capital Expenditure(s).

- 3.) **Amendment to Article 2.02 of the Agreement.** Article 2.02 is hereby deleted in its entirety and replaced with the following:

2.02 Rates Effective. On January 1, 2014 all prospective Signatory Airlines will begin paying Signatory Airline rates and charges per this Agreement, subject to the following conditions:

- A. Any Air Transportation Company executing this Agreement by March 1, 2014 will be eligible to pay rentals, fees, and charges charged to Signatory Airlines for the entire Fiscal Year 2014 and participate in the Settlement for Fiscal Year 2014 pursuant to Article 8.04.
- B. Any Air Transportation Company executing this Agreement after March 1, 2014 will pay Non-Signatory Airline rates, fees, and charges.

- 4.) **Addition of Article 2.03 to the Agreement.** Article 2.03 is hereby added to the Agreement as follows:

2.03 Early Cancellation. This Amendment may be cancelled by either party without cause upon 90 days prior written notice to the other party in accordance with the terms and conditions of Section 18.22 "Notice".

- 5.) **Exhibits.** Exhibit G (entitled "Airport Capital Improvement Program") as revised and amended, dated November 1, 2013, is hereby incorporated into and made a part of this Amendment, and replaces any conflicting, inconsistent or corresponding Exhibit(s) in the Agreement.
- 6.) **Convicted Felon Statement.** AIRLINE swears that it complies with City Code § 2-8(c). No AIRLINE principal, member, or officer has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
- 7.) **Non-Solicitation Statement.** AIRLINE swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this First Amendment. AIRLINE has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this First Amendment. In no event shall the employment or retention of legal counsel by AIRLINE be considered a solicitation for the First Amendment.
- 8.) **Additional Provisions.** The following provisions are hereby adopted by AIRLINE and NOAB and incorporated in the Agreement:

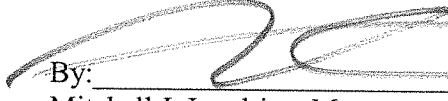
- A. Inspector General Cooperation. It is agreed that AIRLINE will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires AIRLINE to provide the Office of Inspector General with documents and information related to this relocation as requested. Failure to comply with such requests shall constitute a material breach of the Agreement as amended. In signing this First Amendment, AIRLINE agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.
- B. Ownership Interest. AIRLINE shall provide, upon written notice from NOAB, a sworn affidavit listing all persons, natural or artificial, with an ownership interest in AIRLINE and stating that no other person holds an ownership interest in AIRLINE via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If AIRLINE fails to submit the required affidavits, the City may, after 30 days' written notice to AIRLINE, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.
- C. Employee Verification. AIRLINE swears that (i) it is in compliance with Louisiana Revised Statutes 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to AIRLINE a sworn affidavit verifying compliance with items (i) and (ii) above. AIRLINE acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement as amended to cancellation, and may further result in AIRLINE being ineligible for any public contract for a period of three years from the date the violation is discovered. AIRLINE further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement as amended or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. AIRLINE agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement as amended.
- 9.) Non-Waiver. Except as otherwise provided by this Amendment, the terms and conditions of the Agreement remain in full force and effect.

[Remainder intentionally left blank.]

[SIGNATURES CONTAINED ON THE NEXT PAGE]

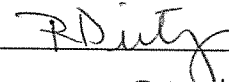
IN WITNESS WHEREOF, NOAB and AIRLINE, through their duly authorized representatives, execute this First Amendment.

CITY OF NEW ORLEANS

By:  3/18/14
Mitchell J. Landrieu, Mayor Date

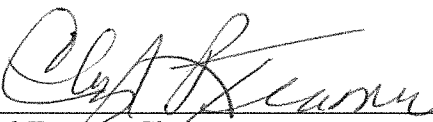
Form and Legality Approved:

Law Department
City of New Orleans

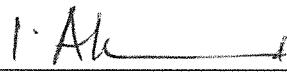
By: 
Printed Name: R. Dintz

[NOAB SIGNATURES CONTAINED ON NEXT PAGE]

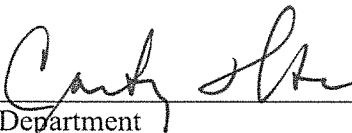
NEW ORLEANS AVIATION BOARD

By:  2/11/14
Cheryl Teamer, Chairwoman Date
New Orleans Aviation Board

Recommended:

By:  2/6/14
Iftikhar Ahmad, Director of Aviation Date
New Orleans Aviation Board

Recommended:

By:  2-4-14
Legal Department Date
New Orleans Aviation Board

[AIRLINE SIGNATURE CONTAINED ON NEXT PAGE]

AIRLINE

FEDERAL EXPRESS CORPORATION

By: Wiley Johnson _____
Print Name: _____ Date _____

**Managing Director, Real Estate
And Airport Development**

Title: _____

Tax ID #: _____

W RJG 2-28-2014

Approved
Legal Department

RJWoke 140226

REVISED AND AMENDED EXHIBIT G
AIRPORT CAPITAL IMPROVEMENT PROGRAM

*11/14/2013
Law*

EXHIBIT G
AIRPORT CAPITAL IMPROVEMENT PROGRAM (ACIP)

Airport Name: Louis Armstrong New Orleans International Airport (MSY)				State: Louisiana		Date Prepared: November 1, 2013					
Associated City: Kenner				NP/AS No.		Prepared By: Parsons Brinkerhoff					
Sponsor: New Orleans Aviation Board/City of New Orleans				Local Identification (optional): MSY		Telephone No.: (504) 303-7556					
ACIP FY-2014											
Item #	Project Description	FAA Fiscal Year	FAA Priority No.	TOTAL COST	Discretionary	Entitlement	Other Grants	PFC	Local	LAB/DOT State Share	Remarks/Justification
Non-Long Term Development Projects											
1	Drainage Pumping Station*	2014		\$ 10,000,000	\$ 7,500,000			\$ 1,666,667		\$ 833,333	Mitigation of cumulative drainage impact 1992-2013
2	Taxiway Rehabilitation Program 1 - Echo, Sierra & Foxrot (Design)	2014		\$ 425,000	\$ 318,750			\$ 70,833		\$ 35,417	PCI Study-recommended rehabilitation, current PCI 52 to 74
3	Airfield Electrical Rehabilitation	2013		\$ 2,200,000		\$ 2,200,000 **					Significant contribution to safety/address operational issues
Total				\$ 12,625,000	\$ 7,818,750	\$ 2,200,000	\$ -	\$ 1,737,500	\$ -	\$ 868,750	
FY-14 TOTALS											
				\$ 12,625,000	\$ 7,818,750	\$ 2,200,000	\$ -	\$ 1,737,500	\$ -	\$ 12,131,250	

* FAA Requested to consider providing funding to jurisdictional agency for construction of pumping station
** BIPAC decision, Memo FY-2015.

* FAA Requested to consider providing funding to jurisdictional agency for construction of pumping station

** Entitlement committed to FY 2013 Airfield Electrical Rehabilitation through FY2015