



**ST. LOUIS LAMBERT
INTERNATIONAL AIRPORT™**

**MEMORANDUM OF AGREEMENT
FOR
EXPANSION OF AND IMPROVEMENTS TO
INBOUND BAGGAGE SYSTEM AND FACILITIES
TERMINAL 2**

AT

ST. LOUIS LAMBERT INTERNATIONAL AIRPORT®

BETWEEN

**THE CITY OF ST. LOUIS, MISSOURI
AND
SOUTHWEST AIRLINES CO.**

CONTRACT NO: 73806

AUTHORIZED BY ORDINANCE NO. 70617 & 70855

**DEPARTMENT OF THE PRESIDENT
BOARD OF PUBLIC SERVICE
RICHARD T. BRADLEY, P. E., PRESIDENT
ROOM 305, CITY HALL
ST. LOUIS, MISSOURI 63103**

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THIS MEMORANDUM OF AGREEMENT (“MOA”) is made and entered into this 28th day of December, 2018 by and between The City of St. Louis, a municipal corporation of the State of Missouri (“**City**”) by and through its Board of Public Service, and Southwest Airlines Co., a corporation organized under the laws of the State of Texas (“**Southwest**” and, together with the City, the “**Parties**”).

WITNESS THAT:

WHEREAS, the City is the owner and operator of the St. Louis Lambert International Airport (“**Airport**”), located in the County of St. Louis, State of Missouri;

WHEREAS, Southwest operates at the Airport and leases space in the Airport’s passenger Terminal Buildings in accordance with the terms of the Airport Use and Lease Agreement No. AL-387, dated June 22, 2016 (“**AUA**”), which is incorporated hereto by reference;

WHEREAS, Southwest’s Leased Premises in the Airport’s passenger Terminal Buildings include facilities related to the inbound baggage handling system in Terminal 2, including the inbound baggage drop-off area, the baggage claim area, and associated baggage carrousel and conveyor belts, all of which Southwest leases from the City on a common use basis with other airlines similarly assigned to that space;

WHEREAS, in accordance with the terms of the AUA Section 801, Southwest may make improvement to its Leased Premises;

WHEREAS, Southwest proposes to build and fund in part an expansion of, and improvement to, the inbound baggage system and facilities in Terminal 2 at an estimated cost of \$23,425,000, including design costs (“**Project**”);

WHEREAS, Southwest’s proposed Project includes the components of a Capital Improvement pre-approved as project number EB1903 by Southwest and the other Signatory Airlines in accordance with AUA Section 702 and Exhibit H, for a total of \$2,168,960, which the City had intended to construct in 2019 and fund with PFCs (in the amount of \$451,609) and from the proceeds from the sale of general airport revenue bonds (in the amount of \$1,717,351);

WHEREAS, the City believes that the Project is in the best interest of the traveling public and the Airport;

WHEREAS, in accordance with AUA Section 702(B), the City “may substitute any individual Capital Improvement shown in Exhibit H with a replacement Capital Improvement without Majority-In-Interest approval if the replacement Capital Improvement: (i) has the same or similar total project cost . . .; (ii) Net Cost is chargeable to the same Cost Center . . .; and (iii) will accomplish the same purpose or function as that of the Capital Improvement that is being substituted”;

WHEREAS, as a replacement to project number EB1903, the City proposes to invest up to \$2,168,960 for the design of the Project, which design and architectural work would meet the conditions for a replacement Capital Improvement as set forth in AUA Section 702(B);

WHEREAS, the City intends to apply to the FAA for authority to collect and use an additional \$5,000,000 in PFCs to fund certain eligible portions of the Project;

WHEREAS, Southwest proposes to pay for the balance of the Project costs, approximately \$16,256,040, from Southwest’s own funds;

WHEREAS, Southwest desires to work together with the City and Airport staff for the completion of the Project; and

WHEREAS, the City and Southwest find it mutually advantageous to memorialize their understandings and agreements with respect to the Project.

NOW THEREFORE, in consideration of the terms, covenants, conditions, and agreements expressed in this MOA, The City and Southwest agree as follows:

1. Capitalized terms used but not defined in this MOA will have the respective meanings given to them in the AUA.
2. The Project is projected to consist of an expansion to Terminal 2, including: (i) an expansion of the baggage claim area by approximately 10,500 square feet building expansion; (ii) 3 new baggage carousels and associated conveyor belts and equipment; (iii) the construction of a new inbound baggage drop building expansion of approximately 3,600 square feet west of Gate 24; and (iv) any other improvements as mutually agreed to during the design phase. The Project will also include the components of Capital Improvement project number EB1903 previously approved by Southwest and the other Signatory Airlines in accordance with AUA Section 702 and Exhibit H. Following completion of design, the Parties will agree upon the ultimate Project scope of work and budget in writing.
3. The City will contract for the planning, design, and preparation of construction drawings to ensure that the Project is consistent with the architectural integrity of Terminal 2. The City, in coordination with Southwest, will provided project management for the planning and design contract.

4. Southwest will contract for, administer, and manage, the construction of the Project in accordance with AUA Article VIII and any requirements applicable to projects funded with proceeds from PFCs. Southwest will construct the Project in accordance with the agreed upon scope of work and budget. In managing the Project, Southwest will:

- a. coordinate performance with the City's designated representatives and all other governmental entities having jurisdiction over the Project;
- b. prepare monthly written reports, meeting notes, and inform the City with respect to conditions, transactions, situations, or circumstances encountered relating to the Project; and
- c. meet with City and Airport staff, local, State, and federal agencies, and the appropriate contractors, as necessary, for the successful completion of the Project.

5. The Project is estimated to cost \$23,425,000. The sources of funds for the Project will be as follows:

- a. the City will fund the Project design work by using funds previously dedicated to project number EB1903 and other funds as necessary;
- b. if the Project design work cost is less than \$2,168,960, the City will make available the balance of that amount ("**Surplus Amount**") to fund Project components that would have been part of project EB1903 by giving Notice to Southwest of such availability. The City will be responsible for all design work cost;
- c. the City intends to apply to the FAA for authority to collect and use an additional \$5,000,000 in PFCs to fund eligible portions of the Project; and
- d. Southwest will fund the balance of the Project, up to its full amount, at its sole cost and expense, which balance the Parties expect to be approximately \$16,256,040.

The City will pay the Surplus Amount to Southwest within 60 days of: (i) the completion of the Project components that would have been part of project EB1903; and (ii) Southwest's invoicing the City with appropriate supporting documentation for the costs of such components. The City will pay \$5,000,000 to Southwest within 60 days of: (i) the FAA's approval of the City's application for authority to collect and use \$5,000,000 in PFCs to fund eligible portions of the Project; (ii) the completion of the Project; and (iii) Southwest's invoicing the City with appropriate supporting documentation for the PFC-eligible portions of the Project, as approved by FAA.

For the avoidance of doubt, all Project costs in excess of the City's stated obligation and of any PFC authority granted by FAA to fund eligible portions of the Project, will be the responsibility of Southwest and the City will have no obligation for such costs.

6. In recognition of the considerable investment by Southwest in the Project and of the benefit that the public and other airlines that use and will continue to use the inbound baggage handling system in Terminal 2 on a common use basis with Southwest for the useful life of the Project, the City hereby covenants and agrees that for the useful life of the Project, which is 20 years from the date of beneficial occupancy of the facilities built or improved by the Project, the City will not include or impute the Project amounts funded at Southwest's sole cost and expense in any current or future charge, fee, or formula rate base, charged to Southwest at the Airport.

7. The City shall retain the right, but not the obligation to reimburse Southwest for the then unamortized value of Southwest's tenant improvements at any point following the date of beneficial occupancy of such improvements. Further, should the City desire to relocate Southwest from Terminal 2, in accordance with Section 409 of the AUA, the City would have the obligation to reimburse Southwest "for the undepreciated value of its tenant improvement that cannot be relocated." At any time following such reimbursement, the City could impose charges, as applicable under the AUA.

8. Upon final completion and acceptance by the City of the Project, the City will be deemed the owner of the improvements and will have all rights, title, and interest in and to those improvements. For operation and maintenance purposes, the improvements will be treated in the same manner as like or similar space elsewhere in the Terminal Buildings in accordance with the terms of AUA Article IX and Exhibit G or similar provisions in subsequent agreements for use and lease of Airport facilities entered into between the City and Southwest.

9. In the event of a conflict between Southwest and any other tenant, operator, licensee, or concessionaire as to the respective right of the other arising out of Southwest's performance of its rights and obligations arising out of this MOA or pursuant to the construction of the Project, the Airport Director will review the applicable agreements and by reasonable interpretation will determine the right of each party, and Southwest agrees to be bound by such decision. All determinations by the Airport Director regarding such conflicts will be final and binding.

10. Southwest will protect, defend, indemnify, and hold harmless the City, its Board of Aldermen, Airport Commission, officers, agents and employees against any claims arising out of this MOA or brought as a result of this MOA, except to the extent such claims arise from the negligence or willful misconduct of the City. This section will survive the expiration or early termination of this MOA.

11. Southwest will maintain records, including computerized records, relevant to the matters covered by this MOA, including but not limited to Project financial and construction records. Records will be maintained for a period of at least three (3) years following the completion of the Project or the extinguishment of any debt incurred by the City as a result of the Project, and longer if necessary for pending litigation. Southwest may maintain such records at its corporate offices, but will make them available to the City upon 15-day written request. The City and such

persons as may be designated by it will have the right, during normal business hours and with 15-day notice to Southwest, to examine, audit, and make copies of such records.

12. This MOA may not be assigned by Southwest without the consent of the City.

13. This MOA is and will be subordinated to the provisions of any existing or future agreement between the City and the United States Government or governmental authority, relating to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or the approval to impose or use PFCs for the improvement or development of the Airport. Southwest will not cause the City to violate any assurances made by the City to the United States Government in connection with the granting of federal funds or the approval of PFCs. This MOA also is and will be subordinated and subject to the lien and provisions of the pledges, covenants (including rate covenants), transfers, hypothecation, or assignments made by the City in the Trust Indenture and any Bond ordinance (including related documents authorized or approved by such ordinance) enacted by the City regarding the issuance of Bonds.

14. If for any reason one or more of the provisions contained in this MOA are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this MOA and the MOA will be construed as if such invalid, illegal or unenforceable provision never had been included in this MOA, provided the invalidity of such provision does not materially prejudice either of the Parties in their respective rights and obligations contained in the remaining valid provisions of this MOA.

15. If disputes or technical disagreements develop between the Parties concerning the Project or the provisions of this MOA, the Parties will elevate these disputes or technical disagreements to the highest practicable level of their organizations for good faith negotiations in order to try to resolve any such disputes or technical disagreements. However, if a party breaches any provision of this MOA or defaults in performing any of its obligations under this MOA, the non-defaulting party will give the breaching party written notice of such breach or default and will give the breaching party thirty (30) days after such notice to cure said default or breach, provided, however, if the breach cannot be cured within said thirty (30) days, the breaching party shall have a reasonable additional amount of time to cure such breach, provided it commences such cure during the original thirty (30) day period, and diligently pursues curing such breach. In the event of an unexcused breach that is not cured within such thirty (30) days, or longer, as provided herein, the non-breaching party will be entitled to pursue any remedies available at law or in equity including, without limitation, the right to seek specific performance.

16. No waiver of any breach of any provision of this MOA will be deemed or constitute a waiver of any preceding or succeeding breach of any provision contained herein. No extension of time for performance of any obligation or act will be deemed or constitute an extension of the

time for performance of any other obligation or act. No waiver will be binding unless executed in writing by the party granting the waiver.

17. All warranties and covenants set forth in this MOA will survive the execution and performance of this MOA.

18. Whenever any approval or consent is required in this MOA, such decision will be made in writing unless otherwise agreed by the Parties, rendered promptly, and will not be unreasonably withheld or conditioned. Unless otherwise required by State or local law, wherever in this MOA the approval, authorization, consent, certification, determination, waiver, or any other action of the City is required, it may be performed by the Airport Director.

19. No director, officer, employee, or agent of the City or Southwest will be charged personally or held contractually liable by or to the other party under any term or provision of this MOA or because of any breach hereof or because of its or their execution of this MOA. Any complaint brought against the City relating to any aspect of this MOA will be brought against the City and not against named individual respondents.

20. All rights and remedies of the City as provided herein and under law are cumulative in nature.

21. All communications and notices required by this MOA will be made in accordance with AUA Section 1513 or similar provisions in subsequent agreements for use and lease of Airport facilities entered into between the City and Southwest.

22. This MOA does not constitute and should not be deemed an amendment to the AUA. All of the terms of the AUA remain in full force and effect.

23. Except as otherwise expressly provided herein, this MOA may not be changed, modified, discharged, or extended except by written amendment duly executed by the Parties.

24. This MOA is made and entered into in the State of Missouri, and Missouri law will govern and apply to this MOA. Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this MOA will be brought only in a federal or state court in the City of St. Louis, Missouri. The Parties hereby consent to the jurisdiction and venue of such courts.

25. This MOA embodies the entire agreement between the Parties relating to the subject matter hereof, and supersedes any prior agreements or understandings, written or oral, express or implied, between the Parties relating thereto.

26. This Agreement may be executed in one or more counterparts each of which will be original, but all of which together will constitute one document or instrument, and it will

constitute sufficient proof of this MOA to present any copy, electronic copies or facsimiles signed by the Parties hereto.

[Space intentionally left blank. Signature page to follow.]

Confidential
garvinm@stlouis-mo.gov
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IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement as of the day and year first above written.

Pursuant to the City of St. Louis Ordinance No. 70617 approved October 16, 2017, and Ordinance No. 70855 approved on November 16, 2018.

THE CITY OF ST. LOUIS, MISSOURI:

APPROVED BY:

[Signature] 11/30/18
DIRECTOR OF AIRPORTS DATE

APPROVED BY:

[Signature] 10-3-18
PRESIDENT DATE
BOARD OF PUBLIC SERVICE

This Memorandum of Agreement was authorized and approved by the City's Board of Public Service at its October 2, 2018 meeting.

[Signature]
SECRETARY DATE

APPROVED AS TO FORM BY:

[Signature] 12-1-18
CITY COUNSELOR DATE

COUNTERSIGNED BY:

[Signature]
COMPTROLLER DATE
CITY OF ST. LOUIS


ATTESTED TO BY:

[Signature] 12-1-18
REGISTER DATE
CITY OF ST. LOUIS

COMPTROLLER'S OFFICE
DOCUMENT # 73806

^{/CO.}
SOUTHWEST AIRLINES, INC.:

APPROVED BY:


(Signature)

DATE: 10/2/2018

NAME: STEPHEN F. SISNEROS

TITLE: MANAGING DIRECTOR - AIRPORT AFFAIRS

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