

BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

SOUTHWEST AIRLINES CO.,	:	
Complainant,	:	
v.	:	Docket FAA-16-25-_____
THE CITY OF SAN ANTONIO,	:	
Respondent.	:	
	:	

COMPLAINT OF SOUTHWEST AIRLINES CO. UNDER 14 C.F.R. PART 16 AGAINST
THE CITY OF SAN ANTONIO

Communications with respect to this document should be addressed to:

Leslie Abbott
Assistant General Counsel &
Director, Regulatory Affairs
Christopher S. Kelly
Senior Attorney, Regulatory
Affairs
Southwest Airlines Co.
1201 Pennsylvania Ave., NW
Suite 550
Washington, DC 20004
Leslie.Abbott@wnco.com
Chris.Kelly@wnco.com

Michael P. Fleming
Glenn P. Wicks
Alice E. Walker Orr
The Wicks Group, PLLC
601 Pennsylvania Avenue, NW
South Building, Suite 900
Washington, DC 20004
Phone: 202-457-7790
mfleming@wicks-group.com
gpwicks@wicks-group.com

Counsel for Southwest Airlines Co.

TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS.....	i
I. EXECUTIVE SUMMARY.....	1
II. SOUTHWEST'S OBJECTIVES.....	5
III. CERTIFICATION.....	8
IV. JURISDICTION.....	11
V. BACKGROUND.....	14
1. The Terminal Development Program.....	14
2. The Sponsor.....	16
3. The Complainant.....	17
4. The Passenger Terminals at SAT.....	20
5. Prior Airline Use and Lease Agreement.....	20
6. Prior Gate Assignments.....	21
7. Terminal A's Deficiencies.....	22
8. The City's Proposed Solution -- New Terminal C.....	27
9. New Lease Discussions.....	28
10. The City's Gating Decision.....	32
VI. SUMMARY OF THE CITY'S GRANT ASSURANCE VIOLATIONS.....	34
VII. THE CITY FAILED TO ENGAGE IN REASONABLE CONSULTATIONS WITH SOUTHWEST.....	40
1. Grant Assurance 8 Requires Reasonable Consultation with Users.....	40
2. The Rates and Charges Policy Also Requires Reasonable Consultations.....	41

3. The City Repeatedly Represented that Southwest would be Placed in the New Terminal.....	42
4. The City Intentionally Concealed from Southwest its Plans to Place Southwest in Terminal A.....	45
5. The City Concealed its Decision Criteria.	49
6. The City Further Acted Unreasonably After Notifying Southwest of its Gating Decision.....	51
7. The City Team Falsely Characterized Southwest’s Expansion Plans in order to Justify its Pre-Determined Decision.....	55
8. The City Failed to Engage in Reasonable Consultations with Southwest in Violation of Grant Assurance 8.....	58
9. The City’s Consultations with Southwest Failed to Comply with the Rates and Charges Policy.	59
10. The City Also Failed to Act in Accordance with Industry Standards.	60
VIII. THE CITY’S IMPERMISSIBLE SELECTION CRITERIA CONSTITUTED UNJUST DISCRIMINATION AGAINST SOUTHWEST.	61
1. Grant Assurance 22 Requires that Airport Sponsors Employ Reasonable and Nondiscriminatory Criteria in Decision-Making.....	61
2. The Rates and Charges Policy Requires Airport Sponsors to Employ a Reasonable, Transparent, and Not Unjustly Discriminatory Methodology.....	62
3. Permissible Criteria Should Have Been Used.....	63
4. Applying Appropriate Criteria Would Have Favored Southwest.....	64
5. The City Used Impermissible Criteria to Discriminate against Southwest and its Passengers.	66
6. The City Improperly Relied on Subjective Perception of Carrier “Fit”.....	67
7. The City Improperly Relied on Requests for Exclusive Airline Clubs.	69
8. The City Improperly Relied on an Arbitrary “City Pairs Commitment” Standard.....	73

9. The City’s Decision Would Harm Southwest’s International Service.....	74
10. The City Improperly Relied on Vague “Service, Growth, and Experience” Standards.....	76
11. The City’s Arbitrary Scoring System in Aggregate Discriminated Against Carriers Like Southwest in Favor of Carriers that the City Preferred.....	79
12. The City Failed to Accommodate Southwest’s Robust Expansion Plans, in Violation of Grant Assurance 39.....	81
13. The FAA Should Not Be Fooled by the City’s Recent Attempts to Recast its Decision as Reliant Upon Objective “Load Balancing” Factors.....	84
IX. THE CITY IS PROPOSING UNREASONABLE AND UNJUSTLY DISCRIMINATORY FEES.....	87
1. Prohibition on Unreasonable Fees and Unjust Discrimination.	87
2. Only Comparable Facilities Can Be Grouped Into A Single Cost-Center.....	89
3. The Terminals the City is Grouping Into a Single Cost-Center are not Comparable.....	91
4. The City has also Failed to Develop a Plan or Budget to Render Terminal A Comparable.....	92
5. Terminal A is Especially Ill-Suited for Southwest’s High-Volume Operation. 97	
X. PRAYER FOR RELIEF.....	99

BEFORE THE
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.

SOUTHWEST AIRLINES CO.,	:	
	:	
Complainant,	:	
v.	:	Docket FAA-16-25-_____
THE CITY OF SAN ANTONIO,	:	
	:	
Respondent.	:	
	:	

COMPLAINT OF SOUTHWEST AIRLINES CO. UNDER 14 C.F.R. PART 16 AGAINST
THE CITY OF SAN ANTONIO

I. EXECUTIVE SUMMARY.

1. Southwest Airlines Co. (“Southwest”) brings this Complaint against the City of San Antonio (“the City”) following substantial efforts to negotiate in good faith to resolve the City’s multiple violations of its Grant Assurances in connection with the City’s plan to build a new airline terminal at the San Antonio International Airport (“SAT” or the “Airport”).

2. Extensive internal City documents, which the City no doubt intended to remain private, demonstrate the City’s numerous, intentional efforts to hide the fact that its terminal allocation decision was predetermined. Those documents also reveal that the City engineered the process throughout to ensure its desired outcome:

excluding Southwest from the City’s planned new facility without addressing significant shortfalls in the existing space in which it intended to leave Southwest, Terminal A, which the City itself has deemed “functionally obsolete” and “undersized.”¹

3. Shockingly, the City explicitly communicated its reason for excluding Southwest: it views Southwest’s passengers as lacking the “fit” and “desirability of passenger profile” to belong in the new terminal, ostensibly because they do not use VIP lounges or book seats in premium aircraft cabins.² The City intends to construct a state-of-the-art terminal for passengers that it prefers, because it deems them “fit,” while leaving behind 37% of the airport’s passengers -- those who fly Southwest -- in a “functionally obsolete” facility that the City assessed as headed for demolition. All this, while charging Southwest (and, ultimately, its passengers) disproportionately high rates, and attempting to use those fees to subsidize its new facility. Moreover, the City is compounding these violations by now attempting to leverage Southwest into accepting the City’s predetermined outcome by imposing upon it punitive charges masked as non-Signatory rates.

4. This Complaint will document in extensive detail four principal violations by the City of its Federal obligations in allocating its terminal space. First, the City

¹ See Section V. “Background,” Subsection 6. “Terminal A’s Deficiencies” of this Complaint for these specific quotations, along with numerous additional statements made by the City detailing Terminal A’s glaring deficiencies.

² See EXHIBIT 1, “Summary of Decision-Making Process for Post-DBO Gate & Club Locations” (the “Gate Assignment Criteria”); EXHIBIT 2, “Gating Scorecard Worksheet”; EXHIBIT 3, “Gating Placement Analysis Worksheet,” all discussed extensively throughout this Complaint.

chose to employ a cost-allocation approach that lumps all terminals into a single cost-center, despite the fact that the new and existing terminals are in no way comparable (and the City has no plan to make them comparable, if even possible), resulting in unreasonable and unjustly discriminatory fees levied against Southwest in violation of Grant Assurance 22(e), the Anti-Head Tax Act, and the Department of Transportation's Policy Regarding Airport Rates and Charges (the "Rates and Charges Policy").

The City has also exacerbated these improper charges by unreasonably classifying Southwest as a non-Signatory airline during this dispute -- despite the "holdover" provision in the prior Airline Use and Lease Agreement ("AULA") calling for the continuation of Signatory rates³ -- in further violation of Grant Assurances 22(a) and (e) and the Rates and Charges Policy.

5. Second, the City unjustly discriminated against Southwest by using patently impermissible criteria to arrive at its predetermined outcome relegating Southwest to the old Terminal A, in violation of Grant Assurances 22(a) and 22(e) and the Rates and Charges Policy.

6. Third, the City abjectly failed to conduct reasonable consultations with air carriers during its Terminal Development Program ("TDP") in violation of Grant Assurance 8 and the Rates and Charges Policy.

³ See EXHIBIT 8, Excerpted Provision 2.4 from the Prior Airline Use and Lease Agreement, stating that an Airline holding over "shall be construed as a tenancy from month-to-month and Airline will pay the then applicable rentals, rates and charges for Signatory Airlines provided negotiations for a new substitute agreement have not reached an impasse."

7. Fourth, the City failed to accommodate adequately Southwest's expansion plans, in violation of Grant Assurance 39. Each of these violations will be set forth in detail in this Complaint, and supported by incontrovertible facts, largely the City's own statements and admissions.

8. A critical element underpinning the U.S. scheme for funding airport improvements is at stake here. Airports that accept Federal funding are required to be good stewards of Federal dollars. To ensure this, they are bound by the Federal mandate to behave reasonably and fairly, are prohibited from playing favorites or putting narrow, local concerns ahead of the broader goals of the U.S. aviation system and the traveling public and may not impose unreasonable charges for the use of facilities. Here, the City has behaved patently unreasonably in its dealings with Southwest, is impermissibly attempting to play favorites among its users based upon its own subjective and improper preferences and is attempting to impose upon Southwest grossly unreasonable charges for the use of a substandard, obsolete facility. Such an approach should not be allowed to stand.

9. As is supported by the extensive documentation provided in this complaint, Southwest urges the FAA to take immediate action to hold the City accountable to its Federal obligations. Failure to do so would not only condone the City's outrageous and unacceptable behavior, but would render meaningless the clear legal protections afforded airport users under Federal law, the Grant Assurances, and FAA policy.

II. **SOUTHWEST'S OBJECTIVES.**

10. As the largest U.S. domestic air carrier, Southwest negotiates with airport sponsors across the United States. In every other instance, Southwest works collaboratively with these airports, recognizing that airport sponsors must balance the competing interests of multiple airport users. Southwest does not make a habit of complaining to the FAA about its airport arrangements.

11. Moreover, Southwest has had a long-term presence at and relationship with San Antonio, going back to Southwest's founding. Southwest values this relationship, and has expended considerable effort, energy, and funds to attempt to work with the City to find a compliant solution for the new TDP. Thus, Southwest does not take lightly this step of filing a Part 16 Complaint with the FAA against the City.

12. However, Southwest's value proposition is to provide excellent, reliable, and safe service to its customers at a fair price. In doing so, it is incumbent upon Southwest to ensure that it keeps its costs down where possible and passes those savings on to its customers.

13. Here, the City of San Antonio's unreasonableness, duplicity, and intransigence have forced Southwest's hand. Southwest, with the support of its senior leadership, took every reasonable step to find a solution to this impasse, to no avail.

14. In addition to the City attempting to force Southwest into a severely disadvantageous position, locking it into substandard facilities and making it, and its customers, pay the lion's share of the high costs of facilities improperly awarded to its

competitors. The City's Airport leadership team has also unfairly suggested that Southwest's passengers are less desirable and do not "fit" into the image that they seem to have of themselves and their city. Southwest finds this characterization of its passengers both offensive and mystifying. Southwest has never seen any such decisional criteria at any other airport in the country in its operational history.

15. Southwest stands behind its business plan, its service, and -- most importantly -- its customers.

16. To make matters worse, the airport sponsor is unjustly discriminating against Southwest by trying to force Southwest to pay non-Signatory rates from the start of the new AULA on October 1, 2024. The City could have treated Southwest as a Signatory carrier for rate purposes during the pendency of this dispute, as called for in the AULA signed by Southwest and the City. Instead, it forced Southwest to choose between signing an unreasonable new lease agreement with noncompliant rates or paying a penalty as a non-Signatory. The City is now further exacerbating this improper treatment of Southwest by attempting to push through a \$15 million spending increase for an additional gate in the new terminal, and another \$25 million increase to expand the floor plate of the new terminal by approximately 5,500 square feet.⁴ The line-item for an additional gate only benefits carriers selected for Terminal C. As Southwest understands it, the second line-item is intended for the sole benefit of Delta Air Lines ("Delta"), to accommodate a Delta club on the main level of Terminal C. The City is requiring responses to this proposed spending increase from

⁴ EXHIBIT 33, MII Ballot Prepared by the City of San Antonio.

the Signatory airlines by March 21, 2025, but is excluding Southwest from the vote. However, the City has made it impossible for the Signatory airlines to block the City's proposal. Doing so would require the action of more than 50% of Signatory Airlines who together account for greater than 60% of the Airport Terminal Spend, a standard that is mathematically impossible to meet when excluding Southwest. The result would be to render the Majority-In-Interest (or "MII") clause moot and allow the City to further favor an individual carrier, without any recourse by the other airlines despite an increase in their CPE.⁵

17. Southwest played by the rules when negotiating with the City. It now requests the FAA to require the City to abide by the rules as well. Those rules are in place to ensure that airports act reasonably, price their services fairly, treat their airlines equally, and not discriminate against airlines, or passengers, based on impermissible factors such as some arbitrary and subjective sense of their "fit" or their "brand position."

18. Southwest urges the FAA to examine carefully the reasonableness of the City's consultations, decision criteria, and proposed terminal rates under the new AULA, and to hold this airport sponsor to the Federal obligations applicable to airport sponsors such as the City

⁵ "CPE" stands for Cost Per Enplanement and is a standard airline metric of airport costs. Southwest intends to object to this ballot and vote, of which it became aware only during the week of March 17, 2025.

III. CERTIFICATION.

19. Pursuant to 14 C.F.R. § 16.21, Southwest certifies that it has made substantial and reasonable good faith efforts to resolve the disputed matter informally with the City of San Antonio prior to filing this Complaint and there is no reasonable prospect for timely resolution of the dispute.

20. As detailed in this Complaint, Southwest took extensive -- and intensive -- efforts, following the City's gating decision on May 29, 2024, to attempt to collaborate with the City to determine whether and how Terminal A could be redeveloped to be made comparable to the other terminals and suitable to Southwest's high-volume operation, what the cost would be of such work, and how it would be funded.

21. These efforts, however, neither yielded a workable solution nor persuaded the City from pushing forward with seeking City Council approval, finalizing its proposed new AULA and gate assignments, and beginning to enter into new AULAs with other carriers at SAT.

22. Following the City Council's approval of the City's proposed new AULA and the gating assignments on September 12, 2024, and with the City asserting that the prior lease agreements would expire on September 30, 2024, Southwest refused to execute a new AULA with the City.

23. Executing the new AULA would have locked Southwest into terminal space that was not suited to Southwest's desired level of operations, with no clear plan or ability to make it suitable, or to pay for such rehabilitation even if possible.

24. The City's proposed new AULA also would have stranded Southwest's arriving international passengers in a facility with no FIS⁶ and no connector to the FIS-equipped terminal post-DBO⁷ of the new Terminal C.

25. The City's proposed new AULA also would have: locked Southwest into 10 to 15 years of rates and charges at SAT that were unreasonable in light of the standards and levels of passenger services in the facilities to which it would be provided access; forced the Terminal A carriers into a single cost-center covering multiple terminals that were not comparable (and cannot be made comparable), in violation of the FAA's Rates and Charges Policy; and improperly burdened Southwest with subsidizing competing carriers for use of facilities to which Southwest would have no access.

26. In late September of 2024, Southwest commenced litigation against the City in connection with the City's proposed gate assignment under the new AULA.⁸

27. Southwest's refusal to sign the new AULA and initiation of litigation, however, were coupled with continued outreach to the City team to attempt to resolve the dispute informally.

⁶ Federal Inspection Service, which is a facility for processing arriving passengers and crews for entry into the United States.

⁷ "DBO" stands for Date of Beneficial Occupancy, a customary term in facilities planning which essentially means the opening date of the new facility.

⁸ Complaint for Declarative and Injunctive Relief, U.S. District Court for the Western District of Texas, San Antonio Division, Civil Action No. 5:24-cv-1085 (Sept. 26, 2024).

28. Following exchanges of calls and emails at the working level, meetings were held between Southwest and the City, facilitated and hosted by the FAA's Southwest Region.

29. A Southwest team met with the City's representatives at the FAA's Southwest Region Headquarters in Fort Worth, Texas on November 19, 2024. Southwest and the City met a second time, at the same location, on December 16, 2024. The parties exchanged positions and proposals in and around these meetings, and with facilitation by FAA representatives from FAA Southwest Region, FAA Office of the Chief Counsel, and FAA Airport Compliance and Management Analysis,⁹ attempted to find common ground for a resolution of the dispute.¹⁰

30. Despite such reasonable and good faith efforts, Southwest's attempts to negotiate with the City for a resolution reached an impasse and have now ceased, leading to the filing of this Complaint.

31. At present there is no reasonable prospect for practical and timely resolution of the dispute.

32. Moreover, because Southwest has not signed the noncompliant new AULA, the City, as of October 1, 2024, and to date, is treating Southwest as having non-Signatory status at the Airport, significantly raising Southwest's costs at SAT and depriving it of the voting and other rights that would accompany Signatory

⁹ Southwest would like to reiterate here its gratitude to the FAA team that facilitated and observed these meetings.

¹⁰ The parties have agreed that such discussions were confidential settlement negotiations protected by Federal Rule of Evidence 408.

airline status. Thus, Southwest is materially harmed for each day that this matter remains unresolved. The rates will be further increased when the new Terminal C is completed.

IV. JURISDICTION.

33. The Federal Aviation Act of 1958, 49 U.S.C. §§ 40101, et seq. confers broad authority on the FAA to regulate air commerce. Any airport receiving Federal assistance in the form of an Airport Improvement Program (“AIP”) grant, such as SAT, must provide written assurances that the airport’s sponsor will comply with certain Federal Requirements (the “Grant Assurances”).¹¹

34. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal government.¹²

35. The FAA has a statutory mandate to ensure that airport owners comply with their Federal Grant Assurances.¹³

36. This Complaint specifies the Federal assurances that the City of San Antonio has violated: Grant Assurance 8; Grant Assurance 22(a); Grant Assurance 22(e); and Grant Assurance 39.

¹¹ 49 U.S.C. § 47107.

¹² *Northwest Airlines, Inc. v. Indianapolis Airport Auth.*, FAA Docket No. 16-07-04, at 11 (Oct. 7, 2009) (“Indianapolis Airport”); *United Airlines v. Port Authority of New York and New Jersey*, FAA Docket No. 16-14-13, at 6 (Nov. 19, 2018) (“United v. PANYNJ”).

¹³ *Indianapolis Airport* at 7; *Union Flights, Inc. v. San Francisco International Airport*, FAA Docket No. 16-99-11, at 3 (Feb. 15, 2000) (“Union Flights”).

37. This Complaint also asserts the City's failure to comply with the Rates and Charges Policy and the Anti-Head Tax Act.¹⁴ The City's deficiencies in complying with its Federal obligations stem from: (i) the City's failure to engage in the requisite reasonable consultative process with Southwest, including by misleading the airline and failing to provide it with material information during the consultation process; (ii) the City's failure to use permissible criteria when discriminating between airlines for terminal gate assignments, amounting to unjust discrimination; (iii) the City's imposition on Southwest of unreasonable rates and charges in light of the standards and levels of passenger services in the facilities offered to Southwest; (iv) the City's inappropriate rate-making methodology, in particular combining in a single cost-center multiple terminals that are not comparable, without an assessment or budget to render Southwest's assigned terminal comparable (which in any case the competing carriers at SAT could veto), and which if allowed to stand would impermissibly force Southwest to subsidize its competitors' superior facilities; and (v) the City improperly subjecting Southwest to a rate increase since October 1, 2024 by imposing on Southwest the difference between Signatory and non-Signatory rates.

38. The FAA has statutory authority under 49 U.S.C. § 46101 to investigate a complaint with respect to an airport sponsor's failure to comply with its Federal obligations.

39. Pursuant to the FAA Rules of Practice for Federally-Assisted Airport Proceedings, 14 C.F.R. Part 16 (the "FAA Rules of Practice"), a person directly and

¹⁴ 49 U.S.C. § 40116.

substantially affected by any alleged noncompliance may file a complaint with the FAA.¹⁵

40. Southwest has standing to file this Complaint under 14 C.F.R. Part 16 § 16.23 because it is an airline operating at SAT that has been substantially affected by the City's failure to comply with its Federal obligations as the airport's sponsor, as pointed out in detail in this Complaint.

41. 49 U.S.C. § 47129, enacted as § 113 of the FAA Authorization Act of 1994 (the "DOT Expedited Airport-Fees Dispute Statute"), sets forth expedited procedures pursuant to which an airline may request that the Secretary of Transportation determine the reasonableness of fees imposed by an airport on one or more airlines. However, that statute is not the exclusive remedy for an airline that has been substantially affected by an airport sponsor's failure to comply with its Federal obligations.¹⁶

¹⁵ 14 C.F.R. § 16.23.

¹⁶ "To provide an expedited process and guidelines for resolving reasonableness disputes, Congress enacted Section 113 of the Federal Aviation Administration Authorization Act of 1994, directing the Secretary of Transportation ("Secretary") to determine whether an airport fee is reasonable upon an airport's request or an airline's complaint. *See* 49 U.S.C. § 47129(a), (c) (1994). Consequently, airlines now have two administrative options for challenging the reasonableness of airport fees--traditional investigation by the FAA or expedited determination by the Secretary--while airports have only the latter option." *Air Canada v. Dep't of Transp.*, 148 F.3d 1142, 1145 (D.C. Cir. 1998); "Although the [DOT Expedited Airport-Fees Dispute] statute created new procedures for examining the reasonableness of new or increased airport fees, it did not change the substantive rights and duties of the airports or the airlines." *Delta Airlines v. Lehigh-Northampton Airport Authority*, DOT Docket No. 50264, 1995 WL 262369 (May 4, 1995) ("Lehigh-Northampton"). "The new statute simply does not address all airport fee disputes, much less all controversies concerning federal aviation law that in some sense relate to airport fees." *Lehigh-Northampton* at 13.

42. The DOT Expedited Airport-Fees Dispute Statute expressly excludes from its scope a fee “imposed pursuant to a written agreement.”¹⁷ If an affected air carrier chooses not to file under the expedited statutory procedures, it does not forfeit its longstanding right to proceed under traditional administrative remedies, such as a 14 C.F.R. Part 16 complaint.¹⁸

43. Moreover, while this Complaint asserts that the City is imposing unreasonable fees at the Airport, it also contains a number of additional assertions of the City’s failure to comply with its Federal obligations. Most, if not all, of such assertions also fall entirely outside of the scope of the DOT Expedited Airport-Fees Dispute Statute, thus can only be brought under the FAA Rules of Practice as a Part 16 Complaint.

V. BACKGROUND.

1. The Terminal Development Program.

44. Under its TDP, the City is building a new, state-of-the-art terminal, dubbed Terminal C, at the Airport. This modern and expansive facility will set a new standard for the terminals at SAT, far surpassing the existing terminals in customer

¹⁷ 49 U.S.C. § 47129(e)(1). *See also Rates and Charges Policy*, 78 Fed. Reg. 55,330, 55,331-32 (Sept. 10, 2013) (noting under Section C that “a dispute that is not subject to expedited [DOT] procedures ... will be processed by FAA under procedures applicable to airport compliance matters in general”).

¹⁸ *See Lehigh-Northampton* at 18-19, dismissing a carrier complaint under the DOT Expedited Fees Statute but referring it to the FAA to review compliance under 14 C.F.R. Part 13 (*FAA Investigative and Enforcement Procedures*, which sets forth the means by which a person may assert a violation of the Federal regulations to the FAA through a process that is less formal than the airport-specific 14 C.F.R. Part 16 procedures). *See also United v. PANYNJ*, in which the Director asserted jurisdiction over an airport rates and charges dispute brought by United as a Part 16 complaint against the sponsor of Newark-Liberty International Airport.

experience and operational capabilities. However, because of the specific design chosen by the City, the new terminal will not be large enough to accommodate all airlines interested in using it.

45. As a result, the City had to decide which airlines would be assigned gates in the new terminal, and which airlines would remain in Terminal A, a facility that the City and its consultants have repeatedly described as “functionally obsolete” and headed to demolition, and which cannot be rendered comparable to the other terminals at SAT even if renovated.

46. Southwest has served San Antonio since the airline’s inception in 1971, and is the single largest carrier at SAT, enplaning 37% of passengers in 2024.¹⁹ Yet the City is now improperly attempting to force Southwest to agree to remain in Terminal A, without any credible plans to render that terminal comparable to the other facilities at the Airport. The City is also attempting to force Southwest to agree to pay rates and charges for a grossly inferior facility at the same rate it intends to charge the carriers selected for use of the new, modern terminal.

47. Southwest is the least suited to Terminal A given that terminal’s glaring deficiencies. Southwest carries the most passengers²⁰ and thus uses the most gates at

¹⁹ EXHIBIT 31, “December & Year End 2024 Statistics,” p.6 table showing “Domestic Market Share” and Passengers Carried 2024 (January 31, 2024), accessed at the City’s website, located at: <https://flysanantonio.com/wp-content/uploads/2025/01/December-2024-Stats-Report.pdf>.

²⁰ Southwest achieved a 37% passenger share at SAT in 2024. American came second with a 22% passenger share, while Delta and United each carried 15% of passengers at SAT in 2024. *Id.* at 6.

the Airport;²¹ utilizes its gates more intensively than any other carrier;²² and has the most aggressive expansion plans for the Airport²³ that will result in Southwest flying nearly 50% of all passengers at SAT, who will then be forced through a terminal offering some 27% of the total terminal square footage upon completion of the proposed TDP. The high-volume nature of Southwest’s operation, which depends upon frequent and fast turns of its gates and large volumes of passengers, is uniquely ill-suited to the severe (and unfixable) capacity constraints and Levels of Service deficiencies of Terminal A.

2. The Sponsor.

48. SAT is the sole commercial-service airport serving San Antonio, Texas.
49. The City is the owner and operator of SAT.²⁴
50. SAT is classified by the FAA as a Medium Hub airport,²⁵ defined as an airport that receives between 0.25% to 1.0% of the annual U.S. commercial enplanements.²⁶

²¹ Southwest currently leases six of SAT’s gates, whereas no other carrier uses more than four.

²² Southwest turns each of its gates at SAT eight to nine times per day, compared to an SAT average of 5.4 in 2018.

²³ Southwest requested 10 gates at Terminal C DBO, for an incremental four, whereas no other carrier requested more than one incremental gate (except that Delta requested five, an increase of two over its current three exclusive gate, but only one when considering that it frequently uses an adjacent common-use “City” gate).

²⁴ The City also operates a second airport serving only General Aviation operations.

²⁵ See Appendix A to the National Plan of Integrated Airport Systems (2025-2029), hereinafter “NPIAS Appendix A.”

²⁶ *Airport Categories*, FEDERAL AVIATION ADMINISTRATION, https://www.faa.gov/airports/planning_capacity/categories (last visited Mar. 14, 2025).

51. SAT recorded 5.3 million enplanements in calendar year 2023.²⁷

52. SAT functions as a primarily Original and Destination (or “O&D”) airport, meaning that the airport primarily serves passengers that are originating at, or destined for, SAT. Very few passengers are using the airport to connect.²⁸

3. **The Complainant.**

53. Southwest Airlines Co. is a major air carrier certified and operating under Part 121²⁹ and based in Dallas, Texas.

54. Southwest has a long history in San Antonio. It was established in 1967 by Herb Kelleher and Rollin King in San Antonio as Air Southwest Co. Southwest adopted its current name in 1971, when it commenced passenger service, 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.

55. Currently, Southwest offers scheduled service to approximately 117 destinations in the United States and in ten other countries. Southwest carries more domestic passengers than any other airline in the United States and is the third largest airline in the world based on passengers flown.

²⁷ NPIAS Appendix A, at A-102.

²⁸ See EXHIBIT 22, Deposition of Timothy O’Krongley, Deputy Aviation Director for Planning, Infrastructure and Development Division, City of San Antonio, (O’Krongley Dep. 68:3; 69:18, November 14, 2024), agreeing that SAT is an O&D airport and will be for the foreseeable future. In the parlance of “hub-and-spoke” airline networks, O&D airports function as “spokes” that are served by “hubs.”

²⁹ 14 C.F.R. Part 121 – Operating Requirements: Domestic, Flag, and Supplemental Operations.

56. Southwest is also the largest carrier serving SAT, accounting for 37% of both passengers and flights in 2023, and 37% of passengers in 2024.

57. Southwest strives to keep its costs down where possible, as a key element of its business model of offering great value and service to its passengers.

58. One way in which Southwest keeps its costs down is by using its assets, especially its aircraft, efficiently, and passing the savings on to its customers in the form of lower fares. As one example, Southwest operates only one aircraft type in its fleet, the Boeing B737, yielding economies of scale and commonality in parts, maintenance, and crew training.

59. Southwest also “turns” its aircraft relatively quickly on the ground at airports to optimize the use of its aircraft and its airport facilities. This means that Southwest tends to use its airport gates for more aircraft daily turns than the industry average. This produces greater than average passenger flows, or what could be deemed a high-volume operation from an airport-usage perspective.³⁰

60. Southwest has historically offered only a single class of service, as opposed to some of its traditional competitors (sometimes called “legacy network carriers”) that have chosen a “split cabin” offering both first and economy classes of service. Southwest has also used a boarding process that differs from the legacy network carriers, utilizing boarding positions rather than assigned seats. In July of

³⁰ The City is well aware of Southwest’s more-intensive usage of gates. In the 2021 Master Plan the City’s consultants note: “While Southwest Airlines routinely schedules 8 or 9 turns per gate, this is not typical of other airlines....” City of San Antonio, 2021 Master Plan.

2024, however, Southwest announced³¹ that the carrier is “moving forward with plans to assign seats, offer premium seating options, [and] redesign the boarding model” among other changes to be introduced in 2025.

61. Southwest’s efficient business model and attractive fares do not come at the expense of quality or customer service. Far from it. In 2024, Southwest was recognized for its unwavering commitment to Customers by receiving top honors and the leading Economy Class Customer Satisfaction distinction in the J.D. Power 2024 North America Airline Satisfaction Study for a third consecutive year. This study measures passenger satisfaction among North American carriers based on performance across seven core dimensions of customer experience; Southwest scored the highest on all seven dimensions.³² Southwest was also named to the first ever Forbes 2023 Customer Experience All-Stars List, representing brands that consumers in the U.S. viewed most positively for the company’s products, services, and treatment of customers.³³ The Wall Street Journal also recently ranked Southwest second among U.S. airlines in 2024.³⁴

³¹ Press Release, Southwest Airlines, Southwest Airlines Launches Enhancements to Transform Customer Experience and Improve Financial Performance (July 25, 2024), available at <https://www.southwestairlinesinvestorrelations.com/news-and-events/news-releases/2024/07-25-2024-110102603>.

³² Press Release, Southwest Airlines, Southwest Airlines Ranks First in Customer Satisfaction Among Economy Class Passengers by J.D. Power (June 6, 2024), available at <https://www.southwestairlinesinvestorrelations.com/news-and-events/news-releases/2024/06-06-2024-160046424>.

³³ Southwest Airlines, Southwest Named on Forbes’ 2023 Customer Experience All-Star List (Nov. 8, 2023), <https://www.swamedia.com/southwest-stories/southwest-named-on-forbes-2023-customer-experience-all-stars-list-MCWJZYBUP56BA6JF6OP77EVTT6JU>.

³⁴ D. Gilbertson, *The Best and Worst Airlines of 2024*, THE WALL STREET JOURNAL, Jan. 21, 2025, <https://www.wsj.com/lifestyle/travel/best-airlines-2024-delta-southwest-ec7f51cc> (last visited Mar. 17, 2025).

4. The Passenger Terminals at SAT.

62. SAT is located on property within the City of San Antonio that the City acquired in 1941. In 1944, the airfield was officially named 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).³⁵

63. 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.³⁶

64. The existing Terminal A (sometimes referred to as “Terminal 1” or “Concourse A”) was commissioned in 1984 and has sixteen gates with a total area of 397,634 square feet.³⁷

65. The existing Terminal B (sometimes referred to as “Terminal 2” or “Concourse B”) was constructed in 2010, replacing an older terminal, and has approximately 247,099 square feet of space.³⁸

5. Prior Airline Use and Lease Agreement.

66. The most recent Airline Use and Lease Agreement (the “Prior AULA”) for carriers serving the airport was authorized by the San Antonio City Council in

³⁵ EXHIBIT 25, Declaration of Steve Sisneros at ¶ 12.

³⁶ *Id.* at ¶ 13.

³⁷ *Id.* at ¶ 14.

³⁸ *Id.* at ¶ 15.

2020. The term expired on September 30, 2024 after the City opted not to exercise an option to extend the Prior AULA for an additional five years.³⁹

67. Southwest held the status of a “Signatory” airline under the Prior AULA, along with the three other major U.S. airlines serving SAT: American Airlines (“American”), Delta, and United Airlines (“United”). Two all-cargo operators, which use their own facilities, also held Signatory status: FedEx and UPS. Viva Aerobus also held Signatory status under the prior AULA, for a total of seven Signatory airlines.⁴⁰

6. Prior Gate Assignments.

68. Southwest leased and used six gates in Terminal A under the Prior AULA, the most gates of any single carrier at SAT.

69. Southwest shared Terminal A with fellow Signatory carrier Delta (which had three gates, plus often used an adjoining “City gate”).

70. “City gates” is a term sometimes used to describe the remaining seven gates in Terminal A⁴¹ because they are not exclusively used by any individual airline.

³⁹ See City of San Antonio Agenda Memorandum, Item No. 6, September 12, 2024, at 3-5, <https://sanantonio.primegov.com/meetings/ItemWithTemplateType?id=204278&meetingTemplateType=2&compiledMeetingDocumentId=47431>.

⁴⁰ W. Scott Bailey, *Airport Lands Long-Term Commitments from Major Airlines*, SAN ANTONIO BUSINESS JOURNAL (Sept. 13, 2024), https://www.bizjournals.com/sanantonio/news/2024/09/13/airport-lands-commitments-major-airlines.html?utm_source=st&utm_medium=en&utm_campaign=me&utm_content=AN&ana=e_AN_me&j=36722224&enddate=2024-09-13&empos=p4.

⁴¹ The assigned gates in Terminal A are numbered A2 through A17; gate A1 is no longer assigned and therefore not included in the gate count of 16.

Rather, they are shared by multiple carriers under common-use⁴² leasing agreements. Four of these seven City gates are international-capable gates, so these gates can be thought of as split between three domestic and four international gates.

71. Six domestic airlines shared the three Terminal A common-use, domestic, City gates: Allegiant Airlines (using two gates); JetBlue (two); Alaska Airlines (one); Frontier Airlines (one); Spirit Airlines (one); and Sun Country (one).

72. Three airlines from Mexico shared the four Terminal A common-use, international-capable, City gates: Viva Aerobus (using three gates); AeroMexico (one gate, code-sharing with Delta); and Volaris Airlines (one).

73. Signatory airlines American and United each had five gates in Terminal B, which has a total of 10 gates (for an airport-wide total of 26 gates).

7. **Terminal A's Deficiencies.**

74. The significant deficiencies in Terminal A led to the City's plans to build the new Terminal C. Such deficiencies in Terminal A were the driving force behind the airlines engaging with the City on its TDP, including the City's plans to develop a new terminal at SAT.

⁴² "Common use" airport facilities are those that are used by more than one carrier as needed, and not subject to an exclusive lease to a single airline.

75. Terminal A was opened in 1984.⁴³ It is one of the original terminals at SAT.⁴⁴ Terminal A was “Designed in early 1980s to now outdated design standards.”⁴⁵

76. In its Project Overview, describing the need for a TDP, the City identified the need to modernize Terminal A as a critical factor in the overall redevelopment plan. “Although some capital improvements have been completed over the years (mostly aesthetic), no significant investment in infrastructure has occurred, and [Terminal A] is reaching the end of useful life. Further, the facility was planned for a prior era of aviation with smaller airplanes and fewer flights. To address these concerns, significant upgrade investment is needed.”⁴⁶

77. In its 2040 Strategic Development Plan, the City summarizes some of the critical deficiencies in Terminal A.⁴⁷

- Terminal A is “functionally obsolete.”⁴⁸
- “Terminal A is functionally obsolete and undersized and should therefore be replaced rather than renovated.”⁴⁹

⁴³ 2021 San Antonio International Airport Master Plan, Demand / Facility Requirements, hereinafter “2021 Master Plan,” at 4-38, https://flysanantonio.com/wp-content/uploads/2022/09/SAT-MP_6-Implementation-Plan-FINAL-20220816.pdf (last visited March 18, 2025).

⁴⁴ EXHIBIT 9, “San Antonio International Airport Terminal Development Program Overview” at 3.

⁴⁵ EXHIBIT 10, “Terminal A: A Critical Infrastructure Decision for San Antonio Airport” (June 20, 2023) at 6.

⁴⁶ EXHIBIT 9, *supra* note 39 at 3.

⁴⁷ 2040 Strategic Development Plan, https://flysanantonio.com/wp-content/uploads/2022/09/SAP_Executive_Summary_online.pdf (last visited March 18, 2025).

⁴⁸ *Id.* at 3.

⁴⁹ *Id.* at 5.

- “Current concourses are too narrow; today’s width standard is approximately 110 feet versus the current 67 feet (Terminal A) to 100 feet (Terminal B).”⁵⁰
- “Inadequate space is available today for concessions.”⁵¹

78. In its own SAT Gate Assignment Criteria (identified in this Complaint and set forth as EXHIBIT 1 hereto), the City admitted that “the width of Terminal A was less than ideal.”

79. Terminal A’s numerous deficiencies were also highlighted by the City’s consultants in the 2021 Master Plan:

- “Terminal A has numerous functional deficiencies … many of its building systems are at or past the end of their useful lives.”⁵²
- The Master Plan notes that the holdrooms in Terminal A are only 30 feet deep, compared to 37 feet in Terminal B (and a planned 45 feet in Terminal C). Four international swing gates (A6 - A9) have internal ramps to the passenger boarding bridge (PBB) door, “which force all boarding into the concourse corridor, at times blocking passenger flows.”⁵³
- The Master Plan goes on to note that many of these holdrooms are in practice much smaller. “In the double-loaded gate area from A8 - A16, the holdrooms extend to the centerline of the columns, reducing the available width to approximately 17 feet, with the same clear width of 16 feet. The corridor varies in width in the central concessions area, narrowing to as little as 12 feet opposite the SSCP where the recomposing seats are located.”⁵⁴

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² City of San Antonio 2021 Master Plan, at 4-38, https://flysanantonio.com/wp-content/uploads/2022/09/SAT-MP_6-Implementation-Plan-FINAL-20220816.pdf (last visited March 18, 2025).

⁵³ *Id.* at 4-55.

⁵⁴ *Id.* at 4-66.

- Limited concession and circulation space “significantly restricts where concessions offerings can be located due to queue conflicts with PAX [passenger] traffic flows in the terminal” which “restricts the revenue potential.”⁵⁵
- Airline check-in queue overflows impair circulation across from ticket counters and “during the peak hours, the overflow from the security screening equipment and checkpoint (SSCP) can also extend through the ticket lobby and block circulation.”⁵⁶
- “Terminal A is extremely undersized as noted during peak periods.”⁵⁷

80. The 2023 San Antonio Airport Program Definition Manual: Advanced

Terminal Planning Program (hereinafter “2023 PDM”)⁵⁸ also noted that the

deficiencies in Terminal A justified the new terminal development project.

- “Justifications as to why the New Terminal is needed include that the existing terminals are faced with aging infrastructure and were developed for different design criteria, with today’s design aircraft being larger than before. With aircraft size growing and the additional traffic demand at SAT, the existing terminals do not have sufficient processing capacity to accommodate future demand for areas such as: International Arrivals processing (FIS), Aircraft gating, Curbside capacity, and Ticketing/SSCP [security screening checkpoint], [and] BHS [baggage handling system] capacity.”⁵⁹
- “The passenger Level of Service [in Terminal A] is suboptimum....”⁶⁰

⁵⁵ *Id.* at 4-62.

⁵⁶ *Id.* at 4-62.

⁵⁷ *Id.* at 4-66.

⁵⁸ The PDM is a detailed technical planning document that functions as “an overview of the capital investment program, including its goals, objectives, expected costs and schedule for implementation 2023.” 2023 PDM, Vol. 1, at 1-1.

⁵⁹ 2023 PDM Vol. 2, at 6-7.

⁶⁰ 2023 PDM Vol. 1, at 3-14.

81. In a presentation at a meeting of the City’s Executive Steering Committee (the “ESC”) on October 6, 2023, the San Antonio Airport System, the City’s airport team, stated that “Terminal A falls short of acceptable levels of service” and that there were “No economically viable options [for Terminal A] that can deliver capacity and acceptable LoS [levels of service].”⁶¹

82. City contractor RS&H summed up the condition of Terminal A on behalf of the City in its 2023 evaluation of terminal, based upon review of 15 years of technical assessments: “The stress on the facility is overwhelming and the space constraints produce a Sub Optimum Level of Service relative to IATA standards. Terminal A is currently being used far beyond its anticipated use. The aircraft are larger than anticipated, resulting in more passengers than designed.”⁶²

83. Airport Director Jesus Saenz, as recently as February 2023, stated that Terminal A has nearly reached the end of its life expectancy, adding it was possible that “we can still get another five to eight years” out of Terminal A, “after that, it’s a demolition.”⁶³

84. Taken collectively, these technical reports and conclusions by City leadership and City consultants point out that the critical deficiencies in Terminal A,

⁶¹ EXHIBIT 34, Executive Steering Committee Presentation at 20 (Oct. 6, 2023).

⁶² EXHIBIT 10, “Terminal A: A Critical Infrastructure Decision for San Antonio Airport” (June 20, 2023) at 9.

⁶³ Shari Biediger, *New Terminal Design Signals Major, Billion-Dollar Changes at San Antonio Airport*, SAN ANTONIO REPORT (Feb. 15, 2023), <https://sanantonioreport.org/san-antonio-international-airport-new-terminal-design-renderings/>.

rendering it “functionally obsolete,” could not be remedied either practically or economically. Moreover, these deficiencies served as the justification for the TDP and in particular for the proposed new terminal at SAT.

8. The City’s Proposed Solution – New Terminal C.

85. In response to these stark deficiencies in Terminal A, the City proposed in 2022 the development and construction of an entirely new, modern, state-of-the-art terminal, which came to be dubbed Terminal C. As the City’s website states in the section discussing the justification for the terminal expansion, “increasing congestion in aging facilities is not acceptable; modernization is essential for passenger growth and retention.”⁶⁴

86. The City summarizes the project on its website as follows:

- Up to 17 domestic and international gates by mid-2028 to accommodate projected growth through 2040.
- 850,000+ sq. ft. of new terminal space with 41,000 sq. ft. of new concession space.
- 29,000+ sq. ft. club lounge space.
- Larger gate hold rooms for enhanced passenger comfort.
- Riparian Paseo entry and indoor courtyard to enhance sense of place and River Walk feel.
- New central passenger screening area provides all-access pass to retail and concessions.

⁶⁴ Terminal Development, San Antonio International Airport, <https://flysanantonio.com/business/about-saas/terminal-development/> (last visited Jan. 13, 2025).

- New, modern Federal Inspection Station for expanded International air service.
- Roadway improvements to improve traffic flow and remove congestion.

87. The development of Terminal C is budgeted at between \$1.5 and \$2 billion, with a net cost of approximately \$1.4 billion to the airlines serving SAT.⁶⁵

88. In 2022 the City informed the airlines of its plans to build the new Terminal C.⁶⁶ The City's plans did not encompass rehabilitation of Terminal A (although its deficiencies drove the process). The City elected not to extend the then-current leases for five years, instead extending them for two years ending September 30, 2024.

9. New Lease Discussions.

89. Negotiations over a new AULA at SAT began in mid-2022. Numerous meetings took place. Discussions were initially held monthly between Airport staff working for the City and the Airline-Airport Affairs Committee (the “AAAC”).⁶⁷ The meetings increased in frequency to roughly two per month beginning in August of 2022.

90. As is customary, the Signatory airlines hired a consulting firm, AvAirPros, to serve as the Airline Technical Representative (the “ATR”) to support

⁶⁵ EXHIBIT 11, Airline Use and Lease Agreement Meeting Presentation (May 29, 2024) at 26; more recently \$1.6 billion per EXHIBIT 12, Executive Steering Committee Presentation (June 28, 2024) at 10.

⁶⁶ At various times this new facility was referred to as the “new terminal” or “Terminal B Extension” but more recently has been designated as Terminal C; this Complaint will therefore refer to it as Terminal C.

⁶⁷ The AAAC is a committee of the Signatory airlines at the Airport that works with the City's Airport staff on matters of interest to the airlines serving the Airport. It is customary in the U.S. industry for airlines to collaborate via an AAAC when negotiating with airports they serve, especially when major capital projects are undertaken.

negotiations with the City and to serve as a single technical advisor to the airlines collectively.

91. Also as customary, Southwest Airlines, as the largest carrier at SAT, was designated to chair the AAAC. Chairing the committee is largely an administrative function involving coordinating airline input and overseeing procedural order in meetings.

92. As customary, the City hired a team of technical advisors to support the TDP. Aviation planning and design firm Corgan served as the City's Master Architect (sometimes noted as "MA"), responsible for design and engineering of the facilities, as well as determining the needs of the airlines and passengers serving the Airport.

93. Anser Advisory ("ANSER") served as the City's Executive Program Manager ("EPM"), providing technical capabilities and aviation experience in Program Management support services for the TDP, and to act as the bridge among the City, the Master Architect, Project Management/Construction Management consultant, construction firms, and other design firms and technical advisors throughout the development, implementation and close-out of the TDP.⁶⁸

94. As will be discussed in more detail in subsequent sections of this Complaint, the City asked Corgan to conduct various analyses of potential gating assignments for the airlines post-DBO of Terminal C, but Corgan did not make a recommendation to the City,⁶⁹ despite the City's claims to the contrary. Rather, it was

⁶⁸ Staff presentation, San Antonio Airport System, Item 12, December 12, 2023 (San Antonio Airport System, sometimes noted SAAS, is the unit of the City of San Antonio that operates SAT).

⁶⁹ EXHIBIT 28, Trupiano Dep., 190:4-6, Mar. 14, 2025.

the City who from early on made its own preference clear through its “recommendation” to its own consultants Corgan and ANSER that Southwest should remain in Terminal A.⁷⁰

95. The City’s stated intent was to incorporate the TDP and new gate assignments into a new AULA to be executed with each of the Signatory airlines. Thus, the TDP review also took place in the context of negotiating new AULAs, to incorporate new rates and charges for the terminals, reflecting the impact of the TDP.

96. Airlines serving SAT pay a rental rate per square foot for space that they lease on an exclusive basis. Airlines also pay on a square footage basis for the use of common-use space.

97. The rate-making methodology for the SAT terminals under the prior AULA treated the SAT terminals collectively as a single “cost-center.”

98. Control over capital improvement spending decisions is achieved through a Majority-In-Interest (or “MII”) clause. “An MII clause gives the airlines that account for the majority of the traffic at an airport the right to review and accept or veto any capital projects that could lead to significant increases in the rates that they pay for

⁷⁰ See EXHIBIT 13, December 11, 2023, email from Executive Program Manager David Brandenburg of ANSER stating that the gating options included “the Airports [sic] Recommendation (WN on Term. A).” See also EXHIBIT 14, December 15, 2023, Executive Steering Committee Presentation at p.42 depicting the “Airport Recommended Option” with Southwest in Terminal A, American and Delta in Terminal C, and United in Terminal B, which of course matches the ultimate gating decision.

the use of airport facilities. ... Airports that operate under MII agreements may have less freedom to undertake capital improvement projects.”⁷¹

99. The Prior AULA contained an MII clause, as does the new AULA proposed by the City. The MII clause at SAT in both the Prior AULA and the proposed new AULA is what is called a “negative MII” or “veto MII” provision. Any capital project introduced by the City -- to be included in the rate base of an airline cost-center -- can proceed unless at least 50% of Signatory airlines representing at least 60% of the terminal spending vote against such project.

100. For the new AULA, the City proposes to include all of the costs of Terminals A, B, and C in a single cost-center post-DBO to be paid for via an equalized rate structure for all of the Signatory airlines serving SAT, subject to the negative MII clause.

101. There is one exception to such proposed equalized rate structure for the terminals under the proposed new AULA. The new AULA includes a \$15 per square foot differential on certain Terminal A rental rates during the first three years following the opening of the new Terminal C.

102. The new AULA also notes the need for certain projects in Terminal A, set forth in Exhibit “M” to the lease and budgeted at an estimated \$200 million (the “Exhibit M Projects”). If such works require more funding than the \$200 million allocated and pre-approved by the Signatory airlines, such incremental funds would

⁷¹ CRS Report for Congress, Order Code 98-579E, “*Airport Finance: A Brief Overview*,” Kirk, Robert S., June 26, 1998, at CRS-3.

be subject to potential MII disapproval. The Exhibit M Projects cannot be completed until well after DBO of the new Terminal C, because they depend upon the space flexibility that will occur when some airlines move out of Terminal A. As will be discussed in subsequent sections of this Complaint, the Exhibit M Projects list was a placeholder that had not been properly assessed to determine how, or even if, Terminal A could be made suitable and comparable to the other terminals.

10. The City's Gating Decision.

103. On May 29, 2024, the City verbally notified Southwest of the City's gate placement decision.

104. Southwest was informed that the City had selected American Airlines (six future gates) and Delta Airlines (five future gates) to site in Terminal C.

105. Six additional FIS-equipped gates in Terminal C would be unassigned but international flights would have priority at those gates.

106. Southwest would remain in Terminal A with 10 post-DBO gates.

107. Under the City's plan, Southwest would be co-located in Terminal A with the new Ground Load Facility.⁷²

108. The FIS would be relocated from Terminal A to Terminal C. There would be no connector from Terminal A to an FIS-equipped terminal. This would mean that Southwest's arriving international passengers would have no convenient or

⁷² A Ground Load Facility, or GLF, is an operation that typically serves several smaller, commuter-sized aircraft loaded from the ground via air stairs rather than through a jet bridge directly connected to the terminal.

reasonable means of arriving at Terminal A and clearing immigration and customs, instead needing to arrive at Terminal C.

109. United Airlines would remain in Terminal B with five gates. (United had originally requested to be placed in the new terminal, but ultimately elected to remain in Terminal B.)⁷³

110. The City refused to explain to Southwest its rationale for proposing to place Southwest in Terminal A at the time of the May 29th verbal notification.

111. On June 20, 2024, the City provided an explanation, via its Assistant Director of Finance and Administration, Michael Garnier, who led the City's new AULA negotiations with the Signatory airlines. Mr. Garnier emailed to Southwest on that date a document (undated) entitled "Summary of Decision-Making Process for Post-DBO Gate and Club Locations" (hereafter the "SAT Gate Assignment Criteria"), set forth as EXHIBIT 1 to this Complaint, which includes a rendering depicting the City's post-DBO gate assignments.⁷⁴ The SAT Gate Assignment Criteria will be discussed in detail in subsequent sections of this Complaint.

⁷³ EXHIBIT 15, Letter from Austin Boyle, Manager – Corporate Real Estate, United Airlines to SAT Airport Director Jesus Saenz, June 19, 2024 ("United's position is to remain at our existing facilities on the western side of Terminal B.").

⁷⁴ See EXHIBIT 23, Garnier Dep. 26:23 to 27:16, November 21, 2024 (Mr. Garnier stating that he prepared the SAT Gate Assignment Criteria attached hereto as EXHIBIT 1, along with Eric Smith of Kaplan, Kirsch in response to a request from Southwest to explain the City's decision and rationale and emailed the document to Southwest and the other airlines). Eric Smith served as counsel to the City, although Mr. Smith is referred to in Executive Steering Committee attendee lists as a consultant, so he may not have been acting in a legal capacity in connection with the production of such Summary.

VI. **SUMMARY OF THE CITY'S GRANT ASSURANCE VIOLATIONS**

112. Congress has long mandated that the FAA regulate airport access and fees.⁷⁵ Absent such regulation, airports within their catchment areas might behave as natural, or at least “local,” monopolies, wielding market power to the detriment of airlines and their passengers.⁷⁶

113. As a means of constraining unreasonable airport behavior, Congress has charged the FAA with ensuring that airport sponsors behave in a reasonable fashion by mandating that they provide assurances to the Federal government in return for Federal assistance.⁷⁷

⁷⁵ The Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (1982) (the “AAIA”), which established the Airport Improvement Program (“AIP”), the primary grant program for U.S. airports, also set out the first version of the current Federal Grant Assurances binding U.S. airports that receive Federal assistance (codified as 49 U.S.C. § 47101, *et. seq.*) (stating, for example, “It is the policy of the United States … that airport fees, rates, and charges must be reasonable” 49 U.S.C. § 47101(a)(12)). Several amendments and enhancements to the AAIA’s regulatory scheme for airports have occurred since its enactment in 1982, as set forth in detail in FAA, Airport Improvement Program History, APP-520 (2017). The current Grant Assurances for airport sponsors are set forth in Fed. Aviation Admin., Assurances, Airport Sponsors (May 2022), *available at* https://www.faa.gov/airports/aip/grant_assurances/assurances-airport-sponsors. *See also* FAA Airport Compliance Manual, FAA Order 5190.6B, App. A.

⁷⁶ M. Smyth and B. Pierce, *Economic Regulation*, IATA Economics Briefing No. 6, (Feb. 2007), at 4. At minimum, markets with a single commercial-service airport, unless regulated, can function as what economists term “locational monopolies.” H. Niemeier, *Regulation of Large Airports: Status Quo and Options for Reform*; H. Niemeier, *Airport Regulation Investment & Development of Aviation*, OECD/ITF (2010), at 12. *See also* *Airport Business Practices and Their Impact on Airline Competition*, FAA/OST Task Force Study (1999) at n.10, (in which the joint task force examined the extent of an airport’s monopoly power over airline fees in response to *Air Transport Association of America v. Dep’t of Trans.*, 119 F.3d 38, 43 (D.C. Cir. 1997), as amended on rehearing, 129 F.3d 625 (D.C. Cir.1997)).

⁷⁷ 49 U.S.C. § 47107 (project grant application approval conditioned on assurances about airport operations). See *Airport Improvement Program History*, explaining the regulatory history of the FAA’s oversight of airports; and *Airport Compliance Manual* at 1-3 to 1-7, explaining the background and authority for the FAA’s administration of the airport compliance program (“The federal obligations a sponsor assumes in accepting FAA administered airport development assistance are mandated by federal statute.”).

114. Owing to such regulations and the assurances made by sponsors, consultations between airports and airlines take place in a highly regulated environment. In these negotiations, the harsh environment of typical, arms-length commercial negotiations -- where *caveat emptor* guides the parties -- does not hold.

115. Quite the contrary, airlines are permitted to assume that airport sponsors are behaving reasonably, because they are *required* to behave reasonably under the assurances that they have made to the Federal government, assurances to which such sponsors are bound and which the FAA is required to enforce.

116. As the proprietor of the only commercial-service airport serving San Antonio, the City could wield market power in its dealings with airport users, but for the Federal regulatory framework that prevents it from doing so. Accordingly, the City must comply with, and should be held to, its Federal obligations, to which it is bound by both law and contractual assurances it has made to the United States government in return for Federal assistance for the Airport.

117. As the sponsor of the Airport, the City has the right to determine how best to allocate facilities, but in doing so it must comply with its obligations under Federal law, FAA regulations, and the Grant Assurances, extending to its consultations with airlines, its decisions regarding access to the Airport and its facilities, and the methodology it employs in establishing the associated fees. The City failed to do so in four critical respects, whose specific contours can be briefly summarized as follows, and each of which is discussed in more detail in subsequent sections of this Complaint.

118. First, the City blatantly failed to comply with Grant Assurance 22(e), the Anti-Head Tax Act, and the Rates and Charges Policy when it grouped its three airline terminals into a single cost-center. Airport sponsors may only group in a single cost-center assets that are “comparable.” The old and “functionally obsolete” Terminal A, to which the City proposes to assign Southwest, is far from comparable to the new, state-of-the-art Terminal C under development. By the City’s own admission, it cannot be made comparable. Even if it could be, the City has developed no plan to do so, entirely ignoring the deficiencies in Terminal A that drove its decision to build a new terminal in the first place. Any such plan would require a study that the City has not yet conducted and which should form the basis of an adequate measure of Terminal A’s renovation costs and fee structure.

119. Additionally, as various carriers have already signed new leases at the City’s insistence (and over Southwest’s objections), any additional expenditures beyond the \$200 million “placeholder” for Terminal A improvements included in the new AULA would be subject to a vote by the other carriers at the airport, who -- as the City has admitted -- have every incentive to oppose additional funding for Terminal A improvements. The City is attempting to leverage its position by preventing Southwest from even participating in such a vote at this time, since the City is currently improperly treating the airline as having non-Signatory status, as punishment for Southwest’s refusal to sign the City’s noncompliant new lease agreement.

120. Because Terminal A is not comparable and likely cannot or will not be made comparable, the City's attempt to lump Terminal A with Terminals B and C into a single cost-center fails to comply with the Rates and Charges Policy and with the City's Federal obligations. This violation, if allowed to stand, would result in Southwest paying grossly unreasonable fees for its leased facilities and would impermissibly require Southwest to subsidize its competitors' superior facilities. The City is further exacerbating this harm by imposing on Southwest non-Signatory rates during the pendency of this legitimate dispute, despite the "holdover" clause in the prior AULA's requirement that a tenant holding over should be charged Signatory rates.

121. Second, the City used outrageously inappropriate criteria in its gating decision, amounting to unjust discrimination in violation of Grant Assurance 22 and the Rates and Charges Policy. The City could have used appropriate objective criteria -- such as the number of gates requested and passenger traffic levels -- in making its gating decision. Instead, the City downplayed such objective factors, relying instead on arbitrary, subjective, results-oriented criteria such as the City's assessment of the carrier's "fit" into San Antonio and of the carrier's "service, growth, and experience." The City also heavily weighted each carrier's request for exclusive VIP clubs in its scoring, despite the fact that clubs could have been added to Terminal A, and there is little to no evidence that this factor is associated with legitimate objectives. There is little question that the use of appropriate, objective factors would have favored Southwest.

122. Instead, the City tortured the facts in order to arrive at its predetermined outcome. It did so by devising and employing a scoring system designed to appear analytically rigorous, while emphasizing its subjective and vague criteria and minimizing the points assigned to objective criteria. This process was put in place to lend a veneer of airline-agnostic analysis to a process that in fact was designed, from beginning to end, to lead to a result the City favored all along -- isolating carriers like Southwest in an inferior facility while favoring carriers serving business travelers and offering VIP lounges and first-class cabins. In doing so, the City is attempting to place its own desire to attract a certain type of visitor to San Antonio that it perceives as preferable and to promote its marketing objectives of establishing San Antonio as a luxury destination, ahead of the larger, legitimate interests of the national air transportation system, and of the Airport and its users, that the FAA is charged with protecting through its enforcement of the Grant Assurances.

123. Third, the City's actions violate Grant Assurance 39, which requires a sponsor of a Medium Hub airport to notify the Secretary if it is unable to accommodate a carrier's expansion plans. In its efforts to achieve its improper objectives, the City failed to remedy the deficiencies in Terminal A, which it has described as "functionally obsolete" and "undersized," and lamented the "increasing congestion [of the] aging facility [as] not acceptable." Yet, the City chose to assign to that terminal the carrier with the most passenger traffic, the highest-volume

operation, and by far the most robust expansion plans at the Airport. The City's abject failure to accommodate this growth violates Grant Assurance 39.

124. Fourth, the City failed to consult reasonably with Southwest in connection with its Terminal Development Program, in violation of Grant Assurance 8 and the Rates and Charges Policy. The City decided at the outset to place Southwest in Terminal A, giving its own consultants a corresponding "recommendation" along with specific requirements, such as preference for airline clubs in the new terminal, that could only produce such result.

125. Additionally, over the course of three years, the City made multiple and repeated promises to Southwest that it would be assigned gates in Terminal C upon its completion. Despite such ongoing assurances and representations, the City at the very same time was actively working to conceal from Southwest its true objectives for its TDP and its intent to place Southwest in Terminal A. It even went so far as to remove a slide depicting Southwest in Terminal A from a presentation during its final headquarters visit to Southwest ahead of announcing its gating decision, as is evidenced by the City's internal communications to this effect.⁷⁸

126. After finally revealing that Southwest would be relegated to Terminal A, the City team then pushed to finalize City Council approval and enter into new leases with the other carriers, ignoring Southwest's pleas to properly evaluate whether and

⁷⁸ See EXHIBIT 4, Email Communications between Dave Brandenburg, Executive Program Manager of ANSER Advisory, and Ryan Hall, Aviation Principal Planner for SAT (March 28, 2024); EXHIBIT 5, The City of San Antonio's Presentation to Southwest, "San Antonio International Airport: The Terminal Development Program" (April 2, 2024); and EXHIBIT 6, Draft of The City of San Antonio's Presentation to Southwest, "San Antonio International Airport: The Terminal Development Program" (March 29, 2024).

how Terminal A could be made to work for Southwest's high-volume operation. The City steamrolled over these objections and reasonable requests, even biasing its own City Council's deliberative process by falsely and baselessly claiming that Southwest was only asking for gates to block competitors, lacked international service, and was unwilling to commit to future growth at the airport. All were untrue and reveal the City's bias.

127. In the following sections of this Complaint, Southwest will address each of these violations in detail, with exhaustive supporting evidence.

VII. THE CITY FAILED TO ENGAGE IN REASONABLE CONSULTATIONS WITH SOUTHWEST

128. The following paragraphs set out the Federal standard governing airport sponsors' consultations with airport users such as commercial airlines, standards by which the City failed to abide.

1. Grant Assurance 8 Requires Reasonable Consultation with Users.

129. Grant Assurance 8, Consultation with Users, mandates that an airport sponsor must provide an assurance that: "In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultation with affected parties using the airport at which the project is proposed."

130. Federal law requires airports who receive Federal grant funds to negotiate in a manner consistent with their role as a governmental entity. It is

expressly envisioned by the law that such entities follow certain legal norms associated with public bodies carrying out their obligations as airport proprietors.

131. Indeed, Grant Assurance 8 is derived from 49 U.S.C. § 47105(a)(2), Project Grant Applications, which states: “Before deciding to undertake an airport development project at an airport under this subchapter, a sponsor shall consult with the airport users that will be affected by the project.”⁷⁹ However, Grant Assurance 8 requires more than just bare consultation with users, it requires “reasonable consultation.”

132. The FAA has defined “affected parties using the airport” under Grant Assurance 8 as “those parties who find themselves on the airport, usually for aeronautical activities or support thereof.”⁸⁰

133. Clearly, as the largest air carrier at SAT, Southwest is a user of the Airport and as such is a party affected by the City’s proposed TDP. Accordingly, Grant Assurance 8 applies.

2. The Rates and Charges Policy Also Requires Reasonable Consultations.

134. The Rates and Charges Policy also functions as FAA guidance on determining the reasonableness of airport sponsor activities.⁸¹

⁷⁹ *Town of Fairview, Texas v. City of McKinney, Texas*, FAA Docket No. 16-04-07 at 28 (2005).

⁸⁰ *Id.*; see also *Jimsair Aviation Servs. Inc. v. San Diego Cnty. Reg’l Airport Auth.*, FAA Docket No. 16-06-08 at 33 (2007) (applying Grant Assurance 8 in the context of an airport’s Master Planning exercise).

⁸¹ *Miami Int’l Airport Rates Proceeding*, Docket OST-1996-1965-0138 (Mar. 19, 1999) (the “Final DOT Miami Order”), at 13.

135. The Policy requires that “well in advance,” the sponsor “should provide adequate information to permit aeronautical users to evaluate the airport proprietor’s justification for the change and to assess the reasonableness of the proposal.”⁸² These elements -- advance notification, adequacy of information, and reasonableness -- were all lacking in the City’s consultations with Southwest.

136. In the rates context, the FAA has stated that airport sponsor methodologies must be “reasonable, consistent, and transparent,” and “clear and fully justified.”⁸³ Although addressing fees, these principles reflect the FAA’s views of airport sponsor behavior that is reasonable and should guide similar critical decisions such as the allocation of constrained airport facilities.

137. The City’s behavior in its consultations with Southwest in connection with the TDP fell far short of the standard for reasonable consultations.

3. The City Repeatedly Represented that Southwest would be Placed in the New Terminal.

138. Far from acting in an open and transparent fashion with its airline partners in accordance with the Federal standards, the City misled Southwest by continuously communicating to Southwest that it would be placed in the new Terminal C when the City never intended to do so.

139. On repeated occasions, Airport Director Jesus Saenz (and on one occasion Assistant Aviation Director/Chief Financial and Administrative Officer

⁸² 78 Fed. Reg. at 55,332 (see *Local Negotiation and Resolution* section, ¶ 1.1.1).

⁸³ *United Airlines, Inc. v. Port Authority of New York and New Jersey*, FAA Docket No. 16-14-13 at 31 (2021).

Michael Garnier) verbally committed to Southwest that Southwest would have all or the majority of its 10 gates located in the new Terminal C:⁸⁴

- a. On or about June 16, 2021, Director Saenz and Assistant City Manager Jeff Coyle had dinner with Southwest's Paul Cullen and Denise McElroy at the St. Anthony Hotel in San Antonio. During the dinner, Mr. Saenz asked if Southwest would complete the new terminal project at SAT similar to its completion of the new terminal at Houston Hobby Airport. Throughout the dinner, Director Saenz stated that Southwest would occupy gates in the new SAT terminal.
- b. On or about September 8, 2022, Director Saenz had dinner with Southwest's Steve Sisneros and Paul Cullen during the Future Travel Experience Conference in Las Vegas. During dinner, Director Saenz represented that Southwest would have gates in the new terminal.
- c. On or about January 10, 2023, Director Saenz met with Southwest's Jason Van Eaton and Paul Cullen at the AAAE Conference in Hawaii. Director Saenz assured Mr. Van Eaton and Mr. Cullen that Southwest Airlines would occupy gates at the new SAT terminal.
- d. On or about November 9, 2023, Director Saenz and Assistant Aviation Director/Chief Financial and Administrative Officer Michael Garnier had a meeting with Southwest's Denise McElroy and Kenneth Gregg in Director Saenz's office in San Antonio. Director Saenz informed Ms. McElroy and Mr. Gregg that Corgan had recommended that Southwest remain in Terminal A, but that he advised Corgan that was a "non-starter." During this meeting, Director Saenz committed to Ms. McElroy and Mr. Gregg that the majority of Southwest's gates at SAT would be in the new terminal.
- e. On November 14, 2023, Mr. Garnier emailed Mr. Gregg, attaching Corgan's drawing that showed Southwest occupying gates in Terminal A. Mr. Garnier stated, "[a]s we discussed the other day, regardless of the drawing showing WN⁸⁵ on A, my angle is that we can probably do something else (better?) for WN via some creative sighting of its gates between part of the new terminal and Terminal B -- something I really think would be great for both Southwest and its passengers."

⁸⁴ See EXHIBIT 26, Pl. Resp. to Def. 1st Set Interrogs., No. 1, October 30, 2024.

⁸⁵ "WN" is the International Air Transport Association code for Southwest and is frequently used in the parties' documentation.

- f. On or about December 13, 2023, Director Saenz and Mr. Garnier met with Southwest's Kenneth Gregg and Denise McElroy in San Antonio. During this meeting, Director Saenz told Mr. Gregg and Ms. McElroy, "I give you my word" that Southwest will have a presence in the new terminal, but that he could not commit that all ten gates that Southwest had requested would be in the new terminal. Director Saenz then showed Mr. Gregg and Ms. McElroy a diagram of Southwest occupying eight gates in the new terminal.
- g. On or about January 9, 2024, Director Saenz met with Southwest's Steve Sisneros and Paul Cullen at the AAAE Conference in Hawaii. During this meeting, Director Saenz assured Mr. Sisneros and Mr. Cullen that Southwest would occupy gates in the new terminal.
- h. On or about April 2, 2024,⁸⁶ Assistant City Manager Coyle, Director Saenz, and the City's Executive Program Manager Dave Brandenburg met with Southwest's Steve Sisneros at Southwest Headquarters in Dallas. Although the City's draft presentation to Southwest disclosed the possibility that Southwest would remain in Terminal A, the City chose not to disclose its plans to Southwest. Instead, Director Saenz stated to Mr. Sisneros that Southwest will be in the new terminal, but may also have some gates in Terminal B.
- i. On or about June 7, 2024, a meeting in Director Saenz's office in San Antonio was attended by Director Saenz, Assistant City Manager Coyle, Southwest's Denise McElroy and Andrea Goodpasture, Dave Brandenburg, Tim O'Krongley, and John Trupiano. During the meeting, Ms. McElroy and Ms. Goodpasture told Director Saenz that Southwest remaining in Terminal A was not what he had repeatedly promised Southwest. Director Saenz did not dispute that he had promised that Southwest would be allocated gates in Terminal C.

140. Southwest justifiably relied on these repeated assurances by the City, most of which came from the Airport Director himself. It was reasonable for Southwest to believe such assurances, given the fact that Federal law requires reasonable consultations with airport users. Deliberately misleading airport users

⁸⁶ Less than two months before the City informed Southwest of its decision on May 29, 2024.

over an extended period of time as to the likely outcome of a TDP is not only highly unusual but is patently unreasonable and a clear violation of Federal law. Southwest Airlines has never encountered such negotiating tactics when dealing with airport sponsors nationwide.

141. Thus, up until May 29, 2024, Southwest reasonably believed the City's representations that it was going to permit Southwest to move at least some of its operations to the new Terminal C. Accordingly, Southwest engaged in lease negotiations with the City based on that understanding.

4. The City Intentionally Concealed from Southwest its Plans to Place Southwest in Terminal A.

142. Perhaps the most revealing instance of the City's misleading communications to Southwest was the presentation the City's team made to Southwest on April 2, 2024,⁸⁷ (the "Presentation to Southwest") both in terms of what was said, and more importantly what was omitted.

143. This presentation was a critical step in the consultations. In the April 2024 timeframe, the City delivered a presentation during headquarters visits to each of the major carriers serving SAT. Coming near the end of the negotiation cycle, these were the final meetings between the key carriers individually and the City's Airports team prior to the City releasing its gating decision.

⁸⁷ EXHIBIT 5, San Antonio International Airport: The Terminal Development Program Presentation (April 2, 2024).

144. Slide 11 of the delivered Presentation to Southwest states that “Terminal A today is particularly challenging for airlines [sic] operations,” depicting three images of overcrowding in Terminal A.

145. The City team on slide 13 of the Presentation to Southwest goes on to state that “Southwest can relocate to Terminal B and the B Expansion [i.e., Terminal C] in the Terminal Development Program.” No mention is made of Southwest remaining in Terminal A, and that is also not depicted in any way. Four subsequent slides show images depicting Southwest’s signage and branding in the new terminal; none depict Southwest in Terminal A.

146. This Presentation to Southwest in April of 2024 confirmed what Southwest had been told all along -- that Southwest as the largest carrier, serving the most passengers visiting San Antonio by air, would be placed in the new terminal facilities. No other option was presented.

147. Like the City’s prior communications, however, this Presentation to Southwest was intended to -- and did -- mislead. Evidence for this intent comes from the prior internal draft of such presentation, dated just a few days earlier, March 29, 2024⁸⁸ (the “Earlier Draft Presentation to Southwest”).

148. Critically, this Earlier Draft Presentation, which was not shared with Southwest at the time, contained at slide 13 a depiction of Southwest in Terminal A, stating that “Southwest can grow into a transformed Terminal A,” and discussing an

⁸⁸ EXHIBIT 6, San Antonio International Airport: The Terminal Development Program Draft Presentation (March 29, 2024). This was clearly a working draft, as it contains highlighted internal comments of the City’s team. Southwest only learned of this Earlier Draft Presentation as a result of discovery in the recent litigation with the City.

assignment of 10 gates to Southwest in that terminal. This slide preceded the slide showing Southwest in the new terminal, suggesting in this earlier, undelivered draft that either terminal placement was possible, and leading with Southwest in Terminal A.

149. The content of slide 13 of the Earlier Draft Presentation to Southwest, depicting Southwest in Terminal A, was deleted from the final version Presentation to Southwest, which only depicted Southwest in the new terminal. The City team chose to omit a slide that had already been prepared, prior to presenting this information to Southwest, from a deck that was otherwise substantively nearly identical to the Earlier Draft.

150. A related email exchange among the City's team further reveals that it was a conscious choice by City leadership to delete the slide showing Southwest in Terminal A from the deck that was presented to Southwest on April 2, 2024.

151. On March 28, 2024, Dave Brandenburg of ANSER, the City's Executive Program Manager for the TDP, emailed the earlier draft slide deck to the City team, stating "You may not have seen this as it was not widely distributed (highly confidential as you can imagine). This is a bit dated now, but the deck does include the Corgan recommendation for WN on Term. A. As for including it in the WN deck, that will be a discussion with Jesus/Tim/Mike."⁸⁹

⁸⁹ EXHIBIT 4, Email Correspondence from Dave Brandenburg (March 28, 2024). As noted elsewhere in this Complaint, it has since come to light that Corgan made no such recommendation.

152. Mr. Brandenburg in this email is teeing up the decision for the City's core Airports and TDP leadership team of Airport Director Jesus Saenz ("Jesus"); Timothy O'Krongley, the Deputy Aviation Director of Planning, Infrastructure and Development ("Tim"); and Michael Garnier, the Assistant Director of Finance and Administration ("Mike") to make the decision whether to show Southwest being placed in Terminal A.

153. The decision of this core City leadership team was to exclude that information, as the relevant slide was deleted from the previous draft and was not presented to Southwest. This is also contrary to the City's approach with the other carriers being considered for Terminal C -- they were all given presentations depicting their placement in the new Terminal, but also depicting alternative scenarios that placed them elsewhere. More crucially, all other carriers were shown a gating scenario that the City ultimately chose for them; Southwest was not. The only reasonable inference is that the City was intentionally concealing from Southwest its plans to force Southwest to remain in Terminal A until the last minute.

154. This exchange also restates the City's assertion that Corgan recommended citing Southwest on Terminal A. Corgan's sworn deposition reveals that this was not the case. Corgan Principal John Trupiano on March 12, 2025, stated under oath that Corgan in fact did not recommend placing Delta and American in Terminal C.⁹⁰ We now know that it was indeed the City's own longstanding

⁹⁰ EXHIBIT 28, Trupiano Dep., 190:4-6, Mar. 14, 2025.

“recommendation” to its advisory team,⁹¹ and not the other way around. Regardless, that recommendation was never communicated to Southwest, nor even shown as an option in the Presentation to Southwest.

155. There could hardly be clearer evidence of the City’s intent to mislead Southwest than deleting from a presentation, delivered at these crucial headquarters visits near the very end of the process, the slide showing Southwest remaining in Terminal A.

156. The FAA should reject any assertion by the City that it acted reasonably in its consultative process, which was underscored by a coordinated effort to conceal its true plans from airport users in order to achieve impermissible objectives of favoring a certain type of air carrier. Doing otherwise would render Grant Assurance 8, Reasonable Consultations, meaningless.

5. The City Concealed its Decision Criteria.

157. The City also failed to communicate its decision-making criteria, both at commencement and throughout the process. It did not even communicate its rationale for its gating decision until well after that decision was conveyed verbally on May 29, 2024.

158. The City explained its decision and rationale for the first time on June 20, 2024, when, in response to Southwest’s requests for an explanation, Mr. Garnier

⁹¹ E.g., EXHIBIT 16, January 23, 2024 email from Jennifer Sanchez of ANSER, stating that one of the gating options shown in a presentation for the ESC “will be the original airport recommendation (Southwest on A).”

on behalf of the City team distributed the SAT Gate Assignment Criteria.⁹² The City's explanations for its decisions have been wildly inconsistent, however, with the Airport Director now attempting to claim that these Criteria did not accurately reflect the City's process, while Mr. Garnier insists that it did (as detailed in subsequent sections of this Complaint).

159. Southwest believed at all times prior to the end of May 2024 that the City would site it in Terminal C. The April 2, 2024 presentation showed no other option. And as the largest carrier, paying the most in terminal fees, it was reasonable for Southwest to believe the City's false assertions that it would be assigned to the new terminal.

160. Moreover, as the only domestic Signatory carrier with international services, Southwest reasonably expected that the City would assign it to Terminal C because the City had disclosed its plans to relocate the FIS from Terminal A to Terminal C.

161. Had the City not led Southwest to believe that it would receive gates in the new terminal, Southwest would have taken a very different approach to the negotiations. Because it operates the highest-volume, most dense service at the Airport, Southwest from the beginning would have focused on if and how Terminal A could be redeveloped to make it usable and suitable for a high-volume operation like Southwest's, and to achieve a Level of Service that would be appropriate for

⁹² These criteria were also apparently developed *ex post facto* to justify the City's decision, and do not align with the process described by the Airport Director, both as discussed in subsequent sections of this Complaint.

Southwest's passengers. Given that Southwest reasonably expected that the City would only place in Terminal A carriers with lower-volume operations at the Airport, there was no compelling reason for Southwest to focus on redeveloping Terminal A for a large, high-volume operation like Southwest's.

162. Southwest also would have requested an FIS in Terminal A, or at minimum a convenient connector to an FIS-equipped facility for its arriving international passengers.

163. If not for the City's lengthy and consistent pattern of intentional concealment, Southwest and the City would have had at least two additional months to evaluate whether and how Terminal A could be made functional for Southwest's high-volume operation. Indeed, had the City revealed to Southwest the gating plans that it had apparently developed as early as in 2023, the parties could have had many months, or even over a year, to attempt to formulate a plan to rehabilitate Terminal A for Southwest's operations.

164. At minimum, it would have been reasonable for Southwest to expect the City to communicate in a timely fashion that Southwest would be sited in Terminal A, or that such result was even an option. Instead, as recently as April 2, 2024 (the date of the City's Presentation to Southwest with the deleted slide), the City continued with its strategy of intentional and coordinated obfuscation.

6. The City Further Acted Unreasonably After Notifying Southwest of its Gating Decision.

165. Once it was notified by the City -- at the eleventh hour, on May 29, 2024 -- that it would remain in Terminal A, in addition to requesting an explanation,

Southwest requested time and collaboration with the City to review if and how Terminal A could be made to work for Southwest's high-volume operation and to accommodate its robust expansion plans.

166. Attempts by Southwest to engage in meaningful conversations with the City on the topic of whether and how to make Terminal A work were mostly rebuffed by the City. The City acknowledged Terminal A's deficiencies and inadequate funding (discussed in more detail in subsequent sections of this Complaint) but refused to evaluate remediation requirements fully.

167. 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."⁹³ This response to Southwest ignored the glaring deficiencies in Terminal A, and the City's lack of an assessment, plan, or adequate funding for Terminal A.

168. In a letter dated June 20, 2024, Denise McElroy, Sr. Manager -- Airport Affairs at Southwest, told 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

⁹³ EXHIBIT 1, SAT Gate Assignment Criteria at 2.

preclude [Southwest] from being able to operate [its] long-term commercial plan for San Antonio (SAT).”⁹⁴ 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.”

169. In a letter to Director Saenz dated August 12, 2024, 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.”⁹⁵ The letter added:

“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

⁹⁴ EXHIBIT 26, Pl. Resp. to Def. 1st Set Interrogs., No. 3, October 30, 2024.

⁹⁵ *Id.*

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."

170. Southwest attempted to determine, with appropriate detail, if Terminal A could be rebuilt in a way that would provide an acceptable experience for Southwest's passengers, but the City largely ignored these legitimate and critical concerns.

171. On August 26, 2024, Southwest Executives Jason Van Eaton, Sherri Hull and Steve Sisneros met with City officials to reiterate Southwest's concern that the City had not presented a viable solution for Terminal A. Follow-up emails further emphasized that Southwest could not sign a new AULA until it received that critical information regarding how necessary capital expenditures for Terminal A were to be funded (which the City has still not provided).

172. Ignoring Southwest's pleas to allow time for such an assessment of Terminal A's requirements and funding, the City insisted on finalizing its decision at the City Council meeting on September 12, 2024, at which the City Council approved the new AULA lease terms, inclusive of the gate assignments,⁹⁶ and on signing new AULAs with carriers effective as of October 1, 2024. As a consequence of not agreeing to the AULA, the City has also wrongly chosen to treat Southwest as a non-Signatory carrier for rates, revenue sharing, and voting purposes.

7. **The City Team Falsely Characterized Southwest's Expansion Plans in order to Justify its Pre-Determined Decision.**

173. Beyond its flawed process and failure to engage in developing a workable plan for the carriers that were to remain in Terminal A, City representatives also engaged in an internal campaign of deception, apparently designed to support its decision to relegate Southwest to the deficient Terminal A.

174. The document titled "San Antonio Airport System Speaking Points, City Council briefings, Airline Use and Lease," dated June 6th,⁹⁷ reveals the City team's blatantly false representations regarding Southwest's proposal.

⁹⁶ City of San Antonio Ordinance 2024-09-12-0681, as reflected in the Meeting Minutes of the City Council A Session, p.9, *available at* <https://webapp9.sanantonio.gov/ArchiveSearch/Viewer2.aspx?Id={27153FED-70C3-4332-AE6A-DF427C8E9473}&DocTitle=City%20Council%20Meeting%20Minutes&PageNo=&TotalPages=&MimeType=application/pdf&RelatedDocs=>.

⁹⁷ See EXHIBIT 29, San Antonio Airport System Speaking Points - City Council Briefings Airline June 6, 2024; see also EXHIBIT 24, which Airport Director Saenz in his deposition indicated set out briefing notes put together by him, Assistant City Manager Jeff Coyle, and Nicole Faust "the executive to the director" for briefing the City Council.

175. This “Speaking Points” document baselessly states: “We want to avoid any air carrier requesting more gates than they can use to purposefully block other carriers from growing in SAT.”⁹⁸ It later refers to a concern that the Southwest “gate request is ultimately a play to block their competitors from growing.”⁹⁹ Finally, it states about Southwest, “Between their lack of international service, no club, financial struggles and an unwillingness to commit to future growth at the airport, it makes sense for us to keep them in Terminal A.”¹⁰⁰

176. None of the statements quoted above from these Speaking Points are true. There was no evidence that Southwest was requesting 10 gates to block other airlines; both Director Saenz¹⁰¹ and Michael Garnier¹⁰² have admitted such in their depositions in connection with the SAT litigation. Moreover, an airline that commits to a gate at SAT would have to pay for it: Southwest’s gate request was backed by a willingness to commit to these gates via the new AULA.

177. The reference to the lack of international service is simply incorrect. Southwest is the only domestic carrier offering international service at SAT.¹⁰³

⁹⁸ EXHIBIT 29, San Antonio Airport System Speaking Points - City Council Briefings Airline at 1 (June 6, 2024).

⁹⁹ *Id.* at 3.

¹⁰⁰ *Id.* at 4.

¹⁰¹ EXHIBIT 24, Saenz Dep. 50:9-51:8, November 20, 2024.

¹⁰² EXHIBIT 23, Garnier Dep. 12:9-13:23, November 21, 2024.

¹⁰³ The two carriers that were chosen for Terminal C do not operate international flights at the Airport (although Delta does codeshare on Mexico flights operated by AeroMexico). The City’s team periodically seems to be unaware of Southwest’s international services: going all the way back to November 3, 2023, a note in the Meeting Minutes of the Executive Steering Committee under the heading “Gate Assignments

178. The reference to financial struggles is misleading. Southwest has been the most profitable of the U.S. major airlines over its history, and unlike the legacy network carriers with which it competes, has never declared bankruptcy. While Southwest is adjusting its operations to enhance profitability and to account for Boeing's difficulties in delivering aircraft, it was in fact profitable in both 2023 and 2024.

179. The alleged unwillingness of Southwest to commit to the future growth of SAT is similarly false. Southwest asked for, and was prepared to commit to, an incremental four gates. No other airline requested more than one additional gate.¹⁰⁴ Southwest communicated to the City team by far the most robust growth plans for San Antonio.

180. Immediately following its enumeration of baseless claims regarding Southwest's expansion plans, the City concludes in the Speaking Points: "So, after more than a year of negotiating, we are where we expected, and frankly wanted to be, with the airlines jockeying trying to elbow out each other." The City team is demonstrating that they had already decided the outcome more than a year prior, and were engaging in *post-hoc* justification.

181. These Speaking Points also demonstrate how outrageous the City's actions truly were. It is unfathomable -- in an environment requiring reasonable

(AULA Update)- Michael Garnier (9:30a.m. - 9:35 a.m.)" states "Additionally, it was noted SWA does not want a club or have international flights." (See EXHIBIT 18.)

¹⁰⁴ Delta requested one additional gate, if Delta's use of a City gate is considered, or two if that City gate is ignored.

behavior and prohibiting unjust discrimination -- that an airport sponsor's key leadership team would try to persuade the decision-making committee in its gate allocation process that a Signatory airline was only asking for gates to block its competitors, especially when such assertion is wholly without any foundation, as was the case here (as admitted to under oath by Director Saenz and Mr. Garnier). This false narrative, made out of whole cloth, patently reveals that the City's bias against Southwest as a value-oriented carrier permeated the City's selection process.

8. **The City Failed to Engage in Reasonable Consultations with Southwest in Violation of Grant Assurance 8.**

182. The City's negotiations with Southwest were fundamentally flawed and failed to comply with its Federal obligations.

183. While the City did consult with Southwest, it did not behave reasonably, refusing to reveal its true objectives or its decision-making criteria, obfuscating, and even misleading Southwest regarding critical elements of the project. Southwest, to its detriment, negotiated in good faith with the City, under the belief that the City was acting reasonably in turn, because the City is required by law to do so.

184. Black's Law Dictionary defines "reasonable" as "Fair, proper, or moderate under the circumstances."¹⁰⁵ The City's behavior fell far short of this standard. At minimum, Southwest urges the FAA to interpret Grant Assurance 8's "reasonable consultation" standard to require transparent communications and

¹⁰⁵ *Black's Law Dictionary* 983 (12th ed. 2024).

reasonable behavior in sponsors' consultations with air carriers. To do otherwise would render meaningless Grant Assurance 8's reasonable consultation requirements.

185. Incomplete, opaque, misleading, and even intentionally deceptive behavior, like the City's actions, should be found to fall far short of Grant Assurance 8 reasonable consultations. Such conduct by an airport sponsor should be discouraged and, indeed, sanctioned.

9. The City's Consultations with Southwest Failed to Comply with the Rates and Charges Policy.

186. The Rates and Charges Policy requires that "well in advance," airport sponsors "should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal."¹⁰⁶

187. In this case, by stark contrast, the City systematically obscured or withheld critical information regarding its TDP planning process, eroding Southwest's ability to participate meaningfully. The City's process was unreasonable, inconsistent, and opaque, and its decisions were far from clearly and fully justified. Given its guidance and precedent, the FAA should hold the City to a much higher standard, one that is consistent with its Federal obligations and promotes reasonableness in airport-airline consultations.

188. As set forth above in great detail, the City engaged in a pattern of conduct that violated the reasonable consultation requirements established by Grant

¹⁰⁶ 78 Fed. Reg. at 55,332 (see *Local Negotiation and Resolution* section, ¶ 1.1.1).

Assurance 8 and the Rates and Charges Policy. Southwest urges the FAA to find accordingly.

10. The City Also Failed to Act in Accordance with Industry Standards.

189. The City's process failed to comply with industry standards for major airport-airline negotiations. Such industry standards are relevant because they have been developed over decades to ensure that sponsors maintain compliance with their Federal regulatory obligations when dealing with airlines, key airport users.

190. As noted above, Southwest Airlines is the largest carrier by traffic in the United States and is routinely and intricately engaged in development projects at airports across the country. The industry standard in such projects is based on an open, transparent, and collaborative approach between the sponsor's team and the airlines' teams.

191. The sponsor typically sets out its objectives, and specifies upfront, and all along, the criteria on which decisions will be made, especially on zero-sum allocations such as gate assignments. The sponsor's team typically shares with the airlines all relevant and useful technical and financial data in an open and transparent manner. As detailed in the preceding sections, the City took a polar opposite approach in its TDP negotiations.

192. The City's abject failure to meet such prevailing industry standards in its consultations serves as further evidence that the City's failed to meet its Federal obligations.

VIII. THE CITY'S IMPERMISSIBLE SELECTION CRITERIA CONSTITUTED UNJUST DISCRIMINATION AGAINST SOUTHWEST.

193. Airport sponsors are required to use reasonable and permissible selection criteria when allocating airport assets among users.

1. Grant Assurance 22 Requires that Airport Sponsors Employ Reasonable and Nondiscriminatory Criteria in Decision-Making.

194. Grant Assurance 22(a) requires airport sponsors to “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.”¹⁰⁷

195. Grant Assurance 22(e) requires that carriers be “subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges … as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers or non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.”¹⁰⁸

196. Grant Assurance 22(e) permits reasonable classifications between carriers and explicitly notes two examples that are recognized as reasonable

¹⁰⁷ Fed. Aviation Admin., Assurances, Airport Sponsors (May 2022), *available at* https://www.faa.gov/airports/aip/grant_assurances/assurances-airport-sponsors.

¹⁰⁸ *Id.*

classifications: whether a carrier is a tenant or non-tenant, or a signatory or non-signatory.

197. These two subparagraphs of Grant Assurance 22, taken together, stand for the proposition that airport sponsors may only discriminate between air carriers if they are deploying reasonable classifications in a just (i.e. fair and reasonable) fashion.

2. The Rates and Charges Policy Requires Airport Sponsors to Employ a Reasonable, Transparent, and Not Unjustly Discriminatory Methodology.

198. The Rates and Charges Policy requires that “the portion of shared costs allocated to aeronautical users and among aeronautical uses should not exceed an amount that reflects the respective aeronautical purposes and proportionate aeronautical uses of the facility in relation to each other and in relation to the nonaeronautical use of the facility, and must be allocated by a reasonable, ‘transparent’ and not unjustly discriminatory methodology.”¹⁰⁹

199. The methodology used for setting fees must be “applied consistently to similarly situated aeronautical users and conform[s] with the requirements of this policy.”¹¹⁰

200. Thus, the Federal standard requires a sponsor in dealing with its tenants to be objective, to employ reasonable terms, to be transparent, and to use

¹⁰⁹ 78 Fed. Reg. at 55,334.

¹¹⁰ *Id.* at 55,333.

reasonable classifications in making its decision. Any discrimination against users must be just.

3. Permissible Criteria Should Have Been Used.

201. This regulatory framework helps to illuminate the type of criteria that would be appropriate and in compliance with a sponsor's Federal obligations.

202. Grant Assurance 22 refers to "use of the airport" and similarity of facilities. The Rates and Charges Policy refers to "proportionate aeronautical use" of facilities. Such language suggests that objective criteria, based upon activity levels and facility usage requirements, would fit squarely within the FAA's permitted framework.

203. In the Miami International Airport Rates Proceeding, the Director found that Miami's concourse-allocation approach was reasonable where it allocated facilities in proportion to operational scale, assigning the largest carrier (in that case, American) to the largest facility.¹¹¹

204. Factors that are objective, quantifiable, and reasonable would be consistent with the regulatory framework. The City could easily have relied upon such factors, such as overall passenger numbers, traffic flows per gate, or other metrics of activity levels, representing legitimate and FAA-sanctioned criteria in making its decision. However, it deliberately chose not to.

¹¹¹ Final DOT Miami Order at 20.

4. **Applying Appropriate Criteria Would Have Favored Southwest.**

205. Had the City applied such objective and appropriate criteria, it would have strongly favored Southwest.

206. Southwest carries more passengers at the Airport than any other carrier, with a 37% market share.

207. Southwest currently leases the most gates at SAT.

208. Southwest operates at higher and denser passenger volumes than the other Signatory carriers. This is based upon its use of B737 aircraft, relatively high load factors, relatively intense gate utilization (i.e., more turns per day), and its vast point-to-point flight network.

209. Southwest presented by far the most robust expansion plans for SAT, indicating its willingness to commit, both contractually and financially, to ten gates at the Airport, an incremental four beyond today's leasehold. No other carrier committed to more than one incremental gate, or five total gates.¹¹²

210. Based on these expansion plans, Southwest is projected to handle 60% more operations than American and Delta combined post-construction of Terminal C. Southwest expects its passenger share to rise to approximately 50% of the Airport's total. Yet the City proposes to confine it to a space less than half the size of the new terminal, and 27% of the total terminal square footage post-DBO.

¹¹² Delta requested a total of five gates, an incremental two beyond their three exclusive gates currently, but they also frequently use a City gate for a total of four currently-used gates.

211. Instead of giving Southwest credit for substantial passenger volume and facility utilization, the City falsely stated, despite Southwest's financial commitment to the contrary, that Southwest's additional gate request was a "play to block their competitors from growing" and that Southwest could "spread their current flights among the existing gates and meet minimum requirements without adding service." These assertions were baseless. They also run contrary to the express language in Section 3.14 of the City's new AULA that requires each Signatory airline to contractually commit to lease "at a minimum" the gates, ticket counters, and other facilities set forth in Exhibit H's "Future Premises Commitment" for the carrier, expressly contemplating the TDP and therefore the post-DBO gating.¹¹³

212. As suggested in *Air Canada v. Dep't of Transportation*, affirming the Department's decision in the Miami International Airport Rates Proceeding, if the City had chosen to assign Southwest to the new Terminal C, it would have been entirely defensible, because the scale of the carrier's aeronautical activity is an appropriate, indeed, unassailable, metric to consider, benefitting the single largest block of passengers.

213. Also noted in the Miami International Airport Rates Proceeding as a critical factor, the largest carrier pays the lion's share of the costs in a single cost-center scenario.¹¹⁴ If its growth plans exceed those of the other carriers, that share will even continue to rise over time.

¹¹³ See EXHIBIT 7, AULA Provisions and Exhibits.

¹¹⁴ *Id.* at 20.

214. Thus, the City had at its disposal appropriate factors it could have considered. All such factors favored Southwest, but none were considered.

5. **The City Used Impermissible Criteria to Discriminate against Southwest and its Passengers.**

215. The City mostly ignored all such objective, quantifiable, and reasonable factors in its evaluation, relying instead upon criteria of precisely the opposite caliber: subjective, vague, opaque, and by the City's own admission "non-quantifiable;" overall far from reasonable.

216. The City further compounded this error by arbitrarily and subjectively weighting its chosen criteria so as to further bias its outcome.¹¹⁵ Indeed, the City's veneer of a robust analytical framework masked the discrimination lying behind its selection and application of what it attempted to portray as neutral criteria.

217. The City's methodology, if permitted to stand, would allow sponsors to circumvent non-discrimination requirements and use vague, unreviewable standards that are underscored by prejudice toward value-oriented carriers and their passengers.

218. To fully evaluate the propriety of the City's gate-allocation criteria, it is instructive to look at each factor the City considered.

¹¹⁵ See, e.g. EXHIBIT 3, Gating Scorecard Worksheet, minimizing the difference in levels of enplaned passengers by assigning quartiles to that factor so that each carrier received between three and five points, despite Southwest carrying roughly twice as many passengers as all of the other three carriers being scored.

6. The City Improperly Relied on Subjective Perception of Carrier “Fit”.

219. The City included as a criterion its subjective assessment of each carrier’s “fit” into San Antonio, emphasizing the “airline brand position” and “passenger profile” to determine such “fit.”¹¹⁶

220. The use of this criterion is set forth in EXHIBIT 1, the SAT Gate Assignment Criteria, which was provided to Southwest and the other carriers by Mr. Garnier on behalf of the City as its response to Southwest’s request for an explanation for the gating decision. In his deposition, Mr. Garnier confirmed under oath that this Criteria document correctly set forth the City’s decision-making process and criteria.¹¹⁷

221. In stark contrast, Airport Director Saenz stated in his deposition that he did not recall having seen the SAT Gate Assignment Criteria,¹¹⁸ and did not know what “fit” meant in such Summary’s recitation of the factors considered.¹¹⁹ The fact that two key officials involved in the decision-making process lacked a clear and consistent understanding of this criterion only reinforces its subjectivity and vague nature.

¹¹⁶ See EXHIBIT 1, Gate Assignment Criteria.

¹¹⁷ EXHIBIT 23, Garnier Dep. 26-27: lines 13-17, November 21, 2024 (with Mr. Garnier responding “Yes, I do” when asked whether he stood by the SAT Gate Assignment Criteria document attached hereto as EXHIBIT 1 and whether it was accurate).

¹¹⁸ EXHIBIT 24, Saenz Dep. 82:14-23, November 20, 2024.

¹¹⁹ *Id.* at 85-86.

222. When shown the additional language in the Summary explaining that “fit” as used in the City’s gating decision related to “desirability of passenger profile (business, leisure, mix, etc.) and airline brand position (network, ULCC, established startup, etc.),” Director Saenz, the City’s top official with responsibility for running the Airport, admitted that would not be a legitimate factor to consider in the gating decision,¹²⁰ and that he would not have directed Corgan to consider those factors.¹²¹

223. Southwest agrees with Airport Director Saenz: the use of a carrier’s “fit” into San Antonio was difficult to understand (because it is inherently vague and subjective), and an illegitimate criterion in a terminal/gate allocation decision.

224. This criterion reflects the City’s arbitrary belief that Southwest’s “brand position” (whatever that might mean) is inadequate for San Antonio, that Southwest’s passengers do not meet the City’s desired “profile,” and that as a result Southwest and its passengers are not a good “fit” for San Antonio’s aspirations. The City penalized Southwest for serving a broad cross-section of the traveling public.

225. The City’s Gating Placement Worksheets, attached hereto as EXHIBIT 3, also demonstrate that the City penalized Southwest for its value-based model, including that it offered “single cabin” service, a “different boarding experience,” and offered a “leisure travel product more than business.”¹²²

¹²⁰ *Id.* at 102:11 - 104:16.

¹²¹ *Id.* at 105:14-16.

¹²² EXHIBIT 2, Gating Scorecard Worksheet.

226. The City is improperly attempting to implement its own preference for carriers that operate traditional legacy/network operations over those that operate a business model like Southwest's. The City is not free to use subjective (and largely irrelevant) criteria to choose one airline over another based on the preferences of municipal government decision makers. Airports are not legally entitled to pick "winners and losers" among the airlines that choose to serve the airport. Yet that is precisely what the City has done in this case.

227. The City's use and weighting of this "fit" factor directly contradicts Grant Assurance 22's prohibition on unjust discrimination. Its use creates arbitrary classifications, discriminating against carriers based on their chosen business models, and arbitrary perceptions of the desirability of their passengers.

7. The City Improperly Relied on Requests for Exclusive Airline Clubs.

228. The City designated airline clubs as "the first component in the decision-making process."¹²³ Mr. Garnier stated that "it was certainly an important factor."¹²⁴

229. The City's internal documents confirm that the City intended all along to give preference to airlines that catered to business and affluent passengers by providing VIP lounges and first class/business services, and to push airlines that catered to value-minded travelers to Terminal A. Indeed, the City's documents confirm that it was the airport's "original recommendation" to its architect to keep

¹²³ EXHIBIT 1, SAT Gate Assignment Criteria.

¹²⁴ EXHIBIT 23, Garnier Dep. 30:5, November 21, 2024.

Southwest in Terminal A, not the other way around.¹²⁵ As early as June 2023, the Master Architect's planning documents reveal the City's interest in isolating "ultra low-cost carriers" in Terminal A.¹²⁶ Similarly, the City's ESC discussed their intention of excluding Southwest from Terminal C because it did not operate VIP clubs, going as far back as September 22, 2023, when Assistant City Manager Jeff Coyle added, "Southwest in the new terminal doesn't work with FIS and the other airlines requesting a club space."¹²⁷ However, Corgan's documents reveal that it doubted that the clubs were even necessary.¹²⁸ Moreover, the City had considered options that included airline lounges in Terminal A;¹²⁹ if Terminal A could have accommodated airlines with lounges, requests for lounges did not need to be a decisive criterion in determining Terminal C assignments.

230. Airline clubs are unrelated to operational efficiency or passenger service. They are of even less relevance at spoke/O&D airports where most passengers are

¹²⁵ See EXHIBIT 16, Email Correspondence from Jennifer Sachez (January 23, 2024). The degree to which the City viewed airline clubs as critical to its gating decision is also revealed in the February 9, 2024 ESC Meeting Minutes which state that Mr. Garnier "noted if Delta cannot commit to a club, gating assignments will be easier" (EXHIBIT 19).

¹²⁶ See EXHIBIT 20, "New Terminal Phase 1 Paradigms," stating that all options "Retain Terminal A as an Ultra-Low Cost Carrier (ULCC) terminal." Such preferences shed light on the City's use of non-standard criteria such as "fit" and "brand position."

¹²⁷ EXHIBIT 34, ESC Meeting Minutes (November 3, 2023).

¹²⁸ See EXHIBIT 27, Corgan Presentation ("If the airline clubs are really needed, need to find a way to build them closer to their gates once we figure out their gate assignments.").

¹²⁹ See EXHIBIT 14, Presentation to Executive Steering Committee (December 15, 2023) at 17, (depicting locations for a Delta lounge in Terminal A).

beginning or ending their journey (as compared, for example, to international gateways or connecting-hub airports).

231. The FAA in the context of its air carrier incentive program has stated that it would constitute unjust discrimination for a sponsor to discriminate among its airlines based upon the type of aircraft it uses or its business model. The FAA Policy Regarding Air Carrier Incentive Program¹³⁰ prohibits sponsors from basing incentives for air carriers on specific aircraft types,¹³¹ because to do so would constitute unjust discrimination. Similarly, incentives “cannot target carriers with particular types of business models (e.g., legacy versus low-cost carriers).”¹³² Here, the City is attempting to use club requests, along with its other subjective criteria, as a proxy to allow it to favor a certain type of air carrier, a means of distinguishing airlines that the FAA has stated is improper.

232. The City’s emphasis on the importance of clubs far outstripped whatever minimal relevance they might have as an appropriate factor in making a gating decision at an O&D airport like SAT.

233. The City produced no evidence that American or Delta had even committed to building -- or funding -- extensive club facilities.¹³³ Tellingly, as late as

¹³⁰ FAA Policy Regarding Air Carrier Incentive Program, 88 Fed. Reg. 73524 (Dec. 7, 2023).

¹³¹ *Id.* at II(F): “Incentives based on specific aircraft types are unjustly discriminatory because they could unreasonably exclude certain carriers that do not operate the type of aircraft identified.”

¹³² *Id.* at II(G).

¹³³ On June 5, 2024, Delta’s Regional Director - Corporate Real Estate Blaine Peters emailed Airport Director Saenz stating that Delta “will build a new SkyClub” if Delta is assigned to the new Terminal C, but this occurred after the City’s gating decision was made. *See EXHIBIT 30, Email Correspondence from Blaine Peters, June 5, 2024.*

June 14, 2024, *after* the City’s gating decision, Airport Director Saenz reported to the ESC that American “ha[s] not considered a lounge.”¹³⁴ This alone undermines the City’s entire gate assignment methodology which is predicated on the assignment of clubs to the two chosen carriers.

234. The City prioritized airline clubs for premium passengers over Southwest’s demonstrated ability to serve more of SAT’s passengers and to deliver higher passenger volumes per gate than the carriers selected for Terminal C. The City ignored Southwest’s need for more space to directly support passenger operations, choosing instead to prioritize lounge amenity space for a select few.

235. In designating airline clubs as the number one factor in its terminal allocation decision, the City blatantly discriminated against Southwest and its passengers, impermissibly based on the City’s bias against certain airline business models.

236. The City also ignored in its scoring for this criterion the possibility of the use of a third-party (not airline-exclusive) club in Terminal C, which is reflected in some of the potential terminal designs (there was also the potential to site clubs in Terminal A, according to some design renderings).¹³⁵ Director Saenz admitted in his deposition that if Southwest had been assigned to Terminal C, even though it had not

¹³⁴ See EXHIBIT 32, Meeting Minutes, Executive Steering Committee, June 14, 2024, at 5.

¹³⁵ EXHIBIT 18, Meeting Minutes, Executive Steering Committee, Nov. 3, 2023.

requested a club, a third-party club could have been placed on Terminal C.¹³⁶ This admission reveals that this was a criterion without meaningful distinction among the carriers.

237. Despite this, the City awarded Southwest zero points for its airline club criterion, while awarding seven points to American and Delta. This factor, standing alone, mathematically determined the City's gating allocation.¹³⁷

8. The City Improperly Relied on an Arbitrary “City Pairs Commitment” Standard.

238. The City used as a key criterion “the existence of a written commitment by airline to city pairs, specific flights, or minimum levels of enplaned passengers.”

239. A “city pair” refers to a specific route between two cities. While vague, the City’s term of “specific flights” presumably also refers to a city-pair route.

240. While levels of enplaned passengers would be an appropriate criterion, it is unclear what the City sought in terms of a “written commitment” by an air carrier to passenger levels. To Southwest’s knowledge, no carrier made, or was asked to make, such commitment to the City of San Antonio.

¹³⁶ EXHIBIT 24, Saenz Dep. at 26:4-25.

¹³⁷ In the final gating scorecards (EXHIBIT 2), the City awarded Delta 31 of a possible 40 points, gave 30 points to American, and 26 to each of Southwest and United. Delta, American, and United each received a full seven points for the “Airline Club Requested” criterion, while Southwest was awarded zero. If the club criterion were removed, Southwest would have been scored first with 26 points, while Delta and American would have received respectively 24 and 23 points, and United would have been awarded 19 points. See EXHIBIT 3, Gating Scorecard Worksheet. Alternatively, if Southwest had been awarded seven points like the other carriers, based on the ability to place a third-party airline lounge in Terminal C, Southwest would have finished with the highest score, 33 points.

241. The City's use of this factor would impermissibly prioritize specific routes rather than overall activity levels, operational metrics, or overall contribution to passenger volumes at SAT.

242. This criterion ignores the reality that carriers must remain flexible to adjust networks based on market conditions, making specific long-term route commitments impractical and inconvenient for carriers and the traveling public.

243. It is also subjective and vague, in that no carrier provided a written commitment to city pairs, specific flights, or minimum levels of enplaned passengers. And, by comparison, the City awarded points for clubs to American and Delta despite no commitment by those carriers to utilize and pay for such clubs.

244. By prioritizing specific route commitments over demonstrated operational excellence and total service levels, this criterion creates an arbitrary and unreasonable basis for discrimination.

9. The City's Decision Would Harm Southwest's International Service.

245. The City purported to consider international services. Two of its first four stated criteria are whether an airline "operates or commits to operating international routes" or "has relevant code share arrangement(s)."

246. Southwest does not deny the propriety of considering international services in allocating terminal facilities. But the City at best paid lip service to this factor, and at worst actively undermined the existing international services at SAT.

247. Southwest is the only one of the four airlines considered for Terminal C that operates international service at the Airport.

248. In the City's scoring sheets, Southwest received, as one would expect, the maximum five points allocated to the international routes factor, with the other three carriers receiving zero points because they do not operate internationally. Delta received the maximum four available points for the codeshare factor, based on its codeshare service with AeroMexico, with all other carriers receiving zero. Accordingly, while Southwest is the only direct international operator of the group considered, its score on these two factors only exceeded Delta's score by a single point.

249. Once again, the City's scoring was arbitrary. While airline clubs were awarded a maximum of seven points, international service could receive only a maximum of five. An international codeshare gave a carrier four points. This approach in effect severely degraded the importance of operated international services.

250. More importantly, the City also decided to relocate the FIS to the new Terminal C, but to place Southwest in Terminal A. This decision flew in the face of numerous discussions throughout the TDP consultation process in which the City indicated that if international services were kept in Terminal A, the City would construct a convenient connector to an FIS-equipped terminal.¹³⁸ Despite these indications, the City now still intends to relocate the FIS to Terminal C, but has also

¹³⁸ Indeed, the City apparently received an award for an \$18 million grant related to this connector, funding "the environmental review and partial design of a new terminal connector and associated enabling projects for the new Terminal C. The connector will provide access between the two existing terminals, enabling passengers to move between them without having to exit the secure area and re-enter." Fed. Aviation Admin., FY2024 Airport Terminal Program Selections (Feb. 15, 2024), *available at* https://www.faa.gov/sites/faa.gov/files/2024-02/FY2024_ATP_Approved_Selections_rev.pdf.

abandoned its plans to build a connector, which would have partially alleviated the harm to Southwest's international passengers.

251. The City therefore proposes to assign the only domestic carrier currently operating international flights at SAT -- Southwest -- to a terminal that will no longer have in-terminal immigration and customs clearance for Southwest's arriving international passengers, while abandoning plans for a terminal connector that would have mitigated this outcome.

252. Thus, while the City claimed that international services were an important factor, its process and outcome if allowed to stand would actively disadvantage Southwest's operated international service, harming its passengers, with little or no countervailing increase in international activity at the Airport.

10. The City Improperly Relied on Vague “Service, Growth, and Experience” Standards.

253. The City's SAT Gate Assignment Criteria set forth another factor: "The airline's service, growth, and experience." This factor was allocated seven possible points in the City's scoring sheets. Southwest, Delta, and United were all awarded six points, while American was awarded the full seven.

254. This factor "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."

255. The term "service" is vague, unexplained, and does not relate to any legitimate factor for consideration.

256. The term "growth" is an appropriate factor and is apparently further explained by "reasonable growth potential." However, that factor should have massively favored Southwest.

257. Southwest requested an increase from six gates to 10 in the new terminal to accommodate its growth plans. No other carrier requested more than one incremental gate (American and Delta both requested one additional gate, if Delta's use of a City gate is considered, or two in Delta's case if that City gate is ignored).

258. Southwest provided the City with assurances that Southwest intended to use the additional gates at the same levels as the current six gates, which would represent more than 30 additional daily flights at SAT.

259. Southwest's growth plans would nearly double its enplanements at SAT - - from approximately 2 million to more than 3.5 million at DBO. Southwest's growth plans, if accommodated by the City, would see it carrying 50% of the Airport's passengers.

260. Thus, when analyzing the "reasonable growth potential" of the carriers requesting Terminal C gates, if the City were acting reasonably Southwest would have received many more points than Delta and American. It received the same as Delta, and one point less than American.

261. The Summary included in its description of this factor "aspirations for international flights" but that factor was separately covered; moreover "aspirations" are not a basis for decision-making (especially where the City seems to hold Southwest to the much higher standard of making a "commitment").

262. The City included in its explanation of this factor “any differentiation of product or technology used that would enhance customer experience.” The City provided no explanation of what is meant by this vague and inappropriate consideration. As such, its inclusion stands as further evidence of the City’s opaque and improper decision-making process.

263. The final element of this factor as set out by the City related to the “experience” of the carrier. Once again, this element is vague and inappropriate for a sponsor to consider in the allocation of terminal facilities and corresponding gates. Southwest’s experience stands without question. Since 1971, Southwest has operated at the highest levels of safety, as overseen by its regulator, the FAA. The City has no business attempting to discriminate among airlines based upon their “experience.”

264. Airport Director Saenz agrees. When asked under oath about the use of a carrier’s “service growth and experience” as a factor, he replied “I would say growth is. I don’t know how service and experience play into a role of deciding why an airline would get into a certain gate.... Your experience, not sure why that would play a factor into why -- whether you’ve been in operation and you’ve got approval to operate an aircraft commercially at this airport, whether it’s one year or ten years. I’d have to have a better definition of what experience means before I’d say.”¹³⁹ Quite.

¹³⁹ EXHIBIT 24, Saenz Dep. 86:2-87:16, November 20, 2024.

11. The City's Arbitrary Scoring System in Aggregate Discriminated Against Carriers Like Southwest in Favor of Carriers that the City Preferred.

265. In addition to the impropriety of the use of these individual criteria, the City also established a subjective scoring system that in aggregate discriminated against airlines like Southwest and gave preference to airlines catering to business travelers and offering first class cabins and VIP lounges. Of a maximum of 40 available points, the City assigned 21 points (52.5%, seven points for each criterion) to the three blatantly subjective and impermissible criteria “Airline Club Requested,” “Fit Into SAT,” and “Service, Growth, Experience.”

266. By glaring contrast, two manifestly objective criteria, “Number of Preferred Gates Requested” and “Current Epax [enplaned passengers] Levels,” were assigned only five points each (collectively a maximum of 10 out of 40 total available, or 25%). These two legitimate criteria were further diluted by being arbitrarily segmented, minimizing the resulting score differential between carriers.

267. For gates requested, the City arbitrarily assigned two points to a request for one to two gates, three points to a request for three to four gates, four points to a request for four to five gates, and a capped five points to a request for anything over six gates. This approach forced all four carriers into a band of between four and five points awarded. It also effectively negated Southwest’s request for an additional four gates, to a total of 10: under the City’s approach, Southwest would have received the same score if it had requested no incremental gates beyond its current lease of six. Had the City been attempting to be fair, it could have assigned a point per gate, or

otherwise evenly attributed the points across gates, but that would not have served its perceived desire to achieve its intended outcome.

268. Similarly for enplaned passengers, the City arbitrarily grouped the carriers' passenger levels into quartiles across all carriers at the Airport, awarding five points to the first quartile, down to two points for the fourth quartile (again minimizing the points awarded to the largest carrier, Southwest), forcing all four carriers into the narrow band of receiving between three and five points on this factor, despite the reality that Southwest enplaned many more passengers at SAT.¹⁴⁰ Again, the City could have approached this in a unassailable fashion by giving the maximum points to the carrier with the most passengers and scaling all of the other carrier's points accordingly and evenly, but it chose not to, revealing its intent to bias the process, while attempting to create the appearance of analytical rigor.

269. Southwest received the maximum 10 points combined for these two otherwise objective factors, but due to the City's scoring methodology, all three of the other carriers received between seven and nine points. This methodology effectively neutered these legitimate criteria and arbitrarily boosted the subjective, improper criteria into playing the decisive role. Indeed, as noted previously, it made the airline club request, *de facto*, the only criterion that mattered, by itself accounting for more than the total score differential between Southwest and the selected carriers. The

¹⁴⁰ Southwest enplaned more than 1.9 million passengers at SAT in 2023, compared to just over 1 million for American, 762 thousand for United, and 730 thousand for Delta.

City improperly and blatantly cooked the books, creating a scoring system that achieved its desired outcome.

270. Taken in total, the City's criteria were opaque (only revealed after the fact and even then challenging to unpack, even for the Airport Director), vague, illogical, and inappropriate for discriminating among carriers. They were further applied in a nonsensical, biased, and arbitrary fashion to the detriment of Southwest and its passengers.

271. The City discriminated against Southwest, and this discrimination was far from "just" when measured against the standards set forth in the Grant Assurances, specifically Grant Assurance 22 and the Rates and Charges Policy. The City deployed precisely the type of unreasonable approach and impermissible decision criteria that the FAA should sanction and discourage among U.S. airport sponsors.

12. The City Failed to Accommodate Southwest's Robust Expansion Plans, in Violation of Grant Assurance 39.

272. Grant Assurance 39 requires that "if the airport owner or operator of a medium or large hub airport ... has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that -- 1) Describes the requests; 2) Provides an explanation as to why the requests could not be

accommodated; and 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.”¹⁴¹

273. While the FAA has noted that “Grant Assurance 39 is not intended to require an airport sponsor to file a report every time lease negotiations fail to meet all of the expectations of a tenant or prospective tenant,”¹⁴² this case goes far beyond mere failure to meet such expectations.

274. While not often litigated, Grant Assurance 39 is on point. The FAA in *Tropical Aviation* emphasized that Grant Assurance 39 “was intended to ensure accommodation of carrier operations directly related to the movement and care of passengers, focusing on gate access and, to a lesser extent, other terminal and baggage processing areas.”¹⁴³

275. Unlike in *Tropical Aviation*, where the court found no evidence that the airport had “taken steps to prevent Air Sunshine from accessing the Airport’s terminal and gates,”¹⁴⁴ here the City is actively impeding Southwest’s expansion plans by leaving it in a terminal that is inadequate even for Southwest’s current operations, much less its expansion plans.

¹⁴¹ Fed. Aviation Admin., Assurances, Airport Sponsors (May 2022), *available at* https://www.faa.gov/airports/aip/grant_assurances/assurances-airport-sponsors.

¹⁴² *Tropical Aviation Ground Servs. Inc. v. Broward Cnty.*, FAA Docket No. 16-12-15 at 28 (Apr. 22, 2015).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

276. Southwest has set out in great detail in this Complaint the deficiencies of Terminal A, and especially its inability to accommodate a high-volume operation like Southwest conducts, uniquely among the Signatory carriers at the Airport.

277. The City has failed to provide any viable path for Southwest's planned expansion of more than 30 flights per day, from an average of approximately 47 flights per day in 2023 to 80 daily flights at DBO, representing an increase of more than 70% in Southwest's operations and of approximately 25% in the total number of flights at SAT.

278. The City has failed to explain adequately why Southwest's expansion needs cannot be accommodated in Terminal C.

279. The City has failed to provide any timeline or plan for future accommodation of Southwest's expansion needs in Terminal A. The City has suggested that its proposal to convert Terminal A from a 16-gate facility to one with only 10 gates, all leased to Southwest, would allow for such expansion. This assertion contains a number of defects. First, the City has not conducted a study to support its proposed changes to Terminal A, despite having admitted the need to do so. Second, reorienting the holdrooms in Terminal A would do nothing to alleviate the congestion in the corridors, and numerous other defects in the terminal's floor plan and antiquated design that the City's consultants have repeatedly identified. Third, this assertion also ignores the incremental passenger activity that will be driven by the City's stated plan to construct a new Ground Load Facility, whose passengers will transit the congested spaces in Terminal A. Fourth, and finally, Southwest's growth

projections, if accommodated, would produce *Southwest-only* traffic levels in Terminal A that exceed today's already-constrained traffic levels.

280. To Southwest's knowledge, the City has failed to file the required reports with the Secretary documenting its inability to accommodate Southwest's facility requests for its expansion plans at the Airport.

281. The City's actions here represent a fundamental failure to accommodate its largest carrier's clearly documented expansion needs, directly impacting Southwest's ability to serve the traveling public, and as such should be found to be in violation of Grant Assurance 39.

13. The FAA Should Not Be Fooled by the City's Recent Attempts to Recast its Decision as Reliant Upon Objective "Load Balancing" Factors.

282. Southwest notes here that the City has recently undertaken an *ex-post facto* effort to whitewash its decision-making approach, and the criteria it applied, to make it appear as though the City considered objective and appropriate factors.

283. Since circulating the SAT Gate Assignment Criteria, the City's representatives have started to backtrack from what that document, and the airline scoring sheets, reveal about the City's flawed decision-making process. Discovery in connection with the ongoing litigation has shown that the City's recent assertions amount to nothing more than *post hoc* justification.

284. Airport Director Saenz in his deposition denies familiarity with the SAT Gate Assignment Criteria,¹⁴⁵ despite having attended the meeting at which the results were presented to the ESC and the scores were summarized.¹⁴⁶ The City now suggests that the decision was largely technical in nature, based upon an “airport-wide load balancing” analysis performed by Corgan.¹⁴⁷ However, contrary to the City’s claim, Corgan Principal John Trupiano testified in his deposition that Corgan did not recommend to the City that American and Delta should be assigned to Terminal C, or that Southwest should be assigned gates in Terminal A.¹⁴⁸

285. The SAT Gate Assignment Criteria does include a reference to “broad-based terminal load balancing considerations,” but that factor appears at the very end of the list, after all the preceding subjective factors were considered and applied, and by which it would have been rendered moot.

286. Moreover, the individual airline score sheets, upon which the actual gate allocations by all indications appear to have been made, contained no factor or score for load-balancing considerations. This new-found emphasis on “load-balancing” is nothing but a fig leaf that the City now deploys to attempt to obscure its impermissible and outrageous approach. The FAA should refuse to accept the City’s

¹⁴⁵ EXHIBIT 24, Saenz Dep. 81:4 to 84:7, November 20, 2024.

¹⁴⁶ *Id.* at 117: lines 3-7.

¹⁴⁷ For example, Director Saenz says that the gating decision “was based on passenger activity levels of traffic and the balancing of the overall complex,” (EXHIBIT 24, Saenz Dep. 27: lines 20-21), but the City presents no evidence of this impacting the scoring decision beyond the quartiles-based “Current Epax Levels” factor, which barely impacted the scoring (because all four of the carriers received between three and five points for this element due to the arbitrary way that it was scored by the City).

¹⁴⁸ EXHIBIT 28, Trupiano Dep., 190:4-6, Mar. 14, 2025.

self-serving assertions of late that purely technical, engineering analyses carried the day; it is belied by the contemporaneous evidence and the mathematical application of the scoring sheets.

287. Even if “load balancing” had played an important part in the City’s decision, which it did not, it strains credulity that the City’s proposed allocation of terminals achieves “balance” at the Airport. The City knew that Terminal A was obsolete, and initiated the entire TDP process to remedy its deficiencies. The City could have designed a new terminal that, combined with Terminal B, would accommodate all of its four major Signatory carriers. It chose not to do so.

288. Instead, the City designed a new terminal that would require at least one of those carriers to remain in a functionally-obsolete terminal that has exceeded its useful life, with no credible plan to refurbish it. It compounded this error by attempting to force the carrier with the single largest block of passengers at SAT, and a uniquely high-volume operation, Southwest, to remain in this small, cramped, and obsolete facility. The City cannot plausibly claim that this was a reasonable way to achieve “balance” at the Airport.

289. Indeed, revealing of its true intent, the City only used Corgan’s analysis to “have ammunition to negotiate with the airlines” to obtain the City’s preferred results. In an email dated September 21, 2023,¹⁴⁹ Executive Program Manager Dave Brandenburg says, “Please keep Corgan laser focused on the ‘balancing’ of the Terminals so we have ammunition to negotiate with the airlines.” When Corgan’s

¹⁴⁹ EXHIBIT 21, Email Correspondence from Dave Brandenburg (September 21, 2023).

“balancing” analysis failed to result in a consensus on gating assignments, the City unilaterally decided to make the coveted new terminal available only to airlines that cater to business class and affluent passengers, rather than to carriers like Southwest that cater to value-minded passengers.

290. Based upon all of the preceding reasons, the criteria that the City deployed failed to comply with the City’s Federal obligations and unjustly discriminated against Southwest in the allocation of airport facilities in violation of Grant Assurance 22.

291. The City also failed to accommodate Southwest’s reasonable expansion plans at the Airport in violation of Grant Assurance 39.

IX. THE CITY IS PROPOSING UNREASONABLE AND UNJUSTLY DISCRIMINATORY FEES.

1. Prohibition on Unreasonable Fees and Unjust Discrimination.

292. The Anti-Head Tax Act (“AHTA”) authorizes airport operators to collect “reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities.”¹⁵⁰

293. Grant Assurance 22(e) requires that each carrier “shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such

¹⁵⁰ 49 U.S.C. § 40116(e)(2).

carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants and non-tenants or signatory carriers and non-signatory carriers.”

294. The Rates and Charges Policy requires that “unless otherwise agreed by aeronautical users,” the airport proprietor must allocate operating costs among cost centers so that “[T]he portion of shared costs allocated to aeronautical users and among aeronautical uses should not exceed an amount that reflects the respective aeronautical purposes and proportionate aeronautical uses of the facility in relation to each other and in relation to the nonaeronautical use of the facility, and must be allocated by a reasonable, ‘transparent’ and not unjustly discriminatory methodology.”¹⁵¹

295. The Rates and Charges Policy further mandates that shared costs are only to be included in the rate base “if the facility or service in question supports the airfield activity reflected in that rate base”¹⁵² and that any methodology be “applied consistently to similarly situated aeronautical users.”¹⁵³

296. The City’s terminal allocation and its fee structure violate these Federal requirements, specifically the AHTA, Grant Assurance 22, and the Rates and Charges Policy.

¹⁵¹ 78 Fed. Reg. 55,332 at § 2.4.5(b).

¹⁵² *Id.*

¹⁵³ *Id.* at § 2.1.

297. The City also unjustly discriminated against Southwest by forcing Southwest to pay non-Signatory rates from the start of the new AULA on October 1, 2024. The City presented to Southwest a draft new AULA that embodies the City's improper gate allocation methodology in violation of the Grant Assurances. Southwest has understandably refused to sign, pending resolution of this dispute. Southwest has held Signatory status at the Airport since 1971, and is prepared to hold such status again upon resolution of this dispute, but should not be forced to waive its rights or to sign an improper agreement. Having thus boxed Southwest into a corner where it is unable to sign the AULA, the City has insisted on treating Southwest as a non-Signatory airline since October 1, 2024 (despite the "holdover" provision in the prior agreement calling for Signatory rates). Such treatment penalizes Southwest through significantly higher rates and strips it of its right to share in certain revenues and to vote on capital projects (one of which the City is now trying to push through, even though it would impact Southwest). Thus, the City's new AULA reflects a "heads you win, tails I lose" choice for Southwest that has the effect of penalizing Southwest for refusing to enter into a noncompliant lease.

2. Only Comparable Facilities Can Be Grouped Into A Single Cost-Center.

298. The Rates and Charges Policy expressly states that "When assets in the rate-base have different costs, the airport proprietor may combine the costs of comparable assets to develop a single cost basis for those assets."¹⁵⁴ This is worth

¹⁵⁴ *Id.* § 2.5.2.

restating: FAA's clearly articulated view is that an airport can only include assets in a single cost-center if those assets are "comparable."

299. In the Miami International Airport Rates Proceeding, the Department applied the Rates and Charges Policy as guidance in assessing the reasonableness of the sponsor's terminal fees,¹⁵⁵ noting that "the applicable reasonableness standards are those established by the Policy Statement,"¹⁵⁶ which replaced the prior use of the general standards of the Commerce Clause test as the means of determining reasonableness.¹⁵⁷ Thus, the Rates and Charges Policy acts as guidance in determining the reasonableness of a sponsor's proposed rates.

300. The Department in the Miami International Airport Rates Proceeding examined in detail whether the terminal facilities in question were "comparable", favorably citing language stating that the facilities would be "essentially comparable with the other new concourses in terms of size, scope, finish, and furnishings and will be built according to [sponsor] design guidelines,"¹⁵⁸ while cautioning that "We would be concerned, however, if an airport built facilities demanded and used by a hub

¹⁵⁵ Final DOT Miami Order at 12 ("Since the A/D Concourse is comparable to the facilities used by other airlines, the Policy Statement allows the airport to include the concourse's cost within the cost pool used to calculate the fees charged all airlines using the terminal, as long as the airport's methodology is reasonable and consistently applied."). The decision in the Final DOT Miami Order was upheld by the Court of Appeals for the D.C. Circuit. *Air Canada*, 148 F.3d at 1157.

¹⁵⁶ Final DOT Miami Order at 13 (referring to the prior version of the Rates and Charges Policy, 61 Fed. Reg. 31,994 (June 21, 1996)).

¹⁵⁷ *Id.* at 14 ("Since we later adopted the Policy Statement, we have now adopted reasonableness guidelines which have replaced the more general standards contained in the Commerce Clause test [used by the Supreme Court in *Northwest Airlines v. County of Kent*, 510 U.S. 355, 368-369 (1994) prior to the issuance of the Policy Statement].").

¹⁵⁸ *Id.* at 24.

airline and charged much of their cost to other airlines in circumstances where the latter airlines would not have comparable facilities needed to replace outmoded facilities.”¹⁵⁹

3. The Terminals the City is Grouping Into a Single Cost-Center are not Comparable.

301. The City of San Antonio has failed to meet this comparability test. It is attempting to aggregate patently non-comparable facilities into a single cost-center, resulting in unreasonable and unjustly discriminatory fees.

302. The City in its new AULA has grouped all terminals at SAT into a single cost-center, which will include the costs of the new Terminal C. It is impermissible for the City to do so, because Terminal A is not even remotely comparable to Terminal C (or even Terminal B) in terms of “size, scope, finish, and furnishings” or the design standards to which each is built. The City and its consultants have repeatedly said as much.

303. The Terminal C project is budgeted to cost between \$1.5 and \$2 billion, with a net cost of approximately \$1.4 billion to the airlines serving SAT.¹⁶⁰ It is undeniable that this will be a brand new, spacious, modern, state-of-the-art terminal, among the best in the United States.

304. Terminal A stands in stark contrast to the planned Terminal C. Southwest has set forth in great detail in this Complaint the gross deficiencies of

¹⁵⁹ *Id.* at 13.

¹⁶⁰ EXHIBIT 11 at 26; more recently \$1.6 billion (EXHIBIT 12 at 10).

Terminal A. The City and its own consultants have deemed it functionally obsolete, and Director Saenz as recently as two years ago stated publicly that it had nearly reached the end of its useful life, might provide five to eight more years of service (which would now be three to six, bumping up against the DBO of Terminal C), and after that would be headed for demolition.¹⁶¹

305. The scenario that the Department cautioned against in the Miami International Airport Rates Proceeding, quoted above, is precisely what is occurring in San Antonio: the sponsor is building facilities for one group of airlines (American and Delta), while charging much of their cost to other airlines (Southwest and any other carrier using Terminal A)¹⁶² in circumstances where the latter airlines would not have comparable facilities needed to replace outmoded facilities.

4. The City has also Failed to Develop a Plan or Budget to Render Terminal A Comparable.

306. The preceding paragraphs established the standard that airport sponsors are permitted to group assets into a single cost-center only if they are comparable. They also established that the facilities the City is attempting to aggregate into a single cost-center are far from comparable.

307. However, the Department in the Miami International Airport Rates Proceeding allowed greater flexibility to sponsors, establishing the principle that

¹⁶¹ Shari Biediger, New terminal design signals major, billion-dollar changes at San Antonio airport, San Antonio Report (Feb. 15, 2023), <https://sanantonioreport.org/san-antonio-international-airport-new-terminal-design-renderings/>.

¹⁶² Further evidence of the benefit to individual carriers is the City's March 10, 2025 MII (2025-Q1) vote which would benefit only Delta, as described in more detail in this Complaint paragraph 16.

even facilities that are not currently comparable may be aggregated into a single cost-center if the sponsor can present credible evidence that the substandard facilities will be rendered comparable.

308. In that case, the Department found, and the D.C. Circuit affirmed, that the airport sponsor's aggregation of currently non-comparable terminal facilities into one cost-center was acceptable because it was based upon "substantial evidence" that the improvement project, when completed, would result in facilities that were "essentially comparable ... in terms of size, scope, finish, and furnishings."¹⁶³ As such, the lack of comparability was only fleeting; all would balance out over time.

309. In making this determination, the Department pointed out that the new facilities would serve the largest carrier, with the greatest potential for expansion, causing the benefitting carrier to bear the largest portion of the fees for the new space, which it would be using.¹⁶⁴ The City of San Antonio's approach is the exact opposite, leaving the largest carrier in the substandard space while trying to charge to it the lion's share of the new space used by other carriers.

310. The Department relied heavily upon the fact that the sponsor in Miami had a Capital Improvement Program which encompassed updating the other, at the time non-comparable facilities, and the Department (and D.C. Circuit) accepted for

¹⁶³ *Air Canada*, 148 F.3d at 1151.

¹⁶⁴ Final DOT Miami Order at 20.

the purposes of approving Miami's single cost-center approach that the sponsor would do so.¹⁶⁵

311. It should also be noted that the Complainants in the Miami International Airport Rates Proceeding "did not object in principle to the airport's equalization methodology."¹⁶⁶ That is not the case here. Unlike in the Miami case where no new terminal was being constructed, Terminal C at SAT did not exist under the prior contractual arrangement. As such, Southwest has not consented to the City's proposed terminal rates, set out in the City's new AULA that Southwest has refused to sign. Southwest objects in principle to the airport's rate-making methodology.

312. The Miami case lays out an alternative approach for an airport sponsor to follow if its facilities are not currently comparable, but it nonetheless wishes to aggregate them into a single cost-center. In that scenario, the sponsor can build new space (typically for the largest carrier with the most robust expansion plans), provided that there is substantial evidence that the sponsor has also developed an airport-wide CIP pursuant to which all of the terminals so grouped will, over time, be rendered comparable. The City of San Antonio followed neither such sanctioned approach.

¹⁶⁵ *Id.* at 21 ("We are basing our decision to uphold the reasonableness of the fees in large part on the airport's intent to build new facilities for many of the airlines using MIA, not just American, under the Capital Program, and on the airport's undisputed need to renovate and expand its facilities.").

¹⁶⁶ *Id.* at 7.

313. In stark contrast to Miami, the City of San Antonio has prepared no airport-wide CIP that will cause all of its airline terminals over time to be made comparable. Indeed, in undertaking this large TDP, driven by the deficiencies of Terminal A, the City has wholly neglected Terminal A.

314. The City's own statements confirm that for Terminal A there are "no economically viable options that can deliver capacity and acceptable [Levels of Service]."¹⁶⁷ As quoted previously in this Complaint, the City and its consultants have repeatedly deemed Terminal A functionally obsolete, and the Airport Director has said it is headed towards demolition.

315. In Exhibit M to the new AULA, the City has proposed \$200 million in improvements to Terminal A. Far from a firm plan to render Terminal A comparable to the other terminals at SAT, these proposed Exhibit M Projects by the City's own admission were nothing more than a "placeholder" for "cosmetic," or "beautification" projects that would make Terminal A "look better," collectively a mere "facelift." Mr. Garnier admitted as much:

"A. So, the 200 million was a **placeholder**, and -- and it had been a **placeholder** for more than a year, I think. So, it was just a -- A **placeholder** was: This is -- This is a good amount. Let's put 200 million in there so that it's a preapproved amount. But you'd have to go through **planning** – We're actually kicking that off right now [stated on Nov 21, 2024]. You have to go through a planning process. **You have to have your -- a study**. We've done some studies of Terminal A, but a little bit more in depth. You'd have to have some design work and a program definition manually, I think is the right thing, before you could get a real price.

¹⁶⁷ EXHIBIT 34, Presentation of the City's Executive Steering Committee on October 6, 2023.

Q. Do you have an understanding as to what the timeline is for that process?

A. Yes. So, it's built into Exhibit M, and that was at Southwest's request. So, we built in a timeline that we would complete the assessment this -- this fiscal year.

Q. Does that mean the end of September next year [2025]?

A. Yes. Yes. So, right now, it looks like **eight to nine months** maybe is what it would take. It could be quicker.”¹⁶⁸

316. This is a clear admission -- by a senior City official charged with implementing the TDP and negotiating the allocation of airline facilities -- that the Exhibit M Projects would by no means render Terminal A comparable. It is also an admission that there is currently not only no plan to do so, but the requisite assessment (or study) has (at best) only just begun.

317. Mr. Garnier later went on to explain:

“Q. “That’s what you were referring to, the Terminal A refurbishment, at that point, as a **facelift**?

A. That’s how I said it. Those are my words.

Q. What did you mean by ‘facelift’?

A. **Cosmetic** redo the -- So, we’ve done some mechanical, electrical, and plumbing already; we’ve done a roof; we’ve -- There’s a whole series of -- host of projects that get done. I was -- My placeholder was more of a **beautification** and how do we -- how do we **make it look better**, how do we make it -- you know, the security checkpoint flow better, and things like that.”¹⁶⁹

¹⁶⁸ EXHIBIT 23, Garnier Dep. 95:5 to 96:1, November 21, 2024 (emphasis added).

¹⁶⁹ EXHIBIT 23, Garnier Dep. 129:11-21, November 21, 2024 (emphasis added).

318. Airport Director Saenz has similarly admitted that the Exhibit M Projects will not render Terminal A comparable:

“Q. Is it your testimony that the \$200 million that the other carriers, including American and Delta, have agreed to fund for the Terminal A renovation will be sufficient? Is that enough money to make Terminal A equivalent in finish, appearance, utility and customer experience as Terminal C?

A. **We don’t know that answer yet.**

Q. Right. Do you know how much money it’s going to be?

A. No, sir.”¹⁷⁰

319. Unlike in the Miami International Airport Rates Proceeding, where the inequality could be considered temporary because the modernization plans would eventually benefit all carriers, Terminal A cannot be made comparable to Terminal C. There is no plan to do so. The list of preapproved Exhibit M Projects will not do so. And any work beyond that list will be subject to potential veto by competing carriers under the MII provision. Not only did the City have no plan to make Terminal A comparable (and it is highly questionable that it ever could be), but any effort to do so could, and likely would, be blocked by the other Signatory carriers who would not wish to absorb any additional rate increase.

5. Terminal A is Especially Ill-Suited for Southwest’s High-Volume Operation.

320. Exacerbating the City’s improper decision, Terminal A is particularly inadequate for Southwest given the high-volume nature of Southwest’s operations at

¹⁷⁰ EXHIBIT 24, Saenz Dep. 200:24 to 201:9, November 20, 2024 (emphasis added).

SAT, as set forth previously in this Complaint. Southwest doesn't just operate the most gates at the Airport, it also turns them much more often, operates relatively large B737 aircraft, at relatively high load factors, and simply pushes many more passenger through the gates and terminal than the other Signatory airlines that were considered.

321. The City took no account of this significant difference in deciding to leave Southwest in Terminal A, and also did not remotely tailor the Terminal A improvements to this type of operation.

322. The City's proposed outcome would result in charges to Southwest for use of Terminal A that are unreasonably high for the facilities provided.

323. Southwest stands to benefit precious little from the TDP. Nearly all of the benefit will flow to its competitors. Southwest would even lose its in-terminal FIS for arriving international passengers. Yet the City's approach would dramatically raise Southwest's costs at SAT.

324. Southwest's internal analyses indicate that the City's proposal if allowed to stand would result in Southwest's Cost Per Enplanement at the Airport rising by 262.5% by 2029 as compared to 2023 rates, and by 337.1% versus 2023 by 2034, when bearing the full impact.

325. Such an outcome would violate the Rates and Charges Policy's requirement that costs allocated to and among aeronautical uses should not exceed an amount that reflects the respective aeronautical purposes and proportionate

aeronautical uses of the facility in relation to each other. They would therefore be unreasonable and should be prohibited.

326. Further, by virtue of the improper aggregation of non-comparable facilities into a single cost-center, the City's proposed terminal fees would represent an impermissible cross-subsidy by Southwest in favor of other carriers at the Airport. Such outcome would be unreasonable and unjustly discriminatory, in violation of City's Federal obligations established by the AHTA, Grant Assurance 22, and the Rates and Charges Policy.

X. PRAYER FOR RELIEF.

327. Accordingly, Southwest requests that the FAA investigate and assess: (i) the reasonableness of the City's consultative process with the airlines in determining its post-DBO terminal/gate assignments; (ii) the reasonableness of the City's decision-making criteria used for such assignments and whether such criteria are unjustly discriminatory; (iii) the reasonableness of the City's rate-making methodology, including without limitation (a) its attempts to combine non-comparable terminals post-DBO into a single cost-center, and (b) its insistence that Southwest should subsidize the use by other carriers of facilities substantially better than, and not comparable with, the facilities offered to Southwest, and whether such methodology comports with the Rates and Charges Policy and the City's Federal obligations.

328. Southwest additionally requests that the FAA find the City in noncompliance and issue a compliance order in relation to the foregoing, in accordance with 14 C.F.R. § 16.109(a).

329. Southwest further requests that the FAA suspend the payment to the City of grant funds for the Airport in accordance with 49 U.S.C. § 47111 and 14 C.F.R. § 16.109(a), to the extent that the FAA deems appropriate to achieve compliance.

330. Southwest requests that the FAA, pursuant to 14 C.F.R. § 16.109(a), order the City to cease and desist charging Southwest the increment between Signatory and non-Signatory rates until such time as the City offers to Southwest a compliant lease and rate structure at the Airport, and cease and desist from any MII votes that could impact Southwest pending resolution of this dispute.

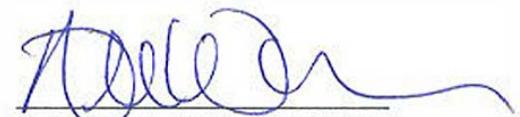
331. Finally, Southwest requests that the FAA issue an order directing the refund of all fees unlawfully collected by the City from Southwest, including without limitation all fees paid by Southwest as a non-Signatory carrier to the extent that such fees exceed the fees that Southwest would have paid as an SAT Signatory carrier, in accordance with 14 C.F.R. § 16.109(a).

* * *

Respectfully submitted,


MICHAEL P. FLEMING
Counsel for Southwest Airlines Co.


GLENN P. WICKS
Counsel for Southwest Airlines Co.


ALICE E. WALKER ORR
Counsel for Southwest Airlines Co.

March 20, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Complaint of Southwest Airlines Co. on the following persons at the following email addresses **by electronic service** in accordance with 14 C.F.R. § 16.13(h):

Office of the Chief Counsel Attn: FAA Part 16 Docket Clerk AGC-600 9-AWA-AGC-Part-16@faa.gov Federal Aviation Administration 800 Independence Ave., SW Washington, DC 20591	Counsel for the City of San Antonio W. Eric Pilsk Epilsk@kaplankirsch.com KAPLAN KIRSCH LLP 1634 I Street, NW, Suite 300 Washington, D.C. 20006
--	---



ALICE E. WALKER ORR
Counsel for Southwest Airlines Co.

March 20, 2025