

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

**DEPARTMENT:** El Paso International Airport

**AGENDA DATE:** February 16, 2021

**PUBLIC HEARING DATE:** February 16, 2021

**CONTACT PERSON NAME AND PHONE NUMBER:** Samuel Rodriguez, P.E., Director of Aviation – 915-212-7301

**DISTRICT(S) AFFECTED:** 2

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

**SUBGOAL:** Grow the core business of air transportation.

**SUBJECT:**

That the City Manager be authorized to sign a Temporary Land Use Lease by and between the City of El Paso ("Lessor") and BT-OH, LLC d/b/a United Parcel Service CO. ("Lessee") regarding the following described property: A portion of Lot 9, Block 3, Butterfield Trail Industrial Park, Unit Three, City of El Paso, El Paso County, Texas (approximately 234,840.30 SQ FT), municipally known and numbered as 25 Founders Blvd., El Paso, Texas. With a term beginning on February 16, 2021 and ending on May 31, 2021, for a monthly fee of \$4696.81.

**BACKGROUND / DISCUSSION:**

Temporary Land Use Lease: February 16, 2021 to May 31, 2021.

**PRIOR COUNCIL ACTION:**

N/A: Initial Lease.

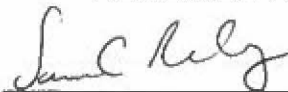
**AMOUNT AND SOURCE OF FUNDING:**

N/A: This is a revenue-generating item.

---

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



---

Samuel Rodriguez, P.E., 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 a Temporary Land Use Lease by and between the City of El Paso ("Lessor") and BT-OH, LLC d/b/a UNITED PARCEL SERVICE CO. ("Lessee") regarding the following described property:

A portion of Lot 9, Block 3, Butterfield Trail Industrial Park, Unit Three, City of El Paso, El Paso County, Texas (approximately 234,840.30 SQ FT), municipally known and numbered as 25 Founders Blvd., El Paso, Texas

with a term beginning on February 16, 2021, and ending on May 31, 2021, for a monthly fee of \$4,696.81.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_ 2021.


**CITY OF EL PASO**

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

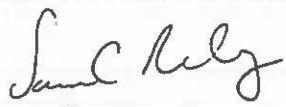
**ATTEST:**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Josette Flores  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

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

**TEMPORARY LAND USE LEASE**

**EL PASO INTERNATIONAL AIRPORT  
EL PASO, TEXAS**

---

Effective Date

**BT-OH, LLC d/b/a UNITED PARCEL SERVICE CO.**  
Lessee

**TABLE OF CONTENTS**

**ARTICLE I - PREMISES AND PRIVILEGES.....1**  
SECTION 1.01 DESCRIPTION OF PREMISES DEMISED. ....1  
SECTION 1.02 RIGHT TO CONSTRUCT. ....2

**ARTICLE II - TERM OF LEASEHOLD .....2**  
SECTION 2.01 TERM. ....2  
SECTION 2.02 HOLDING OVER. ....2  
SECTION 2.03 RECAPTURE. ....2  
SECTION 2.04 NATIONAL EMERGENCY.....3

**ARTICLE III - RENTALS .....3**  
SECTION 3.01 GROUND RENTAL.....3  
SECTION 3.02 COMMENCEMENT OF RENTAL. ....3  
SECTION 3.03 TIME OF PAYMENT. ....3  
SECTION 3.04 UNPAID RENT, FEES AND CHARGES. ....3  
SECTION 3.05 PLACE OF PAYMENT.....3

**ARTICLE IV - OBLIGATIONS OF LESSEE .....4**  
SECTION 4.01 NET LEASE.....4  
SECTION 4.02 CONDITION OF PREMISES. ....4  
SECTION 4.03 COMPLIANCE WITH LAWS. ....4  
SECTION 4.04 TRASH, GARBAGE, ETC.....8  
SECTION 4.05 PERMITTED USES. ....8

**ARTICLE V- INSURANCE AND INDEMNIFICATION .....8**  
SECTION 5.01 LIABILITY INSURANCE. ....8  
SECTION 5.02 AUTHORIZED INSURANCE COMPANIES. ....8  
SECTION 5.03 INDEMNIFICATION.....9

**ARTICLE VI - EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER .....9**  
SECTION 6.01 EXPIRATION. ....9  
SECTION 6.02 CANCELLATION. ....9  
SECTION 6.03 REPOSSESSING AND RELETTING. ....10  
SECTION 6.04 ASSIGNMENT, SUBLEASING AND TRANSFER. ....10  
SECTION 6.05 RIGHTS UPON EXPIRATION.....11  
SECTION 6.06 LANDLORD’S LIEN.....11

**ARTICLE VII - GENERAL PROVISIONS .....11**  
SECTION 7.01 RIGHT OF FLIGHT.....11  
SECTION 7.02 TIME IS OF THE ESSENCE. ....12  
SECTION 7.03 NOTICES.....12  
SECTION 7.04 ATTORNEY’S FEES. ....12  
SECTION 7.05 AGREEMENT MADE IN TEXAS. ....12



**ARTICLE VII - GENERAL PROVISIONS - Cont.**

SECTION 7.06 GENERAL CIVIL RIGHTS PROVISION. ....12  
SECTION 7.07 COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS. ....13  
SECTION 7.08 AFFIRMATIVE ACTION. ....14  
SECTION 7.09 FAA COVENANTS. ....14  
SECTION 7.10 CUMULATIVE RIGHTS AND REMEDIES. ....16  
SECTION 7.11 INTERPRETATION. ....16  
SECTION 7.12 AGREEMENT MADE IN WRITING. ....17  
SECTION 7.13 PARAGRAPH HEADINGS. ....17  
SECTION 7.14 SEVERABILITY. ....17  
SECTION 7.15 SUCCESSORS AND ASSIGNS. ....17  
SECTION 7.16 TAXES AND OTHER CHARGES. ....17  
SECTION 7.17 WAIVER OF WARRANTY OF SUITABILITY. ....17  
SECTION 7.18 SURVIVAL OF CERTAIN PROVISIONS. ....18  
SECTION 7.19 RESTRICTIONS AND RESERVATIONS. ....18  
SECTION 7.20 SUBORDINATION OF LEASE. ....18  
SECTION 7.21 AUTHORIZATION TO ENTER LEASE. ....18  
SECTION 7.22 FORCE MAJEURE. ....18  
SECTION 7.23 PERFORMANCE STANDARDS. ....19  
SECTION 7.24 HAZARDOUS ACTIVITIES. ....19  
SECTION 7.25 EFFECTIVE DATE. ....19  
**LESSOR'S SIGNATURE AND ACKNOWLEDGMENT.....1**  
**LESSEE'S SIGNATURE AND ACKNOWLEDGMENT .....2**

**EXHIBIT A – Metes and Bounds & Lease Area Graphic**

## TEMPORARY LAND USE LEASE

THIS Temporary Land Use Lease is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2021, between the **CITY OF EL PASO** (“Lessor”) and **BT-OH, LLC d/b/a UNITED PARCEL SERVICE CO.**, a Delaware corporation (“Lessee”).

### WITNESSETH:

**WHEREAS**, Lessor owns and operates El Paso International Airport, located in the County of El Paso, State of Texas, (“Airport”), said Airport being managed by the Managing Director of Aviation and International Bridges (“Director”);

**WHEREAS**, Lessor deems it advantageous to itself and to its operation of the Airport to lease to Lessee the parcel of land described below, together with certain privileges, rights, uses and interests therein;

**WHEREAS**, Lessee proposes to lease the parcel of land on a net basis from Lessor to avail itself of certain privileges, rights and uses pertaining thereto;

**WHEREAS**, Lessee has indicated a willingness and ability to properly keep and maintain said ground in accordance with standards established by Lessor if granted a lease on said ground area;

**WHEREAS**, Lessee and Lessor had previously entered into a Temporary Land Use Lease effective from September 15, 2020 through January 31, 2021 (the “2020 Lease”), pursuant to Section 2.01 of the 2020 Lease, and has been on holdover status since that time, pursuant to Section 2.02 of the 2020 Lease;

**WHEREAS**, Lessee and Lessor wish to enter into the present short-term lease in order to formalize their contractual relationship as they negotiate a multi-year lease for the Premises defined below.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, Lessor and Lessee agree and covenant as follows:

### ARTICLE I PREMISES AND PRIVILEGES

#### **Section 1.01      Description of Premises Demised.**

Subject to and on the terms, conditions, covenants, agreements and undertakings hereinafter set forth, Lessor does hereby demise and lease to Lessee and Lessee does hereby lease from Lessor the following described real property located in El Paso County, Texas:

A portion of Lot 9, Block 3, Butterfield Trail Industrial Park, Unit Three, City of El Paso, El Paso County, Texas (approximately 234,840.30 SQ FT), municipally known and numbered as 25 Founders Blvd., El Paso, Texas, and more fully described in Exhibit "A" attached hereto and incorporated herein by reference (the "Premises").

Lessee acknowledges that an existing EPWU/PSB facility and water lines are located in the northwesterly corner of Lot 9, Block 3, Butterfield Trail Industrial Park Unit Three, City of El Paso, El Paso County, Texas, as shown on Exhibit "A-1" attached hereto and incorporated herein by reference. Lessee shall at all times allow EPWU/PSB unencumbered access across the Premises to the EPWU/PSB facility from the street (Founders Boulevard). Lessee shall not interfere with the power provided to the EPWU/PSB facility or with water lines from the facility.

**Section 1.02      Right to Construct.**

Lessee shall not construct any permanent or temporary structures on the Premises, without the prior written approval of the Director.

**ARTICLE II  
TERM OF LEASEHOLD**

**Section 2.01      Term.**

This shall be a monthly lease, beginning on February 16, 2021 ("Effective Date"), and ending on May 31, 2021, and may be terminated by either party upon a thirty (30) day written notice to the other. If the initial period of tenancy shall be less than a full month, the rental for the partial month shall be pro-rated accordingly.

**Section 2.02      Holding Over.**

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or cancellation of this Lease shall operate and be construed as a tenancy from month to month at a rental of one and one-half (1½) times the current monthly rental, and Lessee shall be liable to Lessor for all loss or damage on account of any holding over against Lessor's will after the expiration or cancellation of this Lease, whether such loss or damage may be contemplated at this time or not. No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease 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 Lease, 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.

**Section 2.03      Recapture.**

Notwithstanding any other provision of this Lease, should Lessor execute a lease of the Premises, or should the Premises be required for Airport use, Lessee shall vacate the Premises within thirty (30) days of receipt of written notice from the Director and this Lease shall terminate.

**Section 2.04 National Emergency.**

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

**ARTICLE III  
RENTALS**

**Section 3.01 Ground Rental.**

For the purpose of computing the monthly rental to be paid by Lessee to Lessor for the Premises (hereinafter referred to as the "Ground Rental"), Lessor and Lessee agree that the Premises comprise 234,840.30 square feet. The Ground Rental for the Premises will, during the lease term, be calculated on the basis of 234,840.30 square feet at an annual rate of \$0.24 per square foot. Initially, therefore, the annual Ground Rental shall be FIFTY SIX THOUSAND THREE HUNDRED SIXTY ONE AND 67/100 DOLLARS (\$56,361.67) with a monthly rental amount of FOUR THOUSAND SIX HUNDRED NINETY SIX AND 81/100 DOLLARS (\$4,696.81).

**Section 3.02 Commencement of Rental.**

Payment of Ground Rental by Lessee to Lessor as aforesaid shall commence on February 16, 2021, of this Lease.

**Section 3.03 Time of Payment.**

The rent shall be paid in a prorated amount for the first month and thereafter in three (3) monthly installments. Said monthly rental payments shall be paid in advance on or before the first day of each and every month during the term of this Lease.

**Section 3.04 Unpaid Rent, Fees and Charges.**

Any installment of Ground Rental, any fees, or other charges or monies accruing under any provisions of this Lease that are not received by the 10th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law the date when the same was due according to the terms of this Lease until paid by Lessee.

**Section 3.05 Place of Payment.**

All payments provided herein shall be paid to Lessor at the following address:

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

In lieu of payments being mailed to the above address, electronic payments may be made via any electronic payment system acceptable to Lessor.

**ARTICLE IV  
OBLIGATIONS OF LESSEE**

**Section 4.01      Net Lease.**

This Lease shall be without cost to Lessor except for Lessor's obligations specifically set forth elsewhere in this Lease Agreement. Lessee shall:

- A.      Keep and maintain the Premises in a good state of repair at all times.
- B.      Pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises or any improvements thereon, during the term of this Lease, including any extensions or option periods granted thereto.
- C.      Pay all casualty, bond, and liability insurance premiums required in accordance with Article V hereinbelow.
- D.      Maintain all ground area with code compliant dust-free surfacing, and may fence the area after consultation with and approval of the Director or designee.

**Section 4.02      Condition of Premises.**

Lessee accepts the Premises in their present condition and agrees that the Premises are suitable for Lessee's business, activities, and operations proposed to be conducted thereon subject to Lessee's right to construct limited improvements under the terms of this Lease. Lessee accepts the Premises "AS IS", WITH ALL FAULTS, relying on Lessee's own inspection and judgment and not in reliance on any representations of Lessor. Lessor shall assume no responsibility as to the condition of the Premises and shall not assume responsibility for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition.

**Section 4.03      Compliance With Laws.**

Lessee, at Lessee's expense, agrees that it will operate and maintain improvements on the Premises, and in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Lessor or Lessee, with respect to the use, occupation or alteration of the Premises and any improvements thereon.

Lessee, at Lessee's expense, specifically agrees to make or cause to be made all such alterations to the Premises, and any improvements thereon, including, without limiting the generality of the requirements of this sentence, removing such barriers and providing such alternative services, as shall be required by the Americans with Disabilities Act of 1990 and any other laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which relate to the use or occupation of the Premises and any improvements thereon by disabled persons ("Disabilities Laws").

Lessee shall, at Lessee's expense, comply with all present and hereinafter enacted Environmental Laws and any amendments thereto, affecting Lessee's use, operation, occupation or alteration of the Premises including any improvements thereon.

A. Definitions.

- (1) "Environmental Laws" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300h et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.
- (2) "Hazardous Material" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law and all petroleum products, such as gasoline, kerosene, diesel fuel, and the like.
- (3) "Release" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

B. Compliance.

- (1) Lessee shall not cause or permit any Hazardous Material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Premises, or transported to and from the Premises, by Lessee, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. **Lessee shall indemnify, defend and hold harmless Lessor, its successors and assigns, its employees, agents and attorneys from and against any and all liability, loss, damage, expense, penalties and legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, the environment or violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any**



**government or judicial entity which are incurred or assessed as a result (whether in part or in whole) of any activity or operation on or discharge from the Premises or any improvements thereon which activity or operation or discharge occurs on or subsequent to the Effective Date of this Lease. This obligation includes, but is not limited to, all costs and expenses related to cleaning up the Premises, improvements, land, soil, underground or surface water as required under the law. Lessee's obligations and liabilities under this paragraph shall continue so long as Lessor bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material located on the Premises or any improvements thereon, or present in the soil or ground water on, under or about the Premises. The parties agree that Lessor's right to enforce Lessee's promise to indemnify is not an adequate remedy at law for Lessee's violation of any provision of this Section. Lessor shall also have all other rights and remedies provided by law or otherwise provided in this Lease.**

- (2) Without limiting the foregoing, if the presence of any Hazardous Material on, under or about the Premises or in any improvements thereon or permitted by Lessee results in any contamination of the Premises or any improvements thereon, Lessee shall promptly take all actions at its sole cost and expense as are necessary to return the Premises or any improvements thereon to the condition existing prior to the introduction of any such Hazardous Material to the Premises or in any improvements thereon; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term effect on the Premises or on any improvements thereon.
- (3) Lessee shall, at Lessee's own cost and expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Government") under the Environmental Laws. Should the Government determine that site characterization, site assessment and/or a cleanup plan be prepared or that a cleanup should be undertaken on the Premises or in any improvements thereon, then Lessee shall, at Lessee's own cost and expense, prepare and submit the required plans and financial assurances, and carry out the approved plans. At no cost or expense to Lessor, Lessee shall promptly provide all information requested by Lessor to determine the applicability of the Environmental Laws to the Premises or to respond to any

governmental investigation or to respond to any claim of liability by third parties which is related to environmental contamination.

- (4) Lessee shall immediately notify Lessor of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Lessee's operation on the Premises, and (b) any change in Lessee's operation on the Premises that will change or has the potential to change Lessee's or Lessor's obligations or liabilities under the Environmental Laws.
- (5) Lessee shall insert the provisions of this Section 4.03 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

Notwithstanding any other provision in this Lease to the contrary, Lessor shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of any law on, under or about the Premises.

Lessee's failure or the failure of its agents, employees, contractors, invitees or the failure of a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Lease and shall permit Lessor to pursue the remedies as set forth in Section 6.02 hereinbelow, in addition to all other rights and remedies provided by law or otherwise provided in the Lease, to which Lessor may resort cumulatively, or in the alternative.

C. Reporting.

- (1) At any time that Lessee submits any filing pertaining to its property, operations, or presence on the Airport with any governmental entity (other than the Internal Revenue Service) by way of example but not in limitation, the Federal Aviation Administration, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Lessee shall provide duplicate copies of the filing(s) made along with any related documents to Lessor.
- (2) Upon expiration, termination or cessation of this Lease for any reason, Lessee shall provide current environmental inspection and inventory report on the Premises acceptable to Lessor, and if, in the opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform same to return the Premises into a (like new) condition equal or better to that as of the effective date of the Lease.



**Section 4.04 Trash, Garbage, Etc.**

Lessee shall make suitable arrangements for the storage, collection, and removal of all trash, garbage and other refuse resulting from Lessee's activities on the Premises. Lessee shall provide appropriate, covered, commercial type receptacles, for such trash, garbage, and other refuse, and will maintain these receptacles, screened from view, if possible, of adjoining properties or public streets, in an attractive, safe, and sanitary manner.

**Section 4.05 Permitted Uses.**

Lessee will not enter into any activity on the Premises other than parking for its employees during hours of operation.

**ARTICLE V  
INSURANCE AND INDEMNIFICATION**

**Section 5.01 Liability Insurance.**

Lessee, at its sole cost and expense shall, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) for bodily injury to one person for each occurrence, One Million Dollars (\$1,000,000.00) for bodily injuries to more than one person arising out of each occurrence and One Hundred Thousand Dollars (\$100,000.00) for property damage arising out of each occurrence, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claims Act, whichever is greater.

**Section 5.02 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. Such policies shall contain:

- A. A statement of the coverage;
- B. A statement certifying the Lessor to be listed as an additional insured;
- C. A statement of the period during which the policy is in effect;
- D. A statement that the relevant premium or the advance deposit premium for such policy has been paid in advance; and
- E. An agreement by the insurance company issuing such policy that the policy shall not be canceled or reduced in any amount for any reason whatsoever without at least fifteen (15) days prior written notice to Lessor.

**Section 5.03      Indemnification.**

**LESSEE COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY OF EL PASO, TEXAS, AND ITS RESPECTIVE DIRECTORS, OFFICERS, AGENTS, COUNCIL MEMBERS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, DAMAGES, LOSSES, DEMANDS, LIABILITIES, FINES OR EXPENSES WHATSOEVER (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF LITIGATION) WHICH MAY BE BROUGHT, ALLEGED, OR IMPOSED AGAINST THE CITY OF EL PASO, TEXAS, ITS RESPECTIVE DIRECTORS, OFFICERS, AGENTS, COUNCIL MEMBERS, AND/OR EMPLOYEES RELATING TO OR CONCERNING ANY DAMAGE TO OR LOSS OF PROPERTY, OR PERSONAL INJURY TO OR DEATH OF ANY PERSON ARISING OUT OF OR INCIDENT TO ITS OPERATIONS AND THE LEASING, OR THE USE AND OCCUPANCY OF, THE LEASED PREMISES.**

**ARTICLE VI  
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER**

**Section 6.01      Expiration.**

This Lease shall expire at the end of the term or any extension thereof.

**Section 6.02      Cancellation.**

Subject to the provisions of Article VI, this Lease shall be subject to cancellation by Lessor in the event Lessee shall:

- A. Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after Lessor has notified Lessee in writing that payment was not received when due;
- B. File in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Lessee's property;
- C. Make any general assignment for the benefit of creditors;
- D. Abandon the Premises;
- E. Default in the performance of any of the covenants and conditions 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 thereafter diligently perform such action as may be reasonably necessary to cure such default;
- F. Be adjudged bankrupt in involuntary bankruptcy proceedings; or

- G. Be made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Lessee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

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

Failure of Lessor to declare this Lease 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 Lease by reason of any subsequent violation of the terms of this Lease.

No receipt or acceptance of money by Lessor from Lessee after the expiration or cancellation of this Lease 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 Lease, 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.

**Section 6.03 Repossessing and Reletting.**

In the event of default by Lessee hereunder which shall remain uncured after the required notices have been given pursuant to this Lease, and for such time as provided herein, Lessor may at once thereafter, or at any time subsequent during the existence of such breach or default:

- A. Enter into and upon the Premises or any part thereof and repossess the same, expelling therefrom Lessee and all personal property of Lessee (which property may be removed and stored at the cost of and for the account of Lessee), using such lawful force as may be necessary; and
- B. Either cancel this Lease by notice or without canceling this Lease, relet the Premises or any part thereof upon such terms and conditions as shall appear advisable to Lessor. If Lessor shall proceed to relet the Premises and the amounts received from reletting the Premises during any month or part thereof be less than the rent due and owing from Lessee during such month or part thereof under the terms of this Lease, Lessee shall pay such deficiency to Lessor immediately upon calculation thereof, providing Lessor has exercised good faith in the terms and conditions of reletting. Payment of any such deficiencies shall be made monthly within ten (10) days after receipt of notice of deficiency.

**Section 6.04 Assignment, Subleasing and Transfer.**

Lessee shall not sublease, assign or transfer this Lease.

**Section 6.05      Rights Upon Expiration.**

At the expiration of this Lease, Lessor shall have the Premises returned to Lessor clear of all improvements.

**Section 6.06      Landlord's Lien.**

It is expressly agreed that in the event of default in the payment of rent or any other sum due from Lessee to Lessor under the terms of this Lease, Lessor shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Lessee which are placed in, or become a part of, the Premises, as security for rent due and to become due for the remainder of the Lease term, which lien shall not be in lieu of or in any way affect the statutory landlord's lien given by law, but shall be in addition to that lien, and Lessee grants to Lessor a security interest in all of Lessee's personal property placed in or on the Premises for purposes of this contractual lien. Provided, however, that the terms of this provision shall have effect only to the extent they are not inconsistent with the rules and regulations of the Interstate Commerce Commission or its successor agency, and any other laws pertaining thereto and the Railroad Commission of the State of Texas. Lessor agrees that Lessor will not levy a landlord's lien against any delivery vehicle or rolling stock or any of the goods or personal property of third parties in the possession of Lessee, any sublessee or any assignee of the Lessee. In the event Lessor exercises the option to terminate the leasehold as provided herein, the Lessor, after providing reasonable notice to Lessee of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Lessee's property on the Premises and sell it at public or private sale after giving Lessee reasonable notice of time and place of any public sale or of the time after that any private sale is to be made, for cash or credit, for such prices and terms as Lessor deems best. The proceeds of the sale shall be applied first to the necessary proper expense of removing, storing and selling such property, then to the payment of any rent due or to become due under this Lease, with the balance, if any, to be paid to Lessee.

**ARTICLE VII  
GENERAL PROVISIONS**

**Section 7.01      Right of Flight.**

The City of El Paso reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on the El Paso International Airport.

The City of El Paso reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at El Paso International Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations.

The City of El Paso reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from the El Paso International Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

**Section 7.02 Time is of the Essence.**

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

**Section 7.03 Notices.**

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

LESSOR:	City Clerk City of El Paso 300 N. Campbell St. El Paso, Texas 79901	Director of Aviation El Paso International Airport 6701 Convair Road El Paso, Texas 79925-1099
LESSEE:	BT-OH, LLC Attn: Kevin Stoelting 1400 North Hurstbourne Pkwy Louisville, KY 40223	

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. Any 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 7.04 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 Lease, 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 7.05 Agreement Made in Texas.**

The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this Lease. Venue shall be in the courts in El Paso County, Texas.

**Section 7.06 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 7.07 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 7.07 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 7.07 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 7.08      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 the City of El Paso, to insure that no person shall, on the grounds of race, 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 Subpart. Lessee assures that it will require that its covered sub-organizations (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 sub-organizations (sublessees) to the same effect.

**Section 7.09      FAA Covenants.**

Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the Leased 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:

- A. 1. The Lessee 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) in the event facilities are constructed, maintained, or otherwise operated on the property described in this agreement 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, Lessee 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.

2. In the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the lease had never been made or issued. [See FAA Order 1400.11, Appendix C of Appendix 4]
- B. 1. The Lessee 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 Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.
2. In the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued. [See FAA Order 1400.11, Appendix D of Appendix 4]
- C. 1. During the term of this agreement, Lessee 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);
  - 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 discourages 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).;
  - 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).
2. In the event of breach of any of the covenants in this section C, Lessor shall have the rights and remedies set forth in sections A and B above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E of Appendix 4]

**Section 7.10 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 7.11 Interpretation.**

Lessor and Lessee agree that this Lease has been freely negotiated by both parties and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conclusions there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

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

**Section 7.12 Agreement Made in Writing.**

This Lease 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 7.13 Paragraph Headings.**

The Table of Contents of this Lease and the captions of the various articles and sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

**Section 7.14 Severability.**

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

**Section 7.15 Successors and Assigns.**

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

**Section 7.16 Taxes and Other Charges.**

The Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against the Lessee or the Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, or any improvements thereon, during the term of this Lease including any extensions or option periods granted thereto. Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from the Lessee's use of the property or possession of 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 7.17 Waiver of Warranty of Suitability.**

**LESSOR DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. Except as otherwise provided in this Lease, 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.**

**Section 7.18**      **Survival of Certain Provisions.**

All provisions of this Lease which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Lease hereunder shall survive such cessation, expiration or termination of this Lease, including without limitation, Paragraphs 4.03 and 5.03.

**Section 7.19**      **Restrictions and Reservations.**

This Lease is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. Lessor reserves the right to grant any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances and Lessee consents to and will diligently execute all documentation necessary to complete any future rights-of-way, easements, dedications, restrictions, reservations, or encumbrances, so long as such grants do not adversely affect Lessee's use of the Premises.

Lessor reserves for itself and any authorized agent the right, at any reasonable time and without notice, to enter upon and inspect the Premises for all legal purposes, including without limitation the purpose of ascertaining whether the maintenance of such parcel, and the maintenance, construction, or alteration of structures thereon are in compliance with all the Environmental Laws and for the purpose of showing the Premises; Lessor shall not be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 7.20**      **Subordination of Lease.**

All rights granted in this Lease shall be subordinate to the rights in any deed from the United States to the City of El Paso. This Lease shall further be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Should the effect of such agreement with the United States Government be to substantially destroy the commercial value of the Premises, Lessee may cancel this Lease in its entirety.

**Section 7.21**      **Authorization to Enter Lease.**

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

**Section 7.22**      **Force Majeure.**

Neither party to this Agreement is responsible to the other party for non-performance 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 7.23      Performance Standards.**

The Premises shall not be used or occupied in any manner so as to create any dangerous, injurious, noxious, or otherwise objectionable conditions

**Section 7.24      Hazardous Activities.**

No activity shall be conducted on the Premises that may be or may become hazardous to public health and safety, that shall increase the fire insurance rating for adjoining and adjacent Lots, or that shall be illegal.

**Section 7.25      Effective Date.**

Regardless of the date signed, this Lease shall be effective as of the Effective Date noted in Section 2.01.

**[SIGNATURES BEGIN ON THE FOLLOWING PAGE]**


**LESSOR'S SIGNATURE AND ACKNOWLEDGMENT**

IN WITNESS WHEREOF, this Lease has been approved on the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

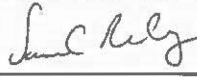
**LESSOR: CITY OF EL PASO**

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

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Josette Flores  
Senior Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Samuel 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.

My Commission Expires: \_\_\_\_\_

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

**[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]**

**LESSEE'S SIGNATURE AND ACKNOWLEDGMENT**


**LESSEE: BT-OH, LLC d/b/a UNITED  
PARCEL SERVICE CO.**

By:   
Printed Name: Kevin Stoelting  
Title: Real Estate Director

**ACKNOWLEDGMENT**

THE STATE OF Texas )  
COUNTY OF Collin )

This instrument was acknowledged before me on this 9 day of February 2021,  
by Kevin Stoelting, Real Estate Director of **BT-OH, LLC d/b/a UNITED PARCEL SERVICE  
CO.**, on behalf of said entity.

  
Notary Public, State of Texas

My Commission Expires:  
07/02/2022

