



MAYER | BROWN

# STL Airport Lease Agreement

October 31, 2019



## Overview of Key Documents

- **Lease Agreement:** The primary transaction document, which defines the relationship between the City and the lessee (the **Operator**) for the term of the agreement.
- **Airport Use Agreement:** The new use agreement negotiated by the City with the Signatory Airlines and entered between the Operator and the Signatory Airlines.
- **Operating Standards:** The standards and processes with which the Operator must comply at all times, which will be part of the Lease Agreement and the Airport Use Agreement and enforceable by both the City and the Airlines.

This presentation is a summary of the key terms that we anticipate would be included in a Lease Agreement for St. Louis Lambert International Airport. These terms are subject to further discussion with the City's Working Group.



## Lease Term and Payments

- **Lease:** The City would lease, not sell, the airport. The City would retain fee simple title to all airport property.
- **Term:** The Market Work Stream is considering the term (years) that would offer the best value to the City, while encouraging long-term investment in the airport.
- **Payments:** The Market Work Stream is also considering the payment structure to be made to the City, whether up-front and/or over time.



# Closing and Transition Process

## Closing

- Upon award and approval of the agreement by the City, the City and the Operator would execute the Lease Agreement.
- The Operator would be required to deliver a cash deposit or letter of credit to secure its obligation and ability to close the transaction. If the Operator fails to close by the closing deadline and is not excused, the City may draw on the closing security.
- The parties would work to satisfy the closing conditions, including obtaining FAA approval and preparing for transition.

## Transition

- The City would continue to operate the airport until closing. At closing, the Operator would assume responsibility for the airport, including holding the FAA Airport Operating Certificate and TSA Airport Security Program.
- The City would assign to the Operator airport-related contracts (e.g. with airport food, parking, and retail vendors), which would remain valid.
- The City would provide reasonable assistance to the Operator following the closing. The Operator must reimburse the City for those costs.



## Transition: Airport Personnel

- There are approximately 7,000 persons who work at the airport. The vast majority (6,500) work for private companies (e.g. airlines and vendors) and would not be directly impacted.
- For the approximately 500 City-employed persons, the City would aim to provide meaningful opportunities in both the public and private sectors.

### **Personnel (Other than Police & Fire)**

- Before closing, the Operator must make offers to all current personnel.
- Each employee who accepts a position with the Operator during the pre-closing offer period would be entitled to a position (at their current salary level, plus at least 1.5% COLA) for five years.
- The City would continue to employ airport personnel who do not join the Operator for up to two years. The City would make those employees available to work at the airport. The Operator would reimburse those costs. Those employees could also seek to transfer to non-airport positions, for which they would receive certain preferences.

### **Police and Fire**

- Police and fire personnel would remain public employees.
- Before closing, and annually thereafter, the City and Operator would set an annual budget for police and fire services. The Operator would reimburse those costs.



# Operating Standards

- The Lease would include **Operating Standards**, whose purpose is to ensure:
  - Compliance with federal, state, and local laws
  - Proper maintenance of the facilities and capital assets
  - Safe operations
  - Customer service and community relations
- The Operating Standards would require regular reporting and permit the City to monitor and audit the Operator's performance.
- The Operator must comply with the Operating Standards at all times. Both the City and the airlines would have the right to enforce the Operating Standards.
- As a "living document", the Operating Standards would be updated periodically. The City may require changes to comply with law and to ensure the Operator adheres to generally accepted practices at other U.S. airports. The Operator and the airlines would also have the right to propose changes to the Operating Standards.



## M/WBE, DBE, and ACDBE Program

- **Federal DBE Requirements:** The Operator must adopt a DBE program for contractors working at the airport to comply with USDOT regulations (49 CFR pt. 26).
- **Federal Airport Concession DBE (ACDBE) Requirements:** The Operator must adopt a DBE program for airport concession services to comply with FAA regulations (49 CFR pt. 23).
- **St. Louis M/WBE Requirements:** The Operator must adopt an M/WBE program to comply with the City of St. Louis's requirements applicable to City contractors, including meeting City-provided goals.
- The Lease Agreement and Operating Standards would require a program that builds upon and enhances what is required by law. The Working Group and advisors are currently developing the framework for those requirements.



# Capital Improvements and Facility Modifications

- **Facility Modifications:** Both the City and Operator may propose modifications to the airport facilities or layout.
- **Capital Improvements:** The Operator would be required to complete an initial set of capital improvements prepared by the City and airlines. The Operator may also propose its own capital improvements over time.
- **City and Airlines Approvals:** Certain types of improvements and modifications require approval of the City and airlines.
- **Funding and Financing:** The City would not be responsible for ongoing financing for capital projects. Sources of funding would include:
  - Operator capital
  - Revenues generated at the airport
  - Passenger Facility Charge revenue
  - Federal grants
  - Airline contributions





## Default by the Operator

- The Operator would be in default if it violates the Lease or Operating Standards, fails to make a required payment, or improperly transfers or assigns its interest in the airport (among other possible defaults).
- The City could give exercise pre-default steps, such as giving warning notices, particularly for immaterial violations.
- The City could give notice of default. If the default is not promptly cured (within the applicable cure period, if any), the City may exercise its remedies, including:
  - Require a remedial work plan
  - Exercise step-in / self-help remedies at the Lessee's expense
  - Recover damages
  - Seek specific performance or injunction
  - Termination (without compensation to the Operator) and take-back the airport
  - Other remedies available under the contract or law
- The City may enforce remedies through arbitration and ultimately court.



## Handback

- At expiration or termination of the Lease, the Operator must return the airport facilities and operations to the City in **good order, condition, and repair**.
- Beginning five years before the expiration, an independent engineer would determine necessary capital repairs. The Operator must post a letter of credit (in favor of the City) equal to that anticipated cost.
- The Operator must assist the City by providing an orderly transition.



## Assignment

- **Transfers of the Lease by the Operator:** The Operator may not transfer its interests in the Lease unless the transfer is approved by the City, complies with any FAA/TSA requirements, and complies with any Use Agreement requirements.
- **Changes in Control:** While equity holders may transfer their interests, if a transfer would result in a change in control in the Lessee, it is subject to approval (as above).
- **Assignment by the City:** The City may assign its interests, subject to certain conditions.



## Lenders' Rights

- The Operator may grant a mortgage on its leasehold interests. The mortgage may not encumber the City's title or rights, must comply with requirements under the Lease, and must be disclosed to the City.
- The Lenders' rights are subordinate the City's and airlines' rights under the Lease and Use Agreement, respectively. The City would **not** be liable for payment of any loan.
- If there is an Operator default, the Lenders generally have a right to cure the default before the City may terminate the Lease. If they attempt to cure, the Lenders must comply with the Lease and any federal requirements (including FAA approval).
- If the Lease is terminated or rejected in bankruptcy, the Lenders and the City would enter into a replacement Lease Agreement on the same terms.