

1 BILLINGS LOGAN INTERNATIONAL AIRPORT

2 SCHEDULED AIRLINE OPERATING PERMIT

3  
4 THIS SCHEDULED AIRLINE OPERATING PERMIT (the "Operating Permit"), made  
5 and entered into \_\_\_\_\_, 20\_\_\_\_, by and between the following:  
6

7 CITY OF BILLINGS, MONTANA  
8 (hereinafter referred to as "City")

9 and

10 ENVOY AIR INC.  
11 (the Air Transportation Company hereinafter referred to as "Permittee")

12 W I T N E S S E T H

13 WHEREAS, City is the owner and operator of Billings Logan International Airport (the  
14 "Airport") situated in the City of Billings, Montana, and has the right to grant operating privileges on  
15 the Airport subject to the terms and conditions hereinafter set forth; and

16 WHEREAS, Permittee is a company primarily engaged in the business of providing air  
17 transportation, and is currently operating in affiliation with American Airlines, Inc., the Affiliate  
18 Airline as herein defined, and

19 WHEREAS, both City and Permittee desire to enter into this Operating Permit, to set  
20 forth the rights, privileges, and obligations of both parties, and to facilitate the development,  
21 promotion, and improvement of air commerce.

22 NOW THEREFORE, in consideration of the mutual covenants and considerations  
23 herein contained, City and Permittee agree as follows:  
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1 F. "Air Transportation Company" shall mean a company certificated by the United  
2 States Department of Transportation to engage for hire in the carriage of persons, property, cargo,  
3 and/or mail by aircraft, and for the purposes of an operating permit, also may include a company  
4 providing any ticketing and/or ground support operations.  
5

6 G. "Common Use Formula" shall mean a formula used to pro-rate twenty percent  
7 (20%) of the cost of a service or Airport space equally among Air Transportation Companies, and  
8 eighty percent (80%) of the cost of a service or Airport space among Air Transportation Companies  
9 that provide Scheduled Service on the basis of that proportion that the number of each Air  
10 Transportation Company's Enplaned Passengers bears to the total number of Enplaned Passengers of  
11 all such Air Transportation Companies using the service or Airport space. The Common Use Formula  
12 shall be calculated each month to determine the next month's proration of Common Use Space costs  
13 using the previous month's data received from the Air Transportation Companies providing Scheduled  
14 Service at the Airport.  
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16 H. "Common Use Space" shall mean space leased to an Airline in common with  
17 other Air Transportation Companies for which the City assesses rental charges based on the Common  
18 Use Formula.  
19

20 I. "Director" shall mean the Director of Aviation and Transit or his duly  
21 authorized representative designated by City to exercise functions with respect to the rights and  
22 obligations of City under this Operating Permit.  
23

24 J. "Effective Date" shall mean the date designated in Section 2.01.  
25

1           K.     "Enplaned Passengers" shall mean any local boarding, interline transfer, or  
2 intraline transfer passengers at the Airport.

3           L.     "FAA" shall mean the Federal Aviation Administration of the U.S.  
4 Government, or any Federal agencies succeeding to its jurisdiction.  
5

6           M.     "Ground Support Operations" shall mean the support provided for operations  
7 such as ground handling, ticketing, loading and unloading passengers, baggage, mail and freight,  
8 lavatory, potable water, preconditioned air servicing, aircraft cleaning, aircraft marshaling, and  
9 emergency or required maintenance.

10          N.     "Ground Support Operations Company" shall mean a company contracted by an  
11 Airline to provide Ground Support Operations for the Airline.  
12

13          O.     "Joint Use Formula" shall mean a formula used to pro-rate 100% of the cost of a  
14 service or Airport space among Air Transportation Companies that use such service or lease such  
15 space on the basis of that proportion that the number of each Air Transportation Company's Enplaned  
16 Passengers bears to the total number of Enplaned Passengers of all such Air Transportation Companies  
17 using the service or space. The Joint Use Formula shall be calculated each month to determine the  
18 next month's proration of Joint Use Space costs using the previous month's data received from the Air  
19 Transportation Companies.  
20

21          P.     "Joint Use Space" shall mean spaced leased to an Airline for Airline's joint use  
22 with other Air Transportation Companies for which the City assesses rental charges based on the Joint  
23 Use Formula.  
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1 Q. "Maximum Certificated Gross Landing Weight" shall mean the maximum  
2 weight, in one thousand (1,000) pound units, that each aircraft is operated by Permittee and is  
3 certificated by the FAA.

4 R. "Rules and Regulations" shall mean those nondiscriminatory rules, regulations,  
5 and ordinances promulgated by the City or the Director for the orderly use of the Airport by Air  
6 Transportation Companies and other tenants, users, guests, and passengers of the Airport as the same  
7 may be amended, modified, or supplemented from time to time to the extent that such Rules and  
8 Regulations are not inconsistent with the provisions and purposes of this Operating Permit.

9 S. "Scheduled Service" shall mean the provision of passenger Air Transportation  
10 for hire flying a particular route, at a particular time, on a regular daily, weekly, or seasonal basis, and  
11 said service will take place regardless of the number of passengers booked for that particular  
12 Scheduled Service.

13 T. "Total Landed Weight" shall mean the sum of the Maximum Certificated Gross  
14 Landing Weight for all of the Permittee's Aircraft Landings over a stated period of time.

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17 ARTICLE 2

18 TERM

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20 Section 2.01 – Term

21 A. This Operating Permit shall become effective at 12:01 a.m. on June 1, 2017, and  
22 continue until midnight on May 31, 2018. This Operating Permit shall be extended automatically for  
23 successive one-year periods, provided the Permittee is not in default in its payments or other  
24 obligations to the City. The foregoing notwithstanding, this Operating Permit may be canceled at any  
25

1 time prior to expiration by either party upon thirty (30) days advance written notice. This Operating  
2 Permit shall automatically be canceled if Permittee has had no reported aircraft landings at the Airport  
3 for a period of one (1) year. The City shall notify Permittee in writing of such cancellation.  
4

5 B. However, in the event Permittee does not have landings at the Airport each  
6 month, but Permittee wishes to continue the term of this Operating Permit without automatic  
7 cancellation, as provided in Paragraph A above, Permittee shall submit a report of either Permittee's  
8 operations or non-activity each month, as provided in Section 4.02, Paragraph A.

9 Section 2.02 – National Emergency

10 In the event the rights and privileges hereunder are suspended by reason of war or other  
11 national emergency, the term of this Operating Permit shall be extended by the amount of the period of  
12 such suspension.  
13

14 ARTICLE 3

15 USE OF AIRPORT AND FACILITIES

16 Section 3.01 – Permissible Uses

17 Subject to the terms and provisions hereof and the Rules and Regulations, Permittee  
18 shall be entitled to the use, in common with others authorized, of the landing area and appurtenances  
19 of the Airport, together with all facilities, equipment, improvements, and services that have been or  
20 may hereafter be provided for common use in connection with the landing area. Such use by Permittee  
21 shall be for the sole purpose of the landing, taking off, flying, taxiing, towing, loading, and unloading  
22 of its aircraft in connection with its conduct of Air Transportation and for no other use.  
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1 Section 3.02 – Terminal, Cargo, and Other Support Space

2 Permittee must arrange, at its expense, for adequate space and other facilities for:

- 3 A. The parking, loading, unloading, and servicing of its aircraft.  
4 B. The processing and handling of its cargo and/or passengers.  
5 C. Such other general offices and space as it may require at the Airport.  
6

7 For this purpose, Permittee shall, prior to effective date of this Operating Permit, enter  
8 into either a separate agreement with the City or with another Airport tenant having an agreement with  
9 the City, for the space required by it for such purpose(s). Should Permittee be operating at the Airport  
10 under contract with an Affiliate Airline, Permittee's use of the Airport and its facilities shall follow the  
11 terms and conditions identified in the Scheduled Airline Operating Agreement and Terminal Building  
12 Lease between Affiliate Airline and the City, and shall include Permittee's or its Affiliate Airline's  
13 responsibility for Terminal Building Lease rentals calculated directly for space used or charged  
14 through a Joint Use Formula or Common Use Formula.  
15

16 ARTICLE 4

17 FEES AND CHARGES

18 Section 4.01 – Landing Fee

19 A. Permittee or its Affiliate Airline shall pay the City, without notice or demand  
20 and without deduction or setoff, all applicable fees and charges during the term of this Operating  
21 Permit for the rights and privileges granted hereunder. Permittee remains responsible for all fees and  
22 charges regardless of arrangements with Affiliate Airline, if Affiliate Airline fails to pay the City.  
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1           B.     All fees for the use of the airfield are combined in and represented by a monthly  
2 landing fee for a particular month and shall be calculated and determined as follows: the then-current  
3 Affiliate Airline landing fee rate per 1,000 pounds shall be multiplied by Permittee's Total Landed  
4 Weight for the month. However, landing fees shall be waived for the initial period beginning June 2,  
5 2017 and ending June 1, 2018.  
6

7           C.     The initial landing fee rate for this Operating Permit shall be \$1.58 per 1,000  
8 pounds. This initial landing fee rate shall apply for the period beginning July 1, 2016 through June 30,  
9 2017, at which time the rate will be adjusted. It shall be subject to adjustment by City annually  
10 thereafter. City also reserves the right to adjust the landing fee rate at any time in the interim period  
11 between annual adjustments to offset significant, unexpected expense increases and/or revenue  
12 shortfalls.  
13

14 Section 4.02 – Calculation of Landing Fees

15           A.     Permittee or its Affiliate Airline shall furnish to City, on or before the 10th day  
16 of each month, an accurate report, in a format to be provided by City, of Permittee's operations at the  
17 Airport during the preceding month. Said report shall include, but shall not be limited to Permittee's:

18                   1)     Total number of Aircraft Landings for the month, by type of aircraft,  
19                   Maximum Certificated Gross Landing Weight of each type of aircraft, and Total  
20                   Landed Weight for such month;  
21

22                   2)     Total number of enplaning and deplaning passengers for such month.

23                   3)     The tonnage of cargo.

24                   4)     Freight.  
25



1 the month in question. Resulting surpluses or deficits shall be applied as credits or charges to  
2 Permittee's landing fees for the next succeeding month.

3 Section 4.03 – Records of Permittee

4 Permittee shall keep and maintain a complete and adequate set of records of all the  
5 landing weights as defined herein, for the use of the Airport and payment of fees required under this  
6 Operating Permit, for three (3) years, and shall make such records available within thirty (30) days  
7 from the date Permittee receives a written request from City for inspection by City or its authorized  
8 representative at any reasonable time.

9  
10 Section 4.04 – Interest on Overdue Payments

11 Any payment not received within five (5) days after the due date shall accrue interest at  
12 the rate of 1.5% per month from the due date until paid in full.

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14 ARTICLE 5

15 INSURANCE AND INDEMNIFICATION

16 Section 5.01 – Insurance

17 A. Permittee shall, without expense to City, and upon commencement of the term  
18 hereof, and prior to commencement of any operations at the Airport, obtain and cause to be kept in  
19 force, liability insurance coverage, with limits as hereinafter stated. Such insurance policies, except  
20 worker's compensation/employee liability insurance, must be primary and non-contributory and  
21 endorsed naming City, its officers, agents, and employees as primary additional insureds to the full  
22 extent of Permittee's indemnity obligations hereunder.

23  
24 Such insurance shall include aviation general liability coverage, aircraft liability  
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1 coverage, worker's compensation/employer's liability insurance, and automobile liability insurance  
2 coverage, and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be  
3 provided by policies issued by a company or companies of sound and adequate financial responsibility.  
4 Such insurance policies shall contain an endorsement providing that City will be given not less than  
5 thirty (30) days notice prior to the cancellation, or material change of the provisions or coverages  
6 affecting the interests of City provided by said policies. The aviation general liability policies shall  
7 include contractual liability coverage.  
8

9           Permittee shall cause a certificate or certificates of insurance and all  
10 endorsements to be furnished to City evidencing all such insurance coverage. If City is notified that  
11 any of the coverage required herein is to be canceled or changed in such a manner as not to comply  
12 with the requirements of this Operating Permit, Permittee shall, within thirty (30) days prior to the  
13 effective date of such cancellation or change, obtain and provide City with certificates evidencing the  
14 re-establishment of the insurance coverage required hereby.  
15

16           B. Insurance limits of aviation general liability coverage and aircraft liability  
17 coverage shall be in an amount not less than One Hundred Fifty Million Dollars (\$150,000,000) per  
18 occurrence for airlines operating aircraft with one hundred (100) or more seats; not less than One  
19 Hundred Million Dollars (\$100,000,000) per occurrence for airlines operating aircraft with between  
20 ninety-nine (99) and sixty (60) seats; not less than Fifty Million Dollars (\$50,000,000) per occurrence  
21 for airlines operating aircraft with between fifty-nine (59) and twenty (20) seats; with all of the above  
22 listed limits subject to a Twenty-Five Million Dollar (\$25,000,000) per occurrence sublimit for  
23 personal injury to non-passengers, and Twenty Million Dollars (\$20,000,000) per occurrence for  
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1 airlines operating aircraft with nineteen (19) or fewer seats with a Twenty Million Dollar  
2 (\$20,000,000) per occurrence sublimit for personal injury to non-passengers. For purposes of this  
3 Paragraph, the number of seats is determined based upon the largest aircraft in Permittee's fleet that  
4 may be utilized for Scheduled Service at the Airport.  
5

6 City reserves the right to review and reasonably modify, after consultation with  
7 Permittee, the limits stated above annually, to give effect to the changing risk management  
8 environment and inflationary trends.

9 C. Permittee shall procure and maintain in force, liability insurance applicable to  
10 the ownership, maintenance, use, or operation of any automobile, mobile equipment, or other ground  
11 vehicle at the Airport, including owned, non-owned, or hired, in an amount not less than \$1,500,000  
12 per occurrence.  
13

14 D. Insofar as said insurance provides protection against liability for personal injury,  
15 bodily injury, death, and property damage, City shall be included as a primary additional insured to the  
16 extent of Permittee's indemnity obligations hereunder. City shall have no liability for any premiums  
17 charged for such coverage, and the inclusion of City as a primary additional insured is not intended to,  
18 and shall not make City a partner or joint venturer with Permittee in its operations on the Airport. All  
19 insurance policies of the City and Airport, including airport commercial general liability policies, will  
20 be excess and noncontributory for Permittee's operations.  
21

22 E. Worker's Compensation/Employer's Liability Insurance shall be maintained in  
23 force by Permittee for all employees engaged in the operations under this Operating Permit. The  
24 limits of coverage shall meet the statutory requirements required for the State of Montana.  
25

1 Section 5.02 – Indemnification

2 Permittee hereby agrees to indemnify, defend, and hold harmless City, its officers,  
3 directors, agents, and employees for all damages to the real and personal property of the City, which  
4 shall be caused by any act, omission, use, occupancy, or operation of Permittee, its agents,  
5 representatives, officers, and employees on or about, or related to the Airport.  
6

7 Permittee shall indemnify, defend, and hold harmless City for all sums that City shall  
8 become obligated to pay by reason of the liability, if any, imposed by law upon City for damages  
9 relating to personal injury, bodily injury, including damages for care and loss of service, and including  
10 death at any time resulting from bodily injury, and because of injury to or destruction of property,  
11 including the loss of use thereof, provided such damages were caused by or resulted from any of the  
12 activities, omissions, or operations of Permittee, its agents, representatives, officers, employees,  
13 contractors, and independent contractors.  
14

15 In addition, with respect to any claims, actions, suits, damages, or judgments caused by  
16 or resulting from acts, omissions, or operations of Permittee, its agents, representatives, officers or  
17 employees, Permittee shall:

18 A. Investigate or cause the investigation of accidents involving such injuries.

19 B. Negotiate or cause to be negotiated all claims made, as may be deemed  
20 expedient by Permittee, and defend, or cause to be defended, suits for damages, even if groundless,  
21 false, or fraudulent, brought against the City on account of such injuries, death, or damages, in the  
22 name and on behalf of City, its officers, directors, representatives, agents, and employees.  
23

24 C. Pay and satisfy judgments finally establishing the liability of City, its officers,  
25

1 directors, representatives, agents, and employees in all actions defended by Permittee pursuant to this  
2 Section 5.02.

3 D. Pay or cause to be paid:

4 1) All costs levied against City, its officers, directors, representatives,  
5 agents, and employees in any legal proceeding defended or caused to be defended by  
6 Permittee as aforesaid.

7 2) Any interest accruing up to the date of payment by Permittee.

8 3) All premiums charged for appeal bonds required in such proceedings.

9 4) All reasonable expenses incurred by City, its officers, directors,  
10 representatives, agents, and employees for investigation, negotiation, and defense.

11 Permittee shall not, however, be liable as set forth in this Section 5.02. with respect to  
12 any bodily injury, death, or injury to or destruction of property which results solely from the  
13 negligence, or wanton or willful misconduct of City, its officers, directors, representatives, agents, or  
14 employees.

15 City shall, promptly upon receipt, give Permittee every demand, notice, summons, or  
16 other process received in any claim or legal proceeding contemplated herein. In the event City fails to  
17 give Permittee notice of any such demand, notice, summons, or other process received by City and  
18 such failure to give notice results in actual and material prejudice to Permittee in the defense of any  
19 action or legal proceeding contemplated herein, such failure or delay shall release Permittee of its  
20 liability as set forth in this Section 5.02. insofar as only the particular claim or legal proceeding is  
21 concerned, and only to the extent of such prejudice. Nothing in this Section 5.02 shall be deemed a  
22 change or modification in any manner whatsoever of the method or conditions of preserving, asserting,  
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1 or enforcing any claim or legal liability against City. This Section 5.02. shall not be construed as a  
2 waiver of City's immunity.

3 Section 5.03 – Non-liability of City

4 City shall not be liable for Permittee's failure to perform any of its obligations under  
5 this Operating Permit or for any delay in the performance thereof, nor shall any such delay or failure  
6 be deemed a default by City, unless such failure to perform or delay in performance is caused by an act  
7 or omission on the part of City.

8 Permittee expressly agrees that City shall not be liable to Permittee for bodily injury or  
9 for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning,  
10 windstorm, hail, explosion, riot, strike, civil commotion, smoke, vandalism, malicious mischief, or  
11 acts of civil authority unless such injury or loss results from negligence of City.

12 Section 5.04 – Non-liability of Agents and Employees

13 No commissioner, councilman, director, officer, agent, or employee of either party shall  
14 be charged personally or held contractually liable by or to the other party under any term or provision  
15 of this Operating Permit or because of any breach thereof or because of its or their execution or  
16 attempted execution.

17 ARTICLE 6

18 ASSIGNMENT AND MERGER

19 Section 6.01 – Assignment or Transfer

20 Permittee shall not at any time assign or transfer any right granted under this Operating  
21 Permit to any party other than a wholly owned subsidiary of Permittee, and provided the prior written  
22 approval of City is obtained. Any attempted assignment or transfer in violation of the provisions  
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1 hereof shall be null and void and a default hereunder. No assignment or transfer shall relieve  
2 Permittee of its responsibility for payment of fees and performance of all other obligations prior to a  
3 City approved assignment or transfer.

4  
5 Section 6.02 – Merger

6 Section 6.01 shall not prevent the assignment of this Operating Permit to any  
7 corporation with which Permittee may merge or consolidate, or which may succeed to the business of  
8 Permittee pursuant to a merger or consolidation; however, due notice of any such assignment shall be  
9 given to City within thirty (30) days after such merger, consolidation, or succession.

10 Section 6.03 – Successors and Assigns

11 All of the terms, covenants, and agreements herein contained, or subsequently amended  
12 from time to time, shall be binding on and inure to the benefit of the successors and assigns of the  
13 parties hereto.

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15 ARTICLE 7

16 COMPLIANCE WITH LAW AND NONDISCRIMINATION

17 Section 7.01 – Compliance with Law.

18 Permittee shall at all times during the term of this Operating Permit, comply with all  
19 applicable laws of the United States and of the State of Montana, and with all applicable Rules and  
20 Regulations of any of the foregoing or of any department thereof, or of the City, including not only  
21 laws, Rules and Regulations now in effect, but also all of the foregoing hereafter prescribed or  
22 promulgated by authority or by law during the term of this Operating Permit.  
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1 Permitee shall not use the Airport or any part thereof, or permit the same to be used by  
2 any of its officers, employees, agents, representatives, invitees, or licensees, for any illegal purposes.

3 Section 7.02 – Nondiscrimination.

4 A. General. In the use and occupation of the Airport, Permitee shall not  
5 discriminate against any person or class of persons by reason of race, color, religion, sex, national  
6 origin or ancestry, age, or disability. Additionally, for the services provided during the use and  
7 occupation of the Airport, Permitee shall furnish said services on a reasonable and not unjustly  
8 discriminatory basis to all users thereof and charge reasonable and not unjustly discriminatory prices  
9 for each unit of service, provided that the Permitee may be allowed to make reasonable and  
10 nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

11 B. Civil/Human Rights Laws. In the operation and use of the Airport, Permitee  
12 shall not, on the grounds of race, color, religion, sex, national origin or ancestry, age, or disability,  
13 discriminate or permit discrimination against any person or group of persons in any manner prohibited  
14 by Part 21 of Title 49, Code of Federal Regulations, the Civil Rights Act of 1964, as amended, the  
15 Equal Pay Act of 1963, the Rehabilitation Act of 1973, and such other Federal, State, or Local laws as  
16 may be applicable.

17 Without limiting the generality of the foregoing, Permitee agrees to not  
18 discriminate against any employee or applicant for employment because of race, color, religion, sex,  
19 national origin or ancestry, age, or disability. Permitee agrees to take affirmative action to ensure that  
20 applicants are employed, and that employees are treated during employment, without regard to their  
21 race, color, religion, sex, national origin or ancestry, age, or disability. Such action shall include, but  
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1 not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment  
2 advertising; layoff or termination; rates of pay or other forms of compensation; selection for training;  
3 and disciplinary actions and grievances. Permittee agrees to post, in conspicuous places available to  
4 employees and applicants for employment, notices to be provided setting forth the provisions of this  
5 nondiscrimination clause.  
6

7 C. Permittee, for itself, its heirs, personal representatives, successors in interest,  
8 and assignees, as part of the consideration of this Lease, does hereby covenant and agree as a covenant  
9 running with the land that, in the event improvements are constructed, maintained, or otherwise  
10 operated on the Airport for a purpose for which a United States Department of Transportation program  
11 or activity is extended or for another purpose involving the provision of similar services or benefits,  
12 Permittee shall maintain and operate such improvements and services in compliance with all other  
13 requirements imposed pursuant to 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs  
14 of the Department of Transportation), as said regulations may be amended.  
15

16 D. Permittee, for itself, its heirs, personal representatives, successors in interest,  
17 and assignees, as a part of the consideration of this Lease, does hereby covenant and agree as a  
18 covenant running with the land that:  
19

20 1) No person on the grounds of race, color, religion, sex, national origin or  
21 ancestry, age, or disability shall be excluded from participation in, denied the benefits  
22 of, or otherwise be subjected to discrimination in the use of said improvements.

23 2) No person on the grounds of race, color, religion, sex, national origin or  
24 ancestry, age, or disability shall be excluded from participation in, denied the benefits  
25

1 of, or otherwise be subjected to discrimination in the construction of any  
2 improvements on, over, or under such land and the furnishing of services thereon.

3 3) Permittee shall use the facilities in compliance with all other  
4 requirements imposed by, or pursuant to 49 CFR Part 21 (Nondiscrimination in  
5 Federally Assisted Programs of the Department of Transportation), as said regulations  
6 may be amended.  
7

8 Permittee assures that it will undertake an affirmative action program as  
9 required by 14 CFR Part 152, Subpart E, to ensure that no person on the grounds of race, color,  
10 religion, sex, national origin or ancestry, age, or disability shall be excluded from participating in any  
11 employment activities covered in 14 CFR Part 152, Subpart E, or such employment activities covered  
12 in any applicable State or Local law. Permittee assures that no person shall be excluded on these  
13 grounds from participating in or receiving the services or benefits of any program or activity covered  
14 by this Article 7.  
15

16 E. During the performance of this Lease, the Permittee, for itself, its assignees, and  
17 successors in interest, agrees to comply with the following nondiscrimination statutes and authorities,  
18 including, but not limited to:  
19

20 1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78  
21 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

22 2) 49 CFR Part 21 (Nondiscrimination in Federally Assisted Programs of  
23 the Department of Transportation – Effectuation of Title VI of The Civil Rights Act of  
24 1964);  
25

1                   3)    The Uniform Relocation Assistance and Real Property Acquisition  
2 Policies Act of 1970 (42 U.S.C. § 4601) (prohibits unfair treatment of persons  
3 displaced or whose property has been acquired because of Federal or Federal aid  
4 programs and projects);

5                   4)    Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*),  
6 as amended (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

7                   5)    The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et*  
8 *seq.*) (prohibits discrimination on the basis of age);

9                   6)    Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471,  
10 § 47123) as amended (prohibits discrimination based on race, creed, color, national  
11 origin, or sex);

12                   7)    The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the  
13 scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age  
14 Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973, by expanding  
15 the definition of the terms "programs or activities" to include all of the programs or  
16 activities of the Federal aid recipients, sub-recipients, and contractors, whether such  
17 programs or activities are Federally funded or not);

18                   8)    Titles II and III of the Americans with Disabilities Act of 1990, which  
19 prohibit discrimination on the basis of disability in the operation of public entities,  
20 public and private transportation systems, places of public accommodation, and certain  
21 testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of  
22 Transportation regulations at 49 CFR Parts 37 and 38;  
23  
24  
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1                   9)    The Federal Aviation Administration's Nondiscrimination statute (49  
2 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin,  
3 and sex);

4                   10)   Executive Order 12898, Federal Actions to Address Environmental  
5 Justice in Minority Populations and Low Income Populations, which ensures  
6 discrimination against minority populations by discouraging programs, policies, and  
7 activities with disproportionately high and adverse human health or environmental  
8 effects on minority and low income populations;

9                   11)   Executive Order 13166, Improving Access to Services for Persons with  
10 Limited English Proficiency (LEP), and resulting agency guidance, national origin  
11 discrimination includes discrimination because of LEP. To ensure compliance with  
12 Title VI, you must take reasonable steps to ensure that LEP persons have meaningful  
13 access to your programs (70 Federal Regulations at 74087 – 74100);

14                   12)   Title IX of the Education Amendments of 1972, as amended, which  
15 prohibits you from discriminating because of sex in education programs or activities  
16 (20 U.S.C. 1681 *et seq.*).

17  
18  
19 Section 7.03 – Noncompliance.

20                   Noncompliance with this Article 7, after timely notice by City to Permittee of such  
21 noncompliance and a failure to substantially remedy such noncompliance within a reasonable period,  
22 shall constitute a material breach thereof. In the event of such noncompliance, City shall have the  
23 right to terminate this Operating Permit and the estate hereby created without liability therefore or, at  
24

1 the election of the City or the United States, either or both said governments shall have the right to  
2 judicially enforce Article 7.

3 ARTICLE 8

4 HAZARDOUS SUBSTANCES

5 Section 8.01 – Hazardous Substances

6 Permittee assumes full responsibility for the proper and legal use, handling, storage,  
7 and disposal of any hazardous substances used or consumed in Permittee's occupancy or conduct of its  
8 business. The storm water system shall not be used to dispose of any substance. "Hazardous  
9 substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or  
10 radioactive substance, or other similar term by any Federal, State or Local environmental law,  
11 regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules  
12 may be amended from time to time; and it shall be interpreted to include, but not be limited to, any  
13 substance which after release into the environment will or may reasonably be anticipated to cause  
14 sickness, death or disease. Permittee will hold City harmless from and indemnify City against and  
15 from any damage, loss, expenses or liability resulting from any breach of these representations and  
16 warranty, including all attorneys' fees and costs incurred as a result thereof.

17 ARTICLE 9

18 NOTICES

19 Section 9.01 – Delivery of Notices

20 A. Notices required herein shall be given by registered or certified mail or by any  
21 similar recognized handler of express mail by sending the same in the continental United States,  
22 postage prepaid. Either party shall have the right, by giving written notice to the other, to change the  
23  
24  
25

1 address at which its notices are to be received. Until any such change is made, notices shall be  
2 delivered as follows:

3 When to City, to:

4  
5 Director of Aviation and Transit  
6 Billings Logan International Airport  
7 1901 Terminal Circle, Room 216  
8 Billings, MT 59105

9 When to Permittee, to:

10 John Nicks, VP Corporate Services  
11 Envoy Air Inc.  
12 4301 Regent Boulevard  
13 Irving, TX 76063  
14 Phone: 972-374-9160  
15 E-mail: john.nicks@aa.com

16 B. If notice is given in any other manner or at any other place, it shall also be given  
17 at the place and in the manner specified in Section 9.01, Paragraph A.

## 18 ARTICLE 10

### 19 MISCELLANEOUS

#### 20 Section 10.01 – Removal of Disabled Aircraft

21 Permittee shall promptly remove any of its disabled aircraft from any part of the  
22 Airport, including runways and taxiways, and place any such disabled aircraft in such storage areas as  
23 may be designated by City, subject to the direction of the appropriate Federal agency (NTSB/FAA) in  
24 charge. Permittee may store such disabled aircraft only for such length of time and on such terms and  
25 conditions as may be established by City.

1           If, after approval by the appropriate Federal agency (NTSB/FAA), the Permittee fails to  
2 remove any of its disabled aircraft promptly, in accordance with this Section 10.01, City may, but shall  
3 not be obligated to, cause the removal of such disabled aircraft. Permittee shall reimburse City for all  
4 costs of such removal.  
5

6           Section 10.02 – Taxes

7           A.     Permittee shall pay all taxes (including any future or current possessory interest  
8 tax), assessments, and charges of a like nature, if any, that at any time during the term of this  
9 Operating Permit may be levied against Permittee or become a lien by virtue of any levy, assessment,  
10 or charge against Permittee by the Federal government, the State of Montana, any municipal  
11 corporation, any government successor in authority to the foregoing or any other tax or assessment  
12 levying bodies, in whole or in part, on or in respect to any of the rights granted under this Operating  
13 Permit or such facilities of the Airport as are made available for use by Permittee hereunder, or in  
14 respect to or upon any personal property belonging to Permittee situated on the Airport. Such payment  
15 shall not be considered part of Airport revenue. Payment of such taxes, assessments, and charges,  
16 when and if levied or assessed, shall be paid by Permittee directly to the taxing or assessing authority  
17 charged with collection thereof.  
18

19           B.     Permittee may, at its own expense, contest the amount or validity of any tax or  
20 assessment directly against the taxing or assessing authority. Permittee shall indemnify City from all  
21 taxes, penalties, costs, expenses, and attorneys' fees incurred by City resulting directly or indirectly  
22 from all such tax contests.  
23  
24  
25

1           C.     On any termination of this Operating Permit, all lawful taxes then levied or a  
2     lien on any of Permittee's property or taxable interest at the Airport shall be paid in full by Permittee  
3     forthwith, or as soon as a statement thereof has been issued by the tax collector if termination occurs  
4     during the interval between the attachment of the lien and the issuance of the statement.  
5

6     Section 10.03 – Subordination to Agreements with the U.S. Government

7           A.     This Operating Permit is subject and subordinate to the provisions of any  
8     agreements heretofore or hereafter made between City and the United States, relative to the operation  
9     or maintenance of the Airport, the execution of which has been required as a condition precedent to  
10    the transfer of Federal rights or property to City for Airport purposes, or to the expenditure of Federal  
11    funds for the improvement or development of the Airport, including the expenditure of Federal funds  
12    for the development of the Airport in accordance with the provisions of the Federal Aviation Act of  
13    1958, as it has been amended from time to time. City covenants that it has no existing agreements  
14    with the United States in conflict with the express provisions hereof.  
15

16          B.     This Operating Permit and all the provisions hereof shall be subject to whatever  
17    right the U.S. Government now has, or in the future may have or acquire, affecting the control,  
18    operation, regulation, and taking over of said Airport or the exclusive or nonexclusive use of the  
19    Airport by the United States during the time of war or national emergency.  
20

21    Section 10.04 – Attorney's Fees

22                 Should either party employ an attorney or attorneys or utilize the services of in-house  
23    attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under  
24    this Operating Permit, the non-prevailing party in any action pursued in a court of competent  
25

1 jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and  
2 attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

3 Section 10.05 – Governing Law

4 This Operating Permit and all disputes arising hereunder shall be governed by the laws  
5 of the State of Montana. Venue in any proceedings held hereunder shall be in the State of Montana,  
6 Thirteenth Judicial District Court, Yellowstone County, Montana.  
7

8 Section 10.06 – Effect of Invalid Provision

9 If any term or provision of this Operating Permit or the application thereof to any  
10 person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Operating  
11 Permit, or the application of such terms or provisions to persons or circumstances other than those to  
12 which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this  
13 Operating Permit shall be valid and enforced to the fullest extent permitted by law.  
14

15 Section 10.07 – Cross-References

16 References in the text of this Operating Permit to articles or sections, pertain only to  
17 articles or sections of this Operating Permit, unless otherwise specified.  
18

19 Section 10.08 – Modification and Amendments

20 This Operating Permit may be amended or modified by the City from time to time,  
21 upon provision of thirty (30) days written notice to Permittee. Changes or modifications to this  
22 Operating Permit shall be in the form of a written Operating Permit Amendment, to be agreed upon  
23 and signed by both the City and Permittee.  
24  
25

1 Section 10.09 – Paragraph Headings

2           The headings of the articles and sections of this Operating Permit are inserted only as a  
3 matter of convenience and for reference and in no way define, limit, or describe the scope or intent of  
4 any provisions of this Operating Permit and shall not be construed to affect in any manner the terms  
5 and provisions hereof or the interpretation or construction thereof.  
6

7           IN WITNESS WHEREOF, the parties have executed this Operating Permit as of the  
8 day and year first above written.  
9

10 ATTEST:

CITY OF BILLINGS

11  
12 BY \_\_\_\_\_  
13           CITY CLERK

BY \_\_\_\_\_  
MAYOR

14 APPROVED AS TO FORM

ENVOY AIR INC.

15  
16 BY \_\_\_\_\_  
17           CITY ATTORNEY

18 BY  \_\_\_\_\_  
19           JOHN NICKS  
20           VP CORPORATE SERVICES  
21  
22  
23  
24  
25