FULLERTON MUNICIPAL AIRPORT
COMMERCIAL OPERATING AGREEMENT

THIS OPERATING AGREEMENT, made and entered into this day of **, 2013**, by and between the CITY OF FULLERTON, a Municipal Corporation (hereinafter referred to as LESSOR), and ,_____ (hereinafter referred to as OPERATOR).

1. USE

OPERATOR's use and services shall be limited to _____at the Fullerton Municipal Airport within the operating area as hereinafter set forth in Paragraph 8. OPERATOR agrees not to use the operating area for any other purpose nor to engage in or permit any other business activity within or from the operating area. The OPERATOR only has such rights as are expressly set forth in this Agreement and the Agreement can only be amended in writing.

OPERATOR must at all times have a current business license issued by the City of Fullerton and such business license shall not be in lieu of any other requirements stated hereunder.

OPERATOR use of the Airport shall conform to all applicable laws, rules, and regulations as set forth in the Noise Abatement Arrival and Departure Procedures, the Fullerton Municipal Code, Chapter 18.03, and the Fullerton Airport Gate Card Policy.

Permission to conduct commercial operations at the Fullerton Airport may not be sold, assigned, or transferred in any manner.

2. TERM

The term of this Agreement shall be for twelve (12) months commencing July 1 and ending June 30. Should the date of this Agreement begin prior to July 1, the commercial operating fee shall be prorated to reflect the actual period of operations for the first term. This Agreement may be renewed annually each July 1 as long as all of the terms, conditions, and covenants of the Agreement are being kept, and all applicable laws, rules, and regulations of the City of Fullerton have been observed, except as otherwise provided herein.

3. TERMINATION

Either party may terminate this Agreement upon thirty (30) days prior written notice.

This agreement may be terminated or suspended by the Airport Manager for non compliance with the terms of this agreement, or any applicable law or ordinance. Such termination or suspension of the agreement shall be made only after a hearing before the Airport Manager after at least five (5) days written notice to OPERATOR stating generally the grounds for termination or suspension and stating the time and place where the hearing will be held. The OPERATOR shall be notified in writing of the Airport Manager's decision within ten (10) days after the hearing.

4. RENT

OPERATOR agrees to pay LESSOR $150.00 annually payable on the first day of July of each year. Said rent/field use is based on the current fee as established by City Council Resolution effective July 1, 2013. Rent/field use fee shall be periodically reviewed and adjusted

to reflect the most current fees as established by City Council Resolution. Said adjustment shall be made by written notice to OPERATOR from the Airport Manager.

5. CHARGE FOR LATE PAYMENT

OPERATOR acknowledges that the late payment of rent or any other sums due LESSOR hereunder will cause LESSOR to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. If payment of rent as specified in section 4 or any other sum due LESSOR is not received by LESSOR on the date indicated on the bill, a late charge of ten percent (10%) of the monthly rental, established by the Fullerton City Council Resolution shall be added to the payment, and the total sum shall become immediately due and payable to CITY. If the account remains delinquent for more than three (3) months, an additional $44 fee will be assessed in addition to the 10% late charge.

6. RENT PAYMENT PROCEDURE

Rent payments required in this section shall be delivered to the City of Fullerton, Administrative Services, 303 West Commonwealth Avenue, Fullerton, CA 92833. Rental payments may be made by check payable to the City of Fullerton. OPERATOR assumes all risk of loss if payments are made by mail.

7. INSURANCE

A. OPERATOR shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services or work contemplated hereunder by the OPERATOR, his agents, representatives, employees, or subcontractors. OPERATOR shall provide current evidence of the required insurance in a form acceptable to the LESSOR and shall provide replacement evidence for any required insurance, which expires prior to the completion, expiration, or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way; the Indemnification and Hold Harmless clause contained in this Agreement or the extent to which OPERATOR may be held responsible for payments of damages to persons or property.

B. Minimum Scope and Limits of Insurance

1. Commercial General Liability Insurance. OPERATOR shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 001 ED. 11/88, with a limit of not less than $1,000,000 each occurrence.

2. Business Automobile Liability Insurance. OPERATOR shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form # CA 000 T ED. 6/92, with a limit of not less than $1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

3. Workers' Compensation and Employers' Liability Insurance. OPERATOR shall maintain workers' compensation insurance as required by

the State of California and employers' liability insurance with limits of not less than $1,000,000 each accident.

4. Aircraft Liability Insurance. OPERATOR shall maintain aircraft liability insurance with a limit of not less than $1,000,000 each accident with no per passenger sub limits. Upon approval by CITY and annual submission of certification by a qualified aviation insurance broker that such limits are not available to OPERATOR, OPERATOR may comply with this provision by maintaining this coverage with limits of not less than $1,000,000 each accident and per passenger sub limits of not less than $100,000. Such insurance shall include coverage for owned and non-owned aircraft.

C. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the LESSOR.

D. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

1. Commercial General Liability, Business Automobile Liability, and Aircraft Liability.

The LESSOR, its elected or appointed officials, officers, agents, employees and volunteers are to be covered as additional insured with respect to liability arising out of work, operations, services or flights performed by or on behalf of OPERATOR, or with respect to liability arising out of aircraft or automobiles owned, leased, hired or borrowed by or on behalf of the OPERATOR. The coverage shall contain no special limitations on the scope of its protection afforded to the LESSOR, its officers, employees, and volunteers.

2. Commercial General Liability, Business Automobile Liability, and Aircraft Liability.

This insurance shall be primary insurance as respects the LESSOR, its officers, employees, and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by the LESSOR, its officers, employees, and volunteers shall be excess of this insurance and shall not contribute with it.

3. All Coverages

Each and every insurance policy required by this section shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to LESSOR.

E. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to the LESSOR with current BEST'S ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California.

F. Verification of Coverage

OPERATOR shall furnish the LESSOR with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, OPERATOR shall furnish certified copies of all policy endorsements (Commercial General Liability, Business Automobile Liability, Aircraft Liability, Worker's Compensation, and Employers' Liability Insurance) required herein. All certificates and endorsements must be received and approved by LESSOR before work or services under this Agreement commence. The LESSOR reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

G. OPERATOR must, at all times throughout the term of this Agreement, comply with current insurance requirements established by the Risk Management Division of the City of Fullerton.

H. The procuring of such required policy or policies of insurance shall not be construed to limit OPERATOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policy or policies of insurance, OPERATOR shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this Agreement or with use or occupancy of "The Premises".

9. PROFESSIONAL LICENSES

OPERATOR shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Fullerton, and all other governmental agencies. OPERATOR shall notify the LESSOR immediately and in writing of her inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

10. HAZARDOUS MATERIALS

OPERATOR agrees that neither it nor its officers, agents, employees, contractors, subcontractors, sub lessees, customers, licensees or invitees shall cause any hazardous materials to be brought upon, kept, used, stored, generated or disposed of in, on or about the AIRPORT, or transported to or from the AIRPORT; provided that OPERATOR may use such substances as are customarily used in aviation so long as such use is in strict compliance with all applicable environmental laws and LESSOR's rules and regulations. "Hazardous Materials" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment.

11. INDEMNIFICATION CLAUSE

OPERATOR agrees to defend, indemnify, and hold harmless the CITY OF FULLERTON, its officers, agents, employees, and volunteers from any and all claims, damages, losses, costs, and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons, contractual liability or damage to property sustained or claimed to have been sustained arising out of activities of the OPERATOR or any of its officers, agents, employees, customers, invitees or subcontractors, whether such act is authorized by the Agreement or not; and OPERATOR shall pay for any and all damage to the property of the CITY OF FULLERTON or loss or theft of such property, done or caused by such persons. CITY OF FULLERTON assumes no responsibility whatsoever for any property placed on the Premises by OPERATOR, its officers, agents, employees, invitees or subcontractors, including aircraft. OPERATOR further agrees to waive all rights of subrogation against CITY OF FULLERTON. The provisions of this Article do not apply to any damage or loss caused by the sole active negligence of the CITY OF FULLERTON of any of its officer, agents, employees, volunteers, or subcontractors.

12. CONFIDENTIALITY

If OPERATOR receives from the LESSOR information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, OPERATOR agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. “Confidential Information” shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the OPERATOR disclosed in a publicly available source; (c) is in rightful possession of the OPERATOR without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the OPERATOR without reference to information disclosed by the LESSOR.

13. DISCRIMINATION

OPERATOR shall not discriminate because of race, color, creed, religion, sex, marital status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. OPERATOR affirms that it is an equal opportunity employer and shall comply with all applicable federal, state, and local laws and regulations.

14. ATTORNEY FEES

In the event any judgment is ordered in any action upon this Agreement, the party hereto against whom such judgment is ordered agrees to pay to the other party hereto, and that there may be added to such judgment an amount equal to the reasonable value of all legal services rendered in said action on behalf of the party in whose favor any such judgment is ordered and that such sum may be fixed by the Court in such action.

15. RESERVED RIGHTS

LESSOR reserves the right to further develop, improve, repair and alter the AIRPORT and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may see fit, and LESSOR shall be free from any and all liability to OPERATOR for loss of business or damages of any nature whatsoever to OPERATOR occasioned during the making

of such improvements, repairs, alterations and additions, including but not limited to any damages resulting from the negligence of LESSOR or its employees, agents or contractors.

16. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the LESSOR and OPERATOR, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the LESSOR and by an authorized representative of OPERATOR. The parties agree that any terms or conditions of any instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate OPERATOR nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

17. NOTICES

All notices pursuant to this Agreement shall be addressed as set forth below or as either party may hereafter designate by written notice and shall be sent through the United States Mail.

TO: LESSOR	TO: OPERATOR
Airport Manager City of Fullerton Municipal Airport 4011 W. Commonwealth Ave. Fullerton, CA 92833	Attn:

18. WAIVER.

No delay or omission in the exercise of any right or remedy of a nondefaulting Party on any default shall impair such right or remedy or be construed as a waiver. CITY's consent or approval of any act by CONSULTANT requiring CITY's consent to or approval of any subsequent act of CONSULTANT or any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

20. MISCELLANEOUS PROVISIONS

a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify LESSOR fully, including reasonable costs and attorney's fees, for any injuries or damages to LESSOR in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

SIGNATURES ON NEXT PAGE