

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

DEPARTMENT: Aviation

AGENDA DATE: January 19, 2022

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

DISTRICT(S) AFFECTED: District 2

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

SUBJECT:

This is a Resolution to authorize the City Manager to sign an Air Cargo Lease Agreement between the City of El Paso and American Airlines, Inc., a Texas corporation, for use of space located at 6413 Convair Road, Air Cargo Building #2, El Paso, Texas 79925.

The term of this lease is one (1) year plus four (4) options of one (1) year each to automatically extend the term of the lease unless Lessee provides 90 days' notice to Lessor of its intent to terminate. The annual rental rate for the initial period is \$50,235.90

BACKGROUND / DISCUSSION:

The Department of Aviation requests approval of this item to allow American Airlines to continue to occupy space in Cargo Building # 2 for its ground service equipment maintenance operations. This space allows for maintenance of equipment that American uses to operate its commercial passenger services in an out of El Paso International Airport. American Airlines has occupied this space since June 2016. The previous lease expired on June 30, 2021, and the lease has been in holdover since then.

Term: One (1) year plus four (4) options of one (1) year each

Rental Fees:

	Sq. Ft.	Annual Rate	Annual Rent	Monthly Rent
Office/Whse	6,614	\$ 6.850	\$ 45,305.90	\$ 3,775.49
Veh Parking	3,400	\$ 0.725	\$ 2,465.00	\$ 205.42
GSE Parking	3,400	\$ 0.725	\$ 2,465.00	\$ 205.42
Total	13,414		\$ 50,235.90	\$ 4,186.33

PRIOR COUNCIL ACTION:

6/14/2016 – Cargo Building Lease Agreement with a term of 5 years, expired 6/30/2021.

AMOUNT AND SOURCE OF FUNDING:

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

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:



Sam Rodriguez, P.E.
Chief Operations & Transportation Officer/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 Air Cargo Lease Agreement between the City of El Paso and American Airlines, Inc., a Texas corporation, for use of space located at 6413 Convair Road, Air Cargo Building #2, El Paso, Texas 79925.

APPROVED this ____ day of _____, 2022.

THE CITY OF EL PASO:

Oscar Leeser
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

AIR CARGO BUILDING LEASE AGREEMENT
6413 Convair Road

El Paso International Airport
El Paso, Texas

American Airlines, Inc.

January 19, 2022
Effective Date

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EXHIBIT "A" - The Premises

EXHIBIT "B" - Air Cargo Building

EL PASO INTERNATIONAL AIRPORT
AIR CARGO BUILDING LEASE AGREEMENT

THIS AIR CARGO BUILDING LEASE AGREEMENT (“Agreement” or “Lease”) is entered into this 19th day of January, 2022, between the **CITY OF EL PASO, TEXAS** (“Landlord”) and **AMERICAN AIRLINES, INC.** (“Tenant”).

WITNESSETH:

WHEREAS, the Municipal Airports Act of the State of Texas authorizes municipal airports, as governmental entities, to assess charges, rentals or fees for the privilege of supplying goods, commodities, things, services or facilities at municipal airports, with due regard to the property and improvements used and the expenses of operation to the municipality; and

WHEREAS, Landlord 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”); and

WHEREAS, Landlord has constructed an Air Cargo Building facility located on Airport property (“Air Cargo Building #2”) and has space therein and appurtenances thereto available for lease, and Tenant desires to lease space in said Air Cargo Building #2; and

WHEREAS, Tenant has indicated a willingness and ability to properly operate, keep and maintain such space in the Air Cargo Building #2 leased hereunder in accordance with the standards established by Landlord; and

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

NOW THEREFORE, for and in consideration of the mutual covenants, agreements, and conditions contained herein, the parties hereto 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, Landlord does hereby demise and lease to Tenant and Tenant does hereby lease from Landlord the following described premises located in El Paso County, Texas all of which will hereinafter be referred to as the “Premises”:

- A. That certain office and warehouse space containing 6,614 square feet, more or less, as shown on **EXHIBIT “A”** attached hereto, and also known as 6413 Convair Road, Air Cargo Building #2, for Tenant’s exclusive use; and

- B. The exclusive right to use the loading dock and to use 3,400 square feet, more or less, of vehicle parking space directly in front of said Air Cargo Building #2 as more fully described on **EXHIBIT "B"** attached hereto; and
- C. The non-exclusive right to use 3,400 square feet, more or less, of the ground service equipment parking apron directly behind said Air Cargo Building #2 as more fully described on **EXHIBIT "B"** attached hereto; and
- D. The non-exclusive right to use a portion of the vehicle parking area, and the roadway, located in front of and adjacent to said Air Cargo Building #2, such portion to be commensurate with Tenant's share of warehouse and office space leased to all tenants that share common use of this vehicle parking area;

All of which will hereinafter be referred to as the "Premises".

Section 1.02 Right of Ingress and Egress. Landlord hereby grants to Tenant the rights of ingress to and egress from the Premises over and across the public roadways serving the Airport for Tenant, 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 Restrictions of Privileges, Uses and Rights. Tenant covenants and agrees that it shall use the Premises for Aviation Related Operations only. "Aviation Related Operations" is hereby defined as any activity related to aviation, including, but not limited to, cargo and ground support equipment (GSE) maintenance operations.

Tenant shall not offer, or permit to be offered, retail services, sales or repairs of any type from the Premises, other than may be incidental to the conduct of Tenant's Aviation Related Operations. Fuel sales are specifically prohibited.

In connection with the exercise of its rights under this Agreement, Tenant:

- A. Shall not do or permit to be done anything at or about the Airport 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 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 and shall prohibit any employee, agent, contractor, or other person from disposing of any waste material taken from, or products used with respect to, its aircraft, equipment or otherwise related to Tenant's operations into the sanitary or storm sewers at the Airport or any other approved 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 approval of Landlord and all other administrative bodies having appropriate jurisdiction or may remain untreated if wastewater limitation guidelines 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 in excess of Tenant's working requirements during any twenty-four (24) hour period, except when 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 Fahrenheit (100 °F) shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said material shall be under the control and care of designated Tenant 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 pretransport of hazardous articles and materials; and (4) said materials shall be stored in special storage areas designated by the Director or other authorized representative of Landlord while on the Airport.
- 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 Tenant provide for the sale or dispensing of food and beverages at the Airport except that Tenant may provide vending machines solely for the sale of hot and cold beverages, food, and confections to Tenant's employees in areas not accessible to the general public.
- G. The rights and privileges granted Tenant under this Agreement with respect to the performance of ground support services and activities in connection with its Aviation Related Operations at the Airport may be exercised by Tenant only for and on behalf of Tenant for regularly scheduled or unscheduled service. Tenant may, subject to the prior written approval of Landlord, and, where applicable, perform ground support services for other air cargo operators conducting Aviation Related Operations at the Air Cargo Building #2 provided said air cargo operators are signatories to an Air Cargo Use Agreement or Airline Operating Agreement with Landlord. It is understood and agreed that Landlord 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 Air Cargo operator(s), and other services or facilities

provided by or for Tenant in competition with concessionaires and operators operating under an agreement with Landlord.

Section 1.04 Conditions of Granting Agreement. The granting of this Agreement and its acceptance by Tenant is conditioned upon the following covenants:

- A. That no functional alteration of the Premises shown on **EXHIBIT "A"** or functional change in the uses of such Premises shall be made without the specific written consent of Landlord herein; said consent to be at Landlord's sole discretion.
- B. That the right to use said 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 Landlord now in force or hereafter prescribed or promulgated by charter authority or by law.
- C. That Tenant will utilize only the roadways or other direction, path, route, or form of travel Landlord may designate, from time to time, for Tenant's operation and movement on or about the Airport.

Section 1.05 Exterior Fencing and Storage. Tenant may store stock, materials, and supplies on the Premises, however, all stock, materials, and supplies located outside must be completely enclosed by fence. The placement and design of any exterior fencing and storage on the Premises shall be in accordance with plans and specifications prescribed by Landlord and shall be uniform throughout the entire Air Cargo Building #2, ramp, and associated areas.

ARTICLE II **OBLIGATIONS OF LANDLORD**

Section 2.01 Quiet Enjoyment. Landlord agrees that upon Tenant's paying rent and performing all of the covenants, conditions, and agreements herein set forth, Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises hereby demised for the term hereby provided.

Section 2.02 Landlord's Right of Entry. Landlord reserves the right, upon prior verbal and/or written notice to Tenant, to enter into and upon the Premises at all times during business hours for the purpose of inspecting the condition thereof, or to perform maintenance or repairs as may be necessary in accordance with the provisions of this 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 Tenant's use or possession, provided that Landlord shall exercise its best efforts not to interfere with Tenant's normal operations on the Premises.

Section 2.03 Condition and Maintenance of Premises. Landlord shall bear responsibility for only repairs and maintenance to the Structural Elements of the Air Cargo Building #2. "Structural Elements" shall mean only the roof, foundation, load bearing columns and walls, exterior walls (but not the doors), exterior paint, and the ramp.

ARTICLE III
OBLIGATIONS OF TENANT

Section 3.01 Net Agreement. This Agreement in every sense shall be without cost to Landlord for the development, maintenance and improvement of the Premises except as explicitly set forth in this Lease. It shall be the sole responsibility of Tenant to keep, maintain, repair and operate the entirety of the Premises and all improvements and facilities placed thereon at Tenant's sole cost and expense.

Section 3.02 Condition and Maintenance of Premises. TENANT ACCEPTS THE PREMISES IN "AS IS" CONDITION. Landlord 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. Tenant shall be solely responsible for repairs and maintenance of the Premises except those required for the Structural Elements referenced in Section 2.03, and shall not cause any damage or impairment to any part of the Structural Elements.

Section 3.03 Internal Improvements. Tenant may make internal improvements, additions and alterations to the Premises hereunder with the prior written approval of Landlord. Tenant shall ensure that all construction work performed by contractors hired by Tenant shall be done in accordance with applicable building codes, laws and regulations and in a good, workmanlike manner, and all materials used by Tenant's contractors shall be of an appropriate grade and quality for the use for which they are employed.

Tenant shall submit to Landlord the internal construction plans and specifications for the written approval by Landlord. It is agreed that Landlord reserves the right to reject any plans and specifications in its sole but reasonable discretion. In the event such additions, alterations, or improvements shall be deemed to have been undertaken without the prior written approval of Landlord required herein, Tenant may be considered in default and Landlord may cancel this Agreement in accordance with the provisions of Article IX hereinafter set forth.

Subject to written approval of Landlord, all permanent improvements, if any, made by Tenant to the Air Cargo Building #2, of which the Premises are a part, shall become the property of Landlord 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 Tenant may be removed from the Premises at any time by Tenant, subject to Landlord'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 Landlord's Air Cargo Building #2 and facilities.

Section 3.04 Performance and Payment Bonds. Prior to Tenant's commencement of any construction, Tenant at its own cost and expense, shall cause to be made, executed and delivered to Landlord two (2) separate bonds, as follows:

- A. A contract surety bond in a sum equal to the full amount of the contract awarded.
- B. A payment bond with Tenant's contractor(s) 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.

Section 3.05 Compliance with Laws. Tenant, at Tenant'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").

Tenant shall, at Tenant's expense, comply with all present and hereinafter enacted Environmental Laws and any amendments thereto, affecting Tenant'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) **Tenant 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 Tenant, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. Tenant shall indemnify, defend and hold harmless Landlord, its successors and assigns, its officers, directors, 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. Tenant's obligations and liabilities under this paragraph shall continue so long as Landlord bears any liability or responsibility under the Environmental Laws for any action that occurred on the Premises or any improvements thereon. This indemnification of Landlord by Tenant 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 Landlord's right to enforce Tenant's promise to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Section. Landlord 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 Tenant results in any contamination of the Premises or any improvements thereon, Tenant 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 Landlord'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) Tenant shall, at Tenant'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 Tenant shall, at Tenant'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 Landlord, Tenant shall promptly provide all information requested by Landlord 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) Tenant shall immediately notify Landlord of any of the following: (a) any correspondence or communication from any governmental entity regarding the application of Environmental Laws to the Premises or Tenant's operation on the Premises, and (b) any change in Tenant's operation on the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under the Environmental Laws.
- (5) Tenant shall insert the provisions of this Section 3.05 in any 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, Landlord 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 Tenant.

The failure of Tenant, its agents, employees, contractors, or any others over whom Tenant has control to comply with any of the requirements and obligations of this Section shall constitute a material default of this Agreement and shall permit Landlord to pursue the remedies as set forth in Article IX herein, in addition to all other rights and remedies provided by law or otherwise provided in the Agreement, to which Landlord may resort cumulatively, or in the alternative.

C. Reporting.

- (1) At any time that Tenant 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 FAA, the Environmental Protection Agency or the Texas Commission on Environmental Quality, Tenant shall, upon request of Landlord, provide duplicate copies of the filing(s) made, along with any related documents, to Landlord.
- (2) Upon expiration, termination or cessation of this Agreement for any reason, Tenant shall provide current environmental inspection and inventory reports on the Premises acceptable to Landlord; and if, in the opinion of Landlord, the Premises shall require environmental remediation, Tenant shall perform same to return the Premises into a (like new) condition equal of better to that as of the date Tenant took possession of the Premises.

Section 3.06 Maintenance. Subject to Section 2.03, Tenant 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. Tenant shall repair all damage to said Premises caused by its employees, patrons or its operation thereon. Tenant shall be responsible for the upkeep and cleanliness of the Premises. Tenant shall, subject to Section 2.03, maintain and repair all equipment thereon, including, but not limited to any heating and cooling equipment or any buildings and improvements; and shall repaint the interior of the Premises as necessary. Tenant agrees not to paint the exterior of the Premises without the written consent of Landlord; said consent to be at Landlord's sole discretion. Landlord shall also be the sole judge of the quality and content of any painting submitted by Tenant for consideration.

Landlord shall be the sole judge of the quality of maintenance and, upon written notice by Landlord to Tenant, Tenant, subject to Section 2.03, shall be required to perform whatever maintenance Landlord deems necessary. If said maintenance is not undertaken by Tenant within thirty (30) days after receipt of written notice, Landlord shall have the right to enter on the Premises and perform the necessary maintenance, the cost of which shall be borne by Tenant.

Section 3.07 Utilities. Tenant shall pay for all costs or charges for utility services furnished to Tenant during the term hereof. Tenant 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, and Tenant shall pay for any and all service charges incurred thereof. If Landlord pays any utilities on Tenant's behalf, Tenant, upon receipt of a statement therefore, shall reimburse Landlord for Tenant'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 #2.

Section 3.08 Trash, Garbage, and Other Refuse. Tenant 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. Tenant 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. Tenant covenants and agrees that in no event will it enter into any business activity on the Premises other than those specified in Article I.

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 the Premises shall be limited to those identifying the uses conducted on the site and to those necessary for directional purposes. The size, design and location of all signs shall require the written approval of Landlord prior to installation. Said written approval shall be at Landlord's sole discretion. Outdoor advertising, billboards 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 Federal Aviation Administration (FAA) and its successor agencies. Tenant 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 of El Paso or any other local, state, or federal agency. It is specifically understood that Airport is only one of numerous departments of the City of El Paso and that, in addition to obtaining approval of Director, Tenant shall be required to obtain the approval in accordance with the City of El Paso City Code.

Section 3.12 Authorization to Enter Restricted Area. Tenant understands that the Premises include access to a restricted area of the Airport and that Tenant and its agents, employees, servants or independent contractors must be authorized by Landlord 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 Tenant upon Tenant's completion of security clearance and identification badging requirements necessary of all persons entering restricted areas of the Airport. As Tenant 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 3.13 Penalties Assessed by Federal Agencies. Tenant understands and agrees that in the event any federal agency assesses a civil penalty against Landlord or the Airport for any security violation as a result of or related to any act or failure to act on the part of Tenant, its agents,

employees or independent contractors, Tenant shall reimburse Landlord in the amount of the civil penalty assessed. Failure to reimburse Landlord within thirty (30) calendar days of receipt of written notice shall constitute an event of default hereunder.

Tenant acknowledges that it is familiar with the restrictions imposed on Landlord by the Federal Aviation Regulations (FAR) Part 1542 and any amendments, 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, Tenant agrees to develop a security plan and will submit same to the Transportation Security Administration (TSA) security office for required approval.

Tenant agrees to cause its employees, vendors, subcontractors, visitors, and all parties with whom it does business on the Premises to comply with the various airport security plans of the El Paso International Airport, as amended from time to time.

ARTICLE IV **TERM OF LEASEHOLD**

Section 4.01 Term. The term of this Agreement shall commence on January 19, 2022 (the "Effective Date"), and shall continue until January 18, 2023 (hereinafter referred to as "Initial Term").

Section 4.02 Automatic Renewal. This Agreement shall automatically renew for four (4) one-year renewal periods upon the expiration of the Initial Term (or any previous one-year renewal period), on the same terms and conditions; provided that Tenant is not in default and there is no condition or event which, with notice from Landlord would become an event of default under this Agreement.

Section 4.03 Termination by Tenant. This Agreement may be terminated by Tenant without cause by ninety (90) days prior written notice to Landlord.

Section 4.04 Holding Over. It is agreed and understood that any holding over by Tenant 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 (1½) times the current monthly rental, and Tenant shall be liable to Landlord for all loss or damage on account of any holding over 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 Landlord from Tenant 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 Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

Section 4.05 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. For the purpose of computing the rental payments, Landlord and Tenant agree that the Premises comprise the following:

6,614 Sq. ft. of Office and Warehouse Space:

Years 1-2: \$6.85/Sq. ft./annum = \$45,305.90/yr.

Years 3-5: \$7.00/Sq. ft./annum = \$46,298.00/yr.

3,400 Sq. ft. of Vehicle Parking Space at \$0.7250/Sq. ft./annum = \$2,465.00/yr.

3,400 Sq. ft. of Ground Service Equipment Parking Apron at \$0.7250/Sq. ft./annum = \$2,465.00/yr.

Initially, therefore, the Initial Annual Rental shall be \$50,235.90 per year.

Section 5.02 Commencement of Rental. Payment of rental by Tenant to Landlord as aforesaid shall commence on the Effective Date of this Agreement, which is first noted on the title page.

Section 5.03 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 5.04 Unpaid Rent, Fees and Charges. Any installment of rentals, fees, or other charges or monies accruing under any provisions of this Agreement that are not received by Landlord 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 Tenant.

Section 5.05 Place of Payment. All rental and other payments required herein shall be paid to Landlord at the following address:

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

Payment by electronic transfer in lieu of mail is encouraged via any transfer system acceptable to the Director.

ARTICLE VI
INSURANCE AND INDEMNIFICATION

Section 6.01 Liability Insurance. Tenant, at its sole cost and expense shall, throughout the term of this Agreement, provide and keep in force for the benefit of Tenant with the Landlord as

an additional insured, comprehensive general liability insurance in such amounts as specified by the Director but 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 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 6.02 Fire and Extended Coverage Insurance. Landlord agrees that, at all times throughout the term of this Agreement, it will keep the Air Cargo Building insured under a 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 re-determined every three (3) years. Upon receipt of a statement therefore, Tenant shall reimburse Landlord for Tenant'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.

If the operations conducted by Tenant, or anyone holding under Tenant, 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 Operations permitted hereunder, then the amount of such additional premium cost shall also be reimbursed by Tenant to Landlord.

6.03 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 Landlord, such approval not to be unreasonably withheld.

Certificates of insurance shall be delivered to Landlord 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;
- 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 Landlord; and
- E. A statement certifying the Landlord has been listed as an additional named insured on the policy.

Section 6.04 INDEMNIFICATION

- A. **INDEMNITY. TENANT AGREES TO INDEMNIFY AND HOLD LANDLORD AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, 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 TENANT'S BUSINESS ON THE PREMISES, ITS USE OF THE PREMISES, OR FROM ANY BREACH ON THE PART OF TENANT OF ANY TERMS OF THIS LEASE, OR FROM ANY ACT OR NEGLIGENCE OF TENANT, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, CONCESSIONAIRES, OR LICENSEES IN OR ABOUT THE PREMISES. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST LANDLORD BY REASON OF ANY SUCH CLAIM, TENANT, UPON NOTICE FROM LANDLORD, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO LANDLORD.**
- B. **THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE TENANT SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER TENANT.**
- C. **LANDLORD ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE PREMISES OR ANY PART THEREOF, AND LANDLORD IS HEREBY EXPRESSLY RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY FOR ANY LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY THAT MAY BE SUSTAINED BY REASON OF THE OCCUPANCY OF THE PREMISES UNDER THIS AGREEMENT.**

ARTICLE VII
CONDEMNATION

Section 7.01 Definitions. 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 Tenant;
 - 2. The conduct of Tenant's business on the Premises would be substantially prevented or impaired;
 - 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 Tenant 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 by 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 Tenant is required to vacate the Premises pursuant to a final order of condemnation or agreement between the parties hereto.

Section 7.02 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 7.03 Rights of Parties During Condemnation Proceeding. Landlord and Tenant 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 7.04 Taking of Leasehold. Upon a total taking, Tenant's obligation to pay rent and other charges hereunder together with Tenant's interest in the leasehold shall terminate on the Date of Taking. Upon a substantial taking, Tenant may, by notice to Landlord within ninety (90) days after Tenant receives notice of the intended taking, elect to treat the taking as a total taking. If Tenant does not so notify Landlord, 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 7.05 Total Taking. Upon a total taking, all of Tenant's obligations under the Agreement shall terminate as of the Date of Taking. Upon a Total taking, all sums awarded for any Tenant-owned improvements and the leasehold estate shall be disbursed to Tenant. All sums awarded for the Premises, as unencumbered by the Tenant-owned improvements, but subject to the Agreement, shall be disbursed to Landlord.

Section 7.06 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 Landlord and Tenant as follows: Tenant shall receive all sums awarded for Tenant-owned improvements and the Leasehold estate. Landlord shall receive all sums awarded for the Premises as unencumbered by the improvements but subject to the Agreement.

Section 7.07 Obligations of Tenant Under Partial Taking. Promptly after any such partial taking, Tenant, at its expense, shall repair, alter, modify or reconstruct the improvements on the Premises so as to make them reasonably suitable for Tenant's continued occupancy for the uses and purposes for which the Premises are leased; provided however, Landlord shall be solely responsible for any repairs, alterations, modifications, or reconstruction of the Structural Elements of the Air Cargo Building #2. Notwithstanding the foregoing to the contrary, should

there be a partial taking in the last year of the Initial Term or any renewal term, Tenant shall be relieved of the responsibility to so repair or reconstruct the improvements on Premises as aforesaid by notifying Landlord of its intention to that effect.

Section 7.08 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 Tenant 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 Tenant's continued occupancy for the uses and purposes for which the Premises are leased, after the termination of such taking, Tenant 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, Tenant 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 VIII **ENCUMBRANCES**

Section 8.01 Encumbrance. As used herein the term "Mortgage" includes a deed of trust and the term "Mortgagee" includes the beneficiary under a deed of trust. Tenant 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 Landlord 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, Landlord 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 Landlord upon Tenant under the terms and provisions of this Agreement so long as such Mortgage is in effect.

Section 8.02 Mortgagee's Rights. Upon receipt of a notice or demand in accordance with Section 8.01 above, Mortgagee shall have one hundred and twenty (120) 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 one hundred twenty (120) days, to commence performance within such one hundred twenty (120) 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 8.03 Rights on Foreclosure. In the event of foreclosure by Mortgagee, the purchaser at the foreclosure sale or the person acquiring Tenant's interest in lieu of foreclosure shall succeed to all of Tenant's rights, interests, duties and obligations under this Agreement.

Section 8.04 Estoppel Certificates. Upon request, Landlord, acting through the Director, may provide to Tenant or Tenant's Mortgagee an estoppel certificate containing the following information and no more: confirmation that Landlord remains owner of the Premises and lessor under this Lease; that this Lease contains the full agreement between Landlord and Tenant with regard to the Premises; that Tenant is current in its obligations under this Lease as of a certain date; that, to the best knowledge of Landlord, Tenant is not in default under the terms of the Lease nor is Landlord aware of any condition which with notice or the passage of time would constitute default under this Lease if uncured; and the beginning date, expiration date, length of term and number and length of any option terms under this Lease.

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

Section 9.01 Expiration. This Agreement shall expire at the end of the term or any extension thereof.

Section 9.02 Events of Default and Cancellation. Subject to the provisions of Article VIII above, the following shall be events of default and this Agreement shall be subject to cancellation by Landlord in the event Tenant 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 Landlord has notified Tenant 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 Tenant'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 Tenant, and such default continues for a period of thirty (30) days after receipt of written notice from

Landlord to cure such default, unless during such thirty-day period, Tenant 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 Tenant where such receivership is not vacated within sixty (60) days after the appointment of such receiver.

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

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

No receipt or acceptance of money by Landlord from Tenant 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 Landlord's consent is required or operate as a waiver of any right of the Landlord to retake and resume possession of the Premises.

Section 9.03 Repossessing and Reletting. In the event of default by Tenant hereunder which shall remain uncured after the required notices have been given pursuant to this Agreement, and for such time as provided herein, Landlord 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 Tenant and all personal property of Tenant (which property may be removed and stored at the cost of and for the account of Tenant), 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 Landlord. If Landlord 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 Tenant during such month or part thereof under the terms of this Agreement, Tenant shall pay such deficiency to Landlord immediately upon calculation thereof, providing Landlord 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 9.04 Assignment and Transfer. Tenant is not permitted to assign this Agreement; provided, that Tenant may assign this Agreement to its parent company upon Landlord's prior written consent. The foregoing notwithstanding, any person or entity to which this Agreement is assigned 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 Landlord an instrument confirming such assumption.

Section 9.05 Subleasing. Tenant is not permitted to sublease all or any part of the Premises.

Section 9.06 Rights Upon Expiration. At the expiration of this Agreement, Landlord shall be entitled to have the Premises returned to Landlord clear of all improvements constructed by Tenant, or on Tenant's behalf. Tenant shall have sixty (60) days after expiration in which to remove such improvements; provided that any occupancy by Tenant for the purposes of removal shall be subject to the rental due hereunder. If Tenant fails to so remove said improvements, Landlord may remove same at Tenant's expense. Landlord may, at its option, take title to the improvements in lieu of removal by or for Tenant.

Section 9.07 Landlord's Lien. It is expressly agreed that in the event of default in the payment of rentals or any other sum due from Tenant to Landlord under the terms of this Agreement, Landlord shall have a lien upon all goods, chattels, personal property or equipment, save and except delivery vehicles or rolling stock belonging to Tenant 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 Tenant grants to Landlord a security interest in all of Tenant'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. Landlord agrees that Landlord 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 Tenant, any subtenant or any assignee of the Tenant. In the event Landlord exercises the option to terminate the leasehold as provided herein, the Landlord, after providing reasonable notice to Tenant of its intent to take possession and giving an opportunity to cure the default, may take possession of all of Tenant's property on the Premises and sell it at a public or private sale after giving Tenant 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 Landlord 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 rentals or other sums due or to become due under this Agreement, with the balance, if any, to be paid to Tenant.

ARTICLE X
GENERAL PROVISIONS

Section 10.01 Right of Flight. Landlord 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.

Landlord 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.

Landlord 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 10.02 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 10.03 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:

LANDLORD: 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

TENANT: American Airlines, Inc.
P.O. Box 619616
MD 5317
DFW Airport, Texas 75261-9616

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 10.04 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 10.05 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 10.06 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 11.08 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 11.08 hereinafter referred to as the "sponsor") or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 10.07 Affirmative Action. Tenant assures that it will undertake an affirmative action program as required by 14 C.F.R. 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 ensure 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. Tenant assures that it will require that its covered sub-organizations (subtenants) provide assurances to Landlord, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (subtenants) to the same effect.

Section 10.08 Cumulative Rights and Remedies. All rights and remedies of Landlord here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Landlord of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

Section 10.09 Interpretation. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

Section 10.10 Agreement Made in Writing. This Agreement contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest.

Section 10.11 Paragraph Headings. The Table of Contents 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 10.12 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 10.13 Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Landlord and Tenant and their successors, assigns, legal representatives, heirs, executors and administrators.

Section 10.14 Taxes and Other Charges. Tenant shall pay any and all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against the Tenant or the Landlord, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Tenant'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 Landlord, Tenant shall provide written proof satisfactory to the Director that all taxes and governmental charges of any kind have been paid in full.

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

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

Section 10.15 Waiver of Warranty of Suitability. LANDLORD DISCLAIMS ANY WARRANTY OF SUITABILITY THAT MAY ARISE BY OPERATION OF LAW. TENANT LEASES THE PREMISES AS-IS AND LANDLORD DOES NOT WARRANT THAT THERE ARE NO LATENT DEFECTS THAT ARE VITAL TO TENANT'S USE OF THE PREMISES FOR THEIR INTENDED COMMERCIAL PURPOSE.

Section 10.16 Survival of Certain Provisions. All provisions of this Agreement which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of this Agreement hereunder shall survive such cessation, expiration, cancellation, or termination, including without limitation, provisions regarding indemnification, environmental responsibility, and the like.

Section 10.17 Authorization to Enter Agreement. If Tenant signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of Tenant warrants to

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

Section 10.18 FAA Order 1400.11. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. 1. The Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) 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, Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
2. In the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the lease and to enter or re-enter and repossess said 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 Tenant for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.
2. In the event of breach of any of the above nondiscrimination covenants, Landlord will have the right to terminate the lease and to enter or re-enter and repossess said 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, Tenant for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following

non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
 - 49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973);
 - 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, Landlord 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 10.19 General Civil Rights Provision. Tenant 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 Tenant transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

Section 10.20 Compliance with Nondiscrimination Requirements. During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest (for purposes of this Section 10.20 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 Landlord (for purposes of this Section 10.20 hereinafter referred to as the “sponsor”) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States

Section 10.21 Complete Agreement. This Agreement, together with the Exhibits 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 no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.


[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this _____ day of _____, 2022.

LANDLORD: 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

LANDLORD'S ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 202_,
by Tomás González as City Manager of the City of El Paso, Texas (Landlord).

My Commission Expires:

Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

TENANT: AMERICAN AIRLINES, INC.

[Handwritten Signature]

Name: Kirk Hotelling
Title: Vice President, Airport Affairs & Facilities

TENANT'S ACKNOWLEDGMENT

STATE OF Texas)
)
COUNTY OF Tarrant)

This instrument was acknowledged before me on this 5th day of January, 2022
by Kirk Hotelling, as Vice President, Airport Affairs and Facilities of American Airlines,
Inc. (Tenant).

[Handwritten Signature]

Notary Public

My Commission Expires: 05-21-2022

