

CITY OF CHARLOTTE

CHARLOTTE DOUGLAS INTERNATIONAL AIRPORT SCHEDULED IRREGULAR OPERATIONS AGREEMENT
WITH

This agreement ("Agreement") made and entered into this ____ day of _____, 20____ by and between the City of Charlotte ("City"), a North Carolina municipal corporation, and _____ ("Carrier").

WITNESSETH:

WHEREAS, the City is the owner and operator of Charlotte Douglas International Airport ("Airport");

WHEREAS, the Carrier wishes to utilize a gate and other property at the Airport to conduct its business (the "Space");

WHEREAS, the Airport has available for rent the Space for use by the Carrier.

NOW, THEREFORE, for and in consideration of mutual covenants, conditions and agreements contained herein, City and Tenant agree as follows:

AGREEMENT:

1. **Rights.** City grants to the Carrier the right to use the Space in accordance with the terms of this Agreement on the date and during the times pre-approved in writing by the Airport.
2. **Payment.** Carrier shall pay the City \$1.03 per one thousand (1000) pounds of landed weight, \$1.03 per each bag checked by passengers originating at the Airport. When the Carrier is utilizing a City owned Common Use Gate a further charge of \$1.29 per seat delivered will be charged for use of the gate and related facilities. When the Carrier is utilizing the City's Common Use Ticket Counter space a charge of \$23.69 per hour will be charged for use of the Common Use Ticket Counter facilities. Where the Carrier is a commercial flight, a \$3.00 per enplaned passenger PFC will also be charged. Where the Carrier is operating an international flight, a charge of \$5.92 per international arrival passenger (deplanement) will be charged for use of the CBP Facility. Carrier must provide Airport an activity report no later than the tenth (10th) day of the month following a month were the Carrier had operations at the Airport. A copy of this report is attached hereto as **Exhibit A**. Upon receipt of the report the City shall bill the Carrier for the previous month's operations.
3. **Term.** This Agreement will continue on a month to month basis until such time that either party gives thirty (30) days written notice to terminate to the other party.
4. **Indemnification.** Carrier agrees to indemnify, defend and hold harmless City, its elected officials, agents and its employees from and against all claims, losses, damages, liabilities, and causes of action of every kind or character and nature as well as costs and fees, including reasonable attorneys' fees connected therewith, and the expenses of the investigation thereof, based upon or arising out of damages or injuries to third persons or their property caused by the negligence or

willful misconduct of the Carrier, or allegations thereof. City shall give to Carrier prompt and reasonable notice of any such claims or actions and Carrier shall have the right to investigate, compromise and defend the same to the extent of its own interests.

5. **Insurance.** Carrier shall procure and at all times maintain in force insurance covering Carrier's property and activities at the Airport from a company or companies of recognized national standing and having an A.M. Best rating of "A" or better, authorized to do business in the State of North Carolina, in minimum amounts as follows:
 - a. General liability for injuries to, or death of, any person or persons and/or damage to property of others (including without limitation, exposure due to ownership, maintenance, use, loading or unloading of aircraft and automobiles), said insurance to be written for a combined single or a combination of primary and excess policy limit of One Hundred Million Dollars (\$100,000,000) for any one (1) occurrence.
 - b. Aircraft hull and liability for the actual value of Carrier's aircraft to be located on Airport property.
 - c. All liability policies shall be occurrence based.
 - d. City shall be named as additional insureds on the insurance coverage required by (a) through (c) above.
 - e. If required, Worker's compensation insurance in the amounts and form required by the laws of the State of North Carolina.
 - f. Carrier shall, upon execution of this Agreement, provide City with a certificate evidencing such insurance required above, and such certificate shall contain a provision stating that the coverage evidenced thereby shall not be canceled, terminated, or changed and shall not expire without ten (10) days prior written notice of the same by Certified Mail to the City.
6. **Rules and Regulations.** Carrier shall observe and obey all rules and regulations of the Airport governing safe conduct and operations on Airport property and the safe use of its facilities.
7. **Audit.** The City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Carrier necessary to evaluate Carrier's compliance with the terms and conditions of this Agreement. The City shall pay its own expenses, related to such audits, but shall not have to pay any expenses or additional costs of the Carrier. However, if non-compliance is found that would have cost the City in excess of \$5,000 but for the audit, then the Carrier shall be required to reimburse the City for the cost of the audit. All relevant material related must be kept during the time in which the Carrier is operating at the Airport and for one (1) year after such operation ceases.
8. **Compliance with the Laws.** Carrier shall obtain all licenses, certificates, permits and other authorizations which may be required for Carrier's operations, use of the Airport or its exercise of any rights under this Agreement.
9. **Federal Requirements.** Carrier shall comply with the federal requirements set forth in **Exhibit B**, attached hereto.
10. **Amendment.** This Agreement may only be modified or amended by a written instrument executed by City and Carrier.
11. **Assignment.** Assignment or transfer of this agreement is prohibited without the prior written consent of the Aviation Director.

- 12. **Entire Agreement.** This document represents the entire Agreement between the parties and will not be modified or cancelled by mutual agreement or in any manner except by written instrument, executed by the parties or their respective successors in interest.
- 13. **Choice of Law.** This Agreement will be interpreted under and governed by the Law of the State of North Carolina.
- 14. **Notice.** Whenever required by the terms of this Agreement, notice shall be in writing and shall be sent by certified mail, postage prepaid. The address of the City shall be:

City

Attn: _____
Charlotte Douglas International Airport

Carrier

Attn: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

THE CITY OF CHARLOTTE

By: _____
Brent Cagle, Aviation Director

Date: _____

[Insert Carrier Name]

By: _____
Name: _____
Title: _____
Date: _____

Exhibit B - FEDERAL REQUIREMENTS

Federal laws and regulations require that the contract provisions set forth herein be included in each contract. Carrier (including all subcontractors) shall:

- A. Insert these contract provisions in each contract and subcontract, and further require that the clauses be included in all lower tier subcontracts.
- B. Incorporate applicable requirements of these contract provisions by reference for work done under any purchase orders, rental agreements and other agreements for supplies or services.
- C. Be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider.

Failure to comply with the terms of these contract provisions may be sufficient grounds to:

- A. Withhold progress payments or final payment;**
- B. Terminate the contract;**
- C. Seek suspension/debarment; or**
- D. Any other action determined to be appropriate by the Owner or FAA.**

1. GENERAL CIVIL RIGHTS PROVISIONS

The Carrier agrees that it will 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, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the companies from the solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the party or any transferee for the longer of the following periods:

- (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or
- (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

2. CIVIL RIGHTS - TITLE VI ASSURANCES

A. Title VI Solicitation Notice

(Source: Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Title VI Solicitation Notice:

The **Owner**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

B. Title VI Clauses for Compliance with Nondiscrimination Requirements

(Source: Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

Compliance with Nondiscrimination Requirements

During the performance of this contract, the Carrier, for itself, its assignees, and successors in interest (hereinafter referred to as the "Carrier") agrees as follows:

1. **Compliance with Regulations:** The Carrier (hereinafter includes consultants) will comply with the **Title VI List of Pertinent Nondiscrimination Statutes and Authorities**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The Carrier, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Carrier will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, 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 Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Carrier for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Carrier of the Carrier's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The Carrier 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 Acts, Regulations, and instructions. Where any information required of a Carrier is in the exclusive possession of another who fails or refuses to furnish the information, the Carrier will so certify to the sponsor 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 a Company's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Company under the contract until the Company complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Carrier will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Carrier will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Carrier becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Carrier may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Carrier may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Authorities
(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the Carrier, for itself, its assignees, and successors in interest (hereinafter referred to as the “Carrier”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- 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);
- 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);
- 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);
- 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;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- 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);
- 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);
- 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;
- 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);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures 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;
- 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);
- 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.*).