

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SOUTHWEST AIRLINES CO.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5:24-cv-01085
)	
THE CITY OF SAN ANTONIO, TEXAS and)	
JESUS SAENZ, in his official capacity as)	
Director of Airports for the City of San)	
Antonio, Texas,)	
)	
Defendants.)	
_____)	

**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION
AND EMERGENCY REQUEST FOR TEMPORARY RESTRAINING ORDER**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Southwest Airlines Co. (“Plaintiff” or “Southwest”) files this Motion for Preliminary Injunction and Emergency Request for Temporary Restraining Order against the City of San Antonio, Texas (“City”), and Jesus Saenz, in his official capacity as the Director of Airports for the City of San Antonio, Texas (“Director Saenz”) (collectively, “Defendants”), and respectfully shows as follows:

INTRODUCTION

Plaintiff is a major airline in the United States that operates on a low-cost carrier model. It has scheduled service to approximately 117 destinations in the United States and ten other countries. Since Southwest commenced passenger service in 1971, it has valued its relationship with the City of San Antonio and San Antonio International Airport (“SAT” or “Airport”). Southwest is deeply proud of the fact that it is the largest air carrier at SAT, with a 38% share of passengers in 2023. Declaration of Stephen F. Sisneros, C.M. (“Sisneros Decl.”), Exhibit A hereto, ¶ 11.

Unfortunately, Defendants have unlawfully and unfairly applied subjective criteria related to airline “service” and “routes” in order to bar Southwest from moving its operations into the new passenger terminal gates being constructed at SAT—which is referred to as “Terminal C,” and is set to open to the public in 2028. *See* Exhibit 1 to Sisneros Decl., (Proposed Terminal Map).

Defendants made this decision based on an array of factors which the City was not lawfully permitted to consider, including, without limitation, the nature of the “services” and air carrier “routes” offered by Southwest, and the City’s subjective perception that Southwest’s “fit” with San Antonio and the “profile” of its passengers did not qualify it for accommodation at the new Terminal C. Government-owned airports such as SAT cannot use subjective preferences concerning an airline’s services, routes, or passengers to favor one airline over another in the assignment of terminal gates. Defendants, however, did just that and are set to sign new, 10-year Airline Use and Lease Agreements (“AULA”) or (“Lease”) with seven other airlines that would be effective October 1, 2024. Defendants’ actions violate the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Airline Deregulation Act, 49 U.S.C. § 41713(b), because Defendants based the allocation of terminal gate space on subjective preferences and criteria that are prohibited by the Act.

A temporary restraining order and preliminary injunction are needed to prevent the Defendants from signing new Leases with the other airlines that will irrevocably prejudice Southwest and prohibit Southwest from moving its operations into Terminal C. Time is of the essence for the relief sought by Southwest because, although Terminal C is not yet constructed, the City’s execution of the new Leases with the other airlines serving SAT which become effective October 1, 2024 (airlines moving into Terminal C and the other Terminals) will create vested legal rights. Those rights will adversely impact Southwest’s ability to move its operations to the new

Terminal C or inhabit suitable terminal space elsewhere at SAT. Specifically, Southwest seeks to obtain a stay of the quickly moving legal events by enjoining Defendants from entering into new Leases with the other airlines on October 1, 2024.

A temporary restraining order and preliminary injunction would preserve the current status quo, thus serving the purpose of such relief, until Defendants apply a terminal/gate allocation process in a manner that comports with applicable federal law. If injunctive relief is not granted, Defendants will sign the Leases with the other airlines which will (1) prevent Southwest from moving into Terminal C for at least ten years, and (2) render it impossible for Southwest to obtain comparable space though necessary renovations at the old Terminal A, because under the new Leases, the capital improvement plan is underfunded and would need to be enhanced, and in any event, other competing airlines would have to agree to expend any funds that might be available to improve Terminal A for Southwest's use, neither of which those airlines would support.

Southwest respectfully requests that the Court grant its request for a temporary restraining order on or before September 30, 2024, before the new Lease takes effect and inflicts irreparable harm on Southwest. Southwest therefore asks that the Court issue a temporary restraining order which prevents which prevents Defendants from entering into, recognizing as effective or otherwise acting in furtherance of new Leases with airlines that are based on Defendants' unlawful gate allocation policy at SAT until after the Court has ruled on Southwest's request for preliminary injunction, in which case the airlines will operate under a hold-over status under the leases otherwise set to expire September 30, 2024.

FACTUAL BACKGROUND

Southwest and Its History with San Antonio Airport

Southwest operates on a low-cost carrier model, which has earned it hundreds of millions of loyal customers over the years. Southwest faced fierce opposition and competition in its early years but held fast to become America's largest airline by passengers carried as well as the third largest airline in the world. Sisneros Decl. ¶ 9. The airline was established in 1967 by Herb Kelleher and Rollin King in San Antonio as Air Southwest Co. and adopted its current name in 1971, when it began operating as an intrastate airline wholly within the State of Texas, first flying between Dallas, Houston and San Antonio. It began regional interstate service in 1979, expanding nationwide in the following decades. Southwest made its first flight to San Antonio in 1971 and has been serving the San Antonio market ever since. *Id.* ¶ 10.

San Antonio Airport and its Two Existing Terminals A and B

SAT is located on property within the City of San Antonio that the City acquired in 1941. In 1944, the airfield was officially named as the San Antonio International Airport and regular flights began. Several renovations and upgrades were carried out during the early 1950s, including a new terminal in 1953 (which became the terminal that ultimately was replaced by what is now Terminal B). *Id.* ¶ 12. A large expansion project took place during the latter part of the 1960s, when gates were added in a "banjo" design, to accommodate the high passenger numbers expected at the Airport for the forthcoming 1968 World's Fair. *Id.* ¶ 13.

The existing Terminal A (sometimes referred to as "Terminal 1" or "Concourse A") at SAT was commissioned in 1984 and has sixteen gates with a total area of 397,634 square feet. *Id.* ¶ 14. Terminal A is in severe need of reconstruction, and even if the City follows through with tentative plans to renovate Terminal A, it will still be much more narrow and less functional than Terminal

C. *Id.*

The existing Terminal B (sometimes referred to as “Terminal 2” or “Concourse B”) was constructed in 2010 and has approximately 247,099 square feet of space. It replaced an older terminal but is not nearly as modern or useful to airlines as the new Terminal C will be. *Id.* ¶ 15.

The City’s Plan to Construct and Operate the New Terminal C

The new Terminal C is to be built at an approximate cost of \$1.4 billion and will be situated next to the existing Terminal B on the northwest end of SAT’s current footprint. It is slated to feature 17 gates and when it opens in 2028 and will have approximately 850,000 square feet, which is approximately 25% more square feet than the *combined* existing Terminals A and B. The new Terminal C will have “[l]arger gate hold rooms for enhanced passenger comfort,” a “Riparian Paseo entry and indoor courtyard to enhance sense of place and River Walk feel,” a “[n]ew central passenger screening area” to provide “all-access pass to retail and concessions,” a “[n]ew, modern Federal Inspection Station for expanded international air service,” and the City has designated “29,000+ sq. ft. club lounge space.” *See* New Terminal En Route for an Exciting Future, San Antonio International Airport, <https://flysanantonio.com/business/about-saas/terminal-development/> (last visited September 24, 2024). Sisneros Decl. ¶ 16.

Lease Negotiations and Improper Terminal Gate Assignment Criteria Utilized by Defendants

The parties began negotiations over the terms of a new Lease in the middle of 2022. Sisneros Decl. ¶ 17. The negotiations continued for two years during which Defendants informed Southwest on multiple occasions that Southwest was going to move to the new Terminal C. For example, during a meeting as recent as April 2, 2024, the City told Southwest that Southwest would have gates in Terminal C. *Id.* However, at a meeting between Southwest and the City that occurred on May 29, 2024, Southwest learned for the *first* time that the City had decided to require

Southwest to remain in Terminal A, and that Southwest would not be able to lease gates in Terminal C. The City's last-minute change in direction foreclosed Southwest's opportunity to try to remedy the situation or to secure adequate lease rights to modify Terminal A to fit its needs during the two years of the lease negotiations. *Id.* ¶ 18.

The City's sudden reversal of its promise to move Southwest into Terminal C was an unfair "bait and switch" tactic that precluded Southwest from pursuing opportunities during the Lease negotiations that Southwest had no reason to believe were necessary. For example, because Southwest had been promised to be able to move into Terminal C under the new Lease, it had no reason to negotiate what became the \$200 million figure for capital expenditures for renovations at Terminal A (provided in Exhibit M to the Lease). After the City reneged on its promise for Terminal C and started discussing Southwest having to remain in Terminal A, Southwest commenced the process of analyzing and documenting why the \$200 million figure was clearly inadequate but the City Council voted to approve the Leases before Southwest had an ample opportunity to work with the City on a higher capital expenditure figure for Terminal A renovations that Southwest would require. *Sisneros Decl.* ¶ 19.

Subsequently, at a meeting on June 7, 2024, the City provided general information as to how Southwest would be accommodated in Terminal A, without addressing the operational concerns raised by Southwest. *Id.* ¶ 20. Despite Southwest's request weeks earlier, and the City's assurances it would be forthcoming, it was not until approximately two weeks later, on June 20, 2024, the City disseminated for the first time its "SAT Gate Assignment Criteria" titled "Summary of Decision-Making Process for Post-DBO Gate and Club Locations" (the "SAT Gate Assignment Criteria"), Exhibit 2 to *Sisneros Decl.* (Ex. A). This document sets forth the criteria applied by the City in deciding where to locate airlines at SAT. This document was only made available to

Southwest on June 20, 2024, despite the fact that negotiations had been ongoing since 2022. Specifically, the document states as follows:

“Factors Considered Included:

- Number of preferential gates requested by airline
- Whether an airline club was requested**
- Whether airline operates or commits to operating international routes**
- Whether airline has relevant code share arrangement(s)
- Current level of enplaned passengers @ SAT
- The airline’s “fit” into San Antonio**
- The airline’s service, growth, and experience**
- The existence of a written commitment by airline to city pairs, specific flights, or minimum levels of enplaned passengers**
- Potential need by airline for appurtenant City Gates (for expansion)
- Terminal load-balancing considerations”

(Emphasis added). The document also states that the SAT team:

considered certain non-quantifiable considerations, among which were the carriers’ “fit” into SAT (relating to desirability of passenger profile (business, leisure, mix, etc.) and airline brand position...; the airlines’ “service, growth, and experience”... , aspirations for international flights, and any differentiation of product or technology used that would enhance customer experience.

In other words, this document expressly acknowledges that in deciding which airlines would be allowed to move to the new Terminal C, the City weighed and considered several subjective factors including (1) the geographic nature of the routes served by the air carrier, (2) the “fit” of the airline into San Antonio, (3) the desirability of the airline’s “passenger profile”, and (4) the “airline’s service.” *Id.*

Although Southwest finally received the SAT Gate Assignment Criteria on June 20, 2024, Southwest has repeatedly asked Defendants to disclose the modeling and other facts used by Defendants to apply the SAT Gate Assignment Criteria to reach the decision it did regarding why Southwest would not be permitted to move to Terminal C. Sisneros Dec. ¶ 24. However, the City has never provided that information to Southwest. *Id.*

A letter from Southwest's Denise McElroy, Sr. Manager – Airport Affairs, told Defendant Saenz that Southwest was “extremely concerned that [his] decision, which [Director Saenz] just shared a few weeks [before], to keep Southwest Airlines in Concourse A.” Sisneros Dec. Exhibit 3. Southwest explained that the decision “will preclude [Southwest] from being able to operate [its] long-term commercial plan for San Antonio (SAT).” *Id.* Southwest sent another letter to Defendant Director Saenz dated August 12, 2024, in which Ms. McElroy stated that “Southwest continues to fervently maintain its desire to be located in the new terminal and remains extremely disappointed at the City’s decision to keep Southwest and what will likely be nearly 50% of the passengers flying through San Antonio International Airport (SAT) in Terminal A.” Sisneros Decl. Exhibit 4. The letter further stated:

“We met with Corgan [an architectural and design firm] and your staff three times to evaluate Terminal A’s deficiencies with respect to the security checkpoint (SSCP), baggage screening, Ticket Lobby, Curb Front, Holdroom Configuration, Restrooms, Technology, and finish upgrades. We also understand there are deficiencies in mechanical, electrical, and plumbing items that were identified in a previous City-commissioned facility study. The Corgan analysis provided thus far does not consider the full utilization of 10 gates as we requested because it restricts peak demand. As a result, we remain extremely concerned that arriving passengers will continue to overwhelm the curb front, ticket lobby and SSCP.

Also, the issue remains open as to what it will cost to modify Terminal A as will be required to accommodate our 10-gate commercial plan. Regardless of the potential investment to improve Terminal A, there are significant customer experience items that cannot be mitigated. Terminal A concourse is too narrow and doesn’t meet today’s design criteria. Increasing the hold rooms sizes as you propose will not alleviate overcrowding in the concourse circulation area. Southwest’s international operations will also be negatively impacted due to the relocation of the Federal Inspection Station (FIS) facility from Terminal A to Terminal C. Splitting our operation between two terminals will introduce operational complexity and significantly increase passenger connection times. The customer experience for our Customers will also suffer due to the potential relocation of the rideshare and taxi area from its current location to a new Transportation Center which will dramatically increase walk times for what will be over 50% of the total passengers using SAT. The allocation of space types (valet, disabled) in the existing garages when the new garage opens, e.g., if valet service is relocated to new garage, the number of disabled spots is adjusted. Furthermore, access to the USO for those Terminal A customers with military affiliations will be impacted with the relocation

of the existing USO to the new Terminal C. The cumulative effect of these items certainly points to a degraded customer experience for Terminal A passengers flying on the City's largest air carrier. Southwest simply will not accept the diminished experience for our Customers and Employees and the risk of facility constraints to our future commercial plan by remaining in the airport's oldest facility. We look forward to further engagement with respect the aforementioned issues. (*Id.*)

As Summer 2024 continued, Southwest had three meetings with Corgan, an architectural firm, to try to determine if Terminal A could meet its needs. Sisneros Decl. ¶ 25. Ultimately the only reasonable conclusion was that it could not. Southwest has repeatedly informed Defendants that forcing Southwest to stay in Terminal A is untenable. *Id.*

One of the insurmountable problems with Terminal A is that it will not support Southwest's growth plans. The facility is too small and too narrow. It also lacks sufficient TSA security checkpoint ("SSCP") and baggage screening facilities, and has an inadequate ticket lobby, an unsuitable curb front, difficult concourse circulation constraints, inefficient hold-room configurations, and insufficient restrooms; and requires critical technology and finish upgrades. There also are deficiencies with the mechanical, electrical, and plumbing systems. *Id.* ¶¶ 26-27.

The only way that Terminal A could be suitable for Southwest would be to spend hundreds of millions of dollars – far more than the \$200 million referenced in the new Leases. But because of the "Majority-in-Interest" ("MI") clauses in the new Leases, the other competing airlines that sign those Leases will be in a position to refuse to agree to any additional money for Terminal A. Southwest's experience in these matters indicates that they will refuse and the City has provided no assurances otherwise. *Id.* ¶ 29.

Terminal Gate Assignment Decision and Leases Finalized by Defendants

Southwest's continued objections were entirely ignored by the Defendants and on September 12, 2024 the San Antonio City Council approved the Lease terms, including the prohibition on Southwest moving to Terminal C. Sisneros Decl. ¶ 35. The new Lease provides

that several other airlines will lease all available gates and operate from Terminal C. If Southwest wants to remain a “signatory airline” at SAT, it must agree to remain at Terminal A, despite its inferior condition compared to Terminal C. Southwest was forced to decline to sign a new Lease at SAT because of the Defendants’ decision and because such an agreement would result in Southwest being confined to a lesser facility, a diminished experience for Southwest’s customers and preclude Southwest from being able to operate its long-term commercial plan for SAT. *Id.*

Because Southwest is not able to sign the new Lease, the City has stated that it will treat Southwest as a “non-signatory airline,” which enables the City to charge Southwest higher rents than those paid by the favored airlines that are being allowed to execute new Leases for Terminal C. Non-signatory status also precludes Southwest from having the benefit of revenue-sharing provisions in the Lease, or a voice in amounts spent by the City on capital improvements—despite the fact that Southwest will be forced to pay rates and charges to fund those projects. *Id.* ¶ 41.

Southwest’s Continued Communications with Defendants

Between May and September 12, 2024, Southwest met with the City of San Antonio via in-person meetings or phone calls no less than six times to try to resolve this dispute, and repeatedly requested that the City delay execution of new Leases. Each of the discussions was unsuccessful. *Id.* ¶ 34. On September 20, 2024, Southwest sent Defendants a letter which set forth the basis for its claim that the Defendants are violating the Supremacy Clause and the Airline Deregulation Act, and requested that Defendants “immediately rescind [the] unlawful SAT Gate Assignment [Criteria] and either move [Southwest] to Terminal C or establish a viable plan for Terminal A that resolves the issues [that Southwest has] raised and puts [Southwest] on equal ground with the rest of the carriers at SAT.” Exhibit 5 to Sisneros Decl. The letter added that “[b]ecause the new lease is set to take effect on October 1, 2024, time is very much of the essence,”

and Southwest requested that Defendants “take corrective action no later than Wednesday, September 25, 2024.” *Id.* Defendants refused (Sisneros Decl. ¶ 44), and are now set to enter into a new Lease with seven airlines on October 1, 2024. As a result, Southwest is required to bring this Motion.

ARGUMENT AND AUTHORITIES

A. LEGAL STANDARD.

To obtain a preliminary injunction and/or a temporary restraining order, Southwest must show (A) a substantial likelihood that it will prevail on the merits; (B) a substantial threat that plaintiff will suffer irreparable injury for which it has no remedy at law if the injunction is not granted; (C) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant; and (D) that granting the preliminary injunction will not disserve the public interest. *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974); *Whole Woman's Health v. Paxton*, 264 F. Supp. 3d 813, 818 (W.D. Tex. 2017).

At the preliminary injunction stage, “the procedures in the district court are less formal, and the district court may rely on otherwise inadmissible evidence, including hearsay evidence.” *Sierra Club, Lone Star Chapter v. FDIC*, 992 F.2d 545, 551 (5th Cir. 1993). These factors must be balanced to determine whether they collectively favor the issuance of an injunction. *DSC Communications Corp. v. DGI Tech., Inc.*, 898 F. Supp. 1183, 1187 (N.D. Tex. 1995), *aff'd* 81 F.3d 597 (5th Cir. 1996).

The purpose of a preliminary injunction is to preserve the status quo, and to prevent irreparable injury to the parties. *Meis v. Sanitas Serv. Corp.*, 511 F.2d 655, 656 (5th Cir. 1975). Thus, a court may grant a preliminary injunction even if the outcome of the lawsuit itself is uncertain. *See, e.g., id.* As recognized by the Fifth Circuit, “[a]lthough the fundamental fairness of

preventing irreparable harm to a party is an important factor on a preliminary injunction application, the most compelling reason in favor of (granting injunctive relief) is the need to prevent the judicial process from being rendered futile by defendant's action or refusal to act." *Canal Auth.*, 489 F.2d at 573. The decision to grant or deny a preliminary injunction is left to the sound discretion of the district court. *Id.*

B. THERE IS A SUBSTANTIAL LIKELIHOOD THAT SOUTHWEST WILL PREVAIL ON THE MERITS.

Southwest need only show a probability of prevailing on the merits of its claim. *See Productos Carnic, S.A. v. Cent. Am. Beef & Seafood Trading Co.*, 621 F.2d 683, 686 (5th Cir. 1980) (citing *Texas v. Seatrain Int'l, S.A.*, 518 F.2d 175, 180 (5th Cir. 1975)). That said, Southwest is certain to prevail on all its claims because Defendants' gate allocation process and decision is in clear violation of federal law. Defendants' use of the impermissible and unlawful Gate Assignment Criteria to allocate Terminal C space violated the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Airline Deregulation Act, 49 U.S.C. § 41713(b) (hereinafter the "Airline Deregulation Act"), because it based the allocation of terminal gate space on subjective preferences and criteria that are prohibited by the Act. The SAT Gate Assignment Criteria and subsequent actions by Defendants are expressly preempted by the Airline Deregulation Act.

Congress enacted the Airline Deregulation Act in 1978, loosening economic regulation of the airline industry after determining that "maximum reliance on competitive market forces" would best "further efficiency, innovation, and lower prices." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-87 (1992). Congress' "overarching goal" with regard to the Airline Deregulation Act was to help assure that transportation prices, routes and services reflected "maximum reliance on competitive market forces," thereby stimulating not only efficiency, innovation and low prices, but also variety and quality in transportation services. *Morales*, at 378.

Under the Airline Deregulation Act, a local government that operates an airport may not apply a provision which relates to an air carrier “route” or “service.” The statute provides:

“Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, **regulation, or other provision having the force and effect of law related to a price, route, or service** of an air carrier that may provide air transportation under this subpart.” 49 U.S.C. § 41713(b)(1) (emphasis added)

“A majority of the circuits to have construed ‘service’ have held that the term refers to the provision or anticipated provision of labor from the airline to its passengers and encompasses matters such as boarding procedures, baggage handling, and food and drink – matters incidental to and distinct from the actual transportation of passengers.” *Air Transp. Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218, 223 (2d Cir. 2008); *see also Hodges v. Delta Air Lines, Inc.*, 44 F.3d 334, 336-38 (5th Cir. 1995) (en banc). The term “services” “extend[s] beyond prices, schedules, origins and destinations.” *Cuomo*, 520 F.3d at 223.

The SAT Gate Assignment Criteria clearly includes consideration of airline “services.” The Criteria document expressly states that one of the relevant factors is “the airline’s service, growth, and experience.” Sisneros Decl. Ex. 2. This is on its face a violation of the Airline Deregulation Act, which does not allow the Airport to consider the nature of the “service” in deciding how to accommodate the airline at the Airport. *See Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 229 n.5 (1995) (“Finally, the ban on enacting or enforcing any law relating to rates, routes, or services is most sensibly read, in light of the ADA's overarching deregulatory purpose, to mean States may not seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier.”) (internal citations and quotations omitted).

In addition, giving priority or a better terminal space to an airline because it offers premium services or airport lounges—or is deemed to be a superior “fit” with the locality—is a local

preference that relates to air carrier “service.” The SAT Gate Assignment Criteria states that a key factor in gate allocation is: “The airline’s ‘fit’ into San Antonio.” Sisneros Decl. Ex. 2. This “fit” factor is a blatant violation of the Airline Deregulation Act. Airports may not give better terminal space because of a community’s subjective belief that the favored carrier is a better “fit”. Likewise, the manner in which an airline is accommodated at a federally funded airport cannot be predicated on the local community’s or airport operator’s subjective perception as to the airline’s “passenger profile” (“business, leisure, mix, etc.”), or the “airline brand position.” Nor may an airport afford priority or a better terminal space to an airline because it offers or hopes to offer more international flights, or flights to more distant international destinations, as that is a local provision that relates to air carrier “routes.”

Simply put, as the owner and operator of SAT, the City is not free to use subjective criteria relating to an airline’s routes, services, or type of passengers to choose one airline over another when allocating limited terminal space. In other words, airports are not legally entitled to pick “winners and losers” among the airlines that choose to serve the airport. *See New York Airlines, Inc. v. Dukes County*, 623 F. Supp. 1435 (D. Mass. 1985) (allowing claims to proceed against airport for refusing to permit air carrier to provide service that other airlines were able to provide). Yet that is exactly what Defendants have done here. *See Meredith Haas, Southwest Airlines’ future at San Antonio International up in the air*, kens5 (September 14, 2024, 10:58 AM) <https://www.kens5.com/article/travel/southwest-san-antonio-international-airport/273-966f1547-ee11-43b0-ba37-f797230ab7b1> (“We want to create an environment where everyone is competitive and we understand that **not everyone can win** every time,” said Jesus Saenz, director of SAT”) (emphasis added); Sisneros Decl. Ex. 2, page 2 (describing how all other carriers’

requests and needs were accommodated but telling Southwest to “make the most” of what it was given).

Finally, the City cannot avail itself of the narrow “proprietary powers” exception to the Airline Deregulation Act’s prohibition, in 49 U.S.C. § 41713(b)(3). “Courts have . . . recognized that local proprietors play an extremely limited role in the regulation of aviation.” *Arapahoe County Public Airport Authority v. FAA*, 242 F.3d 1213, 1222 (10th Cir. 2001) (internal citations and quotations omitted); *see also Am. Airlines, Inc. v. DOT*, 202 F.3d 788, 806 (5th Cir. 2000) (“courts have recognized that local proprietors play an ‘extremely limited’ role in the regulation of aviation”); *Legend Airlines, Inc. v. City of Ft. Worth*, 23 S.W.3d 83, 94-95 (Tex. App.—Fort Worth 2000) (city’s enforcement of regional airport bond ordinance restricting routes and services at Dallas Love Field to protect Dallas-Fort Worth Airport’s competitive position was not a valid exercise of the city’s “proprietary powers” and therefore was preempted by the Airline Deregulation Act).

The City’s application of subjective criteria, including preference for particular “service” or “routes,” in order to deny Southwest access to Terminal C is not the sort of “regulatory conduct related to safety and civil aviation needs [that] may fall under the ‘proprietary powers’ umbrella . . .” *Arapahoe County, supra*, 242 F.3d at 1223 (airport authority “failed to demonstrate that [its] ban” on passenger service was “necessary for the safe operation of the airport” or was “necessary to satisfy the public’s civil aviation needs”). Under no circumstances can the limited “proprietary powers exception” be construed to authorize the City to make gate assignment decisions based on its subjective perception of the nature of the “service” offered by an airline or the “fit” between the airline and the City of San Antonio, or similar considerations.

In sum, the City's application of the SAT Gate Assignment Criteria to entirely exclude Southwest from Terminal C is in direct violation of Supremacy Clause and the Airline Deregulation Act. As a result, Southwest has shown a likelihood of success on the merits and a temporary restraining order and preliminary injunction should issue.

C. ALTHOUGH NOT REQUIRED HERE, THERE IS A SUBSTANTIAL THREAT THAT SOUTHWEST WILL SUFFER IMMINENT AND IRREPARABLE INJURY FOR WHICH IT HAS NO ADEQUATE REMEDY AT LAW.

As explained above, the actions taken by Defendants are prohibited under the Supremacy clause by the express preemption in 49 U.S.C. § 41713(b). According to Fifth Circuit precedent, Southwest is not required to establish irreparable harm. Specifically, “[i]n an express preemption case, however, the finding with respect to likelihood of success carries with it a determination that the other three requirements have been satisfied.” *VRC LLC v. City of Dallas*, 460 F.3d 607, 611 (5th Cir. 2006) (internal citations and quotations omitted).

Although Southwest is not required to establish irreparable harm, it is clearly present in this case. Southwest will suffer irreparable harm absent a preliminary injunction because it will lose the opportunity to lease gates at the new Terminal C if the seven other airlines execute leases which would be inconsistent with the ability of Southwest to obtain lease space at Terminal C, and after the other airlines sign the new Lease they will be able to use their MII rights to oppose funding the capital expenditures in Terminal A that Southwest requires. Allowing parties to sign a lease constitutes irreparable harm where, as here, its consequences uniquely threaten significant non-monetary damages that cannot be adequately remedied by financial compensation. Indeed, once the Defendants enter into the new ten-year Lease with the other airlines it will be impossible to “unscramble the egg” because the City will claim that it cannot make room for Southwest at Terminal C or override the existing MII framework without breaching those leases. The only way

to avoid that unfair and untenable situation is for the Court to order the City to refrain from entering into the new Leases until after the Court has ruled on Southwest's claims. *See* Sisneros Decl. ¶ 7. This Circuit, as well as several others, routinely find that the loss of a lease right constitutes irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 297 (5th Cir. 2012) (potential loss of leasehold interest "established a substantial threat of irreparable harm"); *see also Third Church of Christ, Scientist, of N.Y.C. v. City of New York*, 617 F.Supp.2d 201, 215 (S.D.N.Y.2008), *aff'd*, 626 F.3d 667 (2d Cir.2010) ("The deprivation of an interest in real property constitutes irreparable harm"); *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, 549 F.3d 1079, 1090 (7th Cir. 2008) (holding that "[a]s a general rule, interference with the enjoyment or possession of land is considered 'irreparable' since land is viewed as a unique commodity") (cleaned up); *Minard Run Oil Co. v. U.S. Forest Service*, 670 F.3d 236, 256 (3d Cir. 2011) ("[W]here 'interests involving real property are at stake, preliminary injunctive relief can be particularly appropriate because of the unique nature of the property interest.' ") (quoting *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009)); *Carpenter Tech. Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir. 1999) (holding that where loss of real property was at issue, irreparable harm existed).

Furthermore, requiring Southwest to remain in the old, depleted, and unacceptable Terminal A will result in a diminished experience for Southwest's customers and preclude Southwest from being able to operate its long-term commercial plan for SAT. Sisneros Decl. ¶¶ 7, 26-34. The harm to Southwest is also irreparable because it will be impossible to achieve similar terminal and gate facilities at Terminal A because this would require the expenditure of hundreds of millions of dollars for the necessary improvement (over and above the \$200 million referenced in the Lease), but none of the other airlines are likely to support that expenditure to assist their

competitor Southwest. If not enjoined, they are likely to all exercise the Majority-in-Interest clause in the Lease to oppose such expenditures at Terminal A, thereby leaving Southwest at a permanent and significant disadvantage in the marketplace. *See Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 371–72 (8th Cir. 1991) (holding that a party demonstrated irreparable harm where, without an injunction, a city would award a construction contract to another party which would prevent the plaintiff from rebidding on the contract even if it won the lawsuit and noting that a “preliminary injunction both protects this interest in participating in a legal bidding process and ensure that the contract awarded will be a legal one”); *Swift & Staley Inc. v. United States*, 159 Fed. Cl. 731, 735 (2022) (finding irreparable harm where a contractor because, even if the contractor was successful on appeal, it would lose the opportunity to compete for a contract absent a preliminary injunction which would result in a substantial loss of revenue).

Defendants’ unlawful decision has inflicted—and will continue to inflict—irreparable harm on Southwest’s brand image in San Antonio and other communities, as it will be considered a secondary citizen and less worthy than its competing airlines who are being allowed to move to the new Terminal C. *See Sisneros Decl.* ¶ 7. This harm will continue to occur unless the Defendants are forced to observe the status quo while this case proceeds. *Id.* To be clear, requiring Southwest to stay in the depleted Terminal A will result in a loss of customers and damage to Southwest’s reputation and goodwill, which clearly establishes irreparable harm. *See ADT, LLC v. Capital Connect, Inc.*, 145 F. Supp. 3d 671, 696-97 (N.D. Tex. 2015) (holding a loss of customers and damage to a company’s reputation and goodwill constitutes irreparable harm that is impossible to calculate). A temporary restraining order and preliminary injunction requiring the City to postpone executing the new Leases is critical to stemming that harm.

D. THE THREATENED HARM TO SOUTHWEST OUTWEIGHS THE THREATENED HARM OF DEFENDANTS.

Although Southwest is not required to establish this element as noted above, the harm to Southwest outweighs any threatened harm to Defendants, because there is none. Terminal C is not set to open until 2028, which is approximately three and a half years from now. Sisneros Decl.¶¶

2. Requiring Defendants to hold off on signing leases until they undergo a lawful allocation process does not affect the construction of Terminal C, and the other airlines will be operating under the about-to-expire leases under hold-over status during this period. This will not negatively affect the operations at the Airport in any manner.

E. GRANTING INJUNCTIVE RELIEF WILL NOT DISSERVE ANY PUBLIC INTEREST.

Granting the injunctive relief requested herein will not disserve the public interest. As noted above, Terminal C is not set to be opened to the public until 2028—a delay in signing the leases now does not damage the public interest. In fact, it would only benefit the public interest as it would ensure that the largest carrier at SAT has a meaningful and fair opportunity to be allocated gates on an equal footing with its competitors, which will only benefit the public as Southwest will be able to expand its operations and provide more flights to its San Antonio customers, and will also ensure that the City’s asset is being managed responsibly and in compliance with federal law. Further, “[e]nforcement of a federal law is in furtherance of the public interest . . .” *High Point Water Supply Corp. v. Lake*, No. 1:23-CV-13-DAE, 2023 WL 6518867, at *8 (W.D. Tex. June 16, 2023).

F. A TEMPORARY RESTRAINING ORDER IS NECESSARY UNTIL THE COURT RULES ON SOUTHWEST’S REQUEST FOR A PRELIMINARY INJUNCTION.

As shown above, all of the elements for a temporary restraining order have been satisfied by Southwest. Pursuant to Federal Rule of Civil Procedure 65(b) a temporary restraining order is

necessary with or without notice because once the new airline Leases are signed, it will be impossible to “unscramble the egg.” Sisneros Decl. ¶ 7. The Leases will not be able to be undone and Southwest will be denied any possibility of operating in Terminal C or facilities comparable to its competitors because of Defendants’ unlawful actions. *Id.* If a temporary restraining order is not granted before the Leases are entered into on October 1, 2024, Southwest’s lawsuit would become futile. *Canal Auth. of State of Fla.*, 489 F.2d at 573 (noting that the most compelling reason for an injunction is to “prevent the judicial process from being rendered futile by defendant’s action or refusal to act”). Thus, the Court should grant this Motion and issue the requested injunctions.

G. SOUTHWEST IS WILLING TO POST A BOND ALTHOUGH IT SHOULD NOT BE REQUIRED.

Pursuant to Federal Rule of Civil Procedure 65(c), Southwest is willing to post a bond in an appropriate amount approved by the Court. However, Southwest does not believe a bond is necessary because, as is explained above, Defendants will not be harmed by the issuance of a temporary restraining order or injunction. Indeed, the Fifth Circuit has made clear that the Court “may elect to require no security at all.” *A.T.N. Indus., Inc. v. Gross*, 632 Fed. Appx. 185, 192 (5th Cir. 2015) (quoting *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996); *Avenue7Media, LLC v. Johnson Greer*, No. SA-22-CV-00817-JKP, 2022 WL 17365278, at *3 (W.D. Tex. Dec. 1, 2022) (electing not to require a bond). However, should the Court find the issuance of a bond is necessary, Southwest requests a nominal amount given its likelihood of success on the merits and lack of harm to Defendants. *See Petro Franchise Sys., LLC v. All Am. Properties, Inc.*, 607 F. Supp. 2d 781, 801 (W.D. Tex. 2009) (“First, because Plaintiffs’ likelihood of success on the merits is strong, this Court elects to resolve uncertainties as to the proper basis for calculation in their favor.”).

CONCLUSION AND PRAYER

For the reasons set forth above, Plaintiff Southwest Airlines Co. respectfully requests that the Court:

1. Pursuant to Federal Rule of Civil Procedure 65, issue a temporary restraining order which prevents Defendants from entering into, recognizing as effective, or otherwise acting in furtherance of new Leases with airlines that are based on Defendants' unlawful gate allocation policy at SAT until after the Court has ruled on Southwest's request for preliminary injunction, in which case the airlines will operate under a hold-over status under the leases otherwise set to expire September 30, 2024;
2. Order that an expedited hearing be held on Southwest's request for preliminary injunction;
3. Upon hearing and pursuant to Federal Rule of Civil Procedure 65, issue a preliminary injunction enjoining Defendants from entering into new Leases with airlines for Terminal C until Defendants undertake a lawful allocation process that does not violate the Supremacy Clause and the Airline Deregulation act; and
4. For such other and further relief for which Southwest has shown itself to be justly entitled.

Dated: September 26, 2024

Respectfully submitted:

THE MORALES FIRM, P.C.

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(Application to be Admitted Pro Hac Vice
Forthcoming)

COUNSEL FOR PLAINTIFF SOUTHWEST AIRLINES CO.

CERTIFICATE OF SERVICE

The undersigned certifies that, upon filing of the Complaint and Motion for Preliminary Injunction and Temporary Restraining Order, counsel for Plaintiff will: (1) contact by telephone to provide notice, and (2) serve the papers on the following counsel for the Defendants, which the Defendant City of San Antonio requested that we contact for legal filings relating to this matter:

Eric T. Smith, Esq.

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/s/ Forrest M. "Teo" Seger III

Forrest M. "Teo" Seger III

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SOUTHWEST AIRLINES CO.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
THE CITY OF SAN ANTONIO, TEXAS and)	
JESUS SAENZ, in his official capacity as)	
Director of Airports for the City of San)	
Antonio, Texas,)	
)	
Defendants.)	
_____)	

DECLARATION OF STEPHEN F. SISNEROS, C.M.

I, Stephen F. Sisneros, C.M., hereby declare the following to be true and correct under penalty of perjury:

1. I am the Vice President of Airport Affairs for Plaintiff Southwest Airlines Co. (“Southwest”), a position I have held since 2018.

2. I make this Declaration in support of Southwest’s Motion for Preliminary Injunction against the efforts of the City of San Antonio (“City”), as the owner and operator of San Antonio International Airport (“SAT” or “Airport”), to deny Southwest the ability to move its airline facilities into the new SAT Terminal C when it is planned to open in the second quarter of 2028. My belief is that the City’s denial of access to Terminal C by Southwest violates federal law, and in particular the Airline Deregulation Act of 1978, because the City improperly considered airline “routes” and “services” in making its decision which airlines were given access to the new Terminal C at SAT.

3. The Airport's new Terminal C will add 17 new airline gates and materially enhance the overall experience for passengers using those gates. *See* Proposed Terminal Map at **Exhibit 1** hereto. Although Southwest originated its service in San Antonio in 1971, and has since grown to become the largest passenger carrier in the United States, as well as the largest air carrier at SAT by passenger volume, the City has ruled that Southwest may not move its operations to the new Terminal C and instead must remain at the much older and seriously deficient Terminal A. Importantly, the City's decision to exclude Southwest from Terminal C improperly relied on subjective and impermissible factors relating to its perception of Southwest's service, routes, and passengers at SAT in comparison to those of other airlines at SAT.

4. By the City's own admission, the Airport's Terminal C assignment selection process was grounded in a subjective process that involved what the Airport itself described as "certain non-quantifiable considerations," including air carrier "services," "routes," and "passenger profile." Specifically, the "Factors Considered" by the Airport in deciding that Southwest was not suitable for Terminal C included, without limitation:

- (1) Southwest's failure to request "an airline club" at the new Terminal C;
- (2) the City's subjective view of Southwest's "fit" into the San Antonio community;
- (3) the nature of the routes served by Southwest, including its offering or commitment to "international routes"; and
- (4) Southwest's "code-sharing arrangements" with other airlines.

"Summary of Decision-Making Process for Post-DBO Gate and Club Locations" (June 20, 2024) (hereafter the "SAT Gate Assignment Criteria") **Exhibit 2** hereto.

5. Despite the fact that the new Terminal C will not be open for use until 2028, the City intends to enter into new Airline Use and Lease Agreements ("AULA" or "Lease") with air

carriers for Terminal C space – along with the other Terminals at SAT – as soon as Tuesday, October 1, 2024. This date coincides with the expiration of the Airport’s prior terminal leases with airlines.

6. Because of the City’s use of improper, subjective criteria to select the airlines for Terminal C, Southwest repeatedly has asked the City to delay executing the new Leases and instead apply hold-over status (which is permitted under the existing leases and is customary in the airport industry) for the airlines at SAT to provide an opportunity to resolve the predicament created by the City’s actions, but the City has time and again refused this request.

7. As set forth below, Southwest will suffer irreparable harm unless the Court preserves the status quo by ordering the City and its Director of Airports – Jesus Saenz – not to execute new Leases with the air carriers at SAT until after this Court has ruled on the merits of Southwest’s legal challenge to the City’s Terminal C gate-assignment decision.

a. First, it will be impossible to “unscramble the egg” once the City has executed the new 10-year Leases with other airlines for Terminal C because the City will claim that it cannot make room for Southwest at Terminal C without breaching those Leases. In addition, the airlines who sign the new Lease for Terminal C or the other two Terminals will be able to use the “Majority-in-Interest” (“MII”) clause in their Leases to try to preclude the City from spending additional sums to improve Terminal A that could theoretically benefit Southwest. The only way to avoid that unfair and untenable situation is for the Court to order the City to hold off entering into new Leases until Southwest’s challenge to the City’s air carrier selection process is resolved.

b. Second, the publicity regarding the City’s decision to require Southwest to remain in the old Terminal A will damage Southwest’s public reputation as it unfairly creates the public impression that Southwest is a “second class” airline not on the same par as its competitors

who have been offered space in the new Terminal C. The announcement by the City, widely publicized in local and national media, that Southwest is barred from moving into Terminal C has already inflicted harm on Southwest's brand and will continue to do so unless the City is ordered to observe the status quo while this case proceeds.

My Background

8. After receiving a bachelor's degree in Aeronautics and FAA Part 141 flight training in 1991, I entered the Chaifetz School of Business at Saint Louis University and graduated with an MBA in January 1995. Soon after completing my graduate degree, I joined Southwest on its Revenue Management and Pricing Team in February 1995. After several years in the Southwest marketing department, I joined the Airport Affairs team in 2003. Currently, as Vice President of Airport Affairs, I supervise a team of professionals dedicated to assisting Southwest's efforts to maximize its presence at airports throughout the United States and to ten international destinations.

Southwest Airlines

9. Southwest Airlines Co. is a major airline in the United States that operates on a low-cost carrier model, which has earned it hundreds of millions of loyal customers over the years. Southwest faced fierce opposition and competition in its early years but held fast to become America's largest airline by passengers carried as well as the third largest airline in the world. It has scheduled service to approximately 117 destinations in the United States and in ten other countries.

10. Southwest was established in 1967 by Herb Kelleher and Rollin King in **San Antonio** as Air Southwest Co. and adopted its current name in 1971, when it began operating as an intrastate airline wholly within the State of Texas, first flying between Dallas, Houston and San Antonio. It began regional interstate service in 1979, expanding nationwide in the following

decades. Southwest made its first flight to San Antonio in 1971 and has been serving the San Antonio market ever since.

11. Since Southwest commenced passenger service in 1971, it has valued its relationship with the City of San Antonio and SAT. Our airline is deeply proud of the fact that Southwest is the largest air carrier at SAT, with a 38% share of passengers in 2023.

San Antonio Airport and its Two Existing Terminals A and B

12. San Antonio International Airport is located on property within the City of San Antonio that the City acquired in 1941. In 1944, the airfield was official named as the San Antonio International Airport and regular flights began. Several renovations and upgrades were carried out during the early 1950s, including a new terminal in 1953 (which became the terminal that ultimately was replaced by what is now Terminal B).

13. A large expansion project took place during the latter part of the 1960s, when gates were added in a “banjo” design, to accommodate the high passenger numbers expected at the Airport for the forthcoming World’s Fair, which occurred in 1968.

14. The existing Terminal A (sometimes referred to as “Terminal 1” or “Concourse A”) at SAT was commissioned in 1984, and has sixteen gates. Its total area is 397,634 square feet. It is in severe need of reconstruction, and even if the City follows through with tentative plans to renovate Terminal A, it will still be much more narrow and less functional than Terminal C.

15. The existing Terminal B (sometimes referred to as “Terminal 2” or “Concourse B”) was constructed in 2010 and has approximately 247,099 square feet of space. It replaced an older terminal but is not nearly as modern or useful to airlines as the new Terminal C will be.

City's Plan to Construct and Operate the New Terminal C

16. The new Terminal C is to be built at an approximate cost of \$1.4 billion and will be situated next to the existing Terminal B on the northwest end of the Airport's current footprint. It will have approximately 850,000 square feet, which is more than the combined square footage of the existing Terminals A and B. According to the City, the new Terminal C will have "[l]arger gate hold rooms for enhanced passenger comfort," a "Riparian Paseo entry and indoor courtyard to enhance sense of place and River Walk feel," a "[n]ew central passenger screening area" to provide "all-access pass to retail and concessions," a "[n]ew, modern Federal Inspection Station for expanded international air service," and the City has designated "29,000+ sq. ft. club lounge space." Source: <https://flysanantonio.com>

Lease Negotiations with the City for SAT Terminal Gates

17. The parties began negotiations over the terms of a new Lease in the middle of 2022. The negotiations continued for two years during which Defendants informed Southwest on multiple occasions that Southwest was going to move to the new Terminal C. For example, during a meeting as recent as April 2, 2024, the City told Southwest that Southwest would have gates in Terminal C.

18. However, at a meeting between Southwest and the City that occurred on May 29, 2024, Southwest learned for the **first** time that the City had decided to require Southwest to remain in Terminal A, and that Southwest would not be able to lease gates in Terminal C. The City's last-minute change in direction foreclosed Southwest's opportunity to try to remedy the situation or to secure adequate lease rights to modify Terminal A to fit its needs during the two years of the lease negotiations.

19. The City's sudden reversal of its promise to move Southwest into Terminal C was an unfair "bait and switch" tactic that precluded Southwest from pursuing opportunities during the Lease negotiations that Southwest had no reason to believe were necessary. For example, because Southwest had been promised to be able to move into Terminal C under the new Lease, it had no reason to negotiate what became the \$200 million figure for capital expenditures for renovations at Terminal A (provided in Exhibit M to the Lease). After the City reneged on its promise for Terminal C and started discussing Southwest having to remain in Terminal A, Southwest commenced the process of analyzing and documenting why the \$200 million figure was clearly inadequate but the City Council voted to approve the Leases before Southwest had an ample opportunity to work with the City on a higher capital expenditure figure for Terminal A renovations that Southwest would require.

20. Despite Southwest's objections to the Airport's decision denying it access to the new Terminal C, the Airport refused at the May 29 meeting to disclose the criteria that it used to make that decision. Another meeting was held on June 7 for Defendants to provide information, modeling, and programming analysis behind their decision on gate assignments. Instead of providing that information, Defendants instead used the time to explain how they thought Terminal A could accommodate Southwest.

The SAT Gate Assignment Criteria

21. Approximately two weeks after the June 7 meeting, on June 20, 2024, the City finally provided Southwest and other airlines at SAT the SAT Gate Assignment Criteria document, Exhibit 2. This was the first time that Southwest received the information set forth in that document, which purports to set forth the criteria applied by the City in deciding where to locate airlines at SAT. The document states as follows:

“Factors Considered Included:

- Number of preferential gates requested by airline
- Whether an airline club was requested**
- Whether airline operates or commits to operating international routes**
- Whether airline has relevant code share arrangement(s)
- Current level of enplaned passengers @ SAT
- The airline’s “fit” into San Antonio**
- The airline’s service, growth, and experience**
- The existence of a written commitment by airline to city pairs, specific flights, or minimum levels of enplaned passengers**
- Potential need by airline for appurtenant City Gates (for expansion)
- Terminal load-balancing considerations”

(Emphasis added). The document also states that the SAT team:

considered certain non-quantifiable considerations, among which were the carriers’ “fit” into SAT (relating to desirability of passenger profile (business, leisure, mix, etc.) and airline brand position...; the airlines’ “service, growth, and experience”... , aspirations for international flights, and any differentiation of product or technology used that would enhance customer experience.

Thus, the City’s own document reveals that in deciding which airlines would be allowed to move to the new Terminal C, the City weighed and considered several subjective and improper factors, including (1) the geographic nature of the routes served by the air carrier, (2) the “fit” of the airline into San Antonio, (3) the desirability of the airline’s “passenger profile”, and (4) the “airline’s service.”

22. The City was well aware that requiring Southwest to remain in Terminal A would present significant obstacles to Southwest but brushed aside these concerns, stating that the “airport could partner with [Southwest] to ‘make the most’ out of the airlines’ substantial and focused use of Terminal A.” Exhibit 2 hereto, at p. 2. To me this was further evidence that the City recognized that it was treating Southwest as a second-class citizen at SAT.

23. The problem with the SAT Gate Assignment Criteria is not only its reliance on factors that are not permitted under the federal Airline Deregulation Act, but it also fails to provide for any quantifiable analysis whatsoever. Instead, it contains a bunch of subjective preferences and factors with no disclosure as to what weight various factors will be given. This is a recipe for arbitrary and capricious decision-making.

24. Southwest and other airlines finally received the SAT Gate Assignment Criteria on June 20, 2024, which was three weeks after the City told Southwest its Terminal C allocation decision. Southwest has repeatedly asked the City to disclose the modeling and other factors used by the City to apply the SAT Gate Assignment Criteria to reach the decision barring Southwest from moving to Terminal C. However, the City has never provided that information to Southwest.

25. Southwest was extremely disappointed at the turn-around by the City and instinctively knew that Terminal A would not allow Southwest to engage in the operations that it planned, but we also then undertook comprehensive due diligence to be able to obtain relevant facts on this question. As the Summer of 2024 continued we had three meetings with Corgan (the Airport's architect) to try to determine if Terminal A could meet our needs. Ultimately, the only reasonable conclusion was that it could not. Southwest has repeatedly informed Defendants that forcing Southwest to stay in Terminal A is untenable.

The Deficiencies with Terminal A

26. For Southwest, the overriding problem with Terminal A is that it will not allow Southwest to implement its growth plans for SAT.

27. The facility is too small and too narrow. It also lacks sufficient TSA security checkpoint ("SSCP") and baggage screening facilities, and has an inadequate ticket lobby, an unsuitable curb front, difficult concourse circulation constraints, inefficient hold-room

configurations, and insufficient restrooms; and requires critical technology and finish upgrades. There also are deficiencies with the mechanical, electrical, and plumbing systems.

28. Southwest had plans to expand its gates from the current six to ten and even if it does expand to ten gates, the limitations in Terminal A will have a direct negative impact on both our passengers' experience and the company's profits from SAT.

29. The only way that Terminal A could be suitable for Southwest would be to spend hundreds of millions of dollars – much more than the \$200 million referenced in the new Leases. But because of the MII clauses in the new Leases, the other competing airlines that sign those Leases will be in a position to refuse to agree to any additional money for Terminal A. Southwest's experience in these matters indicates that they will refuse and the City has provided no assurances otherwise.

30. In discussions with the City, they have repeatedly pointed to their plans to spend \$200 Million to renovate Terminal A as justification for why Southwest should accept their decision to locate us in that terminal. Unfortunately, that amount is far too insignificant to fund the necessary improvements for Southwest's operations. And, as noted above, even if the City wanted to spend an additional amount over the \$200 million memorialized in the proposed lease to improve Terminal A, other airlines at SAT would have no financial incentive to agree under their majority in interest lease rights and therefore are unlikely to vote in favor of such expenditures.

31. The City may argue that Southwest could have requested additional funding during the lease negotiations if it thought the \$200 Million allocated to renovate Terminal A was insufficient. But as stated above, the City repeatedly committed to Southwest that it would have gates in Terminal C so there was no reason for Southwest to be focused on or request additional

funding for Terminal A. When it learned on May 29, 2024, that the City had decided Southwest would remain in the old Terminal A, Southwest began to voice its objections and request information on the funding for improvements to that terminal to meet Southwest's needs, which is described in more detail below. Even so, in January 2024, the airlines asked Defendants questions about the scope of the \$200 Million set aside for renovations of Terminal A, based on at least one airline's concerns that the amount was insufficient.

32. In a letter dated June 20, 2024 (**Exhibit 3** hereto), Denise McElroy, Sr. Manager – Airport Affairs at Southwest – told Airport Director Saenz that Southwest was “extremely concerned with his decision, which [Director Saenz] just shared a few weeks [before], to keep Southwest Airlines in Concourse A.” Southwest explained that the decision “will preclude [Southwest] from being able to operate [its] long-term commercial plan for San Antonio (SAT).” Southwest further stated:

“Our original plan, shared with you two years ago, was to lease up to 10 gates. However, we currently do not have confidence that Concourse A can meet those needs. This is a huge 11th hour change, and we must immediately validate whether modifications can be made to meet all the elements of our operation. I recognize your desire to complete negotiations quickly. We shared your goal and, until earlier this month, we believed we were getting very close to a business deal based on our understanding that Southwest would relocate from Concourse A and a pre-approved [Capital Improvement Plan (CIP)] would incorporate a \$200M placeholder for Concourse A infrastructure and finish improvements.”

33. In a follow-up letter to Airport Director Saenz dated August 12, 2024 (**Exhibit 4** hereto), Southwest's McElroy stated that “Southwest continues to fervently maintain its desire to be located in the new terminal and remains extremely disappointed at the City's decision to keep Southwest and what will likely be nearly 50% of the passengers flying through San Antonio International Airport (SAT) in Terminal A.” The letter added:

“We met with Corgan [an architectural and design firm] and your staff three times

to evaluate Terminal A's deficiencies with respect to the security checkpoint (SSCP), baggage screening, Ticket Lobby, Curb Front, Holdroom Configuration, Restrooms, Technology, and finish upgrades. We also understand there are deficiencies in mechanical, electrical, and plumbing items that were identified in a previous City-commissioned facility study. The Corgan analysis provided thus far does not consider the full utilization of 10 gates as we requested because it restricts peak demand. As a result, we remain extremely concerned that arriving passengers will continue to overwhelm the curb front, ticket lobby and SSCP.

Also, the issue remains open as to what it will cost to modify Terminal A as will be required to accommodate our 10-gate commercial plan. Regardless of the potential investment to improve Terminal A, there are significant customer experience items that cannot be mitigated. Terminal A concourse is too narrow and doesn't meet today's design criteria. Increasing the hold rooms sizes as you propose will not alleviate overcrowding in the concourse circulation area. Southwest's international operations will also be negatively impacted due to the relocation of the Federal Inspection Station (FIS) facility from Terminal A to Terminal C. Splitting our operation between two terminals will introduce operational complexity and significantly increase passenger connection times. The customer experience for our Customers will also suffer due to the potential relocation of the rideshare and taxi area from its current location to a new Transportation Center which will dramatically increase walk times for what will be over 50% of the total passengers using SAT. The allocation of space types (valet, disabled) in the existing garages when the new garage opens, e.g., if valet service is relocated to new garage, the number of disabled spots is adjusted. Furthermore, access to the USO for those Terminal A customers with military affiliations will be impacted with the relocation of the existing USO to the new Terminal C. The cumulative effect of these items certainly points to a degraded customer experience for Terminal A passengers flying on the City's largest air carrier. Southwest simply will not accept the diminished experience for our Customers and Employees and the risk of facility constraints to our future commercial plan by remaining in the airport's oldest facility. We look forward to further engagement with respect the aforementioned issues.

34. Between May and September 12, 2024, Southwest met with the City of San Antonio via in-person meetings or phone calls no less than six times to try to resolve this dispute, and repeatedly requested that the City delay execution of new Leases. Each of the discussions was unsuccessful.

The City Council's Terminal Gate Assignment Decision

35. Southwest's continued objections were entirely ignored by the City and Director

Saenz, and on September 12, 2024 the San Antonio City Council approved the Lease terms, including the prohibition on Southwest moving to Terminal C. The new, decade-long Lease is set to commence on October 1, 2024, and seven airlines are ready to sign the Lease, even without participation by Southwest. The new Lease provides that several other airlines will lease all available gates and operate from Terminal C. If Southwest wants to remain a “signatory airline” at SAT, it must agree to remain at Terminal A, despite its far-inferior condition compared to Terminal C. Southwest was forced to decline to sign a new Lease at SAT because of the Defendants’ decision that would result in a diminished experience for Southwest’s customers and preclude Southwest from being able to operate its long-term commercial plan for SAT.

36. There is no viable solution for Southwest to be relegated to Terminal A because that terminal is not only in very poor condition compared to what the new Terminal C will offer, but is also too narrow and unsuited to Southwest’s operations that typically entail high passenger volumes.

37. Southwest has repeatedly requested that the City delay execution of the new Leases to try to find a resolution but the City never agreed.

38. On August 26, 2024, Southwest Executives Jason Van Eaton, Sherri Hull and I met with City officials to reiterate our concern that the City had not presented a viable solution for Terminal A. Our follow up emails further emphasized that Southwest could not sign a new Lease until we received that critical information regarding how necessary capital expenditures for Terminal A were to be funded, which the City has still not provided.

39. In addition, Southwest requires Federal Inspection Services (“FIS”) for its international flights at SAT just as much as the air carriers that the City has allowed to move to the new Terminal C. Southwest already has international service to and from Mexico and could

add other destinations. We understand that the City wants to attract international air service to Europe, and this desire may have played an unquantified role in the Airport's Terminal C decision. Under the Airline Deregulation Act, however, airports are precluded from basing accommodation decisions on the routes an airline serves or intends to serve.

40. The City's Terminal C accommodation criteria give priority to other airlines because they offer premium service and air carrier lounges or "clubs." Southwest passengers very much appreciate the special services and attitude offered by our airline, and those passengers should not be subjected to inferior terminal gate conditions because they enjoy a lower-cost airline experience. Moreover, although the existence of an airline lounge is not a factor that an airport should consider in assigning airline gate space, the fact remains that there are third parties – such as American Express and Chase – that offer airport lounges that are not limited to the airline that a passenger is flying but instead are open to all passengers who meet their membership criteria. In other words, the fact that an airline chooses not to provide a passenger lounge does not mean that there will not be a passenger lounge in the terminal where the airline is based.

41. Because Southwest is not able to sign the new Lease, the City has stated that it will treat it as a "non-signatory airline," which enables the City to charge Southwest a higher rental rate than that charged to the favored airlines that are being allowed to execute new Leases for Terminal C and the other Terminals. It also precludes Southwest from being able to have the benefit of revenue-sharing provisions in the Lease, or a voice in amounts spent by the City on capital improvements – despite the fact that Southwest will be forced to pay rates and charges to fund those projects.

Southwest Request for Relief to the City

42. On September 20, 2024, Southwest sent Defendants a letter which set forth the basis for its claim that the Defendants are violating the Supremacy Clause of the U.S. Constitution and the Airline Deregulation Act, and requested that Defendants “immediately rescind [the] unlawful SAT Gate Assignment [Criteria] and either move [Southwest] to Terminal C or establish a viable plan for Terminal A that resolves the issues [that Southwest has] raised and puts [Southwest] on equal ground with the rest of the carriers at SAT.” Copy attached as **Exhibit 5** hereto, at p. 5.

43. The letter added that “[b]ecause the new lease is set to take effect on October 1, 2024, time is very much of the essence,” and Southwest requested that Defendants “take corrective action no later than Wednesday, September 25, 2024.” *Id.*

44. Although the City did on September 25 respond to Southwest’s September 20 letter, the City did not agree to take corrective action and instead reiterated the City’s intention to enter into a new Lease with seven airlines on October 1, and to simultaneously force Southwest to accept inferior facilities as a result of the City’s flawed Gate Assignment Criteria.

45. Southwest’s strong preference would have been to avoid having to file this case against the City. However, the City gave us no choice when it opted to renege on the promise to move Southwest to Terminal C, resorted to unlawful criteria for selecting the new airline tenants for Terminal C, refused to provide critical information regarding how renovations for Terminal A would be funded, and then caused the immediate timing crisis by proceeding with the City Council vote on September 12 to execute the new Leases as of October 1, despite our continuing requests for more time and responsive information. The emergency that promoted Southwest to file this case (and not sign the new Lease) is entirely of the City’s making.

46. At this time the only way to protect Southwest from irreparable harm is to require the City to continue the status quo and have all of the airline tenants – those selected for Terminal C as well as the other Terminals – operate on a lease holdover month-to-month basis under the existing leases while the Court considers the claims raised by Southwest. A pause on all of the Leases is also necessary to avoid making the airlines' majority-in-interest (MII) clauses operable upon signature of a new Lease, which would effectively preclude the ability of the City and Southwest to fund the necessary improvements for Terminal A.

47. There is no countervailing harm to third parties if the preliminary injunction is issued. If the City does not sign new leases on October 1, the air carriers at SAT can remain at the Airport on a month-to-month tenancy at existing lease rates while the Court rules on the legal claims raised by Southwest in this case.

48. The public interest would not be harmed by the issuance of the preliminary injunction because the new Terminal C is not planned to be occupied by air carriers until the second quarter of 2028.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 26, 2024.



Stephen F. Sisneros, C.M.

Exhibit 1

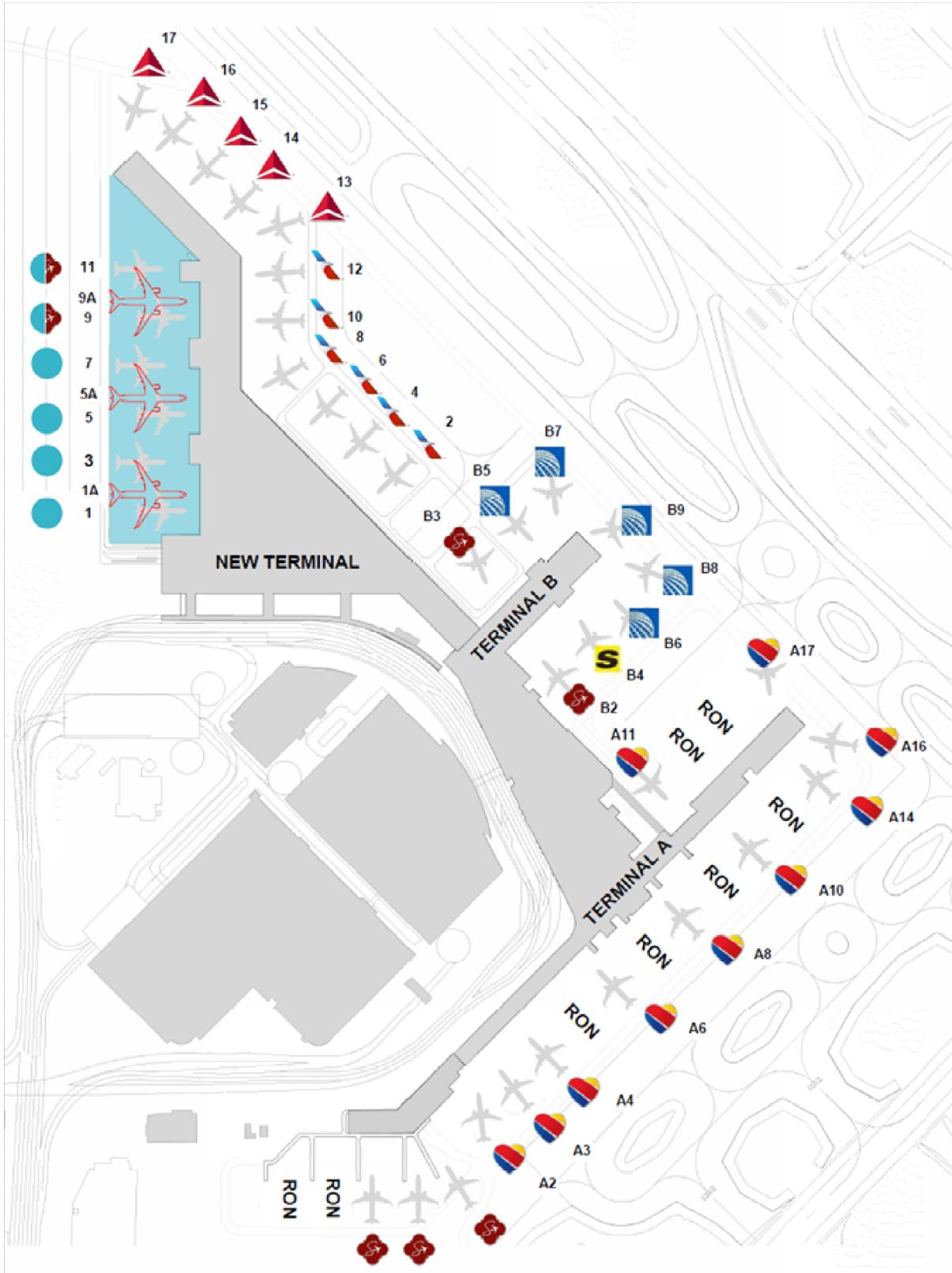


Exhibit 2

=====

**Summary of Decision-Making Process for
Post-DBO Gate & Club Locations**

=====

Teams Involved:

- COSA ESC
- SAT Finance Team
- SAT AULA Team
- SAT TDP Team
- SAT Legal Team
- Executive Program Manager (EPM)
- Master Architect (MA)

Factors Considered Included:

- ✓ Number of preferential gates requested by airline
- ✓ Whether an airline club was requested
- ✓ Whether airline operates or commits to operating international routes
- ✓ Whether airline has relevant code share arrangement(s)
- ✓ Current level of enplaned passengers @ SAT
- ✓ The airline's "fit" into San Antonio
- ✓ The airline's service, growth, and experience
- ✓ The existence of a written commitment by airline to city pairs, specific flights, or minimum levels of enplaned passengers
- ✓ Potential need by airline for appurtenant City Gates (for expansion)
- ✓ Terminal load-balancing considerations

Process Employed:

Each airline with a significantly large market share at SAT was assessed utilizing a "Gating Placement Analysis Worksheet" which considered a variety of relevant factors. The scoring worksheet was reviewed by member(s) of the SAT Finance Team, the SAT AULA Team, the EPM, and the SAT Legal Team. A score was assigned to each large airline and the airlines were ranked (*i.e.*, 1-4).

The EPM, the MA, and a member from each of the SAT AULA team and the SAT TDP team reviewed and considered certain non-quantifiable considerations, among which were the carriers' "fit" into San Antonio (relating to desirability of passenger profile (business, leisure, mix, etc.) and airline brand position (network, ULCC, established, start-up, etc.); the airlines "service, growth and experience" (which included an analysis of the airline's overall reasonable growth potential and commitment to SAT, aspirations for international flights, and any differentiation of product or technology used that would enhance customer experience); and the possible need for appurtenant City Gates (consideration included the potential for a carrier to grow incrementally beyond its preferential gates and/or for the use of City Gates for RON aircraft, and the availability of usable City Gates for IROPs).

The analysis then turned to broad-based terminal load balancing considerations. In assessing such matters, the reviewers assessed the airport's operations as a whole and determined what was advisable from an airport-wide balancing viewpoint. Among the areas for consideration were impacts upon baggage make up area, the BHS, the airport roadway system, the passenger and commercial curbs, and the ticketing lobby.

Summary of Decision:

The first component of the decision-making process was to examine airline club requests, as the requests for airline clubs were valuable to the airport/city for potential customer experience, represent a fixed financial commitment by the airline, and are a unique challenge with respect to available space/siting options. The two largest club requests (AA and DL) could only reasonably be accommodated by siting within new Terminal C. Those two airlines (AA and DL) combined requested 11 preferential gates. One of those two airlines had potential need to be placed next to an FIS-connected gate (DL) due to a relevant code share arrangement. Assigning those two airlines (AA and DL) to Terminal C took 11 of 11 domestic gates to be constructed within the new Terminal and left the 6 FIS-equipped gates in the new Terminal available for international operations and/or itinerant (per turn) use by other airlines (with international arrivals receiving priority).

Another airline requested a club but with a smaller footprint than the other two airlines (UA). That airline (UA) requested 6 gates. With no space left in C to locate a club, it was analyzed whether it was more reasonable to leave that airline (UA) in Terminal B where its existing club is located or move it to Terminal A where a new club would have to be constructed. Relocating that airline and constructing a new club in Terminal A would be costly. It was estimated that it would cost approximately \$2m for relocating the gates and offices and another \$7m for construction of the club itself. In addition, it was estimated that it would cost another \$20m for “bumping out” the structure to accommodate the club. Therefore, it was determined that the most reasonable approach was to leave that airline (UA) in Terminal B. Since such airline (UA) requested 6 preferential gates, that left 2 of the 8 gates available in Terminal B. Given Spirit Airlines’ (NK) request for one preferential gate and its expected growth, it was reasonable to assign NK to 1 preferential gate in Terminal B with the expectation that it could grow incrementally and potentially use the 1 remaining gate which is to remain as a City Gate.

As noted, when the two airlines that requested large clubs (AA and DL) were sited in Terminal C, 11 of the 17 gates were assigned. Further, the 6 remaining gates are to be FIS-equipped and it would be inadvisable to assign such gates to an airline that has a high utilization rate of their gates. Thus, the 6 FIS-gates are planned to be used primarily as international arrival gates and, potentially, for incremental growth for the other airlines in Terminal C or for IROPs.

The fourth large airline (WN) requested 10 preferential post-DBO gates. Notably that airline (WN) does not have an airline club as part of its offerings.

When scenarios were assessed with having WN either on Terminal C or Terminal B, given its high level of passenger throughput, concerns arose over terminal load balancing. One such scenario was siting WN on Terminal B (8 gates) with some utilization of Terminal C gates. With DL and AA in Terminal C, adding WN to that side of the airport would overload the Terminal C baggage system, the terminal roadway/curb and security checkpoint. Further, concerns existed regarding WN’s utilization of FIS-equipped gates and the potential for disruption of their schedule/operation with international flights (which would necessarily have priority over WN’s domestic operations).

Thus, the most reasonable overall solution was to site WN in Terminal A. It was acknowledged that the width of Terminal A was less than ideal. However, the holdrooms in Terminal A are to be substantially enlarged to accommodate the aircraft that use them (*e.g.*, 737-800s), and the interior is to be refurbished to match the look and feel of the new terminal facilities. Of note is that a large number of RON spaces will be a part of the post-DBO Terminal A which should aid WN’s morning and late-night operations. Further, it was thought that the airport could partner with WN to “make the most” out of the airlines’ substantial and focused use of Terminal A.

Low frequency and/or non-signatory airlines are to be assigned to Terminal A as well (noting that the GLF gate will be fully operational at DBO as well).

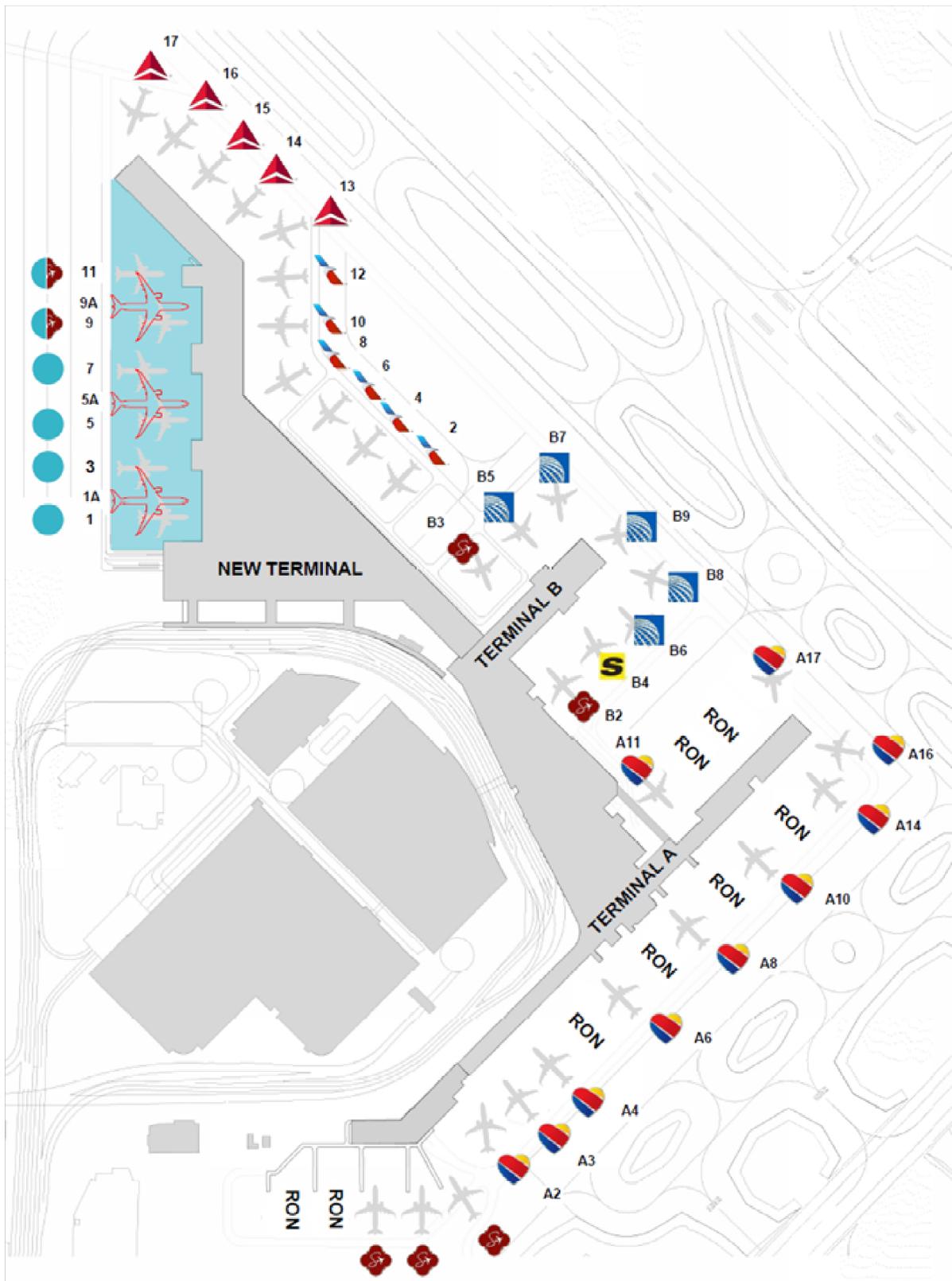


Exhibit 3



Southwest Airlines Co.
Denise McElroy
Sr. Manager – Airport Affairs
PO Box 36611
Dallas, TX 75235-1611
972-273-9333
denise.mcelroy@wnco.com

June 20, 2024

Jesus Saenz, Jr., IAP
Director of Airports
San Antonio International Airport
9800 Airport Blvd.
San Antonio, TX 78216

Dear Mr. Saenz:

As a follow-up to our conversation today, I am extremely concerned that your decision, which you just shared a few weeks ago, to keep Southwest Airlines in Concourse A will preclude us from being able to operate our long-term commercial plan for San Antonio (SAT). Our original plan, shared with you two years ago, was to lease up to 10 gates. However, we currently do not have confidence that Concourse A can meet those needs. This is a huge 11th hour change, and we must immediately validate whether modifications can be made to meet all the elements of our operation.

I recognize your desire to complete negotiations quickly. We shared your goal and, until earlier this month, we believed we were getting very close to a business deal based on our understanding that Southwest would relocate from Concourse A and a pre-approved CIP would incorporate a \$200M placeholder for Concourse A infrastructure and finish improvements. Now Concourse A will require major renovations to increase capacity for passenger processing and baggage screening. These improvements need to be thoroughly studied so that the required scope and associated costs can be defined and included in the new lease.

As we discussed, due to your decision to keep Southwest in Concourse A, there are a number of questions that must be answered before a deal can be completed. You committed to contact Corgan on Friday, June 21, and direct them to set up meetings with Southwest to begin working through the required analysis and facility assessment to redefine the scope of Concourse A improvements necessary for our operation and future at SAT. We look forward to hearing from them to get these meetings scheduled expeditiously.

Thank you for your commitment to support a 15% differential rate for the new Concourse.

Sincerely,

Denise McElroy
Sr. Manager – Airport Affairs, Southwest Airlines Co.

CC: Paul Cullen, Vice President – Real Estate, Southwest Airlines
John Zuzu, Vice President – Corporate Facilities, Southwest Airlines
Steve Sisneros, Vice President – Airport Affairs, Southwest Airlines
Andrea Goodpasture, Managing Director – Airport Affairs, Southwest Airlines
Sherri Hull, Director – Governmental Affairs, Southwest Airlines
Kenneth Gregg, Regional Manager – Airport Affairs, Southwest Airlines
Tim O’Krongley, Aviation Deputy Director – Development, San Antonio International Airport

Exhibit 4



Southwest Airlines Co.
Denise McElroy
Sr. Manager – Airport Affairs
PO Box 36611
Dallas, TX 75235-1611
972-273-9333
denise.mcelroy@wnco.com

August 12, 2024

Jesus Saenz, Jr., IAP
Director of Airports
San Antonio International Airport
9800 Airport Blvd.
San Antonio, TX 78216

Dear Mr. Saenz:

In response to your letter dated June 27, 2024, I would like to address what was mentioned as Southwest's statements supporting a new Airline Use and Lease Agreement (AULA) that memorializes final gate assignments as your letter could be misunderstood to represent that Southwest agrees with the final gate assignments. Southwest continues to fervently maintain its desire to be located in the new terminal and remains extremely disappointed at the City's decision to keep Southwest and what will likely be nearly 50% of the passengers flying through San Antonio International Airport (SAT) in Terminal A.

We met with Corgan and your staff three times to evaluate Terminal A's deficiencies with respect to the security checkpoint (SSCP), baggage screening, Ticket Lobby, Curb Front, Holdroom Configuration, Restrooms, Technology, and finish upgrades. We also understand there are deficiencies in mechanical, electrical, and plumbing items that were identified in a previous City-commissioned facility study. The Corgan analysis provided thus far does not consider the full utilization of 10 gates as we requested because it restricts peak demand. As a result, we remain extremely concerned that arriving passengers will continue to overwhelm the curb front, ticket lobby and SSCP. Also, the issue remains open as to what it will cost to modify Terminal A as will be required to accommodate our 10-gate commercial plan.

Regardless of the potential investment to improve Terminal A, there are significant customer experience items that cannot be mitigated. Terminal A concourse is too narrow and doesn't meet today's design criteria. Increasing the hold rooms sizes as you propose will not alleviate overcrowding in the concourse circulation area. Southwest's international operations will also be negatively impacted due to the relocation of the Federal Inspection Station (FIS) facility from Terminal A to Terminal C. Splitting our operation between two terminals will introduce operational complexity and significantly increase passenger connection times.

The customer experience for our Customers will also suffer due to the potential relocation of the rideshare and taxi area from its current location to a new Transportation Center which will dramatically increase walk times for what will be over 50% of the total passengers using SAT. The allocation of space types (valet, disabled) in the existing garages when the new garage opens, e.g., if valet service is relocated to new garage, the number of disabled spots is adjusted. Furthermore, access to the USO for those Terminal A customers with military affiliations will be impacted with the relocation of the existing USO to the new Terminal C.

The cumulative effect of these items certainly points to a degraded customer experience for Terminal A passengers flying on the City's largest air carrier.

Southwest simply will not accept the diminished experience for our Customers and Employees and the risk of facility constraints to our future commercial plan by remaining in the airport's oldest facility.

We look forward to further engagement with respect the aforementioned issues.

Sincerely,

Denise McElroy
Sr. Manager – Airport Affairs, Southwest Airlines Co.

CC: Paul Cullen, Vice President – Real Estate, Southwest Airlines
John Zuzu, Vice President - Corporate Facilities, Southwest Airlines

August 12, 2024
Page 2

Steve Sisneros, Vice President - Airport Affairs, Southwest Airlines
Andrea Goodpasture, Managing Director – Airport Affairs, Southwest Airlines
Sherri Hull, Director – Governmental Affairs, Southwest Airlines
Kenneth Gregg, Regional Manager – Airport Affairs, Southwest Airlines
Tim O’Krongley, Aviation Deputy Director - Development, City of San Antonio – Aviation Department

Exhibit 5

Southwest Airlines Co.
Jeff Novota
Vice President, General Counsel and Corporate Secretary
2702 Love Field Drive
Dallas, TX 75235-1611
Jeff.Novota@wnco.com



September 20, 2024

Via Email: Jesus.Saenz@sanantonio.gov
& U.S. Mail

Mr. Jesus H. Saenz, Jr., IAP
Director of Airports
City of San Antonio, Texas
9800 Airport Blvd.
San Antonio, TX 78216

Re: Unlawful Allocation of Terminal Space at San Antonio International Airport

Dear Director Saenz:

From our beginning in 1971, Southwest Airlines has valued its relationship with the City of San Antonio (the "City") and the San Antonio International Airport ("SAT" or the "Airport"). It is deeply proud of the fact that Southwest is the largest air carrier at SAT, with a 38% share of passengers in 2023.

After almost two years of negotiations over the terms of a new airline use and lease agreement ("AULA" or "Lease"), Southwest was disappointed to learn that the City is not allowing Southwest to lease gates in the new Terminal C. As stated previously, requiring Southwest to remain in the old Terminal A under the current plan will result in a diminished experience for our Customers and preclude Southwest from operating our long-term commercial plan for SAT. Moreover, the selection process undertaken by the City for allocating gate space at the new Terminal C is grounded in a publicly-disseminated gate assignment policy that is highly unlawful on its face.

As the owner and operator of SAT, the City is not free to use subjective criteria to choose one airline over another based on the desire of the municipal government decision makers. Airports are not legally entitled to pick "winners and losers" among the airlines that choose to serve the airport. See *New York Airlines, Inc. v. Dukes County*, 623 F. Supp. 1435 (D. Mass. 1985) (allowing claims to proceed against airport for denying air carrier access to protect service provided by other airlines). Yet, that is precisely what the City has done in this case. See *Southwest Airlines' future at San Antonio International up in the air*, www.kens5.com ("We want to create an environment where everyone is competitive and we understand that **not everyone can win** every time,' said Jesus Saenz, director of SAT.") (Emphasis added). See also Page 2 of SAT's Summary of Decision-Making Process for Post-DBO Gate and Club Locations (describing how all other carriers' requests and needs were accommodated but telling Southwest to "make the most" of what it was given).

Mr. Saenz, Jr., IAP
September 20, 2024
Page 2

Not only is the City unlawfully discriminating against Southwest – in violation of federal Grant Assurance 22 – but it is also violating the Airline Deregulation Act, 49 U.S.C. 41713(b) (“Airline Deregulation Act”), by using its airline selection criteria to improperly involve itself with air carrier “services” and “routes.”

The SAT Gate Assignment Policy

The City’s document titled “Summary of Decision-Making Process for Post-DBO Gate and Club Locations” (the “SAT Gate Assignment Policy”) sets forth the following criteria applied by the City in deciding where to locate airlines at SAT:

“Factors Considered Included:

Number of preferential gates requested by airline

Whether an airline club was requested

Whether airline operates or commits to operating international routes

Whether airline has relevant code share arrangement(s)

Current level of enplaned passengers @ SAT

The airline’s “fit” into San Antonio

The airline’s service, growth, and experience

The existence of a written commitment by airline to city pairs, specific flights, or minimum levels of enplaned passengers

Potential need by airline for appurtenant City Gates (for expansion)

Terminal load-balancing considerations”

(Emphasis added).

In addition to the above-listed factors, the Airport decided that Southwest was not entitled to move to the new Terminal C, whereas other competing airlines were invited to do so, based on the following analysis:

“The EPM, the MA, and a member from each of the SAT AULA team and the SAT TDP team reviewed and considered certain non-quantifiable considerations, among which were **the carriers’ “fit” into San Antonio (relating to desirability of passenger profile (business, leisure, mix, etc.) and airline brand position (network, ULCC, established, start-up, etc.); the airlines “service, growth and experience” (which included an analysis of the airline’s overall reasonable growth potential and commitment to SAT, aspirations for international flights, and any differentiation of product or technology used that would enhance customer experience);** and the possible need for appurtenant City Gates (consideration included the potential for a carrier to grow incrementally beyond its preferential gates and/or for the use of City Gates for RON aircraft, and the availability of usable City Gates for IROPs).”

Mr. Saenz, Jr., IAP
September 20, 2024
Page 3

(Emphasis added).

In sum, the City expressly acknowledges that in deciding where to locate airlines, the City has weighed and considered factors such as (1) the geographic nature of the routes served by the air carrier, (2) the “fit” of the airline into San Antonio, and (3) the “airline’s service.” Moreover, the City shockingly acknowledged that Southwest would be denied access to Terminal C because “that airline (WN) does not have an airline club as part of its offerings.” “SAT Gate Assignment Policy,” at 1.

1. The Gate Assignment Policy Violates the Airline Deregulation Act by Basing Terminal Allocation on Airline “Services” and “Routes.”

Under the Airline Deregulation Act and the U.S. Constitution’s Supremacy Clause, a local government that operates an airport may not apply a provision which relates to an air carrier “route” or “service.” The statute provides:

Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, **regulation, or other provision having the force and effect of law related to a price, route, or service** of an air carrier that may provide air transportation under this subpart. 49 USC 41713(b)(1) (Emphasis added).

The SAT Gate Assignment Policy states that one of the relevant factors is the airline’s “service, growth, and experience.” This is on its face a violation of the Airline Deregulation Act, which does not allow the Airport to consider the nature of the “service” in deciding how to accommodate the airline at the Airport.

In addition, giving priority or a better terminal space to an airline because it offers First Class or airport lounges -- or is deemed to be a superior “fit” with the locality -- is a local provision that relates to air carrier “service.” The SAT Gate Assignment Policy states that a key factor in gate allocation is: “The airline’s ‘fit’ into San Antonio.”

This “fit” factor is an especially blatant violation of the Airline Deregulation Act. Airports may not give better terminal space because of a subjective belief that the favored carrier is a better “fit” with the community. Nor may an airport afford priority or a better terminal space to an airline because they offer more international flights, or to further away international destinations, as that is a local provision that relates to air carrier “routes.”

At its core, the manner in which an airline is accommodated at a federally-funded airport cannot be predicated on the airport operator’s subjective perception as to the carrier’s “fit” into San Antonio, the nature of the passenger population (“business, leisure, mix, etc.”), or the “airline brand position.”

Finally, the City cannot avail itself of the “proprietary powers” exception to the Airline Deregulation Act’s prohibition. “Courts have . . . recognized that local proprietors play an

Mr. Saenz, Jr., IAP
September 20, 2024
Page 4

extremely limited role in the regulation of aviation.” *Arapahoe County Public Airport Authority v. FAA*, 242 F.3d 1213, 1222 (10th Cir. 2001). See also *Am. Airlines, Inc. v. DOT*, 202 F.3d 788, 806 (5th Cir. 2000) (“courts have recognized that local proprietors play an ‘extremely limited’ role in the regulation of aviation”). The City’s decision to deny Southwest access to Terminal C is not the sort of “regulatory conduct related to safety and civil aviation needs [that] may fall under the ‘proprietary powers’ umbrella” *Id.* at 1214 (airport authority “failed to demonstrate that [its] ban” on passenger service was “necessary for the safe operation of the airport” or was “necessary to satisfy the public’s civil aviation needs”). Under no circumstances can the limited “proprietary powers exception” be construed to authorize the City to make gate assignment decisions based on its subjective perception of the nature of the “service” offered by an airline or the “fit” between the airline and the City of San Antonio, or similar considerations.

2. The City’s Refusal to Allow Southwest to Move to the New Terminal Also Unreasonably Discriminates against Southwest in Violation of 49 U.S.C. 47107(a) and Grant Assurance 22(a) and (b)1.

In addition to violating the Airline Deregulation Act, the City’s treatment of Southwest violates 49 U.S.C. 47107(a) and Grant Assurance 22(a) because it improperly discriminates against Southwest for no proper basis. Section 47107(a) states that DOT may not approve federal grants to an airport unless that airport agrees to make “the airport . . . available for public use on reasonable conditions and without unjust discrimination.” Similarly, Grant Assurance 22(a) states that the airport “will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.”

Even a small discount to Southwest for remaining in the old terminal is not sufficient to mitigate the significant harm to Southwest’s competitive position in comparison to the airlines, which the City is favoring by allowing them to move to the new terminal. As stated in an August 12, 2024 letter to you from Southwest:

“Regardless of the potential investment to improve Terminal A, there are significant customer experience items that cannot be mitigated. Terminal A concourse is too narrow and doesn’t meet today’s design criteria. Increasing the hold rooms sizes as you propose will not alleviate overcrowding in the concourse circulation area. Southwest’s international operations will also be negatively impacted due to the relocation of the Federal Inspection Station (FIS) facility from Terminal A to Terminal C. Splitting our operation between two terminals will introduce operational complexity and significantly increase passenger connection times.

The customer experience for our Customers will also suffer due to the potential relocation of the rideshare and taxi area from its current location to a new Transportation Center which will dramatically increase walk times

Mr. Saenz, Jr., IAP
September 20, 2024
Page 5

for what will be over 50% of the total passengers using SAT. The allocation of space types (valet, disabled) in the existing garages when the new garage opens, e.g., if valet service is relocated to new garage, the number of disabled spots is adjusted. Furthermore, access to the USO for those Terminal A customers with military affiliations will be impacted with the relocation of the existing USO to the new Terminal C.

The cumulative effect of these items certainly points to a degraded customer experience for Terminal A passengers flying on the City's largest air carrier.

Southwest simply will not accept the diminished experience for our Customers and Employees and the risk of facility constraints to our future commercial plan by remaining in the airport's oldest facility."

To date, the City has not provided a viable plan that would address these Customer experience issues or rectify the impact to our long-term commercial plan by requiring Southwest to remain in the old Terminal A.

It is also improper to constructively deny Southwest signatory status under the new lease based on the City's improper refusal to permit Southwest to utilize Terminal C. Pursuant to Section 47107(a)(3), "the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status."

Request for Action by the City

Southwest respectfully requests that the City immediately rescind its unlawful SAT Gate Assignment Policy and either move us to Terminal C or establish a viable plan for Terminal A that resolves the issues we have raised and puts us on equal ground with the rest of the carriers at SAT. Because the new lease is set to take effect on October 1, 2024, time is very much of the essence. We request that the City take corrective action no later than Wednesday, September 25, 2024.

Sincerely,

SOUTHWEST AIRLINES CO.



Jeff Novota
Vice President and General Counsel

Mr. Saenz, Jr., IAP
September 20, 2024
Page 6

Copy:

Denise McElroy, Sr. Manager – Airport Affairs, Southwest Airlines Co.
Paul Cullen, Vice President – Real Estate, Southwest Airlines
John Zuzu, Vice President – Corporate Facilities, Southwest Airlines
Steve Sisneros, Vice President – Airport Affairs, Southwest Airlines
Andrea Goodpasture, Managing Director – Airport Affairs, Southwest Airlines
Sherri Hull, Director – Governmental Affairs, Southwest Airlines
Kenneth Gregg, Regional Manager – Airport Affairs, Southwest Airlines
Tim O’Krongley, Aviation Deputy Director – Development, San Antonio International
Airport

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SOUTHWEST AIRLINES CO.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5:24-cv-01085
)	
THE CITY OF SAN ANTONIO, TEXAS and)	
JESUS SAENZ, in his official capacity as)	
Director of Airports for the City of San)	
Antonio, Texas,)	
Defendants.)	
_____)	

**[PROPOSED] TEMPORARY RESTRAINING ORDER AND ORDER SETTING
HEARING ON PRELIMINARY INJUNCTION**

On this day came to be heard Plaintiff Southwest Airlines Co.’s (“Plaintiff” or “Southwest”) Motion for Preliminary Injunction and Emergency Request for Temporary Restraining Order against the City of San Antonio, Texas (“City”), and Jesus Saenz, in his official capacity as the Director of Airports for the City of San Antonio (“Director Saenz”) (collectively, “Defendants”) (hereinafter the “Motion”). Based on the facts and evidence set forth in the Motion and the accompanying Declaration of Steve Sisneros, C.M. and the exhibits thereto, and the other evidence before the Court, this Temporary Restraining Order is GRANTED.

Based on the facts and evidence set forth in the Motion and the accompanying Declaration of Stephen F. Sisneros, C.M. and the exhibits thereto, this Court finds that Southwest has demonstrated that it has a substantial likelihood of success at trial on the merits of its claims against Defendants. In particular, the Court finds that there is a substantial likelihood that Southwest will prevail against the Defendants on its claim for declaratory relief because the Gate Assignment Criteria and Defendants’ actions in prohibiting Southwest from occupying Terminal C at San

Antonio International Airport (“SAT” or “Airport”) likely violate the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Airline Deregulation Act, 49 U.S.C. § 41713(b), because Defendants based the allocation of terminal gate space on subjective preferences and criteria that are prohibited by the Airline Deregulation Act.

From the facts and evidence set forth in the Motion and the accompanying Declaration of Stephen F. Sisneros, C.M. and the exhibits thereto, this Court finds that Southwest has demonstrated a substantial threat of imminent and irreparable harm for which it has no adequate remedy at law. In particular, the Court finds that the threat of harm to Southwest is imminent because Defendants are set to enter into new leases with seven other airlines on October 1, 2024, that award all of the available gates in Terminal C to other airlines, as well as entering into binding leases for the other Terminals at SAT. Once the leases have been entered, it will be impossible to undo the leases and Southwest, if ultimately successful in its claims in this lawsuit, will not be able to occupy Terminal C, or may be unable to obtain suitable space at a renovated Terminal A because of the “Majority-in-Interest” (“MII”) clauses in the new leases, and the likelihood that those tenant airlines will use the MII clauses to object to the necessary capital expenditures for Terminal A. In addition, Southwest’s reputation and goodwill will be irreparably damaged if it is forced to stay in Terminal A for the reasons detailed in the Declaration of Stephen F. Sisneros, C.M. For the same reasons, the Court find that Southwest has no adequate remedy at law.

From the facts and evidence set forth in the Motion and the accompanying Declaration of Stephen F. Sisneros, C.M. and the exhibits thereto, this Court finds that Southwest has demonstrated that the threatened harm to Southwest outweighs the threatened harm to the Defendants if this Order is granted. In particular, the Court finds that Southwest is willing to post an injunction bond to protect Defendants against any potential injury stemming from the issuance

of this Order, according to the terms thereof. Moreover, as set forth above, the likely injury to Southwest is imminent and irreparable, while any injury to Defendants is unlikely because Terminal C is not set to be occupied until 2028 at the earliest. Furthermore, Defendants and the other airlines can operate on a month-to-month lease while this lawsuit is pending.

From the facts and evidence set forth in the Motion and the accompanying Declaration of Stephen F. Sisneros, C.M. and the exhibits thereto, this Court finds that Southwest has demonstrated that the issuance of this Order will not disserve the public interest. As noted above, Terminal C does not open to the public until 2028 and the public will not in any way be affected by the issuance of this injunction.

It is, therefore, ORDERED that Defendants, their officers, agents, servants, employees, and those in active concert with them are commanded forthwith to desist and refrain from entering into, recognizing as effective, or otherwise acting in furtherance of new Leases with airlines that are based on Defendants' unlawful gate allocation policy at SAT until after the Court has ruled on Southwest's request for preliminary injunction, in which case the airlines will operate under a hold-over status under the leases otherwise set to expire September 30, 2024;

It is further ORDERED that the application of Southwest for a preliminary injunction on the foregoing terms shall be heard on October _____, 2024, at _____ o'clock __.m., in the courtroom of _____ located at the United States District Court for the Western District of Texas, San Antonio Division.

It is further ORDERED Southwest shall execute and file with the Court a Bond in conformity with law, in the amount of _____ Dollars (\$_____). In lieu of obtaining and posting a bond, Southwest may deposit the amount of _____ Dollars (\$_____) into the registry of the Court. The clerk of this

Court shall, upon the filing by Southwest of the Bond or deposit required, and upon approving the same according to law, issue a temporary restraining order in conformance with the terms of this Order, and file and record same.

This Order expires on the ____ day of October 2024, at ____ o'clock ____m.

SIGNED this _____ day of September 2024, at _____ o'clock __.m

UNITED STATES DISTRICT JUDGE