
CITY OF KELOWNA

MEMORANDUM

Date: June 9, 2009
File No.: 0550-05
2380-20-8180
To: City Manager
From: Airport Director
Subject: AIRPORT USE AGREEMENT FOR 1263343 ALBERTA INC. dba ENERJET –
KELOWNA INTERNATIONAL AIRPORT

RECOMMENDATION:

THAT Council consent to approve the Air Carrier Airport Use Agreement allowing 1263343 Alberta Inc. dba Enerjet to operate at the Kelowna International Airport.

AND THAT the Mayor and City Clerk be authorized to execute the Air Carrier Airport Use Agreement allowing 1263343 Alberta Inc. dba Enerjet to operate at the Kelowna International Airport.

BACKGROUND:

1263343 Alberta Inc. dba Enerjet, based and headquartered at the Calgary International Airport, Calgary, Alberta was founded in 2007 by a small team of entrepreneurs and airline industry veterans for the purpose of providing charter services to Canadian companies, organizations and groups, for domestic and international charter flights.

Enerjet will be providing winter charter air service between Kelowna International Airport and vacation spots in Mexico for Transat Holidays and sold through tour operators Transat Holidays, Signature Vacations and Sunquest Holidays. Enerjet will be using 137 seat B737-700 aircraft and have five departures per week to Cancun, Puerto Vallarta and Los Cabos beginning December 20, 2009.

The Airport Use Agreement, approved by the City Solicitor in 1996 was authorized by City Council in September 1996 and allows the Mayor and City Clerk to sign with new entrant air carriers wishing to operate at our airport.

Considerations that were not applicable to this report:

INTERNAL CIRCULATION TO: N/A

LEGAL/STATUTORY AUTHORITY: N/A



LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: N/A

EXISTING POLICY: N/A

FINANCIAL/BUDGETARY CONSIDERATIONS: N/A

PERSONNEL IMPLICATIONS: N/A

TECHNICAL REQUIREMENTS: N/A

EXTERNAL AGENCY/PUBLIC COMMENTS: N/A

COMMUNICATIONS CONSIDERATIONS: N/A

ALTERNATE RECOMMENDATION: N/A

Submitted by:



S. Samaddar
Airport Director
/cmm

Approved for Inclusion:



DUPLICATE ORIGINAL

KELOWNA INTERNATIONAL AIRPORT

AIR CARRIER AIRPORT USE AGREEMENT

BETWEEN THE

CITY OF KELOWNA

AND

**1263343 ALBERTA INC.
DBA ENERJET**

(YLW FILE NO. 2380-20-8180)

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THIS AGREEMENT made this _____ day of _____, 2009.

BETWEEN

City of Kelowna
1435 Water Street
Kelowna, B.C.
V1Y 1J4

(hereinafter called the "City")

OF THE FIRST PART;

AND

1263343 Alberta Inc.
dba Enerjet
119, 1440 Aviation Park N.E.
Calgary, Alberta
T2E 7E2

a company incorporated pursuant to the laws of the Province of Alberta

(hereinafter called the "Air Carrier")

OF THE SECOND PART.

WHEREAS the City is the operator of the Kelowna International Airport (the "Airport") located in the City of Kelowna, Province of British Columbia;

AND WHEREAS the Air Carrier is desirous of using, in common with others, the Airport;

For and in consideration of the fees, charges and covenants hereinafter set forth, the parties hereto agree as follows:

Article 1.00 - Purpose

1. The City covenants that provided the Air Carrier pays all monies due under this Agreement and performs the covenants herein on its part contained, it may:
 - 1.1. Operate its business or a part thereof at the Airport;
 - 1.2. Use, in common with others so authorized, the runways, taxiways, navigational aids and other common use landing field facilities of the Airport, for its aircraft landings and takeoffs required in connection with the operation of its air transportation business to and from the Airport;

- 1.3. Possess the right of access from the Airport as made necessary by the Air Carrier's operations over, and upon streets, roads, paths, hallways, corridors or open spaces only, provided that the right herein defined shall not be exercised in such manner and to such extent as to impede or interfere with the operation of the Airport by the City, its lessees, Air Carriers or others; and
- 1.4. On and off load its passengers or cargo from such areas of the Airport as the Airport Director may from time to time designate. Such assignment of areas shall not constitute any pre-emptive or exclusive right to areas designated. When traffic conditions are such that the areas are in use, the Air Carrier may use other areas designated by the Airport Director if, by such use, others are not inconvenienced or disturbed.

Article 2.00 - Term of Agreement

2. The term of this Agreement shall commence on December 15, 2009 and shall continue to be in effect until terminated as hereinafter provided.
 - 2.1. This Agreement may be terminated at any time by the City in the absolute discretion of the Airport Director. Termination shall be effected by providing up to thirty (30) days prior written notice to the Air Carrier and upon the date of termination specified in the notice all rights of the Air Carrier pursuant to this Agreement shall thereupon cease.
 - 2.2. The Air Carrier may terminate this Agreement by giving thirty (30) days prior written notice to the Airport Director.
 - 2.3. This Agreement may be terminated by the mutual written consent of the parties without notice.
 - 2.4. The Air Carrier shall forthwith cease to carry on business or operation at the Airport as of the effective date of termination of this Agreement.

Article 3.00 - Conduct of Business

3. The Air Carrier covenants and agrees with the City to the terms and conditions set forth below at all times during the term of this Agreement and agrees that non-compliance with any such term or conditions at any time during the term of this Agreement shall constitute grounds for termination of this Agreement by the City by written notice to the Air Carrier, or such other remedy as the City, in its discretion, may deem appropriate. The Air Carrier waives any notice of default or termination not expressly provided for in this Agreement.
 - 3.1. The Air Carrier shall hold all required valid and subsisting agreements, certificates or permits from the federal government to provide commercial air transportation services to the routes it is serving to and from the Airport.

- 3.2. The Air Carrier shall abide by and comply promptly with all laws, regulations, orders, rules, requirements and recommendations which may be applicable to the Air Carrier or to the use of the Airport, made by any and all federal, provincial, civil, municipal and other authorities or association of insurance underwriters or agents and all notices in pursuance of same and whether served upon the City or the Air Carrier, but if served upon the City alone, only if notice thereof is given to the Air Carrier.
- 3.3. The Air Carrier shall comply forthwith and cause its directors, officers, employees and agents to comply with any direction of the Airport Director with respect to matters which, in the opinion of the Airport Director, concern safety, security or matters of urgency.
- 3.4. The Air Carrier shall observe and obey all reasonable rules and regulations not conflicting with the provisions of this Agreement as may now exist or may be promulgated from time to time by the Airport Director, provided that such rules and regulations shall be furnished in writing to the Air Carrier.
- 3.5. The Air Carrier shall maintain strict control over all security passes issued by the employees or agents of the Air Carrier; follow any direction of the Airport Director with respect to security measures; and report forthwith to the Airport Director any loss or misuse of security passes or the termination of its employees or agents.
- 3.6. The Air Carrier shall not, under this Agreement, conduct a separate business on or about the Airport, nor shall it offer, supply, sell or give away, whether singly or in conjunction with its air transportation business, any service or commodity other than usual food or beverages in the course of the flight unless authorized in writing by the Airport Director.
- 3.7. The Air Carrier shall before commencing operations and subject to the approval of the Airport Director, make and maintain:
 - a) Arrangement for fuelling and ground handling; and
 - b) Provide to the Airport Director for approval, a written proposal of the Air Carrier's policy and procedures with respect to the handling and containment, clean-up, and disposal of dangerous goods and hazardous materials, including aircraft fuel and oil, de-icing and other potential pollutants at the Airport.
- 3.8. Subject to the approval of the Airport Director, the Air Carrier shall make and maintain arrangements for the use of gate/apron space, ticket counter and baggage claim.
- 3.9. The Air Carrier shall provide to the City, not later than the fifth day of each month, a report of the Air Carrier's operations at the Airport during the preceding month, separately setting forth the total number of enplaning and deplaning domestic and international passengers (including on-line and interline passengers)

carried by the Air Carrier during the preceding month and the number of landings by the Air Carrier by type of aircraft. The Air Carrier shall also provide such other information on its operation in such form and at such times as may be required by the Airport Director. It is understood by the parties that such information will, with the exception of its inclusion in overall statistical totals, be kept confidential by the City, subject to applicable law.

- 3.10. The Air Carrier shall submit proposed schedules to the Airport Director in writing for the winter/spring period no later than June 15th, and for the summer/fall period no later than November 15th.
- 3.11. The Air Carrier shall at its own expense and cost, procure and maintain the insurance policies listed below with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of this Airport Use Agreement, the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Airport Use Agreement until the termination of the Airport Use Agreement or such longer period as may be specified by the City.

As a minimum, the Air Carrier shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

- a) Aviation Premises/Operations Liability Insurance providing for all sums which the Air Carrier shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the operations carried on in connection with this Airport Use Agreement. This insurance shall include but not be limited to aircraft liability, passenger legal liability, personal injury, premises liability, baggage and cargo liability and such other coverage as may from time to time be generally issued by insurance companies to airlines in connection with their airport operations. Limits of liability for this insurance shall not be less than an inclusive limit of twenty-five million dollars (\$25,000,000.00) for each occurrence or accident, or such greater amount as required by law or regulation applicable to the Air Carriers;
- b) This insurance shall include a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured thereunder, in respect to any claim, demand, suit or judgement made against any other Insured.
- c) Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Air Carrier directly or indirectly in the performance of this Airport Use Agreement. The Limit of Liability shall not be less than two million dollars (\$2,000,000.00) inclusive, for

loss or damage including personal injuries and death resulting from any one accident or occurrence.

- 3.12 The policy required by section 3.11 above shall provide that the City is named as an Additional Insured with respect to the Premises Liability at the Kelowna International Airport and that said policy is primary without any right of contribution from any insurance otherwise maintained by the City.
- 3.13 The Air Carrier agrees to submit a Certificate of Insurance (Schedule A) to the Airport Director of the Kelowna International Airport prior to commencement of this Airport Use Agreement. The Certificate shall provide that 30 days written notice shall be given to the Airport Director of the Kelowna International Airport, prior to any material changes or cancellations of any such policy or policies.
- 3.14 After reviewing the Air Carrier's Certificate of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this Airport Use Agreement and will give notification of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Air Carrier's expense.
- 3.15 The Air Carrier may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City.
- 3.16 All insurance, which the Air Carrier is required to obtain with respect to this Airport Use Agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
- 3.17 If the Air Carrier fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from the Air Carrier. The Air Carrier expressly authorizes the City to deduct from any monies owing the Air Carrier, any monies owing by the Air Carrier to the City.
- 3.18 The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Air Carrier shall not be held to waive or release the Air Carrier from any of the provisions of section 3.11 or this Airport Use Agreement, with respect to the liability of the Air Carrier otherwise. Any insurance deductible maintained by the Air Carrier under any of the insurance policies is solely for its account and any such amount incurred by the City will be recovered from the Air Carrier as stated in section 3.17.
- 3.19 The Air Carrier shall pay or cause to be paid all rates, taxes and assessments, of whatsoever description that may at any time during the existence of the Agreement be lawfully imposed, or become due and payable by the Air Carrier.

3.20 The Air Carrier shall pay to the City all applicable aircraft landing, parking and facility charges as amended from time to time.

3.21 The Air Carrier shall collect and remit to the City an Airport Improvement Fee (AIF) from all departing enplaned passengers in the amount of \$10.00 Canadian in accordance with the Memorandum of Agreement (MOA) between the Air Transport Association of Canada and Signatory Air Carriers and Certain Airports including the Kelowna International Airport dated September 23, 1997 and as amended May 31, 1999, February 18, 2000, June 1, 2000 and January 1, 2004 and November 1, 2007. The amount of AIF collected may be adjusted from time to time by the City as provided for in the MOA (Article 6.2) and included in the City of Kelowna Airport Fees Bylaw No. 7982 (Section 22). The AIF shall be remitted monthly along with an Airport Improvement Fee Monthly Remittance Form (Schedule B) indicating the current month departing enplaning passengers (DEPAX), the addition of G.S.T., and the quantities of DEPAX who purchased tickets, including paperless tickets which are kept in electronic form, in North America and outside North America. The remittance form shall be signed and dated by an authorized representative of the Air Carrier. The Air Carrier will remit the amount shown on the Remittance Form.

3.21.1 The obligation to collect and remit an AIF will not apply to:

- a) those passengers continuing a journey less than four hours after arrival at the Airport for domestic Canada and transborder itineraries and continuing a journey less than 24 hours after arrival at the Airport for international itineraries. A passenger will be considered to be continuing a journey even though multiple air carriers may participate in the itinerary on one or more air carrier ticket(s);
- b) airline employees travelling on business, including duty travel of crews of one air carrier on another air carrier;
- c) infants under two years of age for whom no ticket was purchased, even though a no cost ticket may have been issued in the name of the infant;
- d) those customers travelling on passes or other travel documents with discount codes ID/IN. However, customers travelling on frequent flier mileage redemption programs or promotional tickets (such as two for one tickets) do not qualify as ID passengers within the meaning of this clause 3.21.1 d).

3.21.2 Regardless of which air carrier sells a ticket to a DEPAX passenger or whose designator code is on the passenger's ticket, the air carrier on whom the DEPAX passenger actually travels shall be the party responsible for the collection and remittance of the AIF for that DEPAX passenger.

3.22 The Air Carrier shall without limiting the liability of the Air Carrier under this Agreement or otherwise, pay to the City all costs of the City in using its employees, agents, equipment, and materials, plus a reasonable administrative

charge for damage to or destruction of the property of the City, including but not limited to fuel, oil and other spills.

- 3.23 The Air Carrier shall pay all other fees or charges to the City arising out of the Air Carrier's operation or activities at the Airport, including any sums for employee parking, identification badges, keys and the like.
- 3.24 The Air Carrier shall pay interest thereon at the rate of 1.5 percent per month (equivalent to 18.00 percent per annum) or such other rate which the City shall determine from time to time in its absolute discretion to reflect prevailing interest rates until the amount of the default and all interest thereon have been paid. All interest shall be calculated daily and compounded monthly and shall apply retroactively from the due date for payment.
- 3.25 In the event the City shall prevail in any action for the enforcement of any of its rights hereunder, the Air Carrier shall pay the City such reasonable legal costs, in addition to any other debt or damages recoverable in such action.
- 3.26 Before commencing operations, the Air Carrier shall provide the Airport Director with a Security Deposit calculated to be the sum of three (3) months Landing Fees plus General Terminal Fees based upon the proposed schedule(s) submitted to the Airport Director plus all other related fees and charges.
 - a) The Security Deposit shall be in the form of cash, bank draft, certified cheque, or irrevocable letter of credit in a form acceptable to the City. Interest will not be paid when the Security Deposit is remitted in the form of an irrevocable letter of credit. Where payable, interest will be calculated at a rate determined by the City. In the case of a letter of credit, if the Air Carrier fails to provide the Airport Director with a renewal or replacement letter of credit at least sixty (60) days prior to the date on which such previous letter of credit expires, then the City shall have the right to terminate this Agreement by written notice to the Air Carrier.
 - b) The Security Deposit plus interest retained by the City, for the term of this Agreement or until the Agreement otherwise comes to an end, whichever comes first, shall be returned to the Air Carrier or shall be credited to its account. However, if the Air Carrier fails to pay all sums herein described and/or impairs or damages the Airport or any part thereof during the currency of this Agreement, the City may apply the Security Deposit and accrued interest, if any, or any part thereof to the arrears of sums and/or damages and injuries. If the Security Deposit is so applied by the City, then within fifteen (15) days of having received written notification, the Air Carrier shall restore the Security Deposit to the amount as provided herein. The application of the Security Deposit and interest by the City shall not constitute a waiver nor in any way defeat or affect the rights and remedies which the City has in law.

- c) The Air Carrier asserts that monies deposited herein as security are not subject to any existing encumbrance, charge, or security agreement.
 - d) The Air Carrier covenants and agrees that it will not assign or encumber nor attempt to assign or encumber the monies deposited herein as security and that the City shall not be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.
 - e) The City shall have the right on at least thirty (30) days prior written notice to the Air Carrier to increase or decrease the amount of the Security Deposit that the Air Carrier is required to maintain hereunder so that such amount continues to represent the amount that the City estimates will be payable as determined by this Agreement. If the Air Carrier does not provide the City, prior to the expiration of such thirty (30) day period, with the full amount of any such increase in the form of a Security Deposit, then the City shall have the right to terminate this Agreement by written notice to the Air Carrier.
- 3.27 The Air Carrier shall at all times maintain the airside surfaces free of all foreign objects and litter, and shall whenever directed to do so by the Airport Director, remove immediately from the airside surfaces or a portion thereof all of its equipment and anything related to its operations.
- 3.28 The Air Carrier shall require its personnel and employees to maintain and keep the areas of the Airport used by it in the loading and unloading of its passengers or cargo in a neat, clean and orderly condition, free from litter, debris, refuse, petroleum products or grease that may accumulate thereon as a result of the use of the said areas by its passengers, or its employees, contractors, or others servicing and operating its aircraft.
- 3.29 The Air Carrier shall immediately remove any aircraft owned or operated by the Air Carrier that, through accident or for any other reason, becomes disabled or be abandoned in any area which could interfere with the continuous normal operations of any of the Airport landing and field facilities to such location as shall be designated by the Airport Director unless such aircraft is required to remain in place pending investigation by the appropriate regulatory agencies of the federal government.

Should the Air Carrier fail to immediately remove such disabled aircraft as herein provided, or should aircraft owned or operated by the Air Carrier be allowed to remain on the Airport beyond the needs of normal operation, the City shall have the right to remove such aircraft by any means the City deems necessary under the circumstances, and the Air Carrier shall indemnify and save harmless the City, its officers, officials, employees and agents from any and all costs, liability, damage or expense, including all reasonable legal costs and storage costs incurred by the City or claimed by anyone by reason of removal of such aircraft.

- 3.30 The Air Carrier shall comply with the Airport's noise management and abatement program and with any procedures or directions of the Airport Director with respect to noise management and abatement at the Airport.
- 3.31 The Air Carrier shall comply with the City of Kelowna Local Airport Traffic Directives for the operation of vehicles on airport movement areas, as published by the Airport Director, or any revision or amendment as made from time to time.
- 3.32 The Air Carrier shall provide resources and services for disabled persons.
- 3.33 Where required by the Airport Director, the Air Carrier shall ensure that all signs are provided in both English and French, with equal prominence given to the two languages.
- 3.34 The Air Carrier shall obtain the written approval of the Airport Director for all signs and advertising materials including lettering and other advertising media erected, installed or placed in the Airport and the Air Carrier shall conform to the aesthetic standards of the Airport and any direction the Airport Director may make from time to time with respect to displays and advertising signs and the Air Carrier shall pay the costs of installing, maintaining, changing and removing all such signs or displays.
- 3.35 The Air Carrier shall not cause or allow air freight and cargo items, excluding passenger luggage and related articles, to be handled through the Air Terminal Building unless approved in writing by the Airport Director.

Article 4.00 - Default

- 4. It shall constitute default of the terms of this Agreement and justification for immediate termination by the City upon the occurrence of the following:
 - 4.1 Any breach of the covenants and obligations hereunder not cured within fifteen (15) days written notice signed by the Airport Director setting out the particulars of such breach; or
 - 4.2 The filing by or against the Air Carrier of any petition in bankruptcy, or if the Air Carrier has become insolvent or committed an act of bankruptcy as defined by the Bankruptcy Act; or
 - 4.3 The making or entering into by the Air Carrier of any assignment for the benefit of creditors; or
 - 4.4 The levy of any attachment, execution, appointment of a receiver or other process of court by which the operating rights herein granted may be claimed or attempted to be held and used by any person by reason thereof, whether such person is an officer or appointee of court or otherwise, or any attempted assignment of this Agreement by operation of law; or

- 4.5 Any willful or wanton violation or disregard of the provisions of this Agreement which endangers life or property on the Airport.

Article 5.00 - Assignment

5. The acceptance of any monies from or the performance of any obligation hereunder by a person other than the Air Carrier shall not be construed as an admission by the City to any right or interest of such person as an assignee, transferee or otherwise in the place of the Air Carrier.

Article 6.00 - Waiver

6. The acceptance of the City of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the City to payment in full of such sums.

Article 7.00 - Waiver Negated

7. The failure of either party to insist upon strict performance of any covenant or condition contained in this Agreement or to exercise any right or option hereunder shall not be construed as a waiver or relinquishment for the future of any such covenant, condition, right or option.

Article 8.00 – Hold Harmless/Indemnification/Claims

8. The Air Carrier:
- 8.1 Shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Airport Use Agreement, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.
- 8.2 Shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Airport Use Agreement, excepting only where such claim, demand, action proceeding or liability is based on the sole negligence of the Indemnitees.

- 8.3 Expressly waive any and all claims for compensation for any and all loss or damage sustained by reason of any defect, deficiency or impairment or any of the services to or in any space at the Airport, including but not limited to, power, gas, telephone, steam, heating, air conditioning, water supply system, drainage or sewerage systems, or dome wires leading to or inside of any space used, or by reason of any loss resulting from the failure of any such system or facilities which may occur from time to time from any cause, and the Air Carrier hereby expressly releases and discharges the City its elected officials, officers, employees and agents from any and all demands, claims, actions and causes of action arising from any of the causes aforesaid.

Article 9.00 - Members of the House of Commons

9. No member of the House of Commons of Canada shall be admitted to any share or part of this Agreement, or to any benefit to arise therefrom.

Article 10.00 - Choice of Law and Jurisdiction

10. This Agreement shall be construed in accordance with the laws of the Province of British Columbia and that the parties agree that the courts of British Columbia shall have jurisdiction in all matters concerning or arising out of this Agreement.

Article 11.00 - Entire Agreement

11. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any representations or statement heretofore made with respect to such subject matter, whether verbal or written, are merged herein. This Agreement may be altered or amended only by written instrument executed by both parties hereto.

Article 12.00 - Bribes

12. The Air Carrier hereby confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of the City for, or with a view to, obtaining this Agreement any bribe, gift or other inducement and that it has not, nor has any person on its behalf, employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee.

Article 13.00 - Headings

13. Any note appearing as a heading in this Agreement has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope or meaning of the present Agreement or any of its provisions.

Article 14.00 - Differences

14. All matters of difference arising between the City and the Air Carrier in any matter connected with or arising out of this Agreement whether as to interpretation or otherwise, shall be determined by the Agreement but without prejudice to any recourse available under law.

Article 15.00 - Effect of Agreement

15. This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors of each of the parties hereto, and where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context, and all covenants and obligations shall be deemed joint and several.

Article 16.00 - Provisions Separately Valid

16. If any covenant, obligation, agreement, term or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation, agreement, term or condition to persons or circumstances other than those in respect of which it is held invalid or unenforceable, shall not be affected thereby and each covenant, obligation, agreement, term or condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

Article 17.00 - No Implied Obligations

17. No implied terms or obligations of any kind by or on behalf of the City shall arise from anything in this Agreement and the express covenants and agreements herein contained and made by the City are the only covenants and agreements upon which any rights against the City may be founded.

Article 18.00 - Notices

18. Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if personally delivered, given by facsimile

transmission (and confirmed by mail), or sent by courier, priority post or registered mail, return receipt requested, to the City or the Air Carrier, as appropriate, at their respective addresses appearing as follows:

To the City:

Airport Director
City of Kelowna International Airport
#1 - 5533 Airport Way
Kelowna, BC V1V 1S1

Facsimile: (250) 765-0213

To the Air Carrier:

1263343 Alberta Inc.
dba Enerjet
119, 1440 Aviation Park N.E.
Calgary, Alberta
T2E 7E2

Facsimile: (403) 648-2840

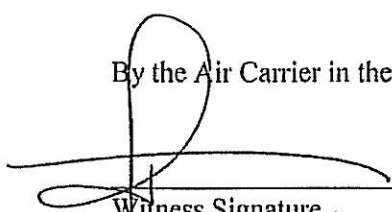
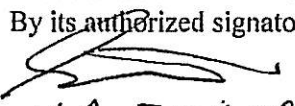
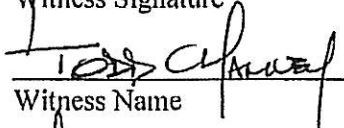
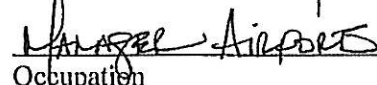
- 18.1 Such addresses may be changed from time to time by either party giving notice to the other as above provided;
- 18.2 Notices given hereunder shall be deemed given to the City or Air Carrier on the date upon which they were personally delivered or, if sent by facsimile transmission, twenty-four (24) hours after transmission with confirmed answer-back or, if mailed, five (5) days after mailing.

Article 19.00 - Definition

19. In the Agreement "Airport Director" shall mean the Airport Director or the person acting on his or her behalf at the Kelowna International Airport.

IN WITNESS WHEREOF the parties hereto have executed these Presents the day and year first above written.

By the City in the presence of:)	CITY OF KELOWNA
)	by its authorized signatory(ies)
_____)	_____
Witness Signature)	
_____)	_____
Witness Name)	
_____)	
Occupation)	
_____)	
Address)	
_____)	
City)	

By the Air Carrier in the presence of:)	1263343 ALBERTA INC.
)	By its authorized signatory(ies)
)	
Witness Signature)	<u>U.P. Tech Ops/Corp.</u>
)	Title:
Witness Name)	_____
)	Title:
Occupation)	_____
<u>119 14th Aviation Park</u>)	
Address)	
<u>Calgary AB</u>)	
City)	



CERTIFICATE OF INSURANCE

This Certificate is issued to: The City of Kelowna
 1435 Water Street
 Kelowna, BC V1Y 1J4

Insured Name: 1263343 ALBERTA INC. DBA ENERJET
 Address 119, 1440 AVIATION PARK, N.E., CALGARY AB T2E 7E2

Broker Name:
 Address:

Location and nature of operation or contract to which this Certificate applies:

Operations by ENERJET as an air carrier at the Kelowna International Airport as covered under the Air Carrier Airport Use Agreement between ENERJET and the City of Kelowna.

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Aviation Premises/Operations Liability; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>25,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

 Print Name

 Authorized Signatory

 Date

CITY OF KELOWNA
KELOWNA INTERNATIONAL AIRPORT

AIRPORT IMPROVEMENT FEE

MONTHLY REMITTANCE FORM

Air Carrier: 1263343 ALBERTA INC.
dba Enerjet

Month/Year: _____

Current Month DEPAX: _____ X \$ 10.00 = \$ _____
(AIF Rate) (Gross Remittance)

Gross AIF Remittance
(Per Above)

Before Tax \$ _____

5% GST \$ _____

Total \$ _____

Authorized Air Carrier Representative

1. DEPAX who purchased ticket
In North America _____
Signature

2. DEPAX who purchased ticket
Outside North America _____
Title

3. Total DEPAX reported this
Month (1 + 2 = 3) _____
Date