

APPENDIX R

Agreements with Continental Airlines, Southwest Airlines, and City of Houston

Houston/Galveston Attainment Demonstration and  
Post-1999 Rate-of-Progress SIP

December 2000

**MEMORANDUM OF AGREEMENT  
("MEMORANDUM")**

**I. Parties**

This Memorandum is entered into between the Texas Natural Resource Conservation Commission (ATNRCC<sup>®</sup>) and the City of Houston (AHouston<sup>®</sup>), collectively, Athe Parties,<sup>®</sup> effective as of the date of the countersignature by Houston's Controller as set forth on the signature page hereto.

**II. Intent and Purpose**

The intent of this Memorandum is to memorialize the agreement between Houston and the TNRCC to reduce emissions of oxides of nitrogen (NO<sub>x</sub>) at the Houston Airport System. Houston is assisting the airlines in obtaining an overall ninety percent (90%) reduction of NO<sub>x</sub> emissions of ground support equipment by agreeing to provide emission reductions from other sources at the Houston Airport System in an amount necessary to cover the difference between the ninety percent (90%) required by the TNRCC and the seventy-five percent (75%) proposed by the airlines. The Parties enter into this Memorandum for the purpose of making Houston's reduction in emissions of nitrogen oxides (NO<sub>x</sub>) a part of the Texas State Implementation Plan ("SIP").

**III. Definitions**

As used in this Memorandum, the following terms have the meanings given below:

- (A) "EPA" shall mean the United States Environmental Protection Agency.
- (B) AGround Support Equipment<sup>®</sup> or AGSE<sup>®</sup> shall mean equipment that is used to service aircraft during passenger, baggage and/or cargo loading and unloading, maintenance, and other ground-based operations as identified in the SIP.

(C) The Houston Airport System shall mean all real property, facilities, fixtures, and personal property whether owned by Houston or another entity, leased by Houston or another entity or otherwise located on, maintaining a presence on or in any way operating (including but not limited to contractors, commercial operators and off-airport operators such as hotel and parking facilities) on or within the boundaries of George Bush Intercontinental Airport/Houston, William P. Hobby Airport, Ellington Field, and any other future facility acquired by Houston.

(D) "TPD" shall mean tons per day.

#### **IV. Background**

(A) The eight (8) county region of the Houston/Galveston area has been designated as a severe non-attainment area for ozone by the EPA.

(B) Under Section 110 of the Federal Clean Air Act, 42 U.S.C. ' 7410, each state that has a non-attainment area must submit a plan to the EPA demonstrating strategies to come into compliance with the National Ambient Air Quality Standards ("NAAQS").

(C) Section 110 of the Federal Clean Air Act, 42 U.S.C. ' 7410 also requires Texas to submit to the EPA for approval any SIP revisions and to demonstrate that such SIP revisions will assist the Houston/Galveston non-attainment area in reaching the NAAQS.

(D) The Houston Airport System consists of one or more sources as defined in Tex. Health & Safety Code ' 382.003(12).

(E) TNRCC has calculated that the projected total 2007 NO<sub>x</sub> emissions from GSE for the Houston/Galveston nonattainment area is 5.650 tpd.

(F) On August 9, 2000, the Executive Director of the TNRCC presented a proposed SIP to the TNRCC Commission for consideration. The proposed SIP includes a ninety percent (90%)

reduction of NO<sub>x</sub> emissions from GSE. In order to reduce GSE emissions by ninety percent (90%), there must be a reduction of 5.085 tpd of NO<sub>x</sub> in the non-attainment area.

## **V. Obligations of Parties**

(A) Houston agrees as follows:

In accordance with the terms of this Memorandum, Houston agrees to implement strategies to obtain reductions in the NO<sub>x</sub> emissions at the Houston Airport System by December 31, 2004. Houston agrees that the amount of NO<sub>x</sub> emissions reductions that Houston is responsible for achieving at the Houston Airport System is 1.809 tpd. Houston agrees to submit to the Executive Director of the TNRCC by May 1, 2002, its plan to achieve this reduction.

The emission reduction plan submitted by Houston must demonstrate in sufficient detail the strategies that will be in place by December 31, 2004, to achieve the required amount of 1.809 tpd reductions in emissions of NO<sub>x</sub> at the Houston Airport System. Houston may choose (but is not required) to make reductions from the following strategies:

1. consolidation of rental car facilities and common bussing system;
2. consolidated employee parking lot and busses;
3. cleaner busses for the City economy lot;
4. a pilot program for fuel cell technology; and
5. voluntary reductions of GSE emissions by various operators at the Houston Airport System with support by Houston for infrastructure.

In lieu of Houston's implementation of one or more of the strategies described above, Houston may propose one or more alternative strategies, subject to approval by the TNRCC. Houston may also comply with all or any part of its commitments through the use of NO<sub>x</sub> emission control

measures which have been achieved elsewhere within the nonattainment area, or the purchase of NOx emission reduction credits or offsets, as long as such actions are creditable pursuant to the TNRCC Emissions Banking Program as defined in 30 TAC ' 101.29, or successor regulations, and Houston can reasonably demonstrate that such measures have resulted in NOx emission reductions at least equal to those required or expected from the commitment being substituted. The emission reduction plan and alternative strategies will be approved, provided the emissions reductions or the effect on the environment from such alternative strategies will achieve a reduction of 1.809 tpd in NOx emissions at the Houston Airport System, and the potential strategies set forth above and the alternative strategies are not duplicative of strategies relied upon in the most recent SIP approved by the TNRCC as of the date which that strategy is included in the emission reduction plan submitted by Houston. Houston may submit this plan anytime after January 1, 2001 in order to ensure that strategies are not duplicative. The plan may be revised to include alternative strategies which would then be evaluated using the SIP existing at the time of the revision. If Houston elects to propose an alternative strategy, it will submit to the TNRCC Executive Director all information reasonably necessary to evaluate and approve the alternative strategy as part of its reduction plan, which approval shall not be unreasonably withheld.

(B) TNRCC agrees as follows:

The TNRCC agrees to support this Memorandum as a revision to the SIP and to recommend that the Governor submit it as such to the EPA.

The TNRCC will not require Houston to regulate the activities of entities that use the Houston Airport System.

## **VI. Term**

The term of this Memorandum shall begin on the date of the countersignature by Houston's Controller and shall expire on December 31, 2007 unless sooner terminated by mutual written consent of both Parties.

**VII. Miscellaneous**

This Memorandum represents the entire agreement between the TNRCC and Houston and supersedes all other agreements, understandings or commitments, written or oral relative to the subject matter of this Memorandum.

This Memorandum may not be amended or modified except pursuant to a mutual written agreement executed by each of the Parties.

This Memorandum shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the conflicts laws thereof.

Both Parties represent they have authority to enter into this Memorandum, including the authority granted in the Texas Government Code Chapter 791, Interlocal Cooperation Contracts, and upon approval of the TNRCC Commission and Houston's governing body, it will be binding on both Parties.

**In Witness Whereof**, TNRCC and Houston, by their authorized officers, have made and executed this Memorandum in multiple copies, each of which is deemed an original.

**Texas Natural Resource Conservation Commission**  
"TNRCC"

By: \_\_\_\_\_  
Name: Jeffrey A. Saitas, P.E.  
Title: Executive Director

**City of Houston, Texas**  
"Houston"

**ATTEST/SEAL**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Secretary

APPROVED:

COUNTERSIGNED:

\_\_\_\_\_  
Director, Department of Aviation

\_\_\_\_\_  
Houston's City Controller

APPROVED AS TO FORM:

DATE COUNTERSIGNED:

\_\_\_\_\_  
Sr. Assistant City Attorney  
LD File No.0040000179001

\_\_\_\_\_

**PASSED AND APPROVED** at the regular meeting of the Texas Natural Resource Conservation Commission on \_\_\_\_\_.

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

\_\_\_\_\_  
**For the Commission**

IN THE MATTER OF AN	§	BEFORE THE
	§	
AGREED ORDER CONCERNING	§	TEXAS NATURAL RESOURCE
	§	
CONTINENTAL AIRLINES, INC.	§	CONSERVATION COMMISSION

AGREED ORDER  
DOCKET NO. 2000-0826-SIP

The Texas Natural Resource Conservation Commission (the Commission or TNRCC) hereby orders Continental Airlines, Inc., (Continental or the Company) to comply with the requirements herein regarding control of emissions of nitrogen oxide (NO<sub>x</sub>) from the sources referenced below, pursuant to §§ 382.011, 382.012 and 382.023(a) of the Texas Clean Air Act (the Act), Texas Health & Safety Code, Chapter 382, for the purpose of revising the Texas State Implementation Plan for Ozone Control (SIP) pursuant to § 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq. The Executive Director of the Commission and the Company have agreed on these control requirements, subject to the approval of the Commission. The parties enter into this Agreed Order for the purpose of making the Memorandum of Agreement between TNRCC and Continental (Attachment A) a part of the SIP. The Memorandum of Agreement is incorporated by reference in this Agreed Order as if set forth at length verbatim in this Agreed Order.

## I. STIPULATIONS

For the purpose of this Agreed Order, the parties have agreed and stipulated as follows:

1. Section 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., requires Texas to submit to the United States Environmental Protection Agency (EPA) for approval SIP revisions and to demonstrate that such SIP revisions provide protection of the National Ambient Air Quality Standards (NAAQS).

2. The Company owns and operates ground support equipment (as defined in the Memorandum of Agreement; GSE) at Bush Intercontinental Airport (IAH) in Houston, Harris County, Texas.

3. The GSE constitute sources as defined in §382.003(12) of the Act.

4. The parties agree that, based upon the current best available information, combined GSE NO<sub>x</sub> emissions for the Houston/Galveston nonattainment area are projected to be 5.65 TPD in 2007. The parties agree that, based upon the current best available information, Continental's IAH GSE fleet's contribution to this amount is estimated to be 3.616 TPD (absent the reductions contemplated by this Memorandum), based on the following assumptions: (i) 80% of the Houston/Galveston region's entire GSE population is located at IAH; and (ii) Continental's GSE fleet makes up 80% of the GSE population located at IAH.

5. In accordance with and subject to the terms of this Agreed Order and the attached Memorandum of Agreement, Continental agrees: (i) to reduce NO<sub>x</sub> emissions from its 1996 GSE Fleet by 25% by December 31, 2003; 50% by December 31, 2004; and 75% by December 31, 2005; (ii) to install RACCC on Continental's GSE placed into service after 1996 at IAH that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT with respect to all GSE placed

into service after 2004 at IAH; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from (ii) and (iii) above will achieve a 75% reduction in NO<sub>x</sub> emissions from the GSE identified in such sections.

6. The Commission and the Company acknowledge that the Company has entered into this Agreed Order voluntarily. In order to better safeguard the air resources of this state, the Company agrees to comply with the terms of this Agreed Order and the attached Memorandum of Agreement.

7. The Commission and the Company agree that the Commission has jurisdiction to enter this Agreed Order, and the Company is subject to the Commission's jurisdiction.

8. Nothing in this Agreed Order shall be interpreted as evidence that the Company is causing or contributing to a violation of the NAAQS or is in any respect non-compliant with any federal, state or local law. Additionally, this Agreed Order shall not constitute a "compliance event" as defined in 30 TAC § 116.11 or any similar designation under federal, state or local law.

9. Capitalized terms used but not defined in this Agreed Order shall have the meanings assigned thereto in the Memorandum of Agreement.

## **II. ORDER**

It is therefore ordered by the TNRCC that Continental shall, from and after the date of this Agreed Order and through the term of the Memorandum of Agreement, limit its emissions of NO<sub>x</sub> as specified in paragraph 5 above and the attached Memorandum of Agreement, and maintain compliance with paragraph 6 above and the attached Memorandum of Agreement.

The provisions of this Agreed Order shall apply to and be binding upon Continental and its successors and assigns. In addition, the terms of this Agreed Order shall apply to any GSE leased to Continental or, if Continental subcontracts out substantial portions (20 percent or more) of its current GSE operations, any GSE so contracted for use at IAH. Continental is hereby ordered to give notice of this Agreed Order to any such successor, assign, lessor or contractor prior to transfer of control of all or any part of the GSE used at IAH to any such successor, assign, lessor or contractor, and to provide TNRCC with written certification that such notice has been given.

The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**PASSED AND APPROVED** at the regular meeting of the Texas Natural Resource Conservation Commission on \_\_\_\_\_.

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

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**For the Commission**

I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and do hereby agree to the terms and conditions specified therein.

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Jim Phillips  
Deputy Director, Office of Legal Services  
Texas Natural Resource Conservation Commission

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Date

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Authorized representative of  
Continental Airlines, Inc.

---

Date

ATTACHMENT A

MEMORANDUM OF AGREEMENT  
BETWEEN CONTINENTAL AND TNRCC

MEMORANDUM OF AGREEMENT (AMEMORANDUM@)

I. Parties

This Memorandum is entered into between the Texas Natural Resource Conservation Commission (ATNRCC@) and Continental Airlines, Inc. (AContinental)@, collectively, Athe Parties@, effective as of \_\_\_\_\_, 2000.

II. Intent

The intent of this Memorandum is to memorialize the matters set forth in Continental-s letter of June 15, 2000 concerning Continental-s voluntary agreement to reduce emissions of oxides of nitrogen (ANOx@) from ground support equipment at George Bush Intercontinental Airport in Houston, Texas (AIAH@).

The Parties agree and intend that the provisions of this Memorandum themselves are not applicable requirements under 30 Tex. Admin. Code Chapter 122, however, individual reduction strategies implemented as part of a plan submitted under Section IV, paragraph G of this Memorandum may be applicable requirements if emission reductions from stationary sources are included in the plan and are located at sites subject to federal operating permit requirements under 30 TAC Chapter 122.

III. Definitions

(A) Ground support equipment ( "GSE") means equipment that is used to service aircraft during passenger, baggage and/or cargo loading

and unloading, maintenance, and other ground-based operations, including, without limitation, the equipment listed on Exhibit A hereto; provided, however, GSE shall not include: (a) equipment used in connection with aircraft de-icing activities such as de-icing equipment, anti-icing equipment and heater carts; and (b) any vehicle registered under the Texas Clean Fleet Program. Any equipment which is leased on a short-term basis (less than 12 months) shall not be considered part of the GSE fleet, except for that portion of such short-term leased equipment which exceeds a substantial portion (20% or more) of the fleet.

(B) Reasonably Available Controls Considering Costs ( 'RACCC) means best air pollution retrofit controls for reducing NOx emissions that are available, in quantities sufficient to meet Continental's operational requirements, from more than one vendor and at a Reasonable Cost.

(C) Best Available Technology ("BAT") means the most stringent (in terms of reducing NOx emissions) air pollution controls or alternate powered technologies that are available, in quantities sufficient to meet Continental's operational requirements, from more than one vendor, and at a Reasonable Cost.

(D) 1996 GSE Fleet means the GSE inventory operated by Continental at IAH and in service on January 1, 1996, and replacements thereof.

(E) Reasonable Cost means that the cost of the control or technology

is reasonable when compared to (i) the cost of the equipment being retrofitted or replaced, or the cost of the equipment available without BAT, (ii) the amount of reductions in NOx to be achieved by such control or technology, and (iii) the average cost of similar controls or technology being used throughout the airline industry.

#### IV. Continental 's Commitment

##### A. Continental 's Obligations

Continental voluntarily agrees: (i) to reduce NOx emissions from its 1996 GSE Fleet by 25% by December 31, 2003; 50% by December 31, 2004; and 75% by December 31, 2005; (ii) to install RACCC on Continental's GSE placed into service after 1996 at IAH that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT, with respect to all GSE placed into service after 2004 at IAH; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from (ii) and (iii) above will achieve a 75% reduction in NOx emissions from the GSE identified in such sections, all in the manner detailed below.

##### B. 1996 GSE Fleet Emission Reductions

The Parties agree that the NOx emissions attributable to the 1996 GSE Fleet are estimated to have been 2.451 tons per day (ATPD). Continental's obligation set forth in section IV.A.(i) will be measured based upon this value. The measurements of the reductions will be based on reasonable empirical measurements to be taken by Continental using assumptions similar to those used to determine NOx emissions from the 1996 GSE Fleet. Demonstration of the achievement of the reductions shall

be to TNRCC's reasonable satisfaction.

C. Installation of RACCC

Installation of RACCC on Continental's GSE placed into service after 1996 at IAH that is in addition to (not replacements of) the 1996 GSE Fleet shall be accomplished by December 31, 2004. As part of the plan described in paragraph G below, Continental shall submit a plan for achieving such retrofits or modifications.

D. Utilization of BAT

BAT shall be utilized for Continental's GSE placed into service after 2004 at IAH. As part of the plan described in paragraph G below, Continental shall submit a plan for achieving such controls.

E. Assistance in SIP Demonstration

The Parties agree that, based upon the current best available information, GSE NOx emissions for the Houston/Galveston nonattainment area are projected to be 5.65 TPD in 2007. The parties agree that, based upon the current best available information, Continental's IAH GSE fleet's contribution to this amount is estimated to be 3.616 TPD (absent the reductions contemplated by this Memorandum), based on the following assumptions: (i) 80% of the region's entire GSE population is located at IAH; and (ii) Continental's GSE fleet makes up 80% of the GSE population located at IAH.

The Parties acknowledge that TNRCC is required under the federal Clean Air Act to demonstrate to the U.S. Environmental Protection Agency (EPA) the adequacy of the Texas State Implementation Plan (ASIP) for ozone pursuant to 42 U.S.C. sec. 7410. To achieve this, the TNRCC wishes to demonstrate a 75% reduction in

Continental's 2007 estimated IAH GSE fleet NOx emissions of 3.616 TPD. Continental estimates that the commitments made by Continental in this Memorandum will result in such a 75% reduction (a reduction of 2.712 TPD) in NOx emissions at IAH. Continental agrees to provide data to TNRCC in order to assist TNRCC in demonstrating to the EPA any such reductions. Continental's obligation is to provide data only, and not to achieve any particular reduction in NOx emissions except as specifically set forth in this Memorandum.

To the extent required, the Parties agree to enter into an Agreed Order setting forth the terms of this Memorandum so that the emission reductions may be creditable for demonstrating ozone attainment for the Houston/Galveston nonattainment area, and that TNRCC may take any appropriate and lawful steps necessary, consistent with this Memorandum, toward ensuring that the reductions are creditable.

#### F. Alternate Methods of Reduction

The parties agree that the actual and estimated reductions of NOx emissions by Continental set forth above can be accomplished in any manner that Continental chooses including, but not limited to, the options enumerated herein. In lieu of compliance with each of the specific commitments set forth above, the Parties agree that Continental may convert its GSE fleet at IAH to 100% lowest emitting commercially available equipment by May 1, 2005, including conversion to electric power where available. The term Lowest emitting commercially available equipment<sup>®</sup> shall not be interpreted to include equipment that limits the horsepower or activity level of a GSE unit. Continental may also comply with all or

any part of its commitments through the use of NOx emission control measures which have been achieved elsewhere within the nonattainment area, or the purchase of NOx emission reduction credits or offsets, as long as such actions are creditable pursuant to the TNRCC Emissions Banking Program as defined in 30 TAC ' 101.29, or successor regulations, and Continental can reasonably demonstrate that such measures have resulted in NOx emission reductions at least equal to those required or expected from the commitment being substituted.

G. Plan Submissions

Continental shall submit to the TNRCC Executive Director by May 1, 2002, a plan for the implementation of NOx emission reduction measures to achieve NOx emission reductions as described above. The plan may include emission reductions measures which are applied to the GSE fleet itself and/or reductions satisfied by other actions as provided in paragraph F above. The plan shall be revised as necessary and is subject to the approval of the Executive Director, which approval shall not be unreasonably withheld or delayed.

V. Confidentiality

The Parties agree that any information designated as AConfidential® and obtained by TNRCC concerning Continental's operations will be maintained by the TNRCC as confidential and will not be released to persons or entities not party to this agreement except upon Continental's valid written approval specific to the information in question or as required by law. Valid written approval may only be obtained by first providing a copy of the Confidential information to Continental's

authorized representative and subsequently receiving written approval from that representative. In the event a request is received by TNRCC for information designated as "Confidential", TNRCC agrees to promptly notify Continental and submit the request and the documents to the Attorney General for consideration as required by the Texas Public Information Act and TNRCC agrees to provide the name and address of Continental's authorized representative to the Attorney General. For purposes of this Memorandum, Continental's authorized representative is Leah Raney or her successors, who may be contacted at the following address: 1600 Smith Street, HQSEN, Houston, TX 77002.

VI. Term and Termination

This Memorandum shall continue in effect through December 31, 2007 unless terminated as allowed herein. Either party may terminate this Memorandum upon 30 days written notice in the event that TNRCC proposes a regulation which in any way attempts to control, directly or indirectly, air emissions from Continental's GSE or aircraft operations at IAH that is inconsistent with or in addition to the measures set forth in this Memorandum. Nothing in this Memorandum shall prohibit TNRCC from proposing or adopting such regulation.

The parties agree that nothing in the proposed air quality rules associated with the proposed Houston/Galveston Area's Attainment Demonstration State Implementation Plan presented to the TNRCC Commission on August 9, 2000, ("the Plan") will trigger such right to terminate provided the final Plan includes exemptions which cover Continental's GSE at IAH in the rules relating to vehicle

idling restrictions when engine idling is necessary for auxiliary purposes or air conditioning for passenger comfort or safety, air ground support equipment, commercial air conditioners, use of diesel emulsion, accelerated purchase of Tier 2/3 diesel and NOx reduction systems. The parties further agree that any action taken by Continental in complying with such rules from which Continental's GSE is exempt may also be used by Continental as an alternate method of complying with this Memorandum as provided in paragraph IV.F. Additionally, Continental's compliance with the Large Spark Ignition Rule at IAH may be used by Continental as an alternate method of complying with this Memorandum as provided in paragraph IV.F.

VII. Miscellaneous

This Memorandum represents the entire agreement between the TNRCC and Continental, and supercedes all other agreements, understandings or commitments, written or oral, relative to the subject matter of this Memorandum.

This Memorandum may not be amended or modified except pursuant to a written agreement executed by each of the Parties.

This Memorandum shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the conflicts laws thereof.

IN WITNESS WHEREOF , TNRCC and Continental, by their authorized officers, have made and executed this Memorandum as of the day and year first above written.

CONTINENTAL AIRLINES, INC.

By: \_\_\_\_\_  
Name:  
Title:

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A  
Examples of Ground Support Equipment

Air Conditioner Cart  
Air Start  
Aircraft Tractor (Push Back)  
Baggage Tractor  
Belt Loader  
Bobtail  
Bus  
Car  
Cargo Loader  
Cargo Tractor  
Catering Truck  
Cleaner Engine Cart  
Fork Lift  
Cherry Picker  
Fuel Hydrant Truck  
Ground Power Unit  
High Lift  
Lavatory Cart  
Lavatory Truck  
Maintenance Lift  
Man Lift  
Passenger Stairs  
Pickup Truck  
Provisioning Truck  
Ramp Sweeper  
Stake Truck  
Van  
Water Truck  
Wrecker Truck

IN THE MATTER OF AN	§	BEFORE THE
	§	
AGREED ORDER CONCERNING	§	TEXAS NATURAL RESOURCE
	§	
SOUTHWEST AIRLINES CO.	§	CONSERVATION COMMISSION

AGREED ORDER  
DOCKET NO. 2000-0827-SIP

The Texas Natural Resource Conservation Commission (the “Commission” or “TNRCC”) hereby orders Southwest Airlines Co. (“Southwest” or the “Company”) to comply with the requirements herein regarding control of emissions of oxides of nitrogen (“NOx”) from the sources referenced below, pursuant to §§ 382.011, 382.012 and 382.023(a) of the Texas Clean Air Act (the Act), Texas Health & Safety Code, Chapter 382, for the purpose of revising the Texas State Implementation Plan for Ozone Control (“SIP”) pursuant to § 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq. The Executive Director of the Commission and the Company have agreed on these control requirements, subject to the approval of the Commission. The parties enter into this Agreed Order for the purpose of making the Memorandum of Agreement between the TNRCC and Southwest (Attachment A) a part of the SIP. The Memorandum of Agreement is incorporated by reference in this Agreed Order as if set forth at length verbatim in this Agreed Order.

## I. STIPULATIONS

For the purpose of this Agreed Order only, the parties have agreed and stipulated as follows:

1. Section 110 of the Federal Clean Air Act, 42 U.S.C. § 7401 et seq., requires Texas to submit SIP revisions to the United States Environmental Protection Agency (“EPA”) for approval and to demonstrate that such SIP revisions provide protection of the National Ambient Air Quality Standards (“NAAQS”).

2. The Company owns and operates ground support equipment (“GSE”), as defined in the Memorandum of Agreement, at Houston-Hobby Airport (“HOU”) in Houston, Harris County, Texas.

3. The GSE constitutes sources as defined in § 382.003(12) of the Act.

4. Southwest acknowledges, but does not necessarily accept or agree to the accuracy thereof, that the TNRCC has projected total GSE NO<sub>x</sub> emissions for the Houston-Galveston nonattainment area to be 5.65 TPD in 2007. Based upon such projection, the TNRCC estimates that, absent any GSE emission reduction measures contemplated by the Memorandum of Agreement (Attachment A) incorporated by reference hereto, Southwest’s HOU GSE Fleet’s contribution to this amount would be 0.753 TPD, based on the following assumptions: (i) 18% of the region’s GSE population is located at HOU; and (ii) Southwest’s GSE Fleet comprises 74% of the GSE population located at HOU.

5. In accordance with and subject to the terms of this Agreed Order and the attached Memorandum of Agreement, Southwest agrees: (i) to reduce NO<sub>x</sub> emissions from sources under Southwest’s control located at HOU, whether stationary or mobile, in an amount equal to

25% of the NOx emitted from its 1996 GSE Fleet (hereinafter “1996 GSE Fleet NOx emissions”) by December 31, 2003; in an amount equal to 50% of its 1996 GSE Fleet NOx emissions by December 31, 2004; and in an amount equal to 75% of its 1996 GSE Fleet NOx emissions by December 31, 2005; (ii) to install RACCC on Southwest’s GSE placed into service after 1996 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT with respect to GSE placed into service after 2004 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from the measures specified in clauses (ii) and (iii) above will achieve a 75% reduction in NOx emissions from the GSE identified in such clauses.

6. The Commission and the Company acknowledge that the Company has entered into this Agreed Order voluntarily. In order to better safeguard the air resources of this state, the Company agrees to comply with the terms of this Agreed Order and the attached Memorandum of Agreement.

7. The Commission and the Company agree that the Commission has jurisdiction to enter this Agreed Order, and the Company is subject to the Commission’s jurisdiction.

8. Nothing in this Agreed Order shall be interpreted as evidence that the Company is causing or contributing to a violation of the NAAQS or is in any respect non-compliant with any federal, state or local law. Additionally, this Agreed Order shall not constitute a “compliance event” as defined in 30 TAC § 116.11 or any similar designation under federal, state, or local law.

9. Capitalized terms used but not defined in this Agreed Order shall have the meanings assigned thereto in the Memorandum of Agreement.

## **II. ORDER**

It is therefore ordered by the TNRCC that Southwest shall, from and after the date of this Agreed Order and through the term of the Memorandum of Agreement, limit its emissions of NOx as specified in paragraph 5 above and the attached Memorandum of Agreement, and maintain compliance with paragraph 6 above and the attached Memorandum of Agreement.

The provisions of this Agreed Order shall apply to and be binding upon Southwest and its successors and assigns. In addition, the terms of this Agreed Order shall apply to any GSE leased to Southwest for a lease term in excess of 12 months or representing 20 percent or more of its fleet, or, if Southwest subcontracts out 20 percent or more of its current GSE operations, to any GSE so contracted for use at HOU. Southwest is hereby ordered to give notice of this Agreed Order to any such successor, assign, lessor, or contractor prior to transfer of control of all or any part of the GSE used at HOU to any such successor, assign, lessor, or contractor, and to provide TNRCC with written certification that such notice has been given.

The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

**PASSED AND APPROVED** at the regular meeting of the Texas Natural Resource  
Conservation Commission on \_\_\_\_\_.

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

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**For the Commission**

I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and do hereby agree to the terms and conditions specified therein.

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Jim Phillips  
Deputy Director, Office of Legal Services  
Texas Natural Resource Conservation Commission

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Date

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Authorized representative of  
Southwest Airlines Co.

---

Date

ATTACHMENT A

MEMORANDUM OF AGREEMENT  
BETWEEN SOUTHWEST AND TNRCC

## MEMORANDUM OF AGREEMENT (“MEMORANDUM”)

### V. PARTIES

This Memorandum is entered into between the Texas Natural Resource Conservation Commission (“TNRCC”) and Southwest Airlines Co. (“Southwest”), collectively, the “Parties,” effective as of \_\_\_\_\_, 2000.

### VI. INTENT

The intent of this Memorandum is to memorialize Southwest’s voluntary agreement to reduce emissions of oxides of nitrogen (“NOx”) from sources under Southwest’s control located at Houston-Hobby Airport in Houston, Texas (“HOU”).

The Parties agree and intend that the provisions of this Memorandum themselves are not applicable requirements under 30 Tex. Admin. Code (“TAC”), Chapter 122; however, individual reduction strategies implemented as part of a plan submitted under Paragraph IV.G. of this Memorandum may be applicable requirements if emission reductions from stationary sources are included in the plan and are located at sites subject to federal operating permit requirements under 30 TAC, Chapter 122.

### VII. DEFINITIONS

- A. Ground support equipment (“GSE”)** means equipment that is used to service aircraft during passenger, baggage, and/or cargo loading and unloading, maintenance, and other ground-based operations, including, without limitation, the equipment listed on Exhibit A hereto; provided, however, GSE shall not include: (a) equipment used in connection with aircraft de-icing activities such as de-icing equipment, anti-icing equipment, and heater carts; and (b) any vehicle registered under the Texas Clean Fleet Program. Any equipment leased on a short-term basis for a period of 12 months or less shall not be

considered part of the GSE Fleet, except for that portion of such short-term leased equipment that exceeds 20% or more of the GSE Fleet.

- B. Reasonably Available Controls Considering Costs (“RACCC”)** means best air pollution retrofit controls for reducing NOx emissions that are available, in quantities sufficient to meet Southwest’s operational requirements, from more than one vendor and at a Reasonable Cost.
  
- C. Best Available Technology (“BAT”)** means the most stringent (in terms of reducing NOx emissions) air pollution controls or alternative-power technologies that are available, which includes availability and adequacy of alternative fueling and/or electrical power grid infrastructure at HOU, in quantities sufficient to meet Southwest’s operational requirements, from more than one vendor, and at a Reasonable Cost.
  
- D. 1996 GSE Fleet** means the GSE inventory operated by Southwest at HOU and in service on December 31, 1996, and replacements thereof.
  
- E. Reasonable Cost** means that the cost of the control or technology is reasonable when compared to (i) the cost of the equipment being retrofitted or replaced, or the cost of the equipment available without BAT; (ii) the amount of reductions in NOx to be achieved by such control or technology; and (iii) the average cost of similar controls or technology being used throughout the airline industry.

**VIII. SOUTHWEST’S COMMITMENT**

**A. Southwest’s Obligations**

Southwest voluntarily agrees: (i) to reduce NOx emissions from sources under Southwest’s control located at HOU, whether stationary or mobile, in an amount equal to 25% of the NOx

emitted from its 1996 GSE Fleet (hereinafter “1996 GSE Fleet NOx emissions”) by December 31, 2003; in an amount equal to 50% of its 1996 GSE Fleet NOx emissions by December 31, 2004; and in an amount equal to 75% of its 1996 GSE Fleet NOx emissions by December 31, 2005; (ii) to install RACCC on Southwest’s GSE placed into service after 1996 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; (iii) to utilize BAT with respect to GSE placed into service after 2004 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet; and (iv) to assist the TNRCC in demonstrating that the anticipated emission reductions from the measures specified in clauses (ii) and (iii) above will achieve a 75% reduction in NOx emissions from the GSE identified in such clauses.

**B. 1996 GSE Fleet Emission Reductions**

The TNRCC has estimated that the NOx emissions attributable to Southwest’s 1996 GSE Fleet are 0.510 tons per day (“TPD”). However, upon submittal of the plan described in Paragraph G. below, the 1996 emissions may be less than this estimate. Southwest's obligation set forth in Paragraph IV.A.(i) above will be measured based upon Southwest’s actual 1996 GSE Fleet NOx emissions as submitted in the plan and agreed to by the Parties. In no event, however, will Southwest’s emissions from the 1996 GSE Fleet exceed 0.128 TPD after December 31, 2005. Calculation of the reductions will be based on reasonable empirical measurements to be taken by Southwest. Demonstration of the achievement of the reductions shall be to TNRCC’s reasonable satisfaction.

**C. Installation of RACCC**

Installation of RACCC on Southwest’s GSE placed into service after 1996 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet shall be accomplished by December 31, 2004. In lieu of retrofitting with RACCC, Southwest may, at its option, replace certain post-1996 GSE with alternative-fuel and/or electric-powered equipment if adequate fueling and/or electrical power grid infrastructure then exists at HOU as long as the reductions

equivalent with the installation of RACCC. As part of the plan described in Paragraph G. below, Southwest shall submit a plan for achieving such retrofits, modifications, or replacements.

**D. Utilization of BAT**

BAT shall be utilized for Southwest's GSE placed into service after 2004 at HOU that is in addition to (not replacements of) the 1996 GSE Fleet. As part of the plan described in Paragraph G. below, Southwest shall submit a plan for achieving such controls.

**E. Assistance in SIP Demonstration**

Southwest acknowledges, but does not necessarily accept or agree to the accuracy thereof, that TNRCC has projected GSE NO<sub>x</sub> emissions for the Houston-Galveston nonattainment area to be 5.65 TPD in 2007. Based upon such projection, TNRCC estimates that, absent any GSE emission reduction measures contemplated by this Memorandum, Southwest's HOU GSE Fleet's contribution to this amount would be 0.753 TPD, based on the following assumptions: (i) 18% of the region's GSE population is located at HOU; and (ii) Southwest's GSE Fleet comprises 74% of the GSE population located at HOU.

The Parties acknowledge that TNRCC is required under the federal Clean Air Act to demonstrate to the U.S. Environmental Protection Agency ("EPA") the adequacy of the Texas State Implementation Plan ("SIP") for ozone pursuant to 42 U.S.C. § 7410. To achieve this, TNRCC wishes to demonstrate a reduction in NO<sub>x</sub> emissions from sources under Southwest's control at HOU equal to 75% of this 0.753 TPD figure, *i.e.*, 0.564 TPD. Southwest agrees to provide data to TNRCC in order to assist TNRCC in demonstrating to the EPA any such reductions. Southwest's obligation in this regard, however, is to provide data only and not to guarantee achievement of any particular TPD amount of NO<sub>x</sub> emission reductions, except as may be achieved from implementation of the commitments specifically set forth in Paragraph IV.A. of this Memorandum.

To the extent required, the Parties agree to enter into an Agreed Order setting forth the terms of this Memorandum so that the emission reductions may be creditable for demonstrating ozone attainment for the Houston-Galveston nonattainment area, and that TNRCC may take any appropriate and lawful steps necessary, consistent with this Memorandum, toward ensuring that the reductions are creditable.

**F. Alternate Methods of Compliance**

The Parties agree that Southwest's NOx emission-reduction obligations set forth in Paragraph IV.A. above can be accomplished in any manner that Southwest chooses including, but not limited to, the options enumerated herein. In lieu of compliance with each of the specific commitments set forth above, the Parties agree that Southwest may convert its GSE fleet at HOU to 100% lowest-emitting commercially-available equipment by May 1, 2005, including conversion to electric power where available. The term "lowest-emitting commercially-available equipment" shall not be interpreted to include equipment that limits the horsepower or activity level of a GSE unit. Southwest may also comply with all or any part of its commitments through emission control measures involving other emission sources controlled by Southwest elsewhere within the Houston-Galveston nonattainment area, such as reducing NOx emissions from aircraft-mounted auxiliary power units ("APUs"), or the purchase of NOx emission reduction credits or offsets, as long as such actions are creditable pursuant to the TNRCC Emissions Banking Program as defined in 30 TAC § 101.29, or successor regulations, and Southwest can reasonably demonstrate that such measures have resulted in NOx emission reductions at least equal to those required from the commitment being substituted.

**G. Plan Submissions**

Southwest shall submit to the TNRCC Executive Director by May 1, 2002, a plan for the implementation of emission control measures to achieve NOx emission reductions as described above. The plan may include emission reduction measures applied to the GSE Fleet itself and/or

reductions satisfied by other actions as provided in Paragraph IV.F. above. The plan shall be revised as necessary and is subject to the approval of the Executive Director, which approval shall not be unreasonably withheld or delayed.

**IX. CONFIDENTIALITY**

The Parties agree that any information designated by Southwest as “Confidential” and obtained by TNRCC concerning Southwest’s operations will be maintained by the TNRCC as Confidential and will not be released to persons or entities not party to this agreement except upon Southwest’s valid written approval specific to the information in question or as required by law. Valid written approval may only be obtained by first providing a copy of the Confidential information to Southwest’s authorized representative and subsequently receiving written approval from that representative. In the event a request is received by TNRCC for information so designated as Confidential, TNRCC agrees to promptly notify Southwest and submit the request and the documents to the Attorney General for consideration as required by the Texas Public Information Act, and TNRCC agrees to provide the name and address of Southwest’s authorized representative to the Attorney General. For purposes of this Memorandum, Southwest’s authorized representative is Richard Ketler, Chief Counsel, or his successors, who may be contacted at the following address: Southwest Airlines Co., 2702 Love Field Drive, P.O. Box 36611, HDQ-4GC, Dallas, Texas 75235-1611.

**X. TERM AND TERMINATION**

This Memorandum shall continue in effect through December 31, 2007 unless terminated as allowed herein. Either party may terminate this Memorandum upon 30 days written notice in the event that TNRCC, the EPA, or the Federal Aviation Administration (“FAA”) promulgates a regulation or regulations that in any way attempt to control, directly or indirectly, air emissions from Southwest’s GSE or aircraft operations at HOU that are incompatible with or require equivalent or greater reductions of NOx than the emission control measures or Southwest’s

obligations set forth in this Memorandum. Nothing in this Memorandum shall prohibit TNRCC from proposing or adopting such regulations.

The Parties agree that nothing in the proposed air quality rules associated with the proposed Houston-Galveston Area's Attainment Demonstration State Implementation Plan presented to the TNRCC Commission on August 9, 2000 (the "Plan") will trigger such right to terminate provided the final Plan includes exemptions covering Southwest's GSE at HOU in the rules relating to vehicle idling restrictions when engine idling is necessary for auxiliary power purposes or air conditioning for passenger comfort or safety, airport ground support equipment, commercial air conditioners, use of diesel emulsion, ~~or~~ accelerated purchase of Tier 2/3 diesel and NOx reduction systems. The Parties further agree that any action taken by Southwest in complying with such rules from which Southwest's GSE is exempt may also be used by Southwest as an alternate method of complying with this Memorandum as provided in Paragraph IV.F. above.

XI. **MISCELLANEOUS**

**A. Entire Agreement**

This Memorandum represents the entire agreement between TNRCC and Southwest, and it supercedes all other agreements, understandings, or commitments, written or oral, relative to the subject matter of this Memorandum.

**B. Amendment**

This Memorandum may not be amended or modified except pursuant to a written agreement executed by each of the Parties.

**C. Applicable Law**

This Memorandum shall be governed by and interpreted in accordance with the laws of the State of Texas, without giving effect to the conflicts laws thereof.

**IN WITNESS WHEREOF**, TNRCC and Southwest, by their authorized officers, have made and executed this Memorandum as of the day and year first above written.

**SOUTHWEST AIRLINES CO.**

By: \_\_\_\_\_  
Name:  
Title:

**TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **EXAMPLES OF GROUND SUPPORT EQUIPMENT**

Air Conditioner Cart  
Air Start Unit  
Aircraft Tractor or Pushback  
Baggage Tug or Tractor  
Baggage or Cargo Beltloader  
Bobtail Truck or Tug  
Boom Truck  
Bus  
Car  
Catering Truck  
Cherry Picker  
Forklift  
Fuel Truck  
Ground Power Unit  
Hydrant Fuel Truck  
Lavatory Cart  
Lavatory Truck  
Maintenance Lift  
Man Lift  
Passenger Stairs  
Pick-up Truck  
Provisioning Truck  
Ramp Sweeper  
Van  
Water Truck  
Wrecker Truck