

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Aviation

**AGENDA DATE:** November 23, 2021

**CONTACT PERSON NAME AND PHONE NUMBER:** Sam Rodriguez, PE, (915) 212-7301

**DISTRICT(S) AFFECTED:** 2

**CITY STRATEGIC GOAL 1:** Create an Environment Conducive to Strong, Sustainable Economic Development.

**SUBJECT:**

Resolution to authorize the City Manager to sign an Office Space Rental Agreement by and between the City of El Paso ("Lessor") and ABM Aviation, Inc. ("Lessee") to lease office space totaling 284 square feet in the El Paso International Airport Terminal Building, located at 6701 Convair, El Paso, El Paso County, Texas, at \$43.60 per square foot per year, or as defined by the City budget resolution for the applicable space, for a term of three years, with an option to extend the Agreement for two additional one-year terms.

Term for this agreement shall be for three (3) years with the option to extend two additional one-year terms. Total value of the space lease is \$13,316.76 annually.

**BACKGROUND / DISCUSSION:**

The Department of Aviation is requesting approval of this item to allow ABM Aviation, Inc. to lease office space in the ticketing area of the El Paso International. ABM Aviation, Inc provides passenger services traveling Southwest Airlines to include ground services, wheelchair escort, and baggage handling.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A: This is an in-kind item

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**BOARD / COMMISSION ACTION:**

N/A

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**DEPARTMENT HEAD:**

  
\_\_\_\_\_  
Sam Rodriguez, PE, Director of Aviation

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Office Space Rental Agreement by and between the City of El Paso (“Lessor”) and ABM Aviation, Inc. (“Lessee”) to lease office space totaling 284 square feet in the El Paso International Airport Terminal Building, located at 6701 Convair, El Paso, El Paso County, Texas, at \$43.60 per square foot per year, or as defined by the City budget resolution for the applicable space, for a term of three years, with an option to extend the Agreement for two additional one-year terms.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2021.

**CITY OF EL PASO**

\_\_\_\_\_  
Oscar Leeser  
Mayor

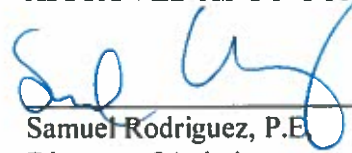
**ATTEST:**

\_\_\_\_\_  
Laura D. Prine  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Samuel Rodriguez, P.E.  
Director of Aviation

# **OFFICE SPACE RENTAL AGREEMENT**

**El Paso International Airport  
El Paso, Texas**

**ABM AVIATION, INC.  
LESSEE**

**December 1, 2021  
Effective Date**

**OFFICE SPACE RENTAL AGREEMENT  
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**ATTACHMENT:**

**EXHIBIT "A" – Description of Premises**

## **OFFICE SPACE RENTAL AGREEMENT**

THIS OFFICE SPACE RENTAL AGREEMENT (“Agreement” or “Lease”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between the City of El Paso (“Lessor”) and ABM Aviation, Inc. (“Lessee”).

### **WITNESSETH:**

**WHEREAS**, the City of El Paso (“City”) owns and operates the El Paso International Airport located in the County of El Paso, Texas (“Airport”), which is managed by the Director of Aviation (“Director”);

**WHEREAS**, Section 22.021 of the Texas Transportation Code, as amended, authorizes the City to assess charges, rentals or fees for the privilege of supplying goods, services or facilities at the Airport, with due regard to the property and improvements used and the expenses of operation to the City;

**WHEREAS**, the Lessee is engaged in the business of providing passenger services to customers traveling Southwest Airlines and American Airlines to include wheelchair escort services, baggage handling services and skycap services and desires to use certain facilities at the Airport and lease from the City certain premises and facilities in connection with Lessee’s use of the Airport;

**WHEREAS**, in furtherance of its authority, the City desires to enter into an agreement to lease to the Lessee certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Agreement; and

**WHEREAS**, the City and the Lessee have the power and authority to enter into this Agreement.

**NOW, THEREFORE**, and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto agree as follows:

### **ARTICLE I - TERM**

#### **SECTION 1.01 TERM.**

The term of this Agreement shall be for a period of three (3) years (“Initial Term”), commencing at 12:00 a.m. on December 1, 2021 (“Effective Date”) and terminating at 11:59 p.m. on November 30, 2024 (“Expiration Date”).

#### **SECTION 1.02 AUTOMATIC EXTENSION OF TERM.**

A. Upon the expiration of the Initial Term, provided the Agreement has not been previously terminated pursuant to the provisions herein, the Initial Term shall be extended automatically for two additional one-year terms (individually referred to as an “Extended Term”), unless on or

before 90 days prior to the then current Expiration Date of the Agreement, either party has given written notice of such party's intention not to extend this Lease for an additional one-year Extended Term.

**SECTION 1.03 HOLDING OVER.**

It is agreed and understood that any holding over by Lessee of the Premises at the expiration of the Initial Term or either of the Extended Terms of this Lease, or at the cancellation of this Agreement shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1.5) times the current monthly rental, unless the hold over is caused by the City staff not placing a new agreement with Lessee regarding the Premises at the end of the term of the present Agreement on the City Council Agenda on a timely basis in which case the current monthly rental rate shall continue until the new agreement is executed. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises.

**ARTICLE II - PREMISES AND PRIVILEGES**

**SECTION 2.01 DESCRIPTION OF THE PREMISES.**

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to the Lessee and the Lessee does hereby lease from Lessor the following described Premises located in the Airport terminal located at 6701 Convair, El Paso, Texas, ("Terminal") (collectively referred to herein as the "Premises"), which is more fully described in EXHIBIT "A" and which is attached hereto and incorporated herein for all purposes:

ATO 2: 96 square feet.  
ATO 10: 135 square feet.  
Hallway: 53 square feet.  
**Total area to be leased is 284 square feet.**

**SECTION 2.02 REASSIGNMENT OF THE PREMISES DURING CONSTRUCTION.**

The Director may temporarily reassign all or any portion of the Premises or other areas utilized by the Lessee during any construction after reasonable written notice is provided to Lessee. The cost for any temporary relocation resulting from construction shall, at the discretion of the Director, be either borne by the Lessee necessitating the relocation or shall be included as part of the City's project cost. During the period when Lessee is temporarily relocated, appropriate adjustments to rental and other fees shall be made to reflect any differences between the area of the Premises and the area of temporarily assigned premises.

**SECTION 2.03 GENERAL PRIVILEGES, USES AND RIGHTS.**

The Premises shall be used as office space in connection with Lessee's business of providing

passenger services to customers traveling Southwest Airlines to include wheelchair escort services, baggage handling services and skycap services at the Airport, and Lessee shall not use, or permit the use of, the Premises, or any part thereof, for any other purpose or purposes, without the written consent of Director. No use shall be made, or be permitted to be made, of the premises, nor any acts done, which will increase the existing rate of insurance on the Airport Terminal, or cause a cancellation of any insurance policy covering the Terminal, or any part thereof.

#### **SECTION 2.04 RESTRICTIONS ON PRIVILEGES, USES AND RIGHTS.**

- A. Lessee shall not commit, or suffer to be committed, any waste upon the Premises, any public or private nuisance or other act or thing that may disturb the quiet enjoyment of any other Lessee in the Terminal.
- B. Lessee shall, at its sole cost and expense, comply with all the requirements of all municipal, state, and federal authorities and rules and regulations of the Airport, now in force and which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all municipal ordinances and state and federal statutes and Airport rules and regulations now in force or which may hereafter be in force.
- C. Lessee covenants that it will not vacate or abandon the Premises at any time during the term; and if Lessee nevertheless does abandon, vacate, or surrender the Premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor.
- D. LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. LESSEE LEASES THE PREMISES AS-IS AND LESSOR DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO LESSEE'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE. Lessee shall take good care of the Premises and they shall not be altered, repaired, or changed without the written consent of the Director; and that, unless otherwise provided for by written agreement, all alterations, improvements, and changes that may be required shall be done either by or under the direction of the Director, but at the cost of Lessee, and shall be the property of Lessor, and shall remain upon and be surrendered with the Premises, excepting, however, that at Lessor's option, Lessee shall, at its expense, when surrendering the Premises, remove all partitions, counters, railing, equipment, etc., installed in the Premises by Lessee; that all damage or injury done to the Premises by Lessee, or by any person who may be in or on the Premises at the invitation of Lessee, shall be paid for by Lessee; and that Lessee shall, at the termination of this Agreement, surrender the Premises to Lessor in good condition and repair, normal wear and tear excepted.

#### **SECTION 2.05 CONDITIONS AND TERMS.**

This Agreement is entered into subject to the following conditions and terms:



- A. Lessee shall have the right to use, in common or jointly with other duly authorized users, those portions of the Terminal, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common or joint use, subject to this Agreement, the rules and regulations of the Airport and any applicable local, state or federal law.
- B. Lessee warrants that it is able to and will provide and maintain first-class quality facilities and services on Airport premises. Lessee further agrees that the passenger services which it conducts on Airport premises shall be delivered in a prompt, courteous and efficient manner and shall be adequate to meet the demand for said service on the Airport.
- C. Lessee shall keep the Premises and the locations from which Lessee's services are offered in a safe, clean and orderly condition at all times satisfactory to the Director.
- D. Lessee shall at all times retain an active, qualified, competent and experienced manager to supervise the checkpoint operations and to represent and act for the Lessee. Lessee shall maintain an employee inspection program to insure a high standard of service to the public.
- E. Lessee shall be required to properly uniform or dress its employees; they shall be clean, courteous, efficient, and neat in appearance at all times. Lessee shall not employ any person(s) who uses improper language or acts in a loud, boisterous or offensive manner in or about Airport premises.
- F. Lessee is familiar with the restrictions imposed on City by 49 CFR Part 1540 and 1542 as amended and agrees to assume responsibility for compliance with said regulations as they relate to access and identification procedures on the Premises. Lessee recognizes that all persons in or on the Premises must comply with federal safety and security requirements and agrees that all employees shall, as a condition of being on the Premises, be badged by the Airport and that all other persons shall be escorted in accordance with Airport requirements. Lessee shall also require that all personnel of any subcontractor or sublessee shall also be similarly badged and/or escorted.

**SECTION 2.06 EMPLOYEE PARKING FACILITIES.**

Lessee's employees working at the Airport Terminal will be provided vehicular parking facilities, if available, in common with other employees. Such facilities shall be located in an area designated by the Director. The Director reserves the right to assess a reasonable charge to Lessee or its employees for such parking facilities.

**ARTICLE III - RENTALS AND FEES**

**SECTION 3.01 RENTALS.**

During the initial term hereof the rental rate applicable to the Premises shall be at the following rate:

\$43.60 per square foot per annum for the Office and Hallway Space or the current applicable rate as defined by City budget resolution (Signatory Terminal Rate).

Said rental shall be paid in twelve (12) equal monthly installments on or before the first day of each month throughout the term of this Agreement, without the necessity for an invoice.

**SECTION 3.02 ELECTRICITY CHARGES.**

Lessee shall pay City charges for electrical power used in the Premises at the rate of \$3.29 per square foot per annum, or the current applicable rate as defined by City Budget Resolution. Such charges shall be paid in twelve (12) equal monthly installments on or before the first day of each month throughout the term of this Agreement, without the necessity for an invoice.

**SECTION 3.03 AIRPORT IDENTIFICATION/ACCESS FEES.**

Lessee shall pay all fees associated with Airport badging of Lessee's employees, including but not limited to all related background and fingerprinting costs, prior to gaining access to secured areas of the Airport.

**SECTION 3.04 UNPAID RENT, FEES AND CHARGES.**

For any installments of rent, any fees, or other charges or monies accruing under any provision of this Agreement that are not received within the tenth (10<sup>th</sup>) day of the date in which payment is due, such payments shall bear interest at a rate equal to the maximum allowed by law from the date when the same was due according to the terms of the Agreement until actually paid by Lessee.

**SECTION 3.05 DEFAULT FOR FAILURE TO PAY RENTALS, FEES AND CHARGES.**

In the event Lessee fails to pay any rentals, charges, and fees hereunder within the due date(s) established herein, Lessor may, at its option, and upon ten (10) days written notice to Lessee (unless in such ten-day period Lessee shall have corrected such failure to pay) immediately or at any time thereafter, enter into and upon the Premises or any additional storage, parking or other related areas utilized by Lessee and repossess the same. In said event, Lessor may expel Lessee and those claiming by, through or under it and remove Lessee's effects forcibly, if necessary, without being deemed guilty of trespass and without prejudice to any remedy which otherwise might be used for arrears of rent or preceding breach of covenant. On reentry, as aforesaid, this Agreement shall terminate.

**SECTION 3.06 CONTRACTUAL LIEN.**

In addition to any other rights or remedies allowed by law, the Lessor shall have a lien on all of the property of the Lessee used or situated in the Premises, to secure payment of rentals owed hereunder by the Lessee to the Lessor at any time during the existence of this Agreement, and in default of payment may take possession of and sell such property as may be sufficient to pay the delinquent rent or indebtedness.

**SECTION 3.07 TAXES AND OTHER CHARGES.**

Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, during the term of this Agreement including any extensions granted thereto. Lessee shall be responsible for and shall pay all taxes, which may be levied or assessed against Lessee's interest in this Agreement or machinery, equipment or other personal property owned or used by Lessee and located on the Premises.

The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to the Lessor such action will not adversely affect any right or interest of the Lessor.

**SECTION 3.08 PLACE OF PAYMENT.**

All rentals, fees or other charges provided herein shall be paid by Lessee to Lessor at the following address:

Accounting Department  
El Paso International Airport  
P.O. Box 971278  
El Paso, Texas 79997-1278

Payment via an electronic payments system is encouraged provided the system is approved in advance by the Director.

**ARTICLE IV - MAINTENANCE AND REPAIRS**

**SECTION 4.01 LESSEE'S MAINTENANCE.**

Lessee shall, at its sole cost and expense, maintain the Premises and every part thereof in good order and repair and in good and safe condition; shall repair all damages caused by its employees, patrons, or its operation of said service; shall maintain and repair all equipment on said Premises; and shall repaint its own leased space when necessary, such repair and repainting to require the prior approval of the Director. Lessee, at its own expense, shall provide for janitorial services in the Premises.

Lessee further understands and agrees that Lessor shall be the sole judge of the quality of maintenance and that upon written notice by Lessor to Lessee, Lessee shall be required to perform whatever maintenance Lessor deems necessary. If said maintenance is not undertaken by Lessee within ten (10) days after receipt of written notice, Lessor shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

**SECTION 4.02 LESSOR'S MAINTENANCE.**

Lessor shall maintain the structure of the Terminal building, the roof and outer walls. However, Lessor shall not furnish janitorial service, window cleaning, guarding or custodial services, or any janitorial material or supplies for the Premises.

Lessee shall permit Lessor and its agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, for the purpose of maintaining the Terminal for the purpose of making repairs, alterations, or additions to any other portion of the Terminal, including the erection of scaffolding, props, or other mechanical devices, without any rebate of rent to Lessee or damages for any loss of occupation or quiet enjoyment of the Premises thereby occasioned.

Lessor agrees to furnish the Premises with heat and air conditioning without cost to Lessee. Lessee agrees to immediately notify the Director of the loss of any electrical power or lighting; however, Lessor shall not be liable, under any circumstances, for any loss of said utilities. Lessor shall clean and service the common hallways and restrooms and shall provide reasonable ingress and egress through the common hallway to the Premises. Lessor shall not be liable, under any circumstances for any loss of, or injury to, any property, however occurring, through or in connection with or incidental to the furnishing of any of the foregoing.

#### **ARTICLE V - ASSIGNMENT, TRANSFER AND SUBLETTING**

Lessee shall not sell, assign or transfer any rights or privileges granted by this Agreement nor sublet any part or all of the Premises without the prior written consent of the Lessor.

#### **ARTICLE VI - CANCELLATION**

Either party may cancel this Lease, upon thirty (30) days written notice to the non-cancelling party, for any reason, including in the event that a contract between the Lessee and an airline is terminated to the detriment of the Lessee.

In addition, this Agreement shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of whole or any part of the amounts agreed upon herein for a period of ten (10) days after Lessor has notified Lessee in writing that the payment was not received when due; or
- B. Make any general assignment for the benefit of creditors; or
- C. Abandon the Premises; or default in the performance of any of the covenants, conditions or agreements required herein (except rental payments) to be kept and performed by Lessee and such default continues for a period of thirty (30) days after receipt of written notice from Lessor to cure such default, unless during such thirty day period Lessee shall commence and diligently perform such action as may be reasonably necessary to cure such default.

In any of the aforesaid events, Lessor may cancel this Agreement and take immediate possession of the Premises, including any and all improvements therein, and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing.

Failure of Lessor to declare this Agreement canceled upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to cancel this Agreement by reason of any subsequent violation of the terms herein.

No receipt or acceptance of money by Lessor from Lessee after the cancellation of this Agreement or after the service of any notice, after the commencement of any suit, or after final judgment for possession of the Premises shall reinstate, continue or extend the terms of this Agreement, or affect any such notice, demand or suit, or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of Lessor to retake and resume possession of the Premises.

## **ARTICLE VII - INDEMNIFICATION AND INSURANCE**

### **SECTION 7.01 INDEMNIFICATION.**

**WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY'S FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY, OR INDIRECTLY TO THE OPERATION, CONDUCT OR MANAGEMENT OF LESSEE'S ACTIVITIES ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF LESSEE OF ANY TERMS OF THIS AGREEMENT, OR FROM ANY ACT OR NEGLIGENCE OF LESSEE, ITS AGENTS, CONTRACTORS, EMPLOYEES, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE, OR IN PART, FROM THE NEGLIGENCE OF LESSOR. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LESSOR BY REASON OF ANY SUCH CLAIM, LESSEE, UPON RECEIPT OF WRITTEN NOTICE FROM LESSOR, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LESSOR.**

### **SECTION 7.02 INSURANCE.**

Prior to the execution of this Agreement, Lessee, at its sole cost and expense shall, provide proof of and shall maintain throughout the term of this Agreement, the types and amounts of insurance coverage listed below:

Comprehensive General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injury to one person for each occurrence,

Two Million Dollars (\$2,000,000.00) for bodily injuries to more than one person arising out of each occurrence,

One Million Dollars (\$1,000,000.00) for Property Damage arising out of each occurrence,

**SECTION 7.03 WORKERS' COMPENSATION INSURANCE.**

The Lessee shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of Lessee's employees to be engaged in work under this Agreement. Lessee shall provide the following endorsement:

"The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the City of El Paso, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

**SECTION 7.04 AUTHORIZED INSURANCE COMPANIES.**

All such policies of insurance shall be written by insurance companies authorized to do business in the State of Texas and shall be written by companies approved by Lessor. Certificates of insurance shall be delivered to Lessor at least ten (10) days prior to the effective date of the insurance policy for which the certificate is issued. Each such certificate shall contain (a) a statement of the coverage provided by the policy; (b) a statement certifying the Lessor to be listed as an additional insured in the policy; (c) a statement of the period during which the policy is in effect; and (d) an agreement by the insurance company issuing such policy that the policy shall not be canceled without at least ten (10) days' prior written notice to Lessor.

**ARTICLE VIII - SURRENDER OF POSSESSION**

Upon the expiration or cancellation of this Agreement, Lessee's rights, privileges and use of all premises and facilities shall cease and Lessee shall forthwith surrender the same. Lessee shall restore the Premises to its original condition as of the beginning of occupancy, ordinary wear and tear, damage by the elements, fire, explosion or other causes entirely beyond Lessee's control excepted.

**ARTICLE IX – FAA REGULATIONS**

**SECTION 10.01 FAA Order 1400.11**

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person

on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Tenant for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by

expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

B. In the event of breach of any of the covenants in this section 3, Landlord shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

## **ARTICLE X - GENERAL PROVISIONS**

### **SECTION 10.01 GENERAL CIVIL RIGHTS PROVISION.**

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.



**SECTION 10.02 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS.**

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 10.02 hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Lessor (for purposes of this Section 10.02 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as

the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

**SECTION 10.03 AFFIRMATIVE ACTION.**

Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from Lessor, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Article. Lessee assures that it will require that its covered suborganizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

**SECTION 10.04 NOTICES.**

All notices provided to be given under this Agreement shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

**LESSOR:** City Manager  
City of El Paso  
P.O. Box 1890  
El Paso, Texas 79950-1890

**COPY TO:** Director of Aviation  
El Paso International Airport  
6701 Convair Road  
El Paso, Texas 79925-1099

**LESSEE:** ABM Aviation  
4151 Ashford-Dunwoody Rd, Suite 600  
Atlanta, Georgia 30319  
Attn: Jim Malone

**With Copy to:** ABM Aviation  
4311 Fairway Drive  
Granbury, TX 76049  
Attn: Jim Malone, Senior Director of Operations

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this Section.

**SECTION 10.05 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT.**

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between Lessor and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to Lessor for Airport purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as amended from time to time.

**SECTION 10.06 NONWAIVER OF RIGHTS.**

The non-enforcement by either party of the breach of any term, covenant or condition herein stipulated shall never be construed to be a waiver of any other or succeeding breach of any term, covenant or condition herein imposed upon the other party, and the acceptance of payments of any amounts due or to become due hereunder in any other way or manner, or at any other time than herein provided, shall never be construed as a waiver of the right of Lessor of any of the provisions herein imposed upon Lessee.

**SECTION 10.07 SEVERABILITY.**

If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there shall be added as part of this Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**SECTION 10.08 HEADINGS.**

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

**SECTION 10.09 ASSIGNMENT BY LESSOR OR OTHER SUCCESSOR IN INTEREST.**

Lessor may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. Lessor, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Agreement and their rights and interests hereunder for any purpose.

**SECTION 10.10 REDEVELOPMENT.**

If this Agreement is terminated as provided herein as a result of physical changes associated with the development of the Airport, Lessee waives any and all rights to reimbursements, allowances,

loans, or other forms of payment for relocation, rental or any other costs which might apply to tenants in other locations who are required to relocate due to construction of public facilities.

**SECTION 10.11 QUIET ENJOYMENT.**

Lessor covenants and agrees that Lessee on paying the rentals, fees and charges herein provided for and observing and keeping all the covenants, conditions, and terms of this Agreement, shall lawfully and quietly hold, occupy and enjoy the Premises during the term of this Agreement without hindrance or molestation by Lessor or any person claiming under Lessor.

**SECTION 10.12 AGREEMENT SUBJECT TO COVENANTS IN DEED.**

It is mutually agreed that this Agreement is made subject to the covenants, requirements, and restrictions contained in the Deed by which Lessor obtained title to Airport property from the Government of the United States.

**SECTION 10.13 FORCE MAJEURE.**

No party to this Agreement is responsible to the other party for nonperformance or delay in performance of the terms and conditions herein due to acts of God, acts of government, wars, riots, strikes, accidents in transportation, fuel or materials shortages, or other causes beyond the control of the parties.

**SECTION 10.14 ENTIRE AGREEMENT.**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties, and all other representations or statements heretofore made, verbal or written, are merged herein.

**SECTION 10.15 TIME IS OF THE ESSENCE.**

Time is and shall be deemed of the essence with respect to the performance of each provision of this Agreement.

**SECTION 10.16 ATTORNEY'S FEES.**

If either party brings any action or proceedings to enforce, protect, or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

**SECTION 10.17 AGREEMENT MADE IN TEXAS.**

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas.

**SECTION 10.18 CUMULATIVE RIGHTS AND REMEDIES.**

All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

**SECTION 10.19 INTERPRETATION.**

Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

**SECTION 10.20 AGREEMENT MADE IN WRITING.**

This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

**SECTION 10.21 SUCCESSORS AND ASSIGNS.**

All of the terms, provisions, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon Lessor and Lessee and their respective successors, assigns, legal representatives, heirs, executors and administrators.

**SECTION 10.22 AUTHORIZATION TO ENTER AGREEMENT.**

Each of the persons executing this Agreement on behalf of Lessee warrants to Lessor that Lessee is a duly authorized and existing entity, that Lessee is qualified to do business in the State of Texas, that Lessee has full right and authority to enter into this Agreement, and that each and every person signing on behalf of Lessee is authorized to do so. Upon the Director's request, Lessee will provide evidence satisfactory to the Director confirming these representations.

**SECTION 10.23 EFFECTIVE DATE.**

Regardless of date signed, this Agreement shall have the effective date indicated in the Term section of this Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

**LESSOR'S SIGNATURE AND ACKNOWLEDGMENT**

**IN WITNESS WHEREOF**, this Agreement has been approved as of the date first noted above.

**LESSOR: CITY OF EL PASO**

\_\_\_\_\_  
Tomás González  
City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Roberta Brito  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Sam Rodriguez, P.E.  
Director of Aviation

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS )**  
**)**  
**COUNTY OF EL PASO )**

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by Tomás González, as City Manager of the City of El Paso, Texas ("Lessor").

\_\_\_\_\_  
Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

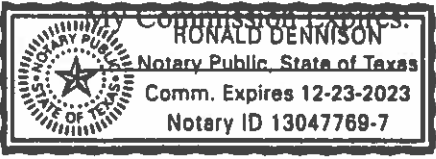
LESSEE:  
ABM AVIATION, INC  
James Malone  
Printed Name; JAMES MALONE  
Title: SENIOR DIRECTOR  
Date: 11-11-21

ACKNOWLEDGMENT

THE STATE OF TX )  
COUNTY OF HOOD )

This instrument was acknowledged before me on this 11th day of November, 2021,  
by JAMES MALONE, as SENIOR DIRECTOR, of ABM Aviation, Inc. ("Lessee").

Ronald Dennis  
Notary Public, State of TEXAS



# EXHIBIT "A"

