

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

AGENDA DATE: December 13, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON: Samuel Rodriguez, P.E. Aviation Director (915) 212-7301

DISTRICT(S) AFFECTED: 3

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

SUBGOAL: N/A

SUBJECT:

That the City Manager be authorized to sign Airport Building Lease Agreement by and between the City of El Paso ("Lessor") and Southwest Airlines Co. ("Lessee") for ground service equipment warehouse and maintenance shop at the Airport Building located at 6765 Convair Road, El Paso, Texas.

The one (1) year term begins on January 1, 2023 ("Effective Date") and ends on December 31, 2023. The annual rent is \$37,230.00 or \$3,102.50 per month. There is an option to extend the lease for one (1) year with a 90-day notice to the Lessor.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this Lease to allow Southwest Airlines to continue to occupy the building as a maintenance shop for its Ground Support Equipment (GSE). The term of this lease follows the same timeframe as Southwest's Airline Agreement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

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

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Aviation

SECONDARY DEPARTMENT: N/A

*****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 an Airport Building Lease Agreement by and between the City of El Paso ("Lessor") and Southwest Airlines Co. ("Lessee") for ground service equipment warehouse and maintenance shop at the Airport Building located at 6765 Convair Road, El Paso, Texas.

With an initial term of one year with one (1) year renewal option.

APPROVED this ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

AIRPORT BUILDING LEASE AGREEMENT

6765 Convair Road

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

**SOUTHWEST AIRLINES CO.
LESSEE**

Effective Date

**AIR CARGO BUILDING LEASE
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ATTACHMENTS:

EXHIBIT "A" GSE Warehouse and GSE Parking Apron

**EL PASO INTERNATIONAL AIRPORT
BUILDING LEASE AGREEMENT**

THIS AIRPORT BUILDING LEASE AGREEMENT, ("Agreement"), entered into this ____ day of _____, 2022, between the **CITY OF EL PASO, TEXAS** ("Lessor") and **Southwest Airlines Co., a Texas corporation** ("Lessee").

WITNESSETH:

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

WHEREAS, Lessor has constructed an Air Cargo Building facility located on the Airport property and has space available for lease, and Lessee desires to lease space in the Air Cargo Building;

WHEREAS, Lessee has indicated a willingness and ability to properly operate, keep and maintain the portion of the Airport Building that it leases in accordance with the standards established by Lessor; and

WHEREAS, in furtherance of its authority, Lessor further desires to lease to Lessee certain facilities located at said Airport in accordance with the terms, covenants, and conditions set forth in this Agreement;

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties agree 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 Premises located in El Paso County, Texas:

- A. That certain warehouse space containing **2,400** square feet, more or less, as shown on **EXHIBIT "A"** attached hereto and incorporated herein by reference, and also known as **Air Cargo Building**, 6765 Convair Road, for Lessee's exclusive use detailed on **EXHIBIT "A"** attached hereto; and
- B. The non-exclusive use of the **4,900** square feet, more or less, of vehicle parking space directly in front of the Airport Building as shown on **EXHIBIT "A"** attached hereto; and

all of which will hereinafter be referred to as the "Premises" or "Leased Premises".

Section 1.02 Right of Ingress and Egress.

Lessor hereby grants to Lessee the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Lessee, its agents and servants, patrons and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the Airport.

Section 1.03 Right to Construct.

In addition to the general privileges, uses, rights, and interests attaching to the Premises herein described and without limiting the generality thereof, Lessee shall have the right to provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Premises, for the purpose of carrying out any of the activities provided for herein, subject, however, to the conditions herein generally or particularly set forth, including but not limited to Section 3.03.

Section 1.04 Restrictions of Privileges, Uses and Rights.

Lessee covenants and agrees that it shall use the Premises for ground service equipment maintenance only.

Lessee shall not offer, or permit to be offered, retail services, sales of any type from the Premises, other than the conduct of what is permitted in this Section 1.04. Fuel sales are specifically prohibited. In connection with the exercise of its rights under this Agreement, Lessee:

- A. Shall not do, or permit to be done, anything at or about the Airport or the Premises that may interfere with the effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, security system, fire hydrants and hoses, electrical system, natural gas, or other Airport systems installed or located on or within the Premises or the Airport.
- B. Shall not do, or permit to be done, any act or thing upon the Airport or the Premises that will invalidate or conflict with any fire or other casualty insurance policies covering the Airport or any part thereof.
- C. Shall not dispose of, or permit any employee, agent, contractor, or other person to dispose of, any waste material taken from, or products used with respect to, its aircraft, equipment or operations into the sanitary or storm sewers at the Airport or any other location on the Airport (whether liquid or solid), including but not limited to Hazardous Materials as defined herein, unless such waste material or products first be properly treated by equipment installed with the prior written approval of Lessor and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater guidelines limitations of the El Paso Water Utilities/Public Service Board are not exceeded.
- D. Shall not keep or store Hazardous Materials or articles including, without limitation, flammable liquids and solids, corrosive liquids, compressed gasses, and magnetized or radioactive materials on the Airport except when all of the following conditions are met: (1) in accordance with standards established by the National

Board of Fire Underwriters, any such liquids having a flash point of less than one hundred degrees (100⁰) Fahrenheit shall be kept and stored in safety containers of a type approved by said Underwriter's laboratories; (2) said material shall be under the control and care of designated Lessee personnel; (3) said material shall be packaged and handled in compliance with applicable U. S. Department of Transportation, Environmental Protection Agency, or other such applicable regulations for transport and pre-transport of hazardous articles and materials; and (4) said materials shall be stored in special storage areas designated by the Director while on the Airport. "Director" shall mean the Director of Aviation of the El Paso International Airport or other authorized representative of Lessor.

- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft, vehicles or other equipment on the Premises.
- F. Shall not maintain or operate on the Premises or elsewhere at the Airport a cafeteria, restaurant, bar or cocktail lounge for the purpose of selling or dispensing food or beverages to the public or to its employees; nor shall Lessee in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Lessee may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Lessee's employees in areas not accessible to the general public.
- G. The rights and privileges granted to Lessee under this Agreement with respect to the performance of ground services and activities in connection with allowed operation at the Airport. It is understood and agreed that Lessor reserves the right to charge a fee or commission associated with controlling access to restricted areas, and to collect reasonable fees or commissions for ground transportation, ground support services for other operator(s), and other services or facilities provided by or for Lessee in competition with concessionaires and operators operating under an agreement with Lessor.

Section 1.05 Conditions of Granting Agreement.

The granting of this Agreement and its acceptance by Lessee are conditioned upon the following covenants:

- A. No functional alteration of the Premises shown on Exhibit "A" or functional change in the uses of the Premises shall be made without the specific written consent of Lessor; said consent to be at Lessor's sole discretion.
- B. The right to use public Airport facilities in common with others authorized to do so shall be exercised only subject to and in accordance with the laws of the United States of America and the State of Texas; the rules and regulations promulgated under their authority with reference to aviation and air navigation; and all applicable rules, regulations and ordinances of Lessor now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. Lessee will utilize only the roadways, taxiways, or other direction, path, route, or form of travel Lessor may designate, from time to time, for Lessee's operation and movement on or about the Airport.

ARTICLE II
OBLIGATIONS OF LESSOR

Section 2.01 Quiet Enjoyment.

Lessor agrees that upon Lessee's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Lessee shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term of this Agreement.

Section 2.02 Lessor's Right of Entry.

Lessor reserves the right to enter into and upon the Premises during normal business hours upon reasonable notice or, in the case of emergencies, without notice for the purpose of inspecting the condition thereof, or to perform maintenance or repairs as may be necessary in accordance with the provisions of the Agreement, or for the purpose of exhibiting the same to prospective tenants, purchasers or others. The exercise of this right to enter the Premises shall not be deemed an eviction or disturbance of Lessee's use or possession, provided that Lessor shall exercise its best efforts not to interfere with Lessee's normal operations on the Premises.

Section 2.03 Condition and Maintenance of Premises.

Lessor shall bear responsibility for the repair and maintenance of the Structural Elements of the Premises, except for any damage caused by the act or omission of the Lessee, or any agent, employee, invitee, contractor, servant, or sublessee of Lessee, for which damage Lessee shall be responsible. "Structural Elements" shall mean the roof, foundation, load bearing columns and walls, exterior walls, exterior paint, common vehicle parking areas, and the aircraft parking apron.

ARTICLE III
OBLIGATIONS OF LESSEE

Section 3.01 Net Agreement.

This Agreement in every sense shall be without cost to Lessor for the development, maintenance and improvement of the Premises. It shall be the sole responsibility of Lessee to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. Notwithstanding the foregoing, Lessee's obligation for the development, maintenance or improvement of the Premises shall not apply to the Structural Elements as described in Section 2.03 above.

Section 3.02 Condition and Maintenance of Premises.

LESSEE ACCEPTS THE PREMISES IN "AS IS" CONDITION. Except as otherwise provided for in Sections 2.03 or 3.01 hereinabove, Lessor has no responsibility as to the condition of the Premises and shall not be responsible for maintenance, upkeep, or repair necessary to keep the Premises in a safe and serviceable condition. Lessee shall be solely responsible for repairs and maintenance of the Premises except the Structural Elements described in Section 2.03 above, and shall not cause any damage or impairment to any part of the Structural Elements, normal wear and tear excepted.

Section 3.03 Internal Improvements.

- A. General. Lessee may make internal improvements, additions and alterations to the Premises with the prior written approval of the Director. Lessee guarantees that all construction work performed by contractors hired by Lessee shall be done in accordance with applicable building codes, laws and regulations and in a good, workmanlike manner, and all materials used by Lessee's contractors shall be of an appropriate grade and quality for the use for which they are employed.

All plans for improvements, additions or alterations to the Premises, either for the construction of additional facilities or alterations to existing facilities, shall be prepared, submitted and approved as outlined in this Article, and shall be subject to the same restrictions as provided herein. Lessee, at its sole expense, must obtain appropriate approval from the Airport, all local, state, and federal agencies, as required, for the completion of any and all improvements. Lessee acknowledges that approval of any and all improvements plans or documents by the Director does not constitute approval by any other local, state, or federal agency. All improvements, furniture, fixtures, and equipment used in the Premises shall be of high quality, safe, fire-resistant, and attractive in appearance.

It is agreed that the Director reserves the right to reject any plans and specifications.

Upon completion of any construction project, Lessee shall provide the Director with one (1) complete set of As-Built drawings in reproducible form as specified by the Director. Lessee agrees that, upon the request of the Director, Lessee will inspect the Premises jointly with the Director to verify the As-Built drawings.

- B. Construction without Approval. If any portion of the Premises, leasehold improvements, or trade fixtures are altered, erected, placed or maintained upon any portion of the Premises other than in accordance with plans and specifications approved by the Director, such alterations, erection and maintenance shall be deemed to have been undertaken without approval required herein. This restriction shall be applicable to aesthetic matters as well as architectural plans.

In the event of such alteration, erection, placement, or maintenance without approval, Lessee will be considered in default of this Agreement and Lessor may terminate this Agreement in accordance with the provisions set forth in Article X.

- C. Title to Improvements. All leasehold improvements made to the Premises by Lessee, shall be and remain the property of Lessee until the termination of this Agreement whether by expiration of the term, cancellation, forfeiture or otherwise. Upon the termination of this Agreement, whether by expiration, cancellation, or otherwise, title to such leasehold improvements shall vest in accordance with Paragraph D of this Section 3.03.

- D. Permanent Improvements. Subject to written approval of Lessor, all permanent improvements, if any, made by Lessee to the Air Cargo Building #2, of which the

Premises are a part, shall become the property of Lessor upon the expiration, cancellation or early termination of this Agreement. All other improvements and fixtures of a non-permanent nature and all trade fixtures, machinery and equipment made or installed by Lessee may be removed from the Premises at any time by Lessee, subject to Lessor's lawful exercise of its landlord's lien, and to the extent that it does not cause structural or cosmetic damage to the Premises or any other portion of Lessor's Air Cargo Building #2 and facilities.

Section 3.04 Payment and Performance Bonds.

Lessee, at its own cost and expense, shall cause to be made, executed, and delivered to Lessor two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, the identified contract amount which exceeds Fifty Thousand and no/100 Dollars (\$50,000.00), a contract surety bond in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee the faithful performance of necessary construction and completion of improvements in accordance with approved final plans and detailed specifications; and shall guarantee Lessor against any losses and liability, damages, expenses, claims and judgments caused by or resulting from any failure of Lessee to completely perform the work.

- B. Prior to the date of commencement of construction, the identified contract amount which exceeds Fifty Thousand and no/100 Dollars (\$50,000), a payment bond with Lessee's contractor or contractors as principal, in a sum equal to the full amount of the construction contract awarded.

Said bond shall guarantee payment of all wages for labor and services engaged and of all bills for materials, supplies, and equipment used in the performance of said construction contract.

- C. In accordance with Article 7.19-1 of the Texas Insurance Code, if a Performance or Payment bond is in amount of excess of ten percent (10%) of the surety's capital and surplus, Lessor will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed ten percent (10%) of the reinsurer's capital and surplus.

- D. In lieu of the payment and performance bonds described in paragraphs A, B, and C, above, Lessee may, at Lessee's option, provide Lessor with an irrevocable Letter of Credit in an amount equal to the full amount of the construction contract awarded. Such Letter of Credit shall be issued by a national banking association with offices in El Paso, El Paso County, Texas, shall provide for partial draws, and shall have an expiration date of at least ninety (90) days after the completion date provided in the construction contract. Such Letter of Credit shall be payable upon

presentment accompanied by an affidavit by an authorized representative of Lessor indicating that the proceeds to be paid will be used by Lessor to either (i) pay sums due and owing pursuant to the construction contract awarded or (ii) complete construction of the improvements contemplated by the construction contract.

Section 3.05 Compliance with Laws.

Lessee, at Lessee's expense, agrees that in the event it constructs, operates and/or maintains improvements on the Premises, such activities shall be done in accordance with the Declarations 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. By way of example and not in limitation of the foregoing, the execution of this Agreement and approval of Lessee's plans by the Airport shall not preclude the requirement that Lessee obtain all other approvals necessary for development of Lessee's project such as, but not limited to, building permits and certificates of occupancy.

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 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 under Lessee's control in violation of any Environmental Law; provided, further, that with respect to demolition of Existing Improvements, Lessee shall comply fully with all regulatory requirements, including, but not limited to, those governing asbestos abatement. **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. 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 Agreement.

- (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 3.05 in any lease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Agreement.

Notwithstanding any other provision in this Agreement 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, the cost of which shall be borne by Lessee.

The failure of Lessee, its agents, employees, contractors, invitees, or a third party to comply with any of the requirements and obligations of this Section shall constitute a material default of this Agreement and shall permit Lessor to pursue the remedies as set forth in Article IX hereinbelow,

in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, 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 ("FAA"), the Environmental Protection Agency ("EPA") or the Texas Commission on Environmental Quality ("TCEQ"), Lessee shall, upon request of Lessor, provide duplicate copies of the filing(s) made, along with any related documents to Lessor.
- (2) Upon expiration, termination or cessation of this Agreement for any reason, Lessee shall provide a current Phase I environmental site assessment of 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 condition equal or better to that as of the Effective Date of the Agreement.

Section 3.06 Maintenance.

Except as set forth otherwise in this Agreement, Lessee shall, at its sole cost and expense, maintain the Premises and the buildings, improvements and appurtenances thereto, in a presentable condition consistent with good business practice and equal in appearance and character to other similar improvements on said Airport. In addition, Lessee shall promptly repair all damage to the Premises or the Airport caused by its employees, patrons or its operation thereon. Lessee shall also be responsible for the upkeep and cleanliness of the Premises. Lessee shall maintain and repair all equipment thereon, including, but not limited to, any heating and cooling equipment or any buildings and improvements. Lessee agrees not to paint the exterior of the improvements without the prior written consent of Lessor; said consent to be at Lessor's sole discretion. Lessor shall also be the sole judge of the quality and content of any painting submitted by Lessee for consideration. Lessee shall be required to perform whatever maintenance Lessor reasonably deems necessary upon written notice by Lessor to Lessee, and Lessor shall be the sole judge of the quality of maintenance. If said maintenance is not undertaken by Lessee within thirty (30) 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 plus twenty percent (20%) shall be borne by Lessee. Lessee shall remit payment within thirty (30) days after receipt of invoice.

Section 3.07 Utilities.

Lessee shall pay for all costs or charges for utility services furnished to Lessee and to the exclusive use Premises during the term hereof. Lessee shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense; subject to approval by all appropriate departments of the City of El Paso including, at a minimum, the Director, and Lessee shall pay for any and all service charges incurred thereof. If Lessor pays any utilities on Lessee's behalf, Lessee, upon receipt of a statement therefore, shall reimburse Lessor for Lessee's pro rata share thereof plus ten percent (10%) for administrative overhead. Said share shall be

calculated on a pro rata basis utilizing the square footage of each tenant's occupancy divided by the total square footage of the Air Cargo Building.

Section 3.08 Trash, Garbage, and Other Refuse.

Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of the operation of its business. Lessee shall provide and use suitable covered commercial type receptacles for all such garbage, trash and other refuse, and will maintain these receptacles, screened from view of adjoining properties or public streets in an attractive, safe, and sanitary manner. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the Premises shall not be permitted.

Section 3.09 Permitted Uses.

Lessee covenants and agrees that in no event will it enter into any business activity on the Airport other than those specified in Section 1.04.

Section 3.10 Signage.

The following regulations shall apply to all signs displayed for observation from outside a building whether displayed on, near or within a building:

- A. **Permitted Signs.** Signs on Premises shall be limited to those identifying Lessee and to those necessary for directional purposes. The size, design and location of all signs shall require the written approval of the Director prior to installation, and said written approval shall be at the Director's sole discretion. Outdoor advertising, billboards, neon, or flashing lighting shall not be permitted.
- B. **Lighting and Construction.** All signs shall comply with all current or future building codes of the City of El Paso and with all current or future rules and regulations of the FAA and its successor agencies. Lessee is solely responsible for obtaining all necessary permits and licenses.

Section 3.11 Approval of Plans.

Approval of any and all improvements, plans, signs, or documents by the Director does not constitute approval of the City or any other local, state, or federal agency. It is specifically understood that the Department of Aviation is only one of numerous departments of the City and that, in addition to obtaining approval of the Director, Lessee shall be required to obtain the approval of other departments as well in accordance with the City of El Paso City Code.

Section 3.12 Fencing and Exterior Storage.

Lessee may store stock, materials, and supplies on the Premises; however, all stock, materials, and supplies that are stored outside must be completely screened from view. The placement and design of any exterior screening, fencing and storage on the Premises shall be in accordance with plans and specifications prescribed by the Director and shall be uniform throughout the entire Air Cargo Building and associated areas.

Section 3.13 Authorization to Enter Restricted Area.

Lessee understands that the Premises include access to a restricted area of the Airport and that Lessee and its agents, employees, servants or independent contractors must be authorized by Lessor to enter restricted areas of the Airport prior to their entry thereon. The authorization to enter restricted areas of the Airport is not granted by this Agreement, but shall be granted to Lessee upon Lessee's completion of security clearance and identification badging requirements necessary to all persons entering restricted areas of the Airport. Lessee understands that no person authorized to enter a restricted area by virtue of this Agreement may permit any person who is not otherwise authorized to enter a restricted area unless such person is, at all times while in the restricted area, in the company of an authorized person. As Lessee is required to comply with all applicable rules and regulations, any violation of this provision or those security rules and regulations applicable to the restricted areas of the Airport, shall be considered to be a material violation of this Agreement and grounds for termination.

Section 3.14 Security.

Lessee is familiar with the restrictions imposed on Lessor by the Federal Aviation Regulations ("FAR") Part 1542//49 CFR Part 1540 as amended, and agrees to assume responsibility for compliance with said regulation as it relates to access and identification procedures on the Premises. To accomplish this compliance, Lessee agrees to develop a security plan and will submit same to the Transportation Security Administration's ("TSA") security office for approval.

Section 3.15 Penalties Assessed by Federal Government.

Lessee understands and agrees that in the event any federal agency assesses a civil penalty against Lessor for any violation of a federal rule or regulation as a result of any act on part of Lessee, its agents, servants, employees, invitees, or independent contractors, Lessee will, upon receipt of Lessor's invoice, promptly reimburse Lessor in the amount of the civil penalty assessed. Failure to reimburse Lessor within thirty (30) days of receipt of written notice shall be an event of default hereunder.

ARTICLE IV
TERM OF LEASEHOLD

Section 4.01 Term.

The term of this Agreement shall begin on December 6, 2022 (the "Effective Date") for a period of one (1) year (herein referred to as the "Initial Term") with one (1) year renewal option.

Section 4.03 Holding Over.

It is agreed and understood that any holding over by Lessee of the Premises at the expiration or 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 then 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 Agreement, 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 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.

Section 4.04 National Emergency.

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

ARTICLE V
RENTALS

Section 5.01 Rental.

6765 Convair Road	Sq. Ft.	Rate per Sq. Ft.	Annual
Warehouse Space	2,400	\$10.00	\$24,000.00
Ground Service Equipment Parking Apron	4,900	\$2.70	\$13,230.00
Total	7,300		\$37,230.00 or \$3,102.50 monthly

Section 5.02 Commencement of Rental.

Payment of Rental by Lessee to Lessor shall commence on the Effective Date of this Agreement, as described in Section 4.01.

Section 5.03 Reserved.

Section 5.04 Unpaid Rent, Fees and Charges.

Any installment of rent, any fees, or other charges or monies accruing under any provisions of this Agreement that are not received by Lessor by the 20th day of the month in which payment is due, shall bear interest at the rate equal to the maximum allowed by law from the date when the same was due according to the terms of this Agreement until paid by Lessee.

Section 5.05 Time of Payment.

All rental due hereunder shall be paid in twelve (12) equal 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 or any extension of this Agreement.

Section 5.06 Place of Payment.

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

Accounting Division
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 VI
RESERVED

Section 6.01 Reserved.

Section 6.02 Reserved.

ARTICLE VII
INSURANCE AND INDEMNIFICATION

Section 7.01 Liability Insurance.

Lessee, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Lessee with Lessor and its officers, directors, agents, and employees as an additional insured, 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 and Five Hundred Thousand Dollars (\$1,000,000.00) 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 7.02 Fire and Extended Coverage Insurance.

Lessor agrees that, at all times throughout the term of this Agreement, it will keep the Premises insured under a Texas Standard Policy of Fire and Extended Coverage Insurance, for an amount equivalent to ninety percent (90%) of the replacement cost, such replacement cost to be redetermined every three (3) years. Upon receipt of a statement therefor, Lessee shall reimburse Lessor for Lessee's pro rata share thereof. Said share shall be calculated on a pro rata basis utilizing the square footage of each tenant's occupancy divided by the total square footage of the Air Cargo Center.

If the operations conducted by Lessee, or anyone holding under Lessee, on the Premises should require the payment of a greater premium for fire and extended coverage insurance than would customarily be payable for the conduct of the air cargo activities permitted hereunder, then the amount of such additional premium cost shall also be reimbursed by Lessee to Lessor upon invoice.

Section 7.03 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 approval not to be unreasonably withheld.

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 of the period during which the policy is in effect;

Southwest Airlines, Co. – Airport Building Lease – 6765 Convair Rd. (GSE Maintenance Shop)/LBJ
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- C. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance;
- D. 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 thirty (30) days' prior written notice to Lessor; and
- E. A statement certifying the Lessor has been listed as an additional named insured on the policy.

Section 7.04 Indemnification.

WITHOUT LIMITING THE GENERALITY OF ANY OTHER INDEMNITY CONTAINED IN THIS AGREEMENT, LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES 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.

ARTICLE VIII
CONDEMNATION

Section 8.01 Definition.

The following definitions apply in construing the provisions of this Agreement relating to the taking of or damage to all or any part of the Premises, or improvements thereon, or any interest in them by eminent domain or condemnation:

- A. "Taking" means the taking or damaging, including severance damage by eminent domain or by condemnation for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation and avoidance proceedings are pending.

- B. "Total taking" means the taking of the fee title to all of the Premises and improvements thereon.
- C. "Substantial taking" means the taking of so much of the Premises or improvements or both that one or more of the following conditions results:
 - 1. The remaining portion of the Premises and improvements thereon after such taking would not be economically and feasibly useable by Lessee;
 - 2. The conduct of Lessee's business on the Premises would be substantially prevented or impaired; or
 - 3. The portion of the Premises not so taken cannot be so repaired or reconstructed, taking into consideration the amount of the award available for repair or reconstruction, as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income after payment of all operation expenses including the rent and after performance of all covenants and conditions required of Lessee under this Agreement.
- D. "Partial taking" means the taking of a fee title that is not either a total or substantial taking.
- E. "Improvements" includes, but is not limited to, all buildings, structures, fixtures, fences, utility installations, parking facilities and landscaping on the Premises.
- F. "Notice of intended taking" means any notice or notification on which a reasonably prudent person would rely and which such person would interpret as expressing an existing intention of taking as distinguished from a mere preliminary inquiry or proposal. It includes, but is not limited to, the service of a condemnation summons and complaint on a party to this Agreement. The notice is considered to have been received when a party to this Agreement receives from the condemning agency or entity a notice of intent to take in writing containing a description or map reasonably defining the extent of the taking.
- G. "Award" means compensation paid for the taking, whether pursuant to judgment, or by agreement, or otherwise.
- H. "Date of taking" means the date that Lessee is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

Section 8.02 Notice of Condemnation.

The party receiving any notice of the kind specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- A. Notice of intended taking:

- B. Service of any legal process relating to condemnation of the Premises or improvements; or
- C. Notice in connection with any proceedings or negotiations with respect to such a condemnation.

Section 8.03 Rights of Parties during Condemnation Proceeding.

Lessor and Lessee shall each have the right to represent its respective interest in each proceeding or negotiation with respect to a taking or intended taking and to make full proof of its claims. No agreement, settlement, sale or transfer to or with the condemning authorities shall be made without the consent of all parties. Each party agrees to execute and deliver to any other party hereto any instrument that may be required to facilitate the provisions of this Agreement relating to the condemnation.

Section 8.04 Taking of Leasehold.

Upon a total taking, Lessee's obligation to pay rent and other charges hereunder together with Lessee's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, Lessee may, by notice to Lessor within ninety (90) days after Lessee receives notice of the intended taking, elect to treat the taking as a total taking. If Lessee does not so notify Lessor, the taking shall be deemed a partial taking. Upon a partial taking, this Agreement shall remain in full force and effect covering the balance of the Premises not so taken, except that the rent payable hereunder shall be reduced in the same ratio as the percentage of the area of the Premises taken bears to the total area of the Premises.

Section 8.05 Total Taking.

All of Lessee's obligations under the Agreement shall terminate as of the Date of Taking. Upon a total taking, all sums awarded for any Lessee-owned improvements and the leasehold estate shall be disbursed to Lessee. All sums awarded for the Premises, as unencumbered by the Lessee-owned improvements, but subject to the Agreement, shall be disbursed to Lessor.

Section 8.06 Partial Taking.

Upon a partial taking, all awards shall be disbursed as follows:

- A. To the cost of restoring the improvements on the Premises; and
- B. The balance, if any, to Lessor and Lessee as follows: Lessee shall receive all sums awarded for Lessee-owned improvements and the Leasehold estate. Lessor shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Agreement.

Section 8.07 Obligations of Lessee Under Partial Taking.

Promptly after any such partial taking, Lessee, at its expense and in accordance with any awards disbursed in accordance with Section 8.06, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased. Notwithstanding the foregoing to the contrary, should there be a partial taking in the last year of the initial term or any

renewal term, Lessee shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Lessor of its intention to that effect.

Section 8.08 Taking of Temporary Use of Premises and Improvements.

Upon any taking of the temporary use of all or any part or parts of the Premises or improvements, or both, for a period of any estate less than a fee ending on or before the expiration date of the term, neither the term nor the rent shall be reduced or affected in any way and Lessee shall be entitled to any award for the use or estate taken. If a result of the taking is to necessitate expenditures for changes, repairs, alterations, modifications or reconstruction of the improvements to make them reasonably suitable for Lessee's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Lessee shall receive, hold and disburse the award in trust for such work. At the completion of the work and the discharge of the Premises and improvements from all liens or claims arising therefrom, Lessee shall be entitled to any surplus and shall be liable for any deficiency.

If any such taking is for a period extending beyond the expiration date of the term, the taking shall be treated under the foregoing provisions for total, substantial and partial takings.

ARTICLE IX
ENCUMBRANCES

Section 9.01 Encumbrance.

As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Lessee may encumber its leasehold estate and its interest in the improvements constructed and to be constructed on the Premises by the execution and delivery of a Mortgage. The Mortgagee of any such Mortgage may deliver to Lessor a written notice specifying:

- A. The amount of the obligation secured by the Mortgage;
- B. The date of the maturity or maturities thereof; and
- C. The name and mailing address of the Mortgagee.

After receipt of such notice, Lessor shall serve such Mortgagee by certified mail at the latest address furnished by such Mortgagee a copy of every notice of default or demand served by Lessor upon Lessee under the terms and provisions of this Agreement so long as such Mortgage is in effect.

Section 9.02 Mortgagee's Rights.

Upon receipt of a notice or demand in accordance with Section 9.01 above, Mortgagee shall have sixty (60) days after receipt of such notice within which, at Mortgagee's election, either:

- A. To cure the default if it can be cured by the payment or expenditure of money;
- B. To perform such other action as may be necessary to cure the default;

- C. If the default cannot be cured within sixty (60) days, to commence performance within such sixty (60) day period and thereafter diligently prosecute same to completion, in which event, the default will have been deemed to have been cured; or
- D. To institute foreclosure proceedings and prosecute same diligently to conclusion.

Section 9.03 Rights on Foreclosure.

In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Lessee's interest in lieu of foreclosure shall succeed to all of Lessee's rights, interests, duties and obligations under this Agreement.

ARTICLE X
EXPIRATION, CANCELLATION, ASSIGNMENT AND TRANSFER

Section 10.01 Expiration.

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

Should Lessee terminate (Name of Lease) which is associated with this Agreement before the end of its term or any extension thereof and upon 30 days following termination of the (Name of Lessee) notify the City of the termination, Lessee shall be permitted to terminate this Agreement.

Section 10.02 Cancellation.

Subject to the provisions of Article IX above, this Agreement 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 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 of this Agreement.

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 term 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.

Section 10.03 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 Agreement, 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 force as may be necessary; and
- B. Either cancel this Agreement by notice or without canceling this Agreement, 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 Agreement, 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 10.04 Assignment and Transfer.

Lessee is not permitted to assign this Agreement without first obtaining Lessor's written consent; said consent shall be at Lessor's sole discretion. The foregoing notwithstanding, any person or entity to which this Agreement is assigned to, pursuant to the Bankruptcy Code, 11 U.S.C. 101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Agreement on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

Section 10.05 Subleasing.

Lessee is prohibited from subleasing the Premises.

Section 10.06 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 Agreement and if any Mortgagee does not exercise its rights under this Agreement, 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 Agreement 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 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 the necessary proper expense of removing, storing and selling such property, then to the payment of any rent or other sums due or to become due under this Agreement, with the balance, if any, to be paid to Lessee.

ARTICLE XI
GENERAL PROVISIONS

Section 11.01 Right of Flight.

Lessor 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 Airport.

Lessor 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 the 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.

Lessor 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 Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

Section 11.02 Time is of the Essence.

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

Section 11.03 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 Clerk
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: Southwest Airlines Co.
Attn: Airport Affairs
2702 Love Field Drive, HDQ-4PF
Dallas, Texas 75235

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 11.04 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 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 11.05 Agreement Made in Texas.

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

Section 11.06 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 11.07 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 11.07 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 11.07 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 11.08 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 11.09 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:

I. A. 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 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 Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (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 Agreement, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Agreement and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said instrument had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. 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 listed acts and authorities appearing in the Acts and Regulations.

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

3. A. During the term of this Agreement, Lessee for itself, its assignees, and successors in interest, 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 USC § 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 USC § 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 USC § 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 USC § 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 USC §§ 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 USC § 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 USC 1681 *et seq.*).

B. In the event of breach of any of the covenants in this section 3, Lessor 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]

Section 11.10 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 11.11 Interpretation.

Words of gender used in this Agreement 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 11.12 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 11.13 Paragraph Headings.

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

Section 11.14 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 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 Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Section 11.15 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 successors, assigns, legal representatives, heirs, executors and administrators.

Section 11.15 Taxes and Other Charges.

Lessee shall pay any and 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, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the term of this Agreement including any extensions or option periods granted thereto.

By March 1 of each year during the term of this Agreement, including any extensions or option periods granted thereto and no cost to Lessor, Lessee shall provide written proof satisfactory to the Director that all taxes and governmental charges of any kind have been paid in full.

Lessee further indemnifies the City from all tax liability including but not limited to ad valorem real property taxes and personal property taxes that may arise in relation to Lessee's activities in furtherance of this Agreement.

Lessee in good faith may contest any tax or governmental charge; provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom.

Section 11.16 Waiver of Warranty of Suitability.

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.

Section 11.17 Survival of Certain Provisions.

All Provisions of this Agreement which expressly or impliedly contemplate or require performance after the expiration or termination of this Agreement hereunder shall survive such expiration or termination of this Agreement, including without limitation, Sections 3.05 and 7.03.

Section 11.18 Authorization to Enter Agreement.

If Lessee signs this Agreement as a corporation, each of the persons executing this Agreement 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 Agreement, 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 11.19 Effective Date.

Regardless of the date signed, this Agreement shall be effective as of the Effective Date noted in Section 4.01.

Section 11.20 Complete Agreement.

This Agreement, together with the attachment(s) attached hereto, constitutes the entire agreement among the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers not rights on any person or business entity that is not a party hereto. This Agreement shall not be construed against or unfavorably to any part because of such party's involvement in the preparation or drafting of this Agreement.

(Signatures begin on following page)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

ATTEST:

LESSEE: SOUTHWEST AIRLINES CO.


Name: Twyla Jones


Name: Stephen F. Sisneros
Title: Vice President Airport Affairs

ACKNOWLEDGMENT

THE STATE OF Texas)
COUNTY OF Dallas)

This instrument was acknowledged before me on this 29th day of November, 2022 by Stephen F. Sisneros, as Vice President - Airport Affairs of Southwest Airlines Co. (Lessee).


Notary Public, State of

My Commission Expires:
02-06-2023

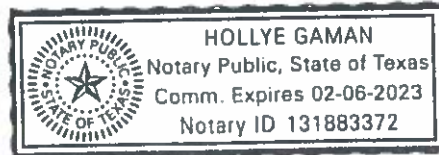
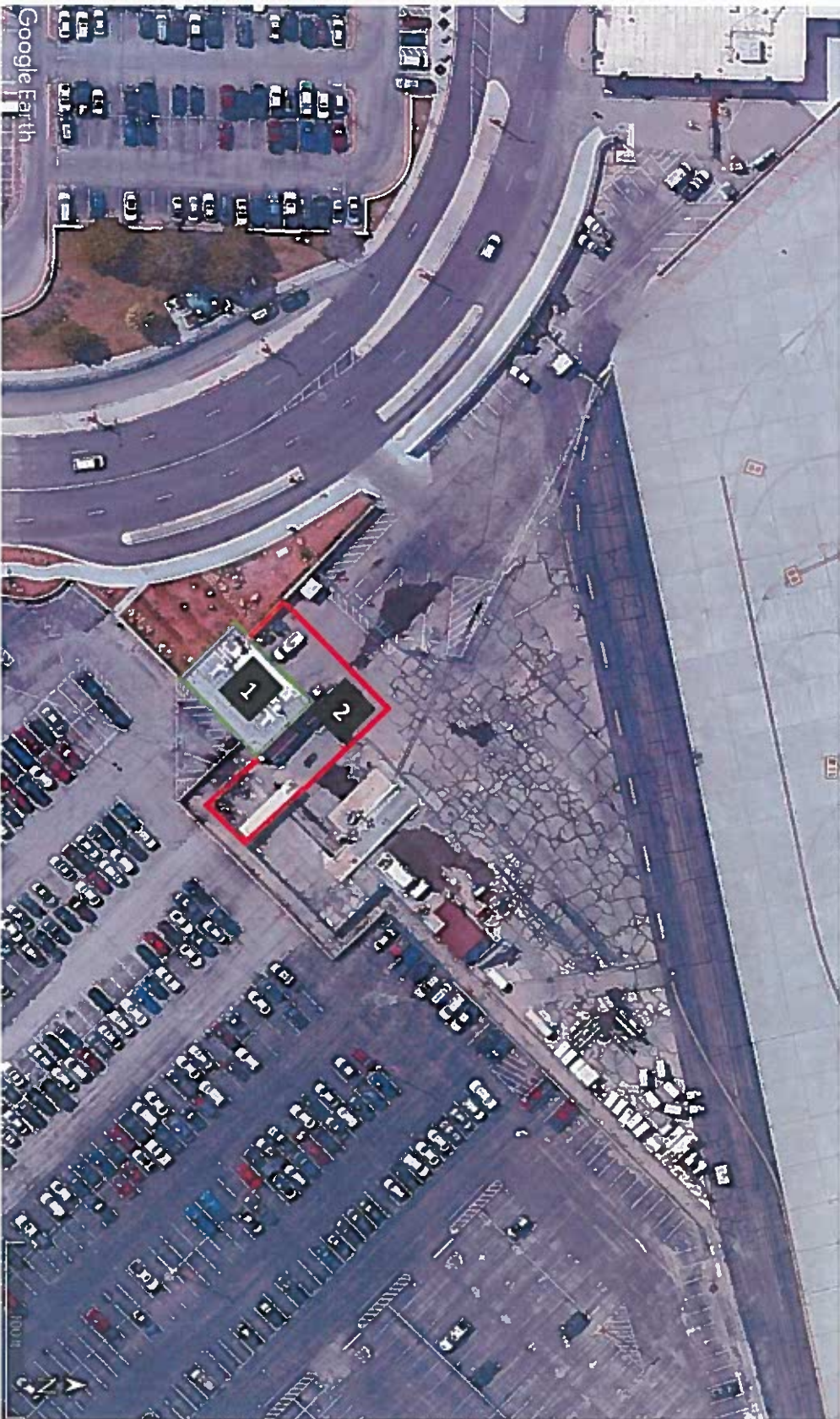


Exhibit A – Premises Aerial View



6701 Convair Road

- 1** Building – 2,400 SF
- 2** Parking Area – 4,900 SF