

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

**DEPARTMENT:** Airport

**AGENDA DATE:** October 9, 2012

**CONTACT PERSON/PHONE:** Monica Lombraña, A.A.E. -780-4793

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Approval for the City Manager to sign the Airline Operating Agreement and Terminal Building Lease (Signatory Agreement) and Operating Agreement (Non-Signatory Agreement).

**BACKGROUND / DISCUSSION:**

This item is requesting approval of the format of the Signatory Agreement and Non-Signatory Agreement which will be executed by the passenger airlines and cargo carriers operating at El Paso International Airport (Airport). Upon approval, the Airport will send the relevant agreement to each airline for execution and then forward to the City Manager for signature.

The Airport retained Ricondo & Associates as a consultant to assist Airport staff with airline negotiations. Meetings with the airlines were conducted and these agreements reflect the final product of the negotiations. While the basic structure of the agreements remains the same as the current agreement, language was updated to current industry form and cost centers were restructured that are more consistent with industry practices. Additionally, air cargo carriers with landed weight over 70,000,000 pounds per year will be allowed to enter into Signatory Agreements as well.

Currently, Signatory Agreements are in month to month status with the following airlines:

- Air Wisconsin Airlines (United Airlines)
- American Airlines
- Continental Airlines (United Airlines)
- Delta Air Lines
- Southwest Airlines
- US Airways

The term of the new Signatory Agreement is five years, effective September 1, 2012, with 2 one year option periods. Passenger airlines and cargo carriers executing the Signatory Agreement will be charged signatory rates for landing fees and terminal rental rates as adopted in the City Budget Resolution. Affiliates of airlines executing a Signatory Agreement will be required to execute a Non-Signatory agreement.

Any airline operating at the Airport that does not desire to enter into the Signatory Agreement will be required to execute a Non-Signatory Agreement. The term of the Non-Signatory Agreement Airlines will run concurrent with the Signatory Agreement (including option periods) with a 90 day mutual termination provision. Airlines executing the Non-Signatory Agreement will be charged non-signatory rates (25% over signatory rates) for landing fees and terminal rental rates as adopted in the City Budget Resolution.

**Note:** On Jan. 6, 2004, the City Council approved a policy on the standard indemnification language to be used in City contracts. The standard indemnification language was modified not to require indemnification of the City for negligence attributed to City employees. However, the motion specifically stated that the policy did not apply to operating agreements entered into for the El Paso International

Airport. After lengthy discussions with the airlines and in consultation with the City Attorney's Office, the City's insurance carrier and Risk Manager, the indemnification provision in these agreements has been modified and the required indemnification of the City for negligence attributed to City employees is not included. The indemnification provision in these agreements state that the joint and concurring responsibility of the City and the Airline will be borne comparatively in accordance with the law of the state of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A - Revenue Generating

**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**



\_\_\_\_\_  
Monica Lombraña, A.A.E., Director of Aviation

*Information copy to appropriate Deputy City Manager*

# RESOLUTION

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

That the City Manager be authorized to sign, on behalf of the City of El Paso, an Airline Operating Agreement and Terminal Building Lease and an Operating Agreement, which shall be in the formats attached hereto. All such agreements shall be approved "As to Form" by the City Attorney prior to execution.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

### THE CITY OF EL PASO

\_\_\_\_\_  
John. F. Cook  
Mayor

### ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

### APPROVED AS TO FORM:



\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

### APPROVED AS TO CONTENT:



\_\_\_\_\_  
Monica Lombraña, A.A.E.  
Director of Aviation

**EL PASO INTERNATIONAL AIRPORT**

**AIRLINE OPERATING AGREEMENT AND  
TERMINAL BUILDING LEASE**

BY AND BETWEEN

**THE CITY OF EL PASO**

AND

---

AIRLINE

**AIRLINE OPERATING AGREEMENT AND  
TERMINAL BUILDING LEASE**

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**EXHIBITS**

<b>Exhibit A</b>	Cost Center Plan
<b>Exhibit B-1</b>	Terminal Premises Level One
<b>Exhibit B-2</b>	Terminal Premises Level Two
<b>Exhibit C-1</b>	Illustrative Calculation of Terminal Building Rentals
<b>Exhibit C-2</b>	Illustrative Calculation of Landing Fees
<b>Exhibit D</b>	Operations, Maintenance, and Service Responsibilities
<b>Exhibit E</b>	Preferentially Assigned Equipment Parking Spaces

**EL PASO INTERNATIONAL AIRPORT  
AIRLINE OPERATING AGREEMENT AND  
TERMINAL BUILDING LEASE**

THIS AGREEMENT AND LEASE (hereinafter referred to as the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **CITY OF EL PASO, TEXAS** ("City") and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, ("Airline").

**WITNESSETH:**

**WHEREAS**, Chapter 22 of the Texas Transportation Code 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**, Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the El Paso International Airport ("Airport") and lease from City certain premises and facilities in connection with its use of the Airport; and

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

**WHEREAS**, the City and Airline have the power and authority to enter into this Agreement;

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

**ARTICLE 1 - DEFINITIONS**

**SECTION 1.01 DEFINITIONS**

The following words and phrases, wherever used in this Agreement, shall, for the purpose of this Agreement, have the following meanings:

"Affiliate" means any Air Transportation Company that is: (1) a parent or subsidiary of Airline, or its parent; or (2) shares an International Air Transport Association (IATA) code with Airline at the Airport (code-sharing partner); and

11-1003-026/135639\_2 (9-27-12 clean)  
(replaces 122036\_6 (9/26/12))  
Airline Operating Agree & Terminal Bldg. Lease

otherwise operates under essentially the same trade name as Airline at the Airport, and uses essentially the same livery as Airline. All seats on the Affiliates' aircraft will be sold in the name of the Signatory Airline in which they are serving as the Affiliate. A Signatory Airline must designate in writing to the City any Air Transportation Company that will be an Affiliate of that Signatory Airline at the Airport. Affiliates shall have the rights afforded Airline without payment of any additional charges or premiums, provided Airline (a) remains a Signatory Airline to this Agreement; and (b) agrees and shall be obligated to serve as a financial guarantor for all rentals, fees, and charges incurred by any Affiliate of Airline at the Airport. Airline shall be responsible for any and all unpaid rentals, fees, and charges of any such Affiliate while such Affiliate operates at the Airport.

"Agreement" means this Operating Agreement and Terminal Building Lease between City and Airline, as the same may be amended, modified, or altered from time to time pursuant to the terms hereof.

"Air Transportation Business" means that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Air Transportation Company" means the legal entity engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, parcels, and/or cargo.

"Aircraft Arrival" means any aircraft arrival at the Airport, including, without limitation, scheduled, non-scheduled, diverted, training, testing, charter, or any other flight operated by an Air Transportation Company. Aircraft Arrivals exclude flights, which are forced to return and land at the Airport because of meteorological conditions, mechanical or operating causes, or emergency or precautionary reasons.

"Airline" means the Air Transportation Company executing this Agreement.

"Airline Equipment or Improvement" means any item of equipment or any improvement to Airline's Leased Premises provided or installed at request by Airline.

"Airport" means the identified areas "Airfield", "Terminal Building", "Air Cargo", "Aviation" and "Ground Transportation" at the El Paso International Airport: as shown in Exhibit A, Cost Center Map, attached hereto and made a part hereof, as it may be modified or developed from time to time, including all real property easements or any other interest within the identified areas therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City.

“Airport Cost Centers” means the cost centers to be used in accounting for Airport revenues and expenses and for calculating and adjusting certain rentals, fees, and charges described herein, as they now exist or may hereafter be modified, changed, or developed, as more particularly described below and depicted on Exhibit A as such Exhibit may be modified by the City from time to time:

1. Direct Cost Centers

- “Terminal Building” means the passenger terminal building and associated curbside entrance areas and adjoining landscaped areas.
- “Ground Transportation” means public and employee vehicle parking areas; rental car, ready/return parking areas; commercial vehicle parking areas; terminal roadways; and associated landside support facilities and areas.
- “Airfield” means that portion of the Airport providing for the landing, taking off, and taxiing of aircraft, including runways, taxiways, approach and runway protection zones, safety areas, infield areas, landing and navigational aids, and land areas required by or related to aeronautical use of the Airport. This cost center also includes the aircraft aprons at the Terminal Building and Air Cargo locations.
- “Aviation” means the hangars, buildings, and apron areas occupied by the Airport’s fixed base operators, other commercial aviation operators, and corporate/private aircraft operators.
- “Air Cargo” means the airfreight and cargo facilities located southwest of the Terminal Building on Convair Road and northeast of the Terminal Building on George Perry Boulevard.
- “Nonaviation” means those portions of the Airport set aside for non-aviation related commercial and industrial uses, including but not limited to industrial parks, golf courses, and any non-aviation related areas located, now or as may be located in the future, in any portion of the Airport.

2. Indirect Cost Centers

- “Administration” means all personnel, services, supplies, equipment, and facilities used to provide administrative support to Airport operations.
- “Public Safety” means all personnel services, supplies, equipment, and all facilities used to provide ARFF, Police,

Canine, and Fire and Medical Services support to Airport operations.

- “Dispatch/Badging” means all personnel services, supplies, equipment, and all facilities used to provide badging for personnel on the Airport, and to provide dispatching services.

“Airport Revenue Bonds” means any bonds issued by City for Airport purposes secured by a pledge of the revenues of the Airport except for any Special Facilities Revenue Bonds.

“Airline Terminal Support System” means any system or service supporting Airline operations in the Terminal Building, including but not limited to, telecommunications, security, access control, paging, flight or baggage information display or similar systems or services.

“Bond Ordinance” means any ordinance of City regulating or authorizing the issuance of bonds, other than Special Facilities Revenue Bonds, for Airport purposes, or payable from Airport revenues, as the same may from time to time be adopted, amended, or supplemented.

“Bonds” means Airport Revenue Bonds or any other similar or substitute financing instruments issued for Airport purposes under and pursuant to authorizing legislation.

“Capital Improvement Program” means the Airport’s program of Capital Improvements as such program may be amended from time to time at City’s sole discretion.

“Capital Improvement” means any single item or project costing more than one hundred twenty-five thousand and 00/100 dollars (\$125,000.00) (net of PFC revenue and grants-in-aid) and having a useful life in excess of five (5) years that is acquired, purchased, or constructed by City to improve, maintain, preserve, or develop the Airport. Capital Improvements shall include, but not be limited to: (1) the acquisition of land or easements; (2) the purchase of machinery, equipment, or rolling stock; (3) the planning, engineering, design, and construction of new facilities; or (4) the performance of any extraordinary, non-recurring major maintenance or replacement of existing facilities.

“City” means the City of El Paso, a municipal corporation organized under the laws of the State of Texas and its officers, directors, agents, and employees.

“Common Use Premises” means those non-exclusive areas at the Airport, used in common by Airline, along with other authorized users of the Airport, along with all facilities, improvements, equipment, and services which are, or hereafter may be, provided for such common use, as shown on Exhibit B-1.

“Coverage” for any series of Airport Revenue Bonds means, for any Fiscal Year, the dollar amount computed by multiplying the rate covenant percentage set forth in any Bond Ordinance adopted by City by the annual debt service requirement for such Fiscal Year.

“Department” means the Department of Aviation of the City.

“Director” means the Director of Aviation of the Department of Aviation or other person properly authorized to act on behalf of Director.

“Enplaned Passengers” means all local, interline transfer, and intraline transfer passengers boarding flights of Airline, its Affiliates, or any other Air Transportation Companies using any of the Leased Premises of Airline at the Airport including revenue and non-revenue passengers but excluding Airline employees.

“Environmental Laws” means all present or future local, state or federal statutes, ordinances, rules, regulations (proposed or adopted), permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof (including specifically but without limitation, the City of El Paso), having governmental authority, relating to:

- (1) the protection of health, safety and the indoor or outdoor environment;
- (2) the conservation, management or use of natural resources and wildlife;
- (3) the protection or use of surface water and ground water;
- (4) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined below); or
- (5) pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water);

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Clean Water Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (U.S.C. §300f-§300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42

U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of this paragraph to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of this paragraph.

“Equipment and Capital Outlay” means any single item or project not included in Maintenance and Operating Expenses or defined as a Capital Improvement. The cost of an item of Equipment and Capital Outlay shall be accounted for as a current expense.

“Exclusive Use Premises” means those portions of the Terminal Building assigned exclusively to Airline, as shown on Exhibit B-1, attached hereto.

“FAA” means the Federal Aviation Administration of the U.S. Department of Transportation or any federal agency(s) succeeding to its jurisdiction.

“Fiscal Year” means City’s fiscal year, which is the twelve-month period commencing September 1 and extending to August 31 of the following year, or such other twelve-month period as may be adopted for the operation of City or Airport.

“Hazardous Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U. S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable Environmental Laws.

“International Arrivals Area” means that area in the Terminal Building at the Airport designated for federal inspection services (FIS).

“Joint Use Premises” means those Terminal Building areas which may be assigned to two or more Air Transportation Companies, as shown on Exhibit B-2, attached hereto.

“Leased Premises” means any areas on the Airport leased by City to Airline, whether on an Exclusive, Joint, Common, Shared, Preferential, non-preferential or temporary use basis, as depicted on Exhibits B-1 and B-2 as attached hereto and made a part hereof.

“Maintenance and Operating Expenses” (or “M&O Expenses”) means, for any Fiscal Year, all expenses, paid or accrued, to maintain, repair, operate and administer the Airport, including, but not limited to, taxes and assessments, if any, and expenses for defending, settling, or satisfying litigation.

“Maximum Gross Landed Weight” means the maximum allowable landing weight of each aircraft operated by Airline at the Airport as authorized by the FAA and recited in Airline’s flight manual governing that aircraft.

“Passenger Facility Charge” or “PFC” means the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statutes and regulations currently exist or as they may be amended, modified, or supplemented during the Term of this Agreement.

“Preferential Use Premises” means those portions of the Terminal Building and aircraft aprons assigned to Airline, as shown on Exhibit B-2, attached hereto, to which Airline shall have priority over other users, subject to the provisions of Article 4.

“Renewal and Replacement Reserve” means that reserve defined in the Bond Ordinance for the purposes of funding renewal and replacement expenditures of the City for the Airport.

“Rules and Regulations” means those rules, regulations, policies, and procedures that have been established by City or the Department for the orderly and efficient use of the Airport by airlines and other tenants and users as the same may be amended, modified, or supplemented from time to time. Such Rules and Regulations shall be made available by City to Airline upon request of Airline.

“Shared Use Premises” means those portions of the Terminal Building shared by Airline with other Air Transportation Companies, as shown on Exhibit B-1, attached hereto.

“Signatory Airlines” means those Air Transportation Companies that lease a minimum of one (1) ticket counter position and other space in the Terminal Building deemed sufficient by the Director to support their operations, provided that the total of Terminal Building space leased to each Signatory Airline is at least 1,100 square feet; and has an agreement with the City substantially similar to this Agreement. An all-cargo Air Transportation Company shall be considered a Signatory Airline if it guarantees a minimum of seventy million (70,000,000)

annual units of Maximum Gross Landed Weight throughout the Term of this Agreement, leases facilities on the Airport from City in a minimum annual amount of at least Eighty-five Thousand and no/100 Dollars (\$85,000), for a term at least equal to the Term of this Agreement, and has an agreement with City substantially similar to this Agreement. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein.

“Special Facilities” means capital improvements or facilities located on any property owned or leased by City and located at Airport, which are financed by the issuance of Special Facilities Revenue Bonds.

“Special Facilities Revenue Bonds” means any debt of City which is permitted by, but not issued pursuant to, the terms of the Bond Ordinance and which is secured by and payable solely from rentals or other charges derived by City under a lease, sale or other agreement (or any document securing the same) between City and the person, firm or corporation utilizing the Special Facilities financed thereby.

“Term” means the period of time during which Airline’s activities at the Airport are governed by this Agreement. Said Term shall begin on the Effective Date, and, except as otherwise set forth herein, terminate on the date set forth in Article 2.

“Title 14” means that portion of the El Paso City Code addressing aircraft and airports, as the same may be amended, modified, or supplemented from time to time.

“Total Airline Landed Weight” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of Airline over a stated period of time.

“Total Airline Landed Weight of Signatory Airlines” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of all Signatory Airlines over a stated period of time. Said sum shall be rounded to the nearest thousand (1,000) pounds for all landing fee computations.

“TSA” means the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

“Usable Space” means the gross space in the Terminal Building at the Airport less mechanical and related storage space and service areas as identified on Exhibits B-1 and B-2.

Additional words and phrases used in this Agreement but not defined either in this Article 1 or elsewhere herein shall have the meanings as defined under the Bond Ordinance or, if not so set forth, shall have their usual and customary meaning.

## **SECTION 1.02 CROSS-REFERENCES**

References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

## **ARTICLE 2 - TERM**

### **SECTION 2.01 TERM**

This Agreement shall commence on September 1, 2012 (Effective Date) and terminate at midnight on August 31, 2017, unless cancelled sooner as provided herein.

### **SECTION 2.02 TERMINATION OF EXISTING AGREEMENTS**

Any Terminal Building leases and operating agreements heretofore executed between the parties covering or pertaining to the Airport are canceled and terminated as of the Effective Date of this Agreement, provided that such cancellation and termination shall not be construed as a waiver, relinquishment, or release of any claims, damages, liability, rights of action, or causes of action that either of the parties hereto may have against the other under such existing leases and agreements and that have accrued before the Effective Date of this Agreement.

### **SECTION 2.03 HOLDING OVER**

It is agreed and understood that any holding over by Airline of the Leased Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at rates, fees, charges, and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution and Airline shall be liable to City for any loss or damage on account of any holding over against City's will after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated or not.

### **SECTION 2.04 EXTENSION**

In the event Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for two (2) one-year renewal periods, through the mutual written agreement of Airline and City. To extend the term of this Agreement, the Director shall give written notice to Airline of City's intent to extend the Agreement no less than three (3) months prior to the expiration of the term of the Agreement or any extension. If Airline is not willing to renew for the extension period, Airline will be

released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent within thirty (30) days from the notification of the City's intent to extend the term. During any extension period, the Agreement shall be extended on the same terms and conditions, except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

## **ARTICLE 3 - RIGHTS AND SPECIFIC PRIVILEGES**

### **SECTION 3.01 USE OF THE AIRPORT**

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common or joint use, subject to the Rules and Regulations.

### **SECTION 3.02 SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT**

Airline shall have the right, subject to conditions contained herein and in addition to all rights elsewhere granted in this Agreement, to use the Airport for the following purposes, subject to the Rules and Regulations:

- A. The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline, subject to the availability of space, and subject to such reasonable charges, regulations, and/or restrictions City may establish; provided however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.
- C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.
- D. The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's Air Transportation Business, and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to

the use of same. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations and in only those areas designated by Director. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.

- E. The purchase of Airline's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's Air Transportation Business. Nothing herein shall restrict City from levying nondiscriminatory concession or privilege fees or charges on any person or company conducting business at the Airport other than an Air Transportation Business.
- F. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies to other Air Transportation Companies subject to City's right to charge and collect fees or commissions for such sales or exchanges as provided in Section 3.04 (H). Such right shall not be construed as authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only those functions that are incidental to the operation of its Air Transportation Business.
- G. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at its Preferentially Assigned Aircraft Parking Areas or other aircraft parking positions designated by Director subject to the Rules and Regulations. Director reserves the right, at any time, to designate other locations reasonably accessible from the Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities would interfere with aircraft operations of other Air Transportation Companies at the Terminal Building.
- H. The installation and operation of identifying signs and graphics on Airline's Leased Premises, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other Air Transportation Companies; (2) consistent with Department's graphics standards as established from time to time by Director; (3) in compliance with the Rules and Regulations; and (4) in compliance with City Code and all local laws and ordinances. However, Airline shall not install any promotional displays or advertising

displays in its Leased Premises unless authorized in writing, in advance, by Director.

- I. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements. Airline is required to use the City's Multi-user Flight Information Display System (MUFIDS) and agrees to abide by the rules established by City for its use. Airline may use its own Flight Information Display System (FIDS) in its Leased Premises subject to the prior written consent of Director and subject to such reasonable conditions as Director may require.
- J. The provision of baggage porter, skycap, or curbside airline baggage check-in services. Airline may arrange with other Air Transportation Companies to provide such services or may provide such services on its own behalf.
- K. The use of the International Arrivals Area, depicted on Exhibits B-1 and B-2, in common with other authorized users, subject to availability and payment of then current use charges.
- L. The installation of loading bridge(s) at Airline's Preferentially Assigned Aircraft Parking Areas, subject to the following:
  1. The requirement to permit the use of such loading bridge(s) by other Air Transportation Companies which may be assigned the use of Airline's gate(s) pursuant to Section 4.02 during periods when such gate(s) is not in use by Airline.
  2. The right to assess and collect charges, as defined in Section 4.02A, from others for the use of such loading bridge(s) and any associated systems, equipment, or furnishings purchased and installed by Airline.
  3. The requirement that any loading bridge(s) owned by Airline but not installed at Airline's Preferentially Assigned Aircraft Parking Area(s) shall, upon sixty (60) days advance written notice from Director, be removed from the Airport at the Airline's expense unless Airline agrees to a sale to City. Any loading bridge not removed by Airline

prior to the expiration of the aforesaid sixty (60) day period, shall thereupon become a part of the land upon which it is located and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of Airline's loading bridge(s) after such sixty (60) day period.

- M. The right to erect, maintain, and station security screening devices and to conduct a security check operation of passengers, baggage, and packages in the Airline's Exclusive Use Space or Joint Use Space at a location approved by Director in his or her reasonable discretion.
- N. The right, in common with other Air Transportation Companies, to the use of City's lifting device, as required by 14 CFR Part 382, and any amendments thereto, and permits the use of that equipment in the course of the Airline's operations, including the performance of passenger handling/boarding services for other Air Transportation Companies at the Airport.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Agreement are reserved for and to City.

### **SECTION 3.03 EMPLOYEE PARKING FACILITIES**

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

### **SECTION 3.04 LIMITATIONS ON USE BY AIRLINE**

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

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport.
- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon

operations permitted by this Agreement. If Airline shall do or permit to be done any act not permitted under this Agreement, or fail to do any act required under this Agreement, regardless of whether such act shall constitute a breach of this Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.

- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft 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, unless such waste material or products first be properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction.
- D. Shall not keep or store any Hazardous Materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport except when all the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said materials shall be under the control and care of designated and properly qualified Airline personnel; (3) said materials shall be packaged, handled and stored in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and other applicable regulations for transport, pre-transport and storage of hazardous articles and materials, including the Airport's Spill Prevention, Control, and Countermeasure (SPCC) Plan; and (4) said materials shall be only stored in such storage areas as are designated. Director reserves the right to require Airline to relocate any stored hazardous material necessary.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of City. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and City.
- F. Shall not maintain or operate in the Terminal Building 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, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft or to passengers boarding Airline's aircraft for consumption on board and provide vending machines solely for the sale of hot and cold beverages, food, and

confections to Airline employees in areas not accessible to the general public. Airline may, by separate agreement with the City and to the extent it does not conflict with any terminal concession agreements, engage in the provision or sale of food or beverages at any airline club room or similar private facility at the Airport. However, in the event of originating flight delays greater than one hour, or for diverted flights or originating flights that have returned to the Airport, Airline may provide water and typical onboard snacks (e.g., peanuts, pretzels, etc.) at no charge to Airline's passengers in the holdroom area.

- G. Agrees to comply with all security measures required of Airline or City by the FAA or contained in City's FAA-approved Master Security Plan for the Airport, as such plan may be amended from time to time, or in any Airport Tenant Security Program as outlined in 49 CFR Part 1542 with respect to Airline's Exclusive Use Premises. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, or suppliers while under its control, shall be immediately due and payable to City by Airline.
- H. The rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation Business at the Airport may be exercised by Airline for and on behalf of Airline's regularly scheduled or unscheduled services and those of its Affiliates. Airline may, subject to the prior written approval of Director, and, where applicable, the payment of fees or commissions as provided for in this Agreement, perform ground services for any other Air Transportation Company using the Airport provided that Airline shall be solely responsible for the reporting to City of all such Air Transportation Company's landings, landed weights, and passengers and for the payment of all fees and amounts payable excluding PFCs, by or on account of such Air Transportation Company to City under this Agreement or under Title 14 unless such Air Transportation Company is a Signatory Airline. It is understood and agreed that City reserves the right to control access to restricted areas and to collect reasonable fees or commissions for the provision of in-flight catering, vending, ground transportation, ground support, or other services by Airline for any Air Transportation Company other than Airline and for any services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with City.
- I. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated on Exhibit E or otherwise designated by Director.

- J. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) machines for the sale of Airline's tickets or issuance of boarding passes located on Airline's Leased Premises or other areas approved in writing by Director; or (2) beverage or snack machines as provided in Section 3.04 (F) above.

### **SECTION 3.05 AIRPORT USE SUMMARY**

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times, maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- The current and proposed schedules of Airline's flight activity at the Airport. Airline shall notify Director of schedule changes or the addition or deletion of flights at the Airport prior to or no later than the public announcement thereof.
- The description of Airline's fleet and identification of the type of Airline's aircraft that are serving or will serve the Airport. Airline shall provide notice of the introduction of any aircraft that is not being operated by Airline at the Airport as of the date of this Agreement.
- Airline's aircraft recovery plan for disabled aircraft.

Such Airport Use Summary shall be updated and re-filed with Director whenever there is a change to the nature of Airline's operations at the Airport or whenever Director shall reasonably request the same.

## **ARTICLE 4 - PREMISES**

### **SECTION 4.01 PREMISES**

- A. Categories of Space.

Airline shall lease areas in or adjacent to the Terminal Building on an Exclusive Use, Joint Use, Common Use, Shared Use, or Preferential Use basis (or combination thereof) as follows and as more particularly delineated on Exhibits B-1 and B-2, as such exhibits may be modified.

B. Space in Terminal Building.

At the Effective Date of this Agreement, Airline shall lease or use the areas in or adjacent to the Terminal Building shown on Exhibits B-1 and B-2. Airline's Leased Premises in the Terminal Building shall be subject to change from time to time by Director, after consultation with Airline. Any such changes shall be incorporated herein by Director transmitting to Airline replacement Exhibits B-1 and B-2.

C. City may, during the Term of this Agreement, expand or modify the leasehold dimensions or location of Joint Use Space or Common Use Space. If City elects to expand or modify the dimensions or location of such space, Director shall consult with and consider any suggestions of Airline, but the approval of Airline shall not be required for any such expansion or modification by Director.

D. The dimensions on Exhibits B-1 and B-2, as such exhibits may be modified, shall be the basis for determining the amount of the rentals payable pursuant to Articles 6 and 7. Director shall issue new Exhibits B-1 and B-2 after any Terminal Building expansion or modification.

#### **SECTION 4.02 EQUIPMENT AND AIRCRAFT PARKING AREAS AND HOLDROOMS**

A. Aircraft Parking Areas, including associated aircraft loading positions, apron areas and loading bridges ("gates") as shown on Exhibit "B-2" as such exhibit may be amended from time to time by Director, and associated Joint Use Space in the Terminal Building ("holdrooms") shall be assigned to Airline by Director on a preferential, nonexclusive use basis. Airline shall have priority in using gate(s) and holdroom(s) assigned to it on a preferential use basis to accommodate its flights provided that Director may authorize other Air Transportation Companies to use such gate(s) and holdroom(s) in accordance with the provision of Section 4.03.

B. City reserves the right to reassign or recapture possession of one or more of Airline's preferentially assigned gate(s) and holdroom(s) if: (1) Airline's scheduled overall gate utilization falls below four (4) flights per gate per weekday and (2) Director determines that other suitable gate(s) are not available and there is a need for the use of such gate(s) by another Signatory Airline. Notice of such recapture or reassignment will be provided to Airline by written notice from Director requesting discussions with Airline and transmitting a revised Exhibit B-1 and B-2. Airline shall then have fifteen (15) days from receipt of said notice to respond to Director's notice either by accepting it or offering alternatives for consideration by the Director. At the end of this fifteen (15) day period, the Director may, at his or her discretion, accept the alternative, if any, or

proceed with the plan contained in the original notice. In the event of any reassignment or recapture, Airline will be entitled to payment by the Signatory Airline accommodated for the unamortized book value of any Airline-owned loading bridge or tenant improvements, and for any reasonable relocation costs. Accommodating Airline shall not be required to relocate until such time as this payment has been made.

- C. Airline shall park all its ground service equipment in its preferentially assigned Equipment Parking Area as set forth on Exhibit B-1. In the event Airline requires additional equipment parking, such parking shall be subject to availability, the written approval of Director, and applicable Rules and Regulations.
- D. Airline shall have the right to park one aircraft overnight per preferentially assigned gate. Airline may park more than one aircraft overnight per preferentially assigned gate subject to the prior approval of Director.
- E. During any construction or remodeling at the Terminal Building, City reserves the right, after consultation with a committee of local station managers selected by the Signatory Airlines, to temporarily reassign preferential use gates.
- F. Airline shall cooperate with City to accommodate other Air Transportation companies from time to time, as deemed necessary by Director for situations including, but not limited to, unscheduled flights (including charters), mechanical problems, and diversions due to weather.

#### **SECTION 4.03 ACCOMMODATION OF AIRLINE AND OTHER AIRLINES**

To maximize the use of terminal facilities at the Airport, to facilitate the entry of new Air Transportation Companies, and to accommodate the expansion plans of present Air Transportation Companies, Airline agrees, upon the request of Director, to accommodate in its Leased Premises any Air Transportation Company requesting facilities ("Requesting Airline") in accordance with the following procedure:

- A. In order to secure the use of Terminal Building facilities, a requesting airline may:
  - 1. Arrange to use City-controlled Terminal Building space and gates not preferentially assigned on a permit basis; or
  - 2. Contact Airline and other Signatory Airlines to request the use of such Leased Premises.
- B. In the event the Requesting Airline demonstrates to the satisfaction of Director that it has made all reasonable efforts to secure facilities without

success, Director shall then notify all Signatory Airlines in writing that, if Requesting Airline is not accommodated within fifteen (15) days from the date of said notice, Director shall select one of the Signatory Airlines to comply with the request for accommodation.

- C. At the end of said fifteen (15) day period, if Requesting Airline has not been accommodated, Director shall select Airline or another Signatory Airline to accommodate the Requesting Airline, taking into consideration such factors as current utilization of terminal facilities, schedule compatibility, union work rules, competitive relationships, and other relevant factors. Director shall send written notice to such selected Air Transportation Company (the "Accommodating Airline") requiring such airline to begin accommodating the Requesting Airline within thirty (30) days from the date of said notice. Director shall include in such notice the reason or reasons why such Accommodating Airline was selected.
- D. Upon receipt of said notice, the selected Accommodating Airline may submit written comments to Director contesting its selection and Director shall consider such comments before confirming or rescinding such selection. However, the decision of Director shall be final.
- E. Unless Director rescinds such selection within the thirty (30) day period specified in Section 4.03 (C), the Accommodating Airline shall accommodate the Requesting Airline by sharing its Leased Premises and aircraft parking positions on a timely, good faith basis and in a reasonable and equitable manner, subject to the following conditions:
  - 1. In case of a conflict between schedules of the Accommodating Airline and the Requesting Airline, the Accommodating Airline shall have preferential use of its Leased Premises and preferentially assigned Aircraft Parking Areas.
  - 2. The Accommodating Airline shall not require that the Requesting Airline obtain ground handling or other services from the Accommodating Airline.
  - 3. The Accommodating Airline may assess the Requesting Airline reasonable and non-discriminatory fees and charges for services rendered to, or Leased Premises shared with, Requesting Airline, which fees and charges shall be limited to Airline's actual direct and indirect costs of providing, maintaining, and operating the shared facilities and equipment plus a reasonable allowance for administration and profit not to exceed 15% of such costs. Airline may further require a payment bond or other third party guarantee from the Requesting Airline.

4. The Accommodating Airline may require the Requesting Airline to insure and indemnify the Accommodating Airline against liability arising out of the use of its facilities and equipment.

#### **SECTION 4.04 USE OF CITY LOADING BRIDGES**

- A. Any loading bridges owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned loading bridges by Airline shall be subject to the following terms and conditions:
  1. The loading bridges shall be operated only by employees, contractors, or agents of Airline, who are approved and qualified by Airline to operate the loading bridges.
  2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the loading bridges by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
  3. Airline shall be solely responsible for the costs to replace or repair any damage to loading bridges or other property caused by the operation of the loading bridges by its employees, contractors, or agents.
  4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned loading bridges referred to herein.
  5. Airline shall pay the loading bridge charge as provided in Section 6.11.

#### **SECTION 4.05 USE OF CITY LIFTING DEVICE**

- A. Any lifting device owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned lifting devices by Airline shall be subject to the following terms and conditions:

1. The lifting devices shall be operated only by employees, contractors, or agents of Airline who are approved and qualified by Airline to operate the lifting devices.
2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the lifting devices by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
3. Airline shall be solely responsible for the costs to replace or repair any damage to lifting devices or other property caused by the operation of the lifting devices by its employees, contractors, or agents.
4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned lifting devices referred to herein.

#### **SECTION 4.06 REQUIREMENT TO REMAIN IN CONFINES OF EXCLUSIVE USE SPACE**

Airline shall, at all times, with regards to their Exclusive Use Space, occupy and use only that space that is designated their Exclusive Use Space. Failure of Airline to remain within the confines of its Exclusive Use Space shall be a breach of this Agreement. Director shall notify Airline in writing of any infraction of this provision and, upon any continued infraction, City shall charge Airline double the normal specified monthly rent for the unauthorized occupancy or use of such Terminal Building space. Airline further agrees that it will, at all times, occupy and use the Joint Use Space so that its operations and passengers do not impede or inconvenience the operations or passengers of other Air Transportation Companies.

#### **SECTION 4.07 REASSIGNMENT OF LEASED SPACE DURING CONSTRUCTION**

Director may temporarily reassign any Leased Premises or Aircraft Parking Area during any construction after reasonable written notice is provided to Airline. The cost for any temporary relocation resulting from construction shall, at the discretion of City, be either borne by the airline necessitating the relocation or shall be included as part of the City's project cost. During the period when Airline is temporarily relocated, appropriate adjustments to rentals shall be made to reflect any differences between the area of the Leased Premises and the area of temporarily assigned premises.

#### **SECTION 4.08 SURRENDER OF THE PREMISES**

- A. Airline covenants and agrees that on expiration of the term of this Agreement, or on earlier termination as hereinafter provided, or on

reassignment of the Leased Premises as heretofore provided, it will peaceably surrender possession of the Leased Premises hereunder in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Leased Premises. City shall not be required to give notice to quit possession at the expiration of the term of this Agreement.

- B. Airline shall have the right, on expiration or early termination and within thirty (30) calendar days thereafter, at its expense to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is located, and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period. If City elects to remove or dispose of any remaining Airline property, it will use best efforts to remove or dispose of any Airline property in a reasonable amount of time.

#### **SECTION 4.09 ACCESS**

- A. Subject to the provisions herein, Title 14, the Rules and Regulations, and such other restrictions as City may impose with respect to Airline's use of Leased Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Leased Premises and to public areas and public facilities of the Terminal Building.
- B. The ingress and egress provided for in Section 4.08(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Director.
- C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Agreement.

- D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by the City to enter restricted areas as defined in Title 14. Airline agrees that no person authorized to enter a restricted area by virtue of this Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.
- E. Airline understands and agrees that, in the event the Federal Aviation Administration assesses a civil penalty against the City or Department for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees, or independent contractors, Airline shall, upon demand of City, immediately reimburse the City in the amount of the civil penalty assessed.

## **ARTICLE 5 - CAPITAL IMPROVEMENTS AND EQUIPMENT AND CAPITAL OUTLAYS**

### **SECTION 5.01 CAPITAL IMPROVEMENTS**

From time to time during the Term of this Agreement, City may, at its sole discretion, undertake Capital Improvements to the Airport. The costs of such Capital Improvements are not included, and for the Term of this Agreement, shall not be included, in the calculation of rentals, charges, and fees pursuant to Article 7. Upon request of Airline, Director shall provide a copy of the most recent Capital Improvement Program.

### **SECTION 5.02 EQUIPMENT AND CAPITAL OUTLAYS**

On or before July 15 of each year, Director shall, as part of the annual budget process, prepare an estimate of the purchase or construction cost of Equipment and Capital Outlays to be purchased or constructed and the estimated costs for such Equipment and Capital Outlays that are to be included in the calculation of the required next year's rentals, charges, and fees pursuant to Article 7. Upon request of Airline, Director shall provide a listing of such budgeted Equipment and Capital Outlays.

## ARTICLE 6 - REPORTS, RENTALS, CHARGES, AND FEES

### SECTION 6.01 GENERAL

- A. In consideration for use of the Leased Premises and for the various rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City, during the Term of this Agreement, without deduction or set-off, rentals, charges, and fees to be calculated as set forth herein. City shall invoice Airline monthly for all such rentals, charges, and fees except landing fees, which shall be payable by Airline without invoice. Payment shall be made by Airline in accordance with Section 6.11 hereof.

### SECTION 6.02 MONTHLY ACTIVITY REPORT

- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Agreement. Said report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers and Deplaned Passengers to include any non-scheduled and charter operations; (3) the number of Enplaned Passengers who are originating their air journeys at the Airport (rather than transferring from other flights of Airline or other Air Transportation Companies at the Airport); (4) the number of Enplaned Passengers who are non-revenue passengers or frequent flier award coupon passengers as such terms are defined in 14 CFR Part 158, as amended; (5) the total number of Aircraft Arrivals and departures from non-preferentially assigned gates or City-owned loading bridges; (6) the number of arriving international passengers using the International Arrivals Area; (7) the weight of cargo, freight, mail, and express for such month; and (8) any other data needed to establish and assess rates and charges. Airline shall also report the activities set forth herein for any Affiliate or other Air Transportation Company or charter, which is handled by or uses the Leased Premises of Airline.
- B. If Airline fails to furnish Director with the report required by Section 6.02(A), it shall be considered in default under this Agreement and Airline's rentals, fees, and charges, as provided for hereafter, shall be determined by assuming that Airline's Total Airline Landed Weight and Enplaned Passengers for such month was one hundred fifty percent (150%) of its Total Airline Landed Weight and Enplaned Passengers

during the most recent month for which such data are available for Airline and by applying the rates specified herein and the applicable City Annual Budget Resolution. Any necessary adjustment in such rentals, fees, and charges shall be calculated after an accurate report is delivered to Director by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the succeeding month.

### **SECTION 6.03 TERMINAL BUILDING RENTALS**

- A. Airline shall pay to City for its Exclusive Use, Joint Use, Common Use, and Shared Use space in the Terminal Building, as set forth on Exhibits B-1 and B-2, monthly rentals based on annual rental rates to be calculated each Fiscal Year, as set forth in Section 7.04.
- B. Rentals for Joint Use space shall be prorated among the Signatory Airlines in accordance with a formula that prorates 50% of the cost of the space on the basis of the number of gates preferentially assigned to each Signatory Airline and its Affiliates as a proportion of the total number of preferentially assigned gates and 50% of the cost on the basis of that proportion which the number of each Signatory Airline's Enplaned Passengers bears to the total number of Enplaned Passengers of all Signatory Airlines. For the purposes of such calculation, a gate serving the International Arrivals Area shall be deemed not to be preferentially assigned to a Signatory Airline and shall not be counted in such calculation if such Signatory Airline exclusively deplanes its passengers at the apron level of the Terminal Building.
- C. Rentals for Common Use space shall be prorated among Air Transportation Companies at the Airport on the basis of: (1) 20% of the total monthly rental apportioned evenly among all Air Transportation Companies using such space; and (2) the remaining 80% of the total monthly rental apportioned among all Air Transportation Companies using such space on the ratio of each airline's Enplaned Passengers to the total number of Enplaned Passengers of all such Air Transportation Companies. The Airline shall be grouped with its Affiliates as a single entity for apportioning the 20% amount under (1) above. Any Air Transportation Company accounting for less than one percent (1%) of the Airport's total Enplaned Passengers shall be exempt from the calculation of the 20% amount under (1) above. Enplaned Passengers shall include any passengers handled by Airline and its Affiliate(s) for other Air Transportation Companies. If the Airline ceases service at the Airport before the expiration of the Term of this Agreement, Airline shall remain responsible for paying its pro rata share of the 20% Common Use formula apportionment throughout the remainder of the Term of this Agreement.

- D. Rentals for Shared Use space shall be prorated among Airport tenants in proportion to the leased area of each tenant's Exclusive Use space relative to the total area of leased Exclusive Use space served by such Shared Use space.

#### **SECTION 6.04 ELECTRICITY CHARGES FOR EXTRAORDINARY USAGE**

Airline shall pay City charges for the extraordinary usage of electrical power in its Shared Use and Exclusive Use space and preferentially assigned gates based on the cost, without mark-up, to City for such extraordinary usage of electricity by Airline as arrived at through separate metering or computation by City. Airline shall report to Director any plans to decrease or increase its extraordinary usage of electrical equipment or electricity.

#### **SECTION 6.05 LANDING FEES**

Airline shall pay to City monthly Landing Fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Landed Weight for Airline during the month by the then-current Landing Fee Rate established pursuant to Section 7.05 herein.

#### **SECTION 6.06 EQUIPMENT PARKING RENTALS**

Airline shall pay City, as rent for its preferentially assigned Equipment Parking Area, a monthly rental computed at the rate set forth in Title 14 and the applicable City Annual Budget Resolution.

#### **SECTION 6.07 SECURITY SCREENING FEE**

Airline shall pay City amounts sufficient to reimburse City for its share of City's actual cost of providing armed law enforcement support for the security screening operation as required by 49 CFR Part 1542. The cost of such support shall be apportioned by City among Air Transportation Companies using the secured passenger boarding areas on the basis of the share of each Air Transportation Companies' Enplaned Passengers relative to the total Enplaned Passengers of all such Air Transportation Companies.

#### **SECTION 6.08 AIRLINE EQUIPMENT OR IMPROVEMENT CHARGES**

Upon the installation or provision by City of any Airline Equipment or Improvement, Airline shall pay for the use of such equipment or improvement amounts sufficient to amortize the cost paid by City, including applicable maintenance and operating expenses, all as determined by City.

## **SECTION 6.09 INTERNATIONAL ARRIVALS AREA CHARGES**

Airlines shall pay amounts for the use of the common-use International Arrivals Area as set forth in Title 14 and the applicable City Annual Budget Resolution.

## **SECTION 6.10 CITY-OWNED LOADING BRIDGE CHARGE**

Airline shall pay City a loading bridge charge on a monthly basis for the use of City-owned loading bridges preferentially assigned to Airline at a rate determined by City for the extraordinary costs of operation and maintenance required to support the operation of such loading bridges. Director may revise such loading bridge charge rate at the beginning of each Fiscal Year. Such loading bridge charge will remain in effect until such time that City acquires new loading bridges through usage of PFC's to replace the existing loading bridges.

## **SECTION 6.11 PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS**

- A. All Exclusive Use and Shared Use Rentals, Apron Use Fees, Equipment Parking Rentals, Airline Equipment Charges and any City-owned loading bridge charges on preferentially assigned gates shall be due and payable the first day of each month, in advance, without invoice.
- B. Landing Fees shall be due and payable on or before the twentieth (20<sup>th</sup>) day of each month, without invoice.
- C. All Joint Use, Common Use, Security Screening Fees, and other fees and charges shall be due and payable on invoice within thirty (30) days of the date of invoice.
- D. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to Director as provided in Section 6.02, or from recovering any additional payment actually due from Airline.
- E. If any payment is not received by City by the due date, City may, at its discretion, charge Airline interest at the highest rate permitted by law. All payments due and payable herein shall be paid in lawful money of the United States of America, without set-off, electronically by Automated Clearing House (ACH), or by check made payable to City and delivered or wired, as applicable, to the following address or account, or to such other address or account as City may notify Airline in writing from time to time:

Via Mail  
Accounting Division  
El Paso International Airport  
P.O. Box 971278  
El Paso, Texas 79925-1278

## **SECTION 6.12 TAXES AND OTHER CHARGES**

Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Airline or City, with respect to the Leased Premises, Airline's use and/or occupancy of the Leased Premises, or any improvements thereon, during the term of this Agreement including any extensions or options periods granted thereto.

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

## **SECTION 6.13 PASSENGER FACILITY CHARGE**

City reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section 9110 (the PFC Act) and implementing regulations as may be supplemented or amended from time to time. Airline shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default pursuant to Section 13.01.

## **SECTION 6.14 RECORDS OF AIRLINE**

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified in Section 6.02 hereof or otherwise required for the calculation or payment of fees required under this Agreement for the current Fiscal Year and the three (3) immediately preceding Fiscal Years, and shall make such records available for inspection by Director at any and all reasonable hours and times.

## **SECTION 6.15 OTHER FEES AND CHARGES**

City expressly reserves the right to assess and collect (1) reasonable and nondiscriminatory fees for concessions and other services provided by Airline for others if such services provided by Airline would otherwise be available from a concessionaire

or licensee of City; (2) reasonable and nondiscriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by City and accepted by Airline, including, but not limited to, FIS facility fees, special maintenance of airline Leased Premises, equipment vehicle storage, disposal fees, utility fees, remote ramp aircraft parking fees, and gate usage per turn fees; and (3) reasonable and nondiscriminatory fee for any employee parking area(s) provided at the Airport.

Anything in this Agreement to the contrary notwithstanding, this Section 6.15 shall not be interpreted or understood as contracting away the City's governmental authority and shall not be construed to waive any lawfully assessed taxes or any governmental charges.

#### **SECTION 6.16 RIGHT OF SET OFF**

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due under prior agreements, this Agreement, or for usage of the Airport as a non-signatory airline. In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

#### **SECTION 6.17 SECURITY DEPOSIT**

Airline agrees to pay a security deposit to City subject to the following conditions:

- A. Unless Airline has provided regularly scheduled weekday passenger or cargo flights to and from the Airport for the eighteen (18) months prior to Airline's execution of this Agreement (or prior to the assignment of the Agreement to Airline) without committing an act or omission that would have been an Event of Default under Section 13.01 of this Agreement, City shall have the right to require Airline to provide to City Security Deposit in an amount equal to three (3) months estimated fees and charges payable by Airline under Article 6 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and charges due hereunder. Airline shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months (including any period prior to Airline's execution of this Agreement or prior to the assignment of this Agreement to Airline during which Airline provided regularly scheduled passenger flights to and from the Airport) during which Airline commits no Event of Default under Section 13.01 of this Agreement (and for any such prior period, no act or omission that would have been such an Event of Default hereunder). City shall provide Airline with written notice that Airline must provide the Security Deposit required hereunder and Airline shall provide the Security Deposit within ten (10) days of issuance of the notice. Such Security Deposit shall be in such form and as shall be

acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. City's rights under this Section 6.17 shall be in addition to all other rights and remedies provided to City under this Agreement.

- B. IF AIRLINE SHALL COMMIT AN EVENT OF DEFAULT UNDER SECTION 13.01 IN THE PAYMENT OF ANY FEES DUE UNDER THIS AGREEMENT, THE DEPARTMENT SHALL HAVE THE RIGHT, BY WRITTEN NOTICE TO AIRLINE GIVEN AT ANY TIME, TO IMPOSE OR REIMPOSE THE REQUIREMENTS OF SECTION 6.17(A) ON AIRLINE. IN SUCH EVENT, AIRLINE SHALL WITHIN TEN (10) DAYS FROM ITS RECEIPT OF SUCH WRITTEN NOTICE, PROVIDE THE DEPARTMENT WITH THE REQUIRED SECURITY DEPOSIT AND SHALL THEREAFTER MAINTAIN SUCH SECURITY DEPOSIT IN EFFECT UNTIL THE EXPIRATION OF A PERIOD OF EIGHTEEN (18) CONSECUTIVE MONTHS DURING WHICH AIRLINE COMMITS NO EVENT OF DEFAULT UNDER SECTION 13.01 OF THIS AGREEMENT. THE DEPARTMENT SHALL HAVE THE RIGHT TO REIMPOSE THE REQUIREMENTS OF SECTION 6.17(A) ON AIRLINE EACH TIME AIRLINE COMMITS SUCH AN EVENT OF DEFAULT DURING THE TERM OF THIS AGREEMENT. THE DEPARTMENT'S RIGHTS UNDER SECTION 6.17(B) SHALL BE IN ADDITION TO ALL OTHER RIGHTS AND REMEDIES PROVIDED TO THE DEPARTMENT UNDER THIS AGREEMENT.

City will also have the option to charge non-signatory landing fee rates if Airline does not comply with Section 6.17(A) above when required to do so.

## **SECTION 6.18 NO OTHER FEES AND CHARGES**

Except as provided in this Agreement, no further rentals, fees, or charges shall be charged against or collected from Airline, its passengers, employees, shippers or receivers of freight or express, suppliers of materials, contractors or furnishers of services, by City for the premises, facilities, rights, licenses, and privileges granted to Airline under this Agreement, unless mutually agreed upon between City and Airline.

## **ARTICLE 7 - CALCULATION OF RENTALS, CHARGES, AND FEES**

### **SECTION 7.01 RENTALS, CHARGES, AND FEES**

Rentals, charges, and fees shall, subject to the provisions of Section 7.06 hereof, be reviewed and recalculated annually based on the principles and procedures set forth in this Article 7, and shall become effective on the effective date of this lease and each September 1<sup>st</sup> thereafter of each year of the Agreement.

### **SECTION 7.02 ACCOUNTING RECORDS**

- A. City shall establish, and thereafter maintain, accounting records that will document the following items for each of the Airport Cost Centers: (1) revenues; (2) Maintenance and Operating Expenses; (3) annual debt service on Bonds; (4) Equipment and Capital Outlays; (5) any annual funding requirements pursuant to the Bond Ordinance; and (6) any other funding requirements imposed by law or judgments.
- B. At the request of Airline, City shall provide to Airline its annual budget and financial statements as well as any supplemental financial data reasonably required to assess the adequacy of rates and charges established under this Agreement.

### **SECTION 7.03 COORDINATION PROCEDURES - BUDGET REVIEW AND CALCULATION OF RENTALS, CHARGES, AND FEES**

- A. On or before the April 1 prior to the beginning of each Fiscal Year, Airline shall submit to Director, in writing, its Total Airline Landed Weight forecast for that Fiscal Year. City shall combine Airline's forecast with the Landed Weight forecasts of all other Signatory Airlines and make such adjustments as City deems appropriate to arrive at an estimated Total Airline Landed Weight of all Signatory Airlines to be used in the calculation of Landing Fee Rates.
- B. On or before the July 1 prior to the beginning of each Fiscal Year, or as soon thereafter as possible if the City Manager has not filed the proposed budget by that date, City shall make available upon request by Airline the following reports:
  - 1. The Department's proposed annual budget for the Fiscal Year, including all estimated Maintenance and Operating Expenses, estimated annual debt service on Bonds, proposed expenditures for Equipment and Capital Outlays, and proposed expenditures for Capital Improvements for the Airport, all allocated to Airport Cost Centers on a consistent basis from year to year.

2. City's calculation of proposed airline rentals, charges, and fees for the Fiscal Year, based on the procedures set forth in this Agreement.
- C. Within thirty (30) calendar days after receipt of the reports, a meeting, if requested by Airline or other Signatory Airline, shall be held between Director and the Signatory Airlines to discuss the proposed rentals, charges, and fees. Director shall give due consideration to any comments and suggestions of Airline regarding the proposed annual budget or the calculations of proposed rentals, charges, and fees.
- D. The City shall adopt an annual budget, which includes the annual Department budget, which may, in the sole discretion of City, include revisions made as a result of Director's discussions with Signatory Airlines or otherwise. At the request of Airline, City shall promptly furnish Airline with a copy of the adopted annual Department budget, together with the calculation of rentals, charges, and fees that will become effective as of the first day of the Fiscal Year.
- E. If, for any reason, the annual budget has not been adopted by City as of the first day of any Fiscal Year, the rentals, charges, and fees in effect during the preceding Fiscal Year shall continue in effect until: (1) the new annual budget has been adopted by the City; and (2) City has calculated the rentals, charges, and fees in accordance therewith. Once established, the new rentals, charges, and fees shall then be made effective retroactive to the first day of such Fiscal Year.

#### **SECTION 7.04 CALCULATION OF TERMINAL BUILDING RENTAL RATES**

Terminal Building Rental Rates shall be calculated for each Fiscal Year in the following manner, as illustrated on Exhibit C-1 attached hereto and made a part hereof:

- A. City's estimated total "Terminal Building Cost" shall be calculated by totaling the following amounts:
  1. The total of estimated direct and indirect Maintenance and Operating Expenses, including any bad debt expense, allocable to the Terminal Building.
  2. Equipment and Capital Outlays allocable to the Terminal Building.
  3. The pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Terminal Building.

4. The estimated amount of any deficiency in the Renewal and Replacement Account as of the last day of the current Fiscal Year resulting from an expenditure allocable to the Terminal Building.
  5. The pro rata portion allocable to the Terminal Building of deposits to the Maintenance and Operating Reserve Account required by the Bond Ordinance.
  6. The pro rata portion allocable to the Terminal Building of any other deposits to reserve accounts as set forth in Article 8 and established pursuant to the Bond Ordinance.
  7. The estimated amount of any assessment, judgment, settlement, or charge to become payable by City and not covered by the proceeds of City's insurance relating directly to the Airport or its operations and allocable to the Terminal Building.
- B. The estimated Terminal Building Requirement for the Fiscal Year shall then be divided by the total amount of Usable Space in the Terminal Building to determine an Average Terminal Building Rental Rate per square foot.
- C. The Average Terminal Building Rental Rate per square foot shall be multiplied by the total square footage leased to Signatory Airlines to determine the annual Signatory Airline Rental Requirement.

## **SECTION 7.05 CALCULATION OF LANDING FEE RATES**

A Landing Fee Rate per one thousand (1,000) pounds of landed weight shall be calculated in each Fiscal Year in the following manner, as illustrated on Exhibit C-2, attached hereto and made a part hereof.

- A. City's estimated "Landing Area Cost" for the Fiscal Year shall be calculated by totaling the following amounts:
1. The total of estimated direct and indirect Maintenance and Operating Expenses including any allocable bad debt expense allocable to the Landing Area.
  2. Equipment and Capital Outlays allocable to the Landing Area.
  3. The pro rata portion of annual debt service on Bonds, net of applicable PFC revenue received, plus Coverage allocable to the Landing Area.

4. The estimated amount of any deficiency in the Renewal and Replacement Account as of the last day of the current Fiscal Year resulting from an expenditure allocable to the Landing Area.
  5. The pro rata portion allocable to the Landing Area of deposits to the Maintenance and Operating Reserve Account required in the Bond Ordinance.
  6. The pro rata portion allocable to the Landing Area of any other deposits to reserve accounts as set forth in Article 8 and established pursuant to the Bond Ordinance.
  7. The estimated amount of any assessment, judgment, or charge to become payable by City net of proceeds of City's insurance relating directly to the Airport or its operation and allocable to the Landing Area.
- B. The Landing Area Cost shall then be credited with all revenues derived from the operation of the Landing Area (except revenues derived from Signatory Airline landing fees), as estimated by City, to determine the "Landing Fee Requirement."
- C. The Landing Fee Requirement shall then be divided by the estimated Total Airline Landed Weight of all Signatory Airlines to determine the Landing Fee Rate per one thousand (1,000) pound unit.

## **SECTION 7.06 EXTRAORDINARY RATE ADJUSTMENTS**

- A. In the event that, at any time during a Fiscal Year, any of the components of Terminal Building Cost, Landing Area Cost, Landing Area revenues or the Total Airline Landed Weight of Aircraft Arrivals of all Signatory Airlines varies materially (upward or downward ten percent (10%) or more) from the estimates used in setting the Average Terminal Building Rental Rate or Landing Fee Rate, such rates may be adjusted either upward or downward for the balance of such Fiscal Year if such adjustment is deemed necessary by City to ensure that adequate revenues will be available to cover the estimated Terminal Building Requirement and Landing Area Requirement for the Fiscal Year.
- B. In addition to the provisions of Section 7.06 (A), City reserves the right to adjust the Average Terminal Building Rental Rate or Landing Fee Rate or both in the event that a Signatory Airline is delinquent in the payment of such rentals and fees by more than sixty (60) days.

## **SECTION 7.07 SETTLEMENT**

Within one hundred eighty (180) days following the close of each Fiscal Year, or as soon as audited financial data for said Fiscal Year is available, rates for rentals, fees, and charges for the preceding Fiscal Year shall be recalculated using audited financial data and the methods set forth in this Agreement. Upon the determination of any difference(s) between the actual rentals, fees, and charges paid by Signatory Airlines (including Affiliates) during the preceding Fiscal Year and the rentals, fees, and charges that would have been paid by Signatory Airlines (including Affiliates) using said recalculated rates, City shall, in the event of overpayment, promptly issue payment to Airline in the amount of such overpayment, reduced by any accounts receivable due City greater than sixty (60) days, and in the event of underpayment, invoice Airline for the amount of such underpayment. Said invoiced amount shall be due within thirty (30) days of the invoice mailing date.

## **ARTICLE 8 - BOND ORDINANCE**

### **SECTION 8.01 SUBORDINATION TO BOND ORDINANCE**

- A. This Agreement and all rights of Airline hereunder are expressly subordinated and subject to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by City pursuant to the terms, covenants, and conditions of the Bond Ordinance.
- B. In conflicts between this Agreement and the Bond Ordinance, the Bond Ordinance shall govern except that no change in the method of calculation of rentals and fees payable shall govern to the extent that it materially adversely affects the rights of Airline hereunder.
- C. All definitional terms in this Article 8 that are not specifically defined herein are to have the meanings set forth in the Bond Ordinance.

### **SECTION 8.02 CREATION OF AND FLOW OF FUNDS**

- A. Subject to the terms and provisions of the Bond Ordinance and other related instruments, it is mutually understood and agreed that, as long as any Bonds secured by the Bond Ordinance are outstanding, Bond proceeds and all Airport revenues shall be deposited, maintained, and paid as set forth in the Bond Ordinance, or if not specified in the Bond Ordinance, as set forth in Section 8.02(B). City shall maintain separate accounts as set forth in Section 8.02 (B), (C), and (D) for the purposes of accounting for all Airport revenues and expenses.

- B. Restricted Land Sales Fund. All revenues derived by City from activities conducted on property which was sold or leased to establish the Restricted Land Sales Fund shall be deposited in that fund. All such revenues (including interest earned on fund balances) shall remain in the fund unless expended for purposes deemed eligible by the FAA.
- C. PFC Fund. In compliance with federal regulations, all PFC revenue shall be deposited in a separate fund to be used to pay the costs of approved PFC projects and associated debt service. All interest earned in the PFC Fund shall remain in the PFC Fund and be used solely for approved projects.
- D. All other revenues derived from the Airport in each Fiscal Year shall be deposited, used, and applied in the following priority:
1. To the Maintenance and Operating Expense Account, an amount sufficient to increase the balance in the account to at least the amount in the annual operating budget for Maintenance and Operating Expenses. Amounts shall be paid out of the Maintenance and Operating Account from time to time by City for the necessary expenses for the operation, maintenance, repairs, and ordinary replacement and reconstruction of the Airport.
  2. To the Debt Service Account, an amount equal to the aggregate annual amount of principal, interest, and any sinking fund requirements on any outstanding Bonds payable from annual Airport revenues.
  3. To the Debt Service Reserve Account, an amount required to maintain a balance at least equal to the maximum annual revenue bond debt service on all outstanding Airport Revenue Bonds issued by City. Amounts shall be paid out of the Debt Service Reserve Account, from time to time as necessary, to pay interest and principal due on any Bonds outstanding and payable from Airport revenue to the extent that other moneys are not available within the Debt Service Account. All interest earned in this account shall remain in the account until it is fully funded.
  4. To the Maintenance and Operating Reserve Account, an amount required to maintain in such account a balance equal to three-twelfths (3/12) the amount in the annual operating budget for Maintenance and Operating Expenses for the current Fiscal Year. Amounts shall be accumulated or reaccumulated and maintained as a contingency reserve in the Maintenance and Operating Reserve Account to be used only to prevent deficiencies in the payment of Maintenance and Operating Expenses from the

Maintenance and Operating Account. In this event, such moneys may be withdrawn from the Maintenance and Operating Reserve Account and transferred to the credit of the Maintenance and Operating Account.

5. To the Renewal and Replacement (R&R) Reserve Account, an amount required to maintain in such account a balance of no more than one million dollars (\$1,000,000.00). Such amounts shall be accumulated or reaccumulated and maintained as a contingency reserve in the Renewal and Replacement Reserve Account to be used only for emergency repairs or emergency replacement for the Airport. All interest earned in this account shall remain in the account until it is fully funded.
6. To the Equipment and Capital Outlay Account, an amount to pay for all equipment purchases, repairs, renewals, and replacements to the Airport and for all Equipment and Capital Outlays.
7. To the Capital Improvement Account, all remaining revenues to be used by City for any lawful Airport purposes.

### **SECTION 8.03 INITIAL DEPOSITS INTO MAINTENANCE AND OPERATING RESERVE ACCOUNT AND RENEWAL AND REPLACEMENT RESERVE ACCOUNT**

City has funded the initial deposits to the Maintenance and Operating Reserve Account and Renewal and Replacement Reserve Account through cash balances on hand. Subsequent deposit requirements shall be included in the calculations of Signatory Airline Terminal Building Rentals and Landing Fees as set forth in Sections 7.04 and 7.05.

## **ARTICLE 9 - MAINTENANCE AND OPERATION OF AIRPORT**

### **SECTION 9.01 DESIGNATION OF OPERATION AND MAINTENANCE RESPONSIBILITIES.**

In addition to the obligations of Airline and City set forth in this Article 9, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

### **SECTION 9.02 CITY'S RESPONSIBILITIES**

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a manner consistent with airports of similar size with qualified personnel and keep the Airport in an

orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Section 9.03 and Exhibit D.

- B. City shall, to the extent it is legally able to do so, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided in accordance with this Section 9.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by City's negligence or any other cause beyond reasonable control of City.
- D. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

### **SECTION 9.03 AIRLINE'S RESPONSIBILITIES**

Subject to the provisions of Section 9.05:

- A. Airline shall, at all times, preserve and keep its Leased Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have janitorial responsibilities designated to be those of City pursuant to Exhibit D.
- B. Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline for the exclusive use of Airline, except for infrastructure improvements and equipment and facilities serving the entire Terminal Building.
- C. Airline shall not erect, maintain, or display on its Leased Premises or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director.

### **SECTION 9.04 CITY'S RIGHT OF ENTRY**

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right during normal business hours upon reasonable notice or, in the case of emergencies, without notice, to enter upon Airline's Leased Premises space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Agreement.
- B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Agreement, and to recover the actual cost of such maintenance, cleaning, or repair from Airline, plus a fifteen-percent (15%) administrative charge from Airline on the next rent due.
- C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Agreement.
- D. For the purpose of exhibiting same to prospective tenants, purchasers or others.

The exercise of this right of entry shall not be deemed an eviction or disturbance of Airline's use or possession provided City shall exercise its best efforts not to interfere with Airline's normal operations in the Leased Premises.

#### **SECTION 9.05 ALTERATIONS AND IMPROVEMENTS**

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Leased Premises without the prior written approval of Director.
- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.
- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Agreement.

#### **SECTION 9.06 ENVIRONMENTAL REGULATIONS**

Airline shall comply with the following environmental regulations:

- A. Airline shall not cause or permit any Hazardous Materials, as defined in Section 1.01 herein, to be stored or used on or about the Airport by Airline, its agents, or employees, except in compliance with Environmental Laws as described below and as permitted by City in accordance with this Agreement.

- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all present and hereinafter enacted local, state, and federal laws, ordinances, regulations, orders, and any amendments thereto relating to industrial hygiene, environmental protection, or the use, generation, manufacture, storage, disposal, or transportation of Hazardous Materials on, about, or from the Airport. Without limiting the foregoing, Airline shall comply with Environmental Laws (as defined in Section 1.01 herein) at all times in connection with its use and occupancy of the Airport. Airline shall also comply with permits held by City as and to the extent Airlines activities may impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US EPA or the Texas Commission on Environmental Quality (TCEQ) or any predecessor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Agreement, if City becomes aware of other permits, which are impacted by the Airlines activities, it will provide Airline with written notice of those permits. When reasonably possible, City may provide Airline with written notice of any new permits or proposed changes to permits prior to issuance that may reasonably be expected to impact Airline's costs or operations in order to provide Airline with a reasonable opportunity to engage in the permitting process.
- C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport, including, without limitation, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. Airline shall cause any and all Hazardous Materials removed from the Airport to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of this Agreement, Airline shall cause all Hazardous Materials that are Airline's responsibility to be removed from the Airport as required by applicable Environmental Laws and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; In addition, to the extent Hazardous Materials are required by Environmental Laws to be remediated, Airline shall do so in compliance with such Environmental Laws provided, however, that Airline shall not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement agreement, consent

decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying City in writing of Airline's intention to do so and affording City ample opportunity to appear, intervene, or otherwise appropriately assert and protect City's interest with respect thereto.

- D. If at any time Airline shall become aware, or have reasonable cause to believe, that any Hazardous Material has come to be located on or about the Airport in violation or potential violation of Environmental Laws, Airline shall, immediately upon discovering such presence or suspected presence of the Hazardous Material, provide City with written notice of that condition. In addition, Airline shall immediately notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any Environmental Laws; (2) any claim made or threatened by any person against Airline or City relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials at the Airport. Airline shall make available for review by City any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Airport or Airline's use thereof. Airline shall promptly deliver to City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Airport by or on behalf of Airline.

## **ARTICLE 10 - DAMAGE OR DESTRUCTION OF PREMISES**

### **SECTION 10.01 DAMAGE OR DESTRUCTION**

- A. If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.

If Director shall fail to notify Airline of its decision to repair any untenable Leased Premises within sixty (60) days after the destruction, City shall be deemed to have elected to terminate this Agreement as to the space damaged and destroyed, and the Agreement shall automatically terminate as to such space as of the date of the damage or destruction.

## **SECTION 10.02 DAMAGE CAUSED BY AIRLINE**

Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Leased premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Leased Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City.

## **ARTICLE 11 - INSURANCE AND INDEMNIFICATION**

### **SECTION 11.01 INSURANCE**

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance companies shall be qualified to do business and be in good standing in Texas. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.
- C. Airline shall cause a certificate of insurance to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage. A certificate of insurance shall be delivered to City 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:
  - 1. A statement of the coverage provided by the policy;
  - 2. A statement certifying the City and its officers, directors, agents, and employees are listed as an additional insured in the policy;

3. A statement of the period during which the policy is in effect;
4. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
5. An agreement by the insurance company issuing such policy that the policy shall not be cancelled or any of the provisions changed for any reason whatsoever without at least thirty (30) days' prior written notice to City.

If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 14.03.

D. The minimum limits of coverage shall be as follows:

1. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, aviation general liability insurance with insurance underwriters, satisfactory to City and with the following minimum limits:

For Aviation General Liability:

\$100,000,000 Combined Single Limit, Each Occurrence

For Aircraft liability:

\$50,000,000 for all airlines exclusively using aircraft with 60 or under passenger capacity;

\$100,000,000 for all others

2. Comprehensive motor vehicle liability policy in a minimum amount of five million dollars (\$5,000,000) for both bodily injury and property damage.
3. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one million (\$1,000,000) limit each accident, disease aggregate, and disease each employee.

- E. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, acts, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline may show City as an additional insured with respects to Airline's operation at the Airport, provided, that Airline shall then also show on the insurance policy that liability insurance coverage also includes contractual liability.
- F. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis.
- G. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.

## **SECTION 11.02 INDEMNIFICATION**

- A. **INDEMNITY. AIRLINE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES", FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS), TO THE FULL EXTENT ARISING OUT OF (A) ANY BREACH OF THIS AGREEMENT BY AIRLINE OR ITS AGENTS, EMPLOYEES, AFFILIATES, SUBTENANTS, OR CONTRACTORS, (COLLECTIVELY THE "AIRLINE PARTIES"); (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE AIRLINE PARTIES HEREUNDER; OR (C) NEGLIGENCE OR WILLFUL MISCONDUCT OF THE AIRLINE PARTIES IN CONNECTION WITH THIS AGREEMENT, THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE LEASED PREMISES, OR THE AIRPORT.**

**IT IS THE INTENTION OF THIS INDEMNITY SECTION THAT THE JOINT AND CONCURRING RESPONSIBILITY OF CITY AND AIRLINE BE BORNE COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR AIRLINE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF CITY OR AIRLINE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF CITY FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.**

**AIRLINE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT AIRLINE'S INDEMNITY OBLIGATIONS. AIRLINE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR AIRLINE, AS AIRLINE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY AIRLINE<sup>1</sup>. IN NO EVENT MAY AIRLINE ADMIT LIABILITY ON THE PART OF CITY WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.**

- B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF AIRLINE'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.**
- C. CLAIMS AGAINST AIRLINE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE AIRLINE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE LEASED PREMISES, AIRLINE SHALL GIVE WRITTEN NOTICE THEREOF TO CITY WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM, DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM, THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR**

**PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHO SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY, #2 CIVIC CENTER PLAZA, 9TH FLOOR, EL PASO, TEXAS 79901 OR TO SUCH REVISED ADDRESS AS NOTIFIED BY DIRECTOR.**

- D. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT CITY'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT CITY'S ABILITY TO ADJUST LANDING FEES OR IMPOSE OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.**
- E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE AIRLINE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE AIRLINE.**
- F. CITY ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE LEASED PREMISES OR ANY PART THEREOF, AND CITY 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 LEASED PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CITY, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

#### **SECTION 11.03 NON-LIABILITY OF CITY**

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Agreement or for any delay in the performance thereof.

## **SECTION 11.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES**

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section 11.04 shall not be construed as a limitation of City's rights pursuant to Section 11.02, but are additional to the rights and exclusions from liability provided in Section 11.02.

## **ARTICLE 12 - ASSIGNMENT OR SUBLEASE**

### **SECTION 12.01 GENERAL**

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Agreement or any part of the Leased Premises. Airline shall not assign its interest under this Agreement or any part of the Leased Premises to any party without prior written approval of City. Any failure of Airline to obtain City's prior approval shall be a material breach of this Agreement.

### **SECTION 12.02 BANKRUPTCY**

Section 12.01 shall not apply to any valid assumption or assignment of this Agreement, the Leased Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Agreement upon the assumption or assignment of this Agreement;
- B. Adequate assurance that all other consideration due under this Agreement shall be forthcoming after the assumption or assignment of this Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City would incur in the event that City, within three (3) years following the assumption or assignment of this Agreement, becomes entitled to and exercises any right to reassign the Leased Premises covered by this Agreement under Article 4.

### **SECTION 12.03 RELINQUISHMENT OF SPACE**

If Airline desires to relinquish any of its Exclusive Use space or preferentially assigned areas, Airline will notify Director in writing of the space available, and Director shall use best efforts to reassign the space to another airline. No assignment, vacation, transfer, conveyance, or sublease by Airline shall relieve Airline of its responsibility for payment of rentals, fees, and charges and performance of all other obligations provided in this Agreement without specific written consent by the Director to such assignment, vacation, transfer, conveyance or sublease.

### **SECTION 12.04 CONSENT**

Consent by City to any type of transfer provided for by this Article 12 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

### **SECTION 12.05 CORPORATE REORGANIZATION**

Notwithstanding anything contained in this Article 12 to the contrary, no consent shall be required for any transfer or assignment of Airline's interest in this Agreement by operation of law or otherwise in connection with a merger, consolidation or other corporate reorganizations, or in connection with a sale of all or substantially all of Airline's assets.

## **ARTICLE 13 - DEFAULTS**

### **SECTION 13.01 DEFAULT**

If Airline: (1) fails to pay rent or any other payment past due hereunder within ten (10) calendar days after receipt of written notice of a past due account; (2) fails to commence immediately to keep and perform any of its other covenants and agreements within ten (10) calendar days after receipt of written notice of such failure; or (3) fails to continue to complete, in a timely manner, any of its covenants and agreements after performance is commenced, or after the filing of any petition, proceedings, or action by, for, or against Airline under any insolvency, bankruptcy, or reorganization act of law, then, at the election of City:

- A. Without terminating this Agreement, City may reenter the Leased Premises and improve and relet all or any part of it to others at its sole discretion. Any costs of renovation necessitated by the neglect of Airline, its agents, or its employees and an administrative fee to City for all costs incurred, shall be set off against relet rentals received. Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such reletting, as compared to Airline's obligations hereunder.

- B. At any time before or after a reentry and reletting as provided in Section 13.01(A), City may terminate Airline's rights under this Agreement as provided in Section 14.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by law.
- C. Notwithstanding any of the provisions hereof, automatically and immediately upon the occurrence of an event of default by Airline, the term of this Agreement shall convert to month-to-month, commencing on the date of the automatic conversion and shall terminate upon thirty (30) days written notice from City to Airline. The conversion of the term of this Agreement pursuant to this Section shall not discharge any of Airline's obligations hereunder nor affect any of City's other remedies set forth herein; provided, however, that the termination of this Agreement shall discharge subsequent Airline obligations hereunder.

## **ARTICLE 14 - TERMINATION**

### **SECTION 14.01 EVENTS PERMITTING TERMINATION BY AIRLINE**

Airline may terminate this Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City ninety (90) calendar days advance written notice only if: (1) Airline is prohibited by lawful authority from using the Airport for a period exceeding sixty (60) consecutive calendar days because of any deficiency of the Airport or an unsafe operating condition existing at the Airport; or (2) City is in breach of any of the covenants or agreements contained in this Agreement which materially affect the operation of Airline for a period exceeding sixty (60) consecutive calendar days after receipt of written notice of such breach from Airline and City's failure to cure such breach.

### **SECTION 14.02 CONDITIONS OF PREMISES AT TERMINATION**

Upon termination of this Agreement, Airline shall yield and deliver to City the Leased Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of Director, reasonable wear and tear excepted.

### **SECTION 14.03 EVENTS PERMITTING TERMINATION BY CITY**

City may terminate this Agreement and all of its obligations hereunder upon ninety (90) calendar days' written notice and may thereafter exercise all rights of entry and reentry upon the Leased Premises, with or without process of law, upon or after the occurrence of any one of the following events:

- A. Airline is 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 Director has notified Airline in writing that payment was not received when due;
- B. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property;
- C. Airline makes any general assignment for the benefit of creditors;
- D. Airline abandons the Leased Premises;
- E. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues for a period of thirty (30) days after receipt of written notice from Director to cure such default;
- F. Airline is adjudged bankrupt in involuntary bankruptcy procedures;
- G. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- H. Airline reduces its regularly scheduled service at the Airport to less than two (2) flights per weekday unless such reduction of service is directly attributable to circumstances for which Airline is not responsible, and which are totally beyond its control;
- I. The abolition, limitation, or restriction by any act of the Texas Legislature or Law of Congress of the powers of City under which these premises are being leased, except with respect to legislation that grants authority to a successor;
- J. Airline fails to remit PFC revenue to City within the time limits established by federal regulation;
- K. Required redevelopment of the Airport caused by circumstances unplanned or uncontrolled by the Airport which necessitates relocation of Airline from the Leased Premises; or
- L. Airline violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement.

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

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

No receipt or acceptance of money by City from Airline after the expiration or cancellation of this Agreement, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Leased 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 City's consent is required or operate as a waiver of any right of City to retake and resume possession of the Leased Premises.

## **ARTICLE 15 - GENERAL PROVISIONS**

### **SECTION 15.01 RULES AND REGULATIONS**

- A. Airline shall observe and obey all Rules and Regulations established, promulgated, or adopted consistent with this Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities. When reasonably possible, City shall provide Airline with notice prior to adoption of any new or amended Rules or Regulations in order to provide Airline with the opportunity to comment on same prior to adoption. Copies of the Rules and Regulations shall be forwarded to Airline's local manager upon request of Airline.
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such Rules and Regulations.

### **SECTION 15.02 COMPLIANCE WITH LAW**

- A. Airline shall not use the Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Leased Premises.
- B. At all times during the term of this Agreement, Airline shall, in connection with its activities and operations at the Airport:

1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline or Airline's operations and activities under this Agreement.
2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use space (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations which are promulgated or enacted by City.
3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

### **SECTION 15.03 NONDISCRIMINATION**

Airline, for itself its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Airline shall use the Airport in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Airline shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- D. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Agreement and re-

enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Agreement had never been made or issued.

**SECTION 15.04 AFFIRMATIVE ACTION**

Airline 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 City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

**SECTION 15.05 NOTICES**

- A. Any notice under the terms of this Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to Director of Aviation, El Paso International Airport, 6701 Convair Road, El Paso, Texas 79925-1091, or to such revised address as notified by Director. If given by Director, such notice shall be submitted to the address of Airline at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth in this Section.

**SECTION 15.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT**

This Agreement is subject and subordinate to the provisions of any agreements heretofore or hereafter made between City and the United States relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport

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(replaces 122036\_6 (9/26/12))  
Airline Operating Agree & Terminal Bldg. Lease

purposes, or to the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time.

#### **SECTION 15.07 NONWAIVER OF RIGHTS**

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

#### **SECTION 15.08 FEDERAL AVIATION ACT, SECTION 308**

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use space leased to Airline under the provisions of this Agreement.

#### **SECTION 15.09 SEVERABILITY**

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

#### **SECTION 15.10 HEADINGS**

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

#### **SECTION 15.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST**

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with

respect to this Agreement and their rights and interests hereunder for any purpose relating to the issuance of Bonds or other revenue generating devices.

#### **SECTION 15.12 REDEVELOPMENT**

If this Agreement is terminated as provided by Section 14.03 (K) as a result of physical changes associated with the development of the Airport, Airline waives any and all rights to reimbursements, allowances, loans, or other forms of payment for relocation, rental or any other costs which might apply to tenants in other locations who are required to relocate due to construction of public facilities.

#### **SECTION 15.13 REMOVAL OF DISABLED AIRCRAFT**

Airline shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City.

#### **SECTION 15.14 QUIET ENJOYMENT**

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

#### **SECTION 15.15 AGREEMENT SUBJECT TO COVENANTS IN DEED**

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

#### **SECTION 15.16 FORCE MAJEURE**

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

## **SECTION 15.17 ENTIRE AGREEMENT**

This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

## **SECTION 15.18 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 15.19 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 15.20 AGREEMENT MADE IN TEXAS**

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts in El Paso County, Texas or in the federal district courts of the Western District of Texas or in the U.S. Department of Transportation, as applicable.

## **SECTION 15.21 CUMULATIVE RIGHTS AND REMEDIES**

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

## **SECTION 15.22 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 15.23 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 15.24 SUCCESSORS AND ASSIGNS**

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

## **SECTION 15.25 AUTHORIZATION TO ENTER LEASE**

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

## **SECTION 15.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS**

Airline agrees that with respect to the Leased Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject to under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Leased Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

## **SECTION 15.27 MOST FAVORED NATIONS**

Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rentals, charges, and fees with respect to facilities or equipment directly and substantially related to providing an Air Transportation Business as are applicable to all Air Transportation Companies which make similar use of the Airport and which use the same or similar facilities or equipment, subject to reasonable classifications such as tenants or non-tenants and Signatory Airlines or non-signatory airlines. Classification as a Signatory Airline shall not be unreasonably withheld by the City provided the Air Transportation Company requesting such classification assumes obligations substantially similar to those imposed on other Signatory Airlines.

**SECTION 15.28 AIRLINE DEREGULATION ACT**

Nothing contained in this Agreement is intended, nor shall be construed, as a waiver by either party of any right to assert any claim or defense, or raise any issue in any context or forum including, but not limited to, a court or administrative forum, regarding the preemption by federal law, including but not limited to the Airline Deregulation Act (49 U.S.C. § 41713), of any state or local law or ordinance, or the Rules and Regulations.

**IN WITNESS WHEREOF**, these presents have been executed, attested and ensealed by the parties hereto or their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first above written.

**CITY OF EL PASO**

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

\_\_\_\_\_  
Monica Lombraña, A.A.E.  
Director of Aviation

**ACKNOWLEDGMENT**

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

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by Joyce A. Wilson, as **City Manager** of the **City of El Paso, Texas**.

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

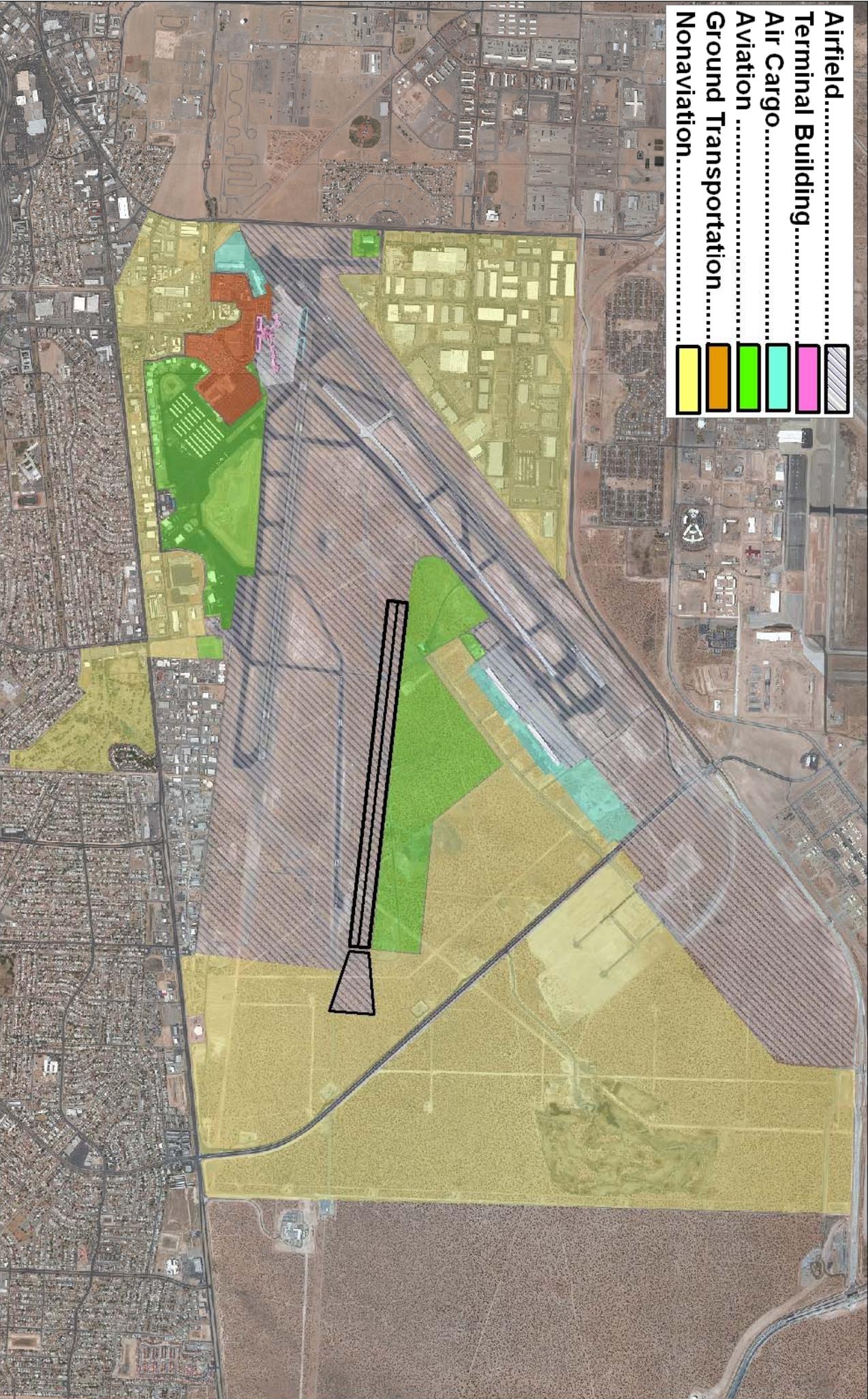
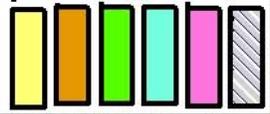
My Commission Expires:

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

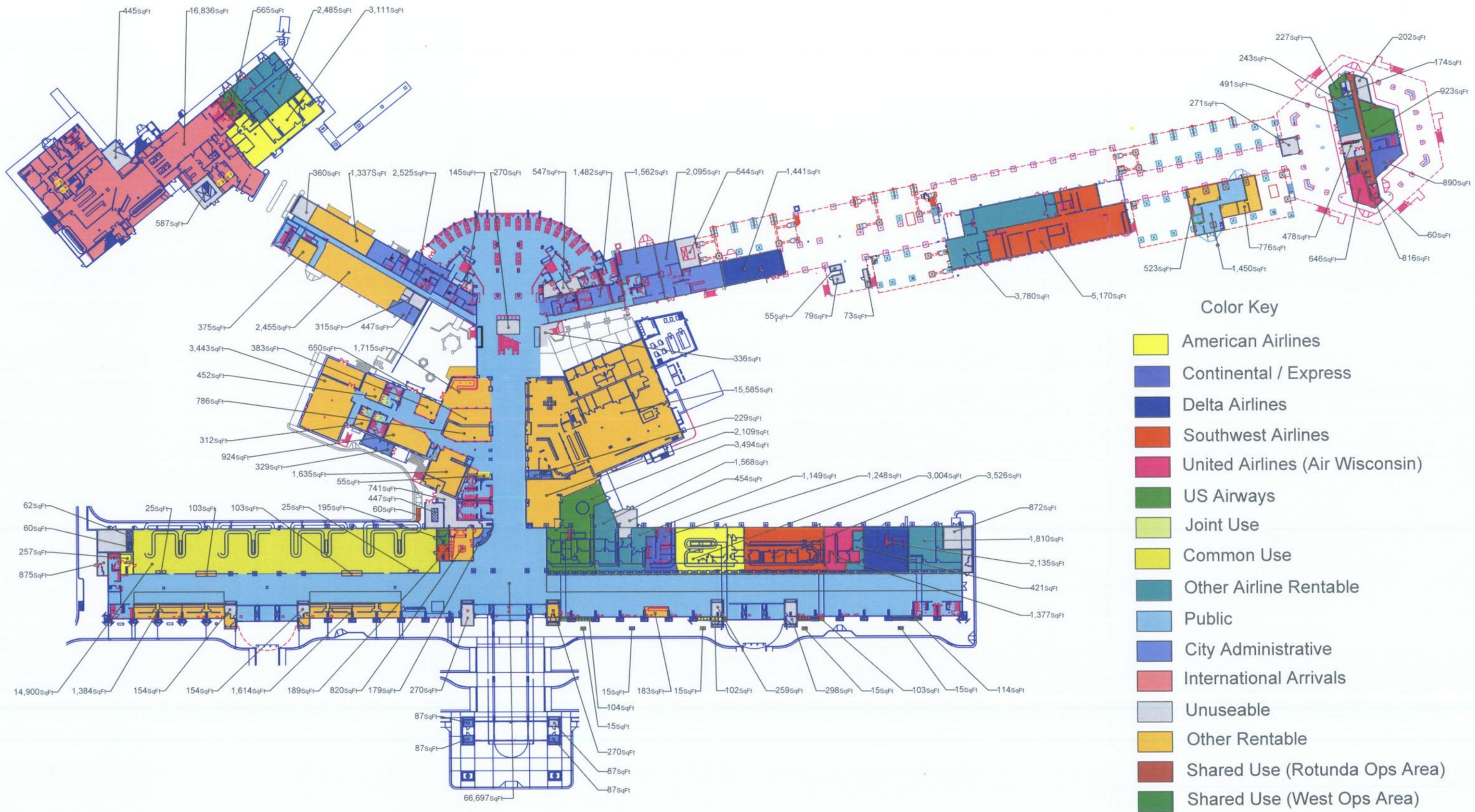
11-1003-026/135639\_2 (9-27-12 clean)  
(replaces 122036\_6 (9/26/12))  
Airline Operating Agree & Terminal Bldg. Lease



- Airfield.....
- Terminal Building.....
- Air Cargo.....
- Aviation.....
- Ground Transportation.....
- Nonaviation.....

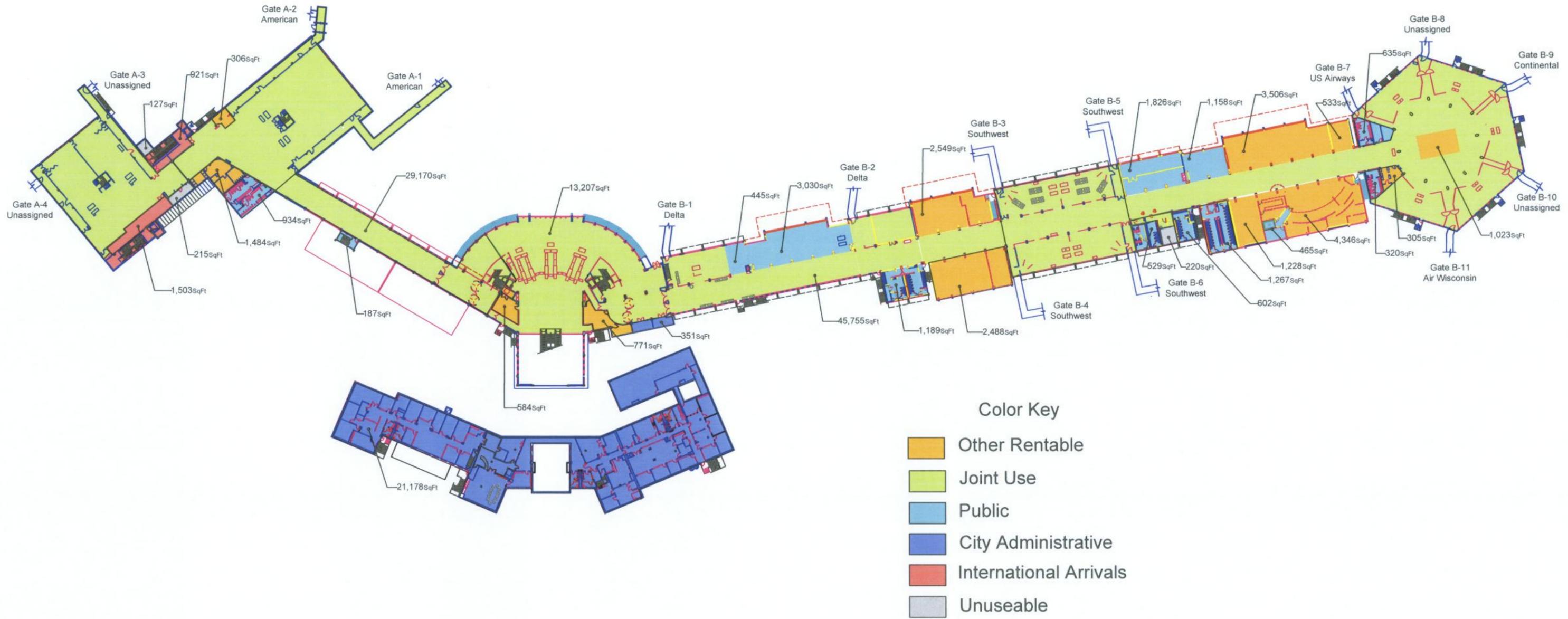


**El Paso International Airport    Airline Operating Agreement    Cost Center Map    Exhibit "A"**



El Paso International Airport Airline Operating Agreement and Terminal Building Lease

Revised Exhibit B-1, drawing depicts terminal as of 02-01-2010 Level 1



El Paso International Airport Airline Operating Agreement and Terminal Building Lease

Revised Exhibit B-2, drawing depicts terminal as of 02-01-2010 Level 2

Exhibit C-1

**Table 8**

Terminal Rental Rate (Fiscal Year ending August 31)

		Proposed Budget	Estimated	Proposed Budget
		2012	2012	2013
<b>Terminal Building Expenses</b>				
M&O Expenses (Direct and Indirect)		\$12,517,889	\$11,828,618	\$12,793,683
M&O Reserve (3 Months of M&O)		113,403	(58,915)	241,266
Equipment and Capital Outlays		65,000	65,000	55,000
Debt Service		1,118,721	1,118,721	1,118,301
Debt Service Coverage		(519)	(519)	(105)
Deficiency in Renewal and Replacement Account		0	0	0
Deposits to Other Reserve Accounts		0	0	0
Assessments, Judgments, and Settlements		0	0	0
<b>Total Terminal Building Expenses</b>	<b>[A]</b>	<b>\$13,814,495</b>	<b>\$12,952,906</b>	<b>\$14,208,144</b>
Less:				
Direct Electricity Charges	[B]	\$0	\$0	\$0
Passenger Security Screening Fees	[C]	0	0	0
City-Owned Loading Bridges	[D]	14,400	14,400	14,400
<b>Net Terminal Building Expenses</b>	<b>[E]=[A]-[B]-[C]-[D]</b>	<b>\$13,800,095</b>	<b>\$12,938,506</b>	<b>\$14,193,744</b>
Usable Space (square feet)	[F]	332,898	332,898	332,898
<b>Average Rental Rate</b>	<b>[G]=[E]/[F]</b>	<b>\$41.45</b>	<b>\$38.87</b>	<b>\$42.64</b>
Airline Rented Space (square feet)	[H]	132,926	132,926	132,926
<b>Airline Rental Revenue</b>	<b>[G]*[H]</b>	<b>\$5,509,783</b>	<b>\$5,166,834</b>	<b>\$5,667,965</b>

Source: El Paso International Airport, Ricondo & Associates Inc., May 2012.

Prepared by: Ricondo & Associates, Inc., May 2012.

## Exhibit C-2

**Table 9**

Landing Fee (Fiscal Year ending August 31)

		Proposed Budget	Estimated	Proposed Budget
		2012	2012	2013
<b>Airfield Expenses</b>				
M&O Expenses (Direct and Indirect)		\$4,731,395	\$4,500,289	\$4,783,153
M&O Reserve (3 Months of M&O)		(28,102)	(85,878)	70,716
Equipment and Capital Outlays		137,750	137,750	70,000
Debt Service (net of PFC Revenues, plus Coverage)		0	0	0
Deficiency in Renewal and Replacement Account		0	0	0
Deposits to Other Reserve Accounts		0	0	0
Assessments, Judgments, and Settlements		0	0	0
<b>Total Airfield Costs</b>	<b>[A]</b>	<b>\$4,841,043</b>	<b>\$4,552,160</b>	<b>\$4,923,869</b>
<b>Credit for Other Airfield Revenues</b>				
Non-Signatory Landing Fees		\$141,283	\$1,038,221	\$147,729
Equipment Parking Rentals		32,000	32,000	32,000
Gate Use Fees		0	0	0
Air Cargo Apron Rentals		296,200	296,170	227,500
RON Fees		16,700	16,700	15,500
Fuel Flowage Fees		498,000	364,435	469,000
Other Miscellaneous Revenue		15,000	10,721	15,000
<b>Total Airfield Credit</b>	<b>[B]</b>	<b>\$999,183</b>	<b>\$1,758,247</b>	<b>\$906,729</b>
<b>Signatory Landing Fee Requirement</b>	<b>[C]=[A]-[B]</b>	<b>\$3,841,860</b>	<b>\$2,793,913</b>	<b>\$4,017,140</b>
<b>Signatory Landed Weight (1,000 lb units)</b>	<b>[D]</b>	<b>2,674,191</b>	<b>2,064,199</b>	<b>2,674,191</b>
<b>Signatory Landing Fee Rate (per 1,000 lbs)</b>	<b>[E]=[C]/[D]</b>	<b>\$1.44</b>	<b>\$1.35</b>	<b>\$1.50</b>
<b>Non-Signatory Landing Fee Rate (per 1,000 lbs)</b>	<b>[F]=[E]*1.25</b>	<b>\$1.80</b>	<b>\$1.69</b>	<b>\$1.88</b>
<b>Non-Signatory Landed Weight</b>				
Non-Signatory Airlines		66,290	69,281	66,290
Non-Signatory Cargo		12,384	544,366	12,384
<b>Total Non-Signatory Landed Weight</b>	<b>[G]</b>	<b>78,674</b>	<b>613,647</b>	<b>78,674</b>
<b>Landing Fee Revenue</b>				
<b>Signatory Landing Fee Revenue</b>	<b>[D]*[E]</b>	<b>\$3,841,860</b>	<b>\$2,793,913</b>	<b>\$4,017,140</b>
<b>Non-Signatory Landing Fee Revenue</b>	<b>[F]*[G]</b>	<b>141,283</b>	<b>1,038,221</b>	<b>147,729</b>
<b>Total Landing Fee Revenue</b>		<b>\$3,983,143</b>	<b>\$3,832,134</b>	<b>\$4,164,869</b>

Source: El Paso International Airport, Ricondo & Associates Inc., May 2012.

Prepared by: Ricondo & Associates, Inc., May 2012.

**OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES  
AIRLINES AND CITY**

The following matrix identifies the responsible party (either the City or Airline) who shall, at its sole cost, be responsible for the maintenance, repair, service, and/or provision of the specifically identified Premises, appurtenances, or services in connection with the operation or maintenance. The City shall not be responsible for any prior or subsequent installation, appurtenance or system by Airline. The City shall not be responsible for any prior or subsequent Airline modification of City-provided Airline Premises, appurtenance, system or service. Airline shall have the duty to restore the Premises, at its sole cost, into the original condition prior to vacating Airline's Premises, including the de-installation of any Airline modification and Airline appurtenance, system or service, at the sole discretion of the City. If Airline is positively determined to have damaged Premises or misused an City-provided appurtenance or system, said Airline may be charged for maintenance and repairs.

**NOTE 1:** All installations, repairs, replacements, alterations, or improvements undertaken by Airline must first be submitted for approval by the City.

**NOTE 2:** The responsibilities of the City listed below apply to normal wear and tear only. Any damage caused by Airline's negligence will be the responsibility of the Airline.

**NOTE 3:** All operations, maintenance and service responsibilities in Public Use Space is the responsibility of the City, except when damage is caused by Airline's negligence.

**NOTE 4:** Airline shall notify City, in writing, of any maintenance or repairs needed which are the responsibility of the City.

**NOTE 5:** City, at its sole discretion, may be able to perform certain maintenance or improvements which are Airline responsibilities upon Airline's written request. If the total dollar amount for maintenance or improvements performed by City is equal to or more than \$100, City will invoice the Airline time and materials plus a \$40.00 administrative charge for such work. Work performed by City totaling less than \$100 will not be charged back to the Airline.

LEGEND	
ELP = City	N/A = Not Applicable
A = Airline	

	SPACE						
	EXCLUSIVE				SHARED	JOINT	COMMON
	TICKET COUNTER AREAS	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED SPACE	HOLD ROOMS	BAG CLAIM
<b>A. OPS, MAINTENANCE AND SERVICE AREAS</b>							
<b>BUILDING - EXTERIOR</b>							
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation and Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Lighting Mounted on Outside of Building	N/A	ELP	N/A	ELP	ELP	ELP	ELP
Roof	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Walls and Load-Bearing Structures	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Windows	N/A	N/A	N/A	ELP	ELP	ELP	ELP
<b>BUILDING INTERIOR</b>							
Backwall Finish and Signage	A	N/A	A	N/A	N/A	A	N/A
Counter Shell/Exterior Casement, Countertops	ELP	N/A	N/A	N/A	N/A	ELP	N/A
Counter Insert Cabinetry, Kiosks	A	N/A	N/A	N/A	N/A	A	N/A
Ceiling Tiles	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Flooring: Carpet & Tile	A	A	A	A	A	ELP	ELP
Furnishings and Fixtures	A	A	A	A	A	ELP	ELP
HVAC: Building System Maintenance & Air Distribution	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation/Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Interior Wall Windows	A	A	A	A	A	ELP	ELP
Paint and Wall Finishes <sup>1</sup>	A	A	A	A	A	ELP	ELP
Passenger Seating - Installation and Maintenance	N/A	N/A	N/A	N/A	N/A	ELP	ELP
Stanchions	ELP	N/A	A	N/A	N/A	A	N/A
<b>COMMUNICATIONS</b>							
Public Address System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Communication Lines/Conduit: To D-Mark <sup>2</sup>	A	A	A	A	A	A	A
Communication Lines/Conduit: From D-Mark <sup>2</sup>	ELP	ELP	ELP	ELP	ELP	ELP	ELP
FIDS (City owned)	N/A	N/A	N/A	N/A	N/A	ELP	ELP
<b>DOOR LOCKS, LOCKSETS AND KEYS</b>							
ELP-Required locks, locksets and keys <sup>3</sup>	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Non-ELP required	A	A	A	A	A	ELP	ELP
<b>EQUIPMENT AND COMPUTER SYSTEMS</b>							
Airline Proprietary Computer System	A	A	A	A	N/A	A	N/A
Airline Ticketing and Gate Equipment	A	A	A	A	N/A	A	N/A
Broadband Access	A	A	A	A	N/A	A	N/A
Radio, Meteorological and Aerial Navigation Equipment	A	A	A	A	N/A	A	N/A
Ticket Counter Scales	A	N/A	N/A	N/A	N/A	N/A	N/A
<b>FIRE ALARM SYSTEM &amp; OTHER EQUIPMENT</b>							
Fire Alarm System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Fire Extinguishers <sup>4</sup>	A	A	A	A	A	ELP	ELP

**OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES  
AIRLINES AND CITY**

	SPACE						
	EXCLUSIVE				SHARED	JOINT	COMMON
<b>A. OPS, MAINTENANCE AND SERVICE AREAS</b>	TICKET COUNTER AREAS	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED	HOLD ROOMS	BAG CLAIM
<b>FIXTURES, ELECTRICAL/ENERGY</b>							
Bulb & Tube Replacement (real property installed)	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Maintenance	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Power supply protection <sup>5</sup>	A	A	A	A	A	A	ELP
<b>JANITORIAL AND RECYCLING SERVICES</b>							
Recycling of Paper, Plastic and Cardboard <sup>6</sup>	A	A	A	A	N/A	ELP	ELP
Tenant Space (including Floors and Tenant Restroom Areas)	A	A	A	A	ELP	ELP	ELP
Window Cleaning - Appurtenant to Tenant Space (Int. & Ext.)	A	A	A	A	ELP	ELP	ELP
Window Cleaning - All Others (Interior & Exterior)					ELP	ELP	ELP
Shampoo Carpets/Wax Floors	ELP	A	A	A	ELP	ELP	ELP
<b>PEST CONTROL</b>							
Rodents and Insects <sup>7</sup>	ELP	ELP	ELP	ELP	ELP	ELP	ELP
<b>PLUMBING AND SEWER</b>							
Incoming Water Line from Common Use Water Line to Fixture	N/A	ELP	N/A	ELP	ELP	N/A	N/A
Sanitary Sewer Line	N/A	ELP	N/A	ELP	ELP	N/A	N/A
Restrooms/Breakrooms (Fixture Repair & Replacement)	N/A	A	N/A	A	ELP	N/A	N/A
<b>SIGNS</b>							
Ticket Counter Backwall/Above Ticket Counter	A	N/A	A	N/A	N/A	N/A	N/A
Concourses: Podium Backwall/Holdroom walls	N/A	N/A	N/A	N/A	N/A	A	N/A
Directional/Informational Signage	ELP	N/A	N/A	N/A	N/A	ELP	ELP
<b>TRASH REMOVAL</b>							
Trash Removal (City will provide dumpster/compactor )	A <sup>8</sup>	A	A	A	A	ELP <sup>9</sup>	ELP

	SPACE		
	TICKET COUNTER	BAG MAKEUP	BAG CLAIM
<b>B. BAGGAGE CONVEYANCE SYSTEM</b>			
<b>BAGGAGE CONVEYANCE SYSTEM AND CAROUSELS</b>			
Repair and Maintenance	A	A	ELP

	RESPONSIBILITIES					
	SNOW REMOVAL	RAMP SCRUBBING	PAVEMENT PAINTING	SPILLS	MAINTENANCE	JANITORIAL AND TRASH REMOVAL
<b>C. RAMP AREAS</b>						
<b>JET BRIDGES (City Owned)</b>					ELP	A <sup>10</sup>
<b>LIFTING DEVICE (City Owned)</b>					ELP	
<b>RAMP MAINTENANCE (Including Jet Bridge Ramp Areas)</b>	ELP	ELP	ELP	A <sup>11</sup>		ELP

**FOOTNOTES:**

<sup>1</sup>City will paint walls one time during the five year term of the agreement. Airline will be charged back for any additional paint requests.

<sup>2</sup>D-Mark is defined as the point in the terminal building where telecommunication's lines ends and the City's begins.

<sup>3</sup>Replacement of keys will be charged back to Airline

<sup>4</sup>Airlines are responsible for their own ramp gate fire extinguishers.

<sup>5</sup>Airline is responsible for providing adequate power supply protection for all vital services and important equipment sensitive to voltage drops, voltage spikes, or temporary power outages as may occur from time to time.

<sup>6</sup>City will provide dumpsters for recyclables.

<sup>7</sup> Regularly scheduled service only.

<sup>8</sup>Airline will remove trash from curbside check-in counter.

<sup>9</sup>City will remove trash from containers for public use. Airline will remove trash from their operations.

<sup>10</sup>Airline shall safely and properly collect and dispose of bio-hazards and other hazmat from their aircraft and provide trash removal from their jet bridges.

<sup>11</sup>City will mitigate any ineffective response and charge Airline for the clean-up.

**Preferentially Assigned Equipment  
Parking Spaces. All Parking Spaces  
1,600 Sq Ft.**



**El Paso International Airport**

**Airline Operating Agreement**

**Exhibit "E"**

***EL PASO INTERNATIONAL AIRPORT  
OPERATING AGREEMENT***

BY AND BETWEEN

**THE CITY OF EL PASO**

AND

---

AIRLINE

# AIRLINE OPERATING AGREEMENT

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**EL PASO INTERNATIONAL AIRPORT  
AIRLINE OPERATING AGREEMENT**

THIS OPERATING AGREEMENT (hereinafter referred to as the "Operating Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **CITY OF EL PASO, TEXAS** ("City") and, \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, ("Airline").

**WITNESSETH:**

**WHEREAS**, Chapter 22 of the Texas Transportation Code 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**, Airline is engaged in the business of transportation of persons, property, or mail by air and desires to use certain facilities at the El Paso International Airport ("Airport") and, where applicable, lease from City certain premises and facilities in connection with its use of the Airport; and

**WHEREAS**, in furtherance of its authority, City desires to permit Airline to use and, where applicable lease, certain facilities located at said Airport in accordance with the terms, covenants, and conditions hereinafter set forth in this Operating Agreement; and

**WHEREAS**, the City and Airline have the power and authority to enter into this Operating Agreement;

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

**ARTICLE 1 - DEFINITIONS**

**SECTION 1.01 DEFINITIONS**

The following words and phrases, wherever used in this Operating Agreement, shall, for the purpose of this Operating Agreement, have the following meanings:

"Affiliate" means any Air Transportation Company that is: (1) a parent or subsidiary of a Signatory Airline, or its parent; or (2) shares an International Air Transport Association (IATA) code with a Signatory Airline at the Airport (code-sharing partner); and (3) otherwise operates under essentially the same trade

name as a Signatory Airline at the Airport, and uses essentially the same livery as a Signatory Airline. A Signatory Airline must designate in writing to the City any Air Transportation Company that will be an Affiliate of that Signatory Airline at the Airport. Affiliates shall have the rights afforded Airline without payment of any additional charges or premiums, provided that the Signatory Airline (a) remains a Signatory Airline to its Signatory Agreement; and (b) agrees and shall be obligated to serve as a financial guarantor for all rentals, fees, and charges incurred by any Affiliate of Airline at the Airport. The Signatory Airline shall be responsible for any and all unpaid rentals, fees, and charges of any such Affiliate while such Affiliate operates at the Airport.

“Air Transportation Business” means that business operated by Airline at the Airport for the commercial transportation by air of persons, property, mail, parcels, and/or cargo.

“Air Transportation Company” means the legal entity engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, parcels, and/or cargo.

“Aircraft Arrival” means any aircraft arrival at the Airport, including, without limitation, scheduled, non-scheduled, diverted, training, testing, charter, or any other flight operated by an Air Transportation Company. Aircraft Arrivals exclude flights, which are forced to return and land at the Airport because of meteorological conditions, mechanical or operating causes, or emergency or precautionary reasons.

“Airline” means the Air Transportation Company executing this Operating Agreement.

“Airline Equipment or Improvement” means any item of equipment or any improvement to Airline’s Leased Premises provided or installed at request by Airline.

“Airport” means the identified areas “Airfield, “Terminal Building”, “Air Cargo”, “Aviation” and “Ground Transportation” at the El Paso International Airport, as shown in Exhibit A, Cost Center Map, attached hereto and made a part hereof, as it may be modified or developed from time to time, including all real property easements or any other interest within the identified areas therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by City.

“Airline Terminal Support System” means any system or service supporting Airline operations in the Terminal Building, including but not limited to, telecommunications, security, access control, paging, flight or baggage information display or similar systems or services.

“City” means the City of El Paso, a municipal corporation organized under the laws of the State of Texas.

“Common Use Premises” means those non-exclusive areas at the Airport, used in common by Airline, along with other authorized users of the Airport, along with all facilities, improvements, equipment, and services which are, or hereafter may be, provided for such common use, as shown on Exhibit B-1.

“Department” means the Department of Aviation of the City.

“Director” means the Director of Aviation of the Department of Aviation or other person properly authorized to act on behalf of Director.

“Enplaned Passengers” means all local, interline transfer, and intraline transfer passengers boarding flights of Airline, at the Airport including revenue and non-revenue passengers but excluding Airline employees.

“Environmental Laws” means all present or future local, state or federal statutes, ordinances, rules, regulations (adopted), permits, citations, orders, directives, or consent decrees or other enforceable requirement of any federal, state or local entity, agency or body, or subdivision thereof (including specifically but without limitation, the City of El Paso), having governmental authority, relating to:

- (1) the protection of health, safety and the indoor or outdoor environment;
- (2) the conservation, management or use of natural resources and wildlife;
- (3) the protection or use of surface water and ground water;
- (4) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release or threatened release, abatement, removal, remediation or handling of, or exposure to any Hazardous Materials (as defined below); or
- (5) pollution (including any release or threatened release discharge or emission to air, land, surface water, or ground water);

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §18091 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), The Clean Water Act (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act (U.S.C. §300f-§300j-11 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 et seq.), the Occupational Safety and Health Act, the Clean Air Act, 42 U.S.C. Section 7401 et seq. and any state counterpart, each as heretofore and

hereafter amended or supplemented, and any analogous future or present local, state or federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Materials, or special wastes or by the federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions. The reference to Hazardous Materials in the immediately preceding sentence shall not limit the application of this paragraph to laws dealing with Hazardous Materials, it being the intention of the parties that all environmental laws dealing with activities having an impact on the environment be included within the scope of this paragraph.

“Equipment and Capital Outlay” means any single item or project not included in Maintenance and Operating Expenses or defined as a Capital Improvement. The cost of an item of Equipment and Capital Outlay shall be accounted for as a current expense.

“Exclusive Use Premises” means those portions of the Terminal Building assigned exclusively to Airline, as shown on Exhibit B-1, attached hereto.

“FAA” means the Federal Aviation Administration of the U.S. Department of Transportation or any federal agency(s) succeeding to its jurisdiction.

“Fiscal Year” means City’s fiscal year, which is the twelve-month period commencing September 1 and extending to August 31 of the following year, or such other twelve-month period as may be adopted for the operation of City or Airport.

“Hazardous Materials” means any hazardous or toxic substances, materials, or wastes, including, but not limited to, those substances, materials, and wastes listed in the U. S. Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) or as extremely hazardous substances under 40 CFR Part 355 and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable Environmental Laws.

“International Arrivals Area” means that area in the Terminal Building at the Airport designated for federal inspection services (FIS).

“Joint Use Premises” means those Terminal Building areas which may be assigned to two or more Air Transportation Companies, as shown on Exhibit B-2, attached hereto.

“Leased Premises” means any areas on the Airport leased by City to Airline, whether on an Exclusive, Joint, Common, Shared, Preferential, non-preferential or temporary use basis, as depicted on Exhibits B-1 and B-2 as attached hereto and made a part hereof.

“Maintenance and Operating Expenses” (or “M&O Expenses”) means, for any Fiscal Year, all expenses, paid or accrued, to maintain, repair, operate and administer the Airport, including, but not limited to, taxes and assessments, if any, and expenses for defending, settling, or satisfying litigation.

“Maximum Gross Landed Weight” means the maximum allowable landing weight of each aircraft operated by Airline at the Airport as authorized by the FAA and recited in Airline’s flight manual governing that aircraft.

“Operating Agreement” means this Operating Agreement between City and Airline, as the same may be amended, modified, or altered from time to time pursuant to the terms hereof.

“Passenger Facility Charge” or “PFC” means the fees authorized by 49 USC 40117 and regulated by 14 CFR Part 158 as such statutes and regulations currently exist or as they may be amended, modified, or supplemented during the Term of this Operating Agreement.

“Preferential Use Premises” means those portions of the Terminal Building and aircraft aprons assigned to Airline, as shown on Exhibit B-2, attached hereto, to which Airline shall have priority over other users, subject to the provisions of Article 4.

“Renewal and Replacement Reserve” means that reserve defined in the Bond Ordinance for the purposes of funding renewal and replacement expenditures of the City for the Airport.

“Rules and Regulations” means those rules, regulations, policies, and procedures that have been established by City or the Department for the orderly and efficient use of the Airport by airlines and other tenants and users as the same may be amended, modified, or supplemented from time to time. Such Rules and Regulations shall be made available by City to Airline upon request of Airline.

“Shared Use Premises” means those portions of the Terminal Building shared by Airline with other Air Transportation Companies, as shown on Exhibit B-1, attached hereto.

“Signatory Agreement” means that Airline Operating Agreement and Terminal Building Lease executed by the City and those airlines which are

signatory to that agreement, effective September 1, 2012 \_\_\_\_\_ and expiring on August 31, 2017.

“Signatory Airlines” means those Air Transportation Companies that lease a minimum of one (1) ticket counter position and other space in the Terminal Building deemed sufficient by the Director to support their operations, provided that the total of Terminal Building space leased to each Signatory Airline is at least 1,100 square feet; and has an agreement with the City . An all-cargo Air Transportation Company shall be considered a Signatory Airline if it guarantees a minimum of 70,000,000 annual units of Maximum Gross Landed Weight throughout the Term of this Agreement, leases facilities on the Airport from City in a minimum annual amount of at least \$85,000, for a term at least equal to the Term of its Signatory Agreement. An Affiliate of a Signatory Airline, as defined herein, shall be treated as a Signatory Airline for the purposes of this Agreement, subject to certain restrictions and requirements as defined herein.

“Special Facilities” means capital improvements or facilities located on any property owned or leased by City and located at Airport which are financed by the issuance of Special Facilities Revenue Bonds.

“Special Facilities Revenue Bonds” means any debt of City which is permitted by, but not issued pursuant to, the terms of the Bond Ordinance and which is secured by and payable solely from rentals or other charges derived by City under a lease, sale or other Operating Agreement (or any document securing the same) between City and the person, firm or corporation utilizing the Special Facilities financed thereby.

“Term” means the period of time during which Airline’s activities at the Airport are governed by this Operating Agreement. Said Term shall begin on the Effective Date, and, except as otherwise set forth herein, terminate on the date set forth in Article 2.

“Title 14” means that portion of the El Paso City Code addressing aircraft and airports, as the same may be amended, modified, or supplemented from time to time.

“Total Airline Landed Weight” means the sum of the Maximum Certificated Gross Landing Weights for all Aircraft Arrivals of Airline over a stated period of time.

“TSA” means the Transportation Security Administration of the Department of Homeland Security, or its authorized successor.

“Usable Space” means the gross space in the Terminal Building at the Airport less mechanical and related storage space and service areas as identified on Exhibits B-1 and B-2.

Additional words and phrases used in this Operating Agreement but not defined either in this Article 1 or elsewhere herein shall have the meanings as defined under the Bond Ordinance or, if not so set forth, shall have their usual and customary meaning.

## **SECTION 1.02 CROSS-REFERENCES**

References in the text of this Operating Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Operating Agreement, unless otherwise specified.

## **ARTICLE 2 - TERM**

### **SECTION 2.01 TERM**

This Operating Agreement shall commence on September 1, 2012 (Effective Date) and terminate at midnight on August 31, 2019, unless cancelled sooner as provided herein.

### **SECTION 2.02 HOLDING OVER**

It is agreed and understood that any holding over by Airline of the Leased Premises at the expiration or cancellation of this Agreement shall operate and be construed as a tenancy from month to month at rates, fees, charges, and provisions as set forth herein and the applicable City's Annual Budget Resolution and Airline shall be liable to City for any loss or damage on account of any holding over against City's will after the expiration or cancellation of this Agreement, whether such loss or damage may be contemplated or not.

## **ARTICLE 3 - RIGHTS AND SPECIFIC PRIVILEGES**

### **SECTION 3.01 USE OF THE AIRPORT**

Airline, its employees, passengers, guests, patrons, agents, independent contractors and invitees shall have the right to use, in common or jointly with other duly authorized users, those portions of the Airport, together with all facilities, improvements, equipment, and services that have been or may hereafter be provided for their common or joint use, subject to the Rules and Regulations.

### **SECTION 3.02 SPECIFIC RIGHTS OF AIRLINE AT THE AIRPORT**

Airline shall have the right, subject to conditions contained herein and in addition to all rights elsewhere granted in this Operating Agreement, to use the Airport for the following purposes, subject to the Rules and Regulations:

- A. The operation of an Air Transportation Business, including all activities reasonably necessary to such operation.
- B. The landing, taking off, flying over, taxiing, pushing, towing, loading, unloading, repairing, maintaining, conditioning, servicing, parking, storing, or testing of aircraft or other equipment of or operated by Airline, subject to the availability of space, and subject to such reasonable charges, regulations, and/or restrictions City may establish; provided however, Airline shall not permit the use of the Airfield by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Airfield as described in the then-current FAA-approved Airport Layout Plan (ALP) or other engineering evaluations performed subsequent to the then-current ALP, including the then-current Airport Certification Manual.
- C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, the sale, handling, and providing of mail, freight, and express services, and reasonable and customary airline activities.
- D. The training of persons and testing of aircraft and other equipment at the Airport, such training and testing to be limited to that incidental to Airline's Air Transportation Business, and shall not unreasonably hamper or interfere with the use of the Airport and its facilities by others entitled to the use of same. Flight training and aircraft testing shall be undertaken by Airline only to the extent permitted by and subject to the Rules and Regulations and in only those areas designated by Director. City reserves the right to restrict or prohibit such training and testing operations which it deems to interfere with the use of the Airport, including excessive noise as reasonably determined by City.
- E. The purchase of Airline's requirements of personal property or services, including fuel, lubricants, food, beverage, and other passenger supplies, and any other materials and supplies used by Airline from any person or company of Airline's choice for services to be performed for Airline that are incidental to the operation of Airline's Air Transportation Business. Nothing herein shall restrict City from levying nondiscriminatory concession or privilege fees or charges on any person or company conducting business at the Airport other than an Air Transportation Business.
- F. The sale, disposal, and exchange of Airline's aircraft, engines, accessories, fuel, oil, lubricants, other equipment, and materials or supplies to other Air Transportation Companies subject to City's right to charge and collect fees or commissions for such sales or exchanges as provided in Section 3.04 (H). Such right shall not be construed as

authorizing the conduct of a separate regular business by Airline, but as permitting Airline to perform only those functions that are incidental to the operation of its Air Transportation Business.

- G. The servicing by Airline, or by its suppliers of materials or its furnishers of services, of aircraft and other equipment operated by Airline with line maintenance or other materials or supplies, at its Preferentially Assigned Aircraft Parking Areas or other aircraft parking positions designated by Director subject to the Rules and Regulations. Director reserves the right, at any time, to designate other locations reasonably accessible from the Terminal Building for the performance of aircraft maintenance and service activities if Director believes that such activities would interfere with aircraft operations of other Air Transportation Companies at the Terminal Building.
- H. The installation and operation of identifying signs and graphics on Airline's Leased Premises, subject to the prior written approval of Director, provided that such signs shall be: (1) substantially uniform in size, type, and location with those of other Air Transportation Companies; (2) consistent with Department's graphics standards as established from time to time by Director; (3) in compliance with the Rules and Regulations; and (4) in compliance with Municipal Code and all local laws and ordinances. However, Airline shall not install any promotional displays or advertising displays in its Leased Premises unless authorized in writing, in advance, by City.
- I. The installation, maintenance, and operation of such radio, communication, meteorological, and aerial navigation equipment and facilities at suitable locations on the Airport, including computer equipment at passenger check-in counters in the Terminal Building, as may be necessary for Airline's operations; provided that such equipment and facilities do not interfere with other Airport communication, meteorological, or aerial navigation systems. The location of such equipment and facilities, method of installation and type of equipment shall require the prior written approval of Director and shall conform with all applicable federal, state, and local requirements. Airline is required to use the City's Multi-user Flight Information Display System (MUFIDS) and agrees to abide by the rules established by City for its use. Airline may use its own Flight Information Display System (FIDS) in its Leased Premises subject to the prior written consent of Director and subject to such reasonable conditions as Director may require.
- J. The provision of baggage porter, skycap, or curbside airline baggage check-in services. Airline may arrange with other Air Transportation Companies to provide such services or may provide such services on its own behalf.

- K. The use of the International Arrivals Area, depicted on Exhibits B-1 and B-2, in common with other authorized users, subject to availability and payment of then current use charges.
- L. The right to erect, maintain, and station security screening devices and to conduct a security check operation of passengers, baggage, and packages in the Airline's Exclusive Use Space or Joint Use Space at a location approved by Director in his or her reasonable discretion.
- M. The right, in common with other Air Transportation Companies, to the use of City's lifting device, which equipment is required under 14 CFR 382.40a, and permits the use of that equipment in the course of the Airline's operations, including the performance of passenger handling/boarding services for other Air Transportation Companies at the Airport.

All rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to the Operating Agreement are reserved for and to City.

### **SECTION 3.03 EMPLOYEE PARKING FACILITIES**

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

### **SECTION 3.04 LIMITATIONS ON USE BY AIRLINE**

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

- A. Shall not do or permit to be done anything at or about the Airport that may interfere with the use, operation, or maintenance of the Airport, including but not limited to effectiveness or accessibility of the water system, drainage and sewage system, fire protection system, sprinkler system, alarm system, fire hydrants and hoses, heating or ventilation system, air conditioning system, electrical system, natural gas, or other Airport systems installed or located on or within the Leased Premises or the Airport.
- B. Shall not do or permit to be done anything, either by act or failure to act, that shall cause the cancellation or violation of the provisions, or any part thereof, of any policy of insurance for the Airport, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Operating Agreement. If Airline shall do or

permit to be done any act not permitted under this Operating Agreement, or fail to do any act required under this Operating Agreement, regardless of whether such act shall constitute a breach of this Operating Agreement, which act or failure, in and of itself, causes an increase in City's insurance premiums, Airline shall immediately remedy such actions and/or pay the increase in premiums, upon notice from Director to do so.

- C. Shall not dispose of or permit any employee, agent or contractor to dispose of any waste material taken from, or products used with respect to, its aircraft 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, unless such waste material or products first be properly treated by equipment installed with the approval of City and any other administrative body having appropriate jurisdiction.
- D. Shall not keep or store any Hazardous Materials such as flammable liquids and solids, corrosive liquids, compressed gases, or magnetized or radioactive materials on the Airport except when all the following conditions are met: (1) in accordance with standards established by the National Board of Fire Underwriters, any liquids having a flash point of less than one hundred degrees (100°) Fahrenheit shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories; (2) said materials shall be under the control and care of designated and properly qualified Airline personnel; (3) said materials shall be packaged, handled and stored in compliance with applicable U.S. Department of Transportation, Environmental Protection Agency, and other applicable regulations for transport, pre-transport and storage of hazardous articles and materials, including the Airport's Spill Prevention, Control, and Countermeasure (SPCC) Plan; and (4) said materials shall be only stored in such storage areas as are designated. Director reserves the right to require Airline to relocate any stored hazardous material necessary.
- E. Shall not install fuel storage tanks or pumping facilities for use in fueling any aircraft at the Airport without prior written approval of City. The granting of the right to store aviation fuels shall be subject to the execution of a separate Operating Agreement between Airline and City.
- F. Shall not maintain or operate in the Terminal Building 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, its employees, or passengers; nor shall Airline in any manner otherwise provide for the sale or dispensing of food and beverages at the Airport except that Airline may dispense food and beverages on board Airline's aircraft or to passengers boarding Airline's aircraft for consumption on board and provide vending machines solely for the sale of hot and cold beverages, food, and confections to Airline employees in areas not accessible to the general

public. Airline may, by separate Operating Agreement with the City and to the extent it does not conflict with any terminal concession Operating Agreements, engage in the provision or sale of food or beverages at any airline club room or similar private facility at the Airport. However, in the event of originating flight delays greater than one hour, or for diverted flights or originating flights that have returned to the Airport, Airline may provide water and typical onboard snacks (e.g., peanuts, pretzels, etc.) at no charge to Airline's passengers in the holdroom area.

- G. Agrees to comply with all security measures required of Airline or City by the FAA or contained in City's FAA-approved Master Security Plan for the Airport, as such plan may be amended from time to time, or in any Airport Tenant Security Program as outlined in CFR Part 1542 with respect to Airline's Exclusive Use Premises. Any fines and/or penalties levied against City for security violations at the Airport resulting from any non-compliance of Airline, its employees, officers, agents, affiliates, or suppliers while under its control, shall be immediately due and payable to City by Airline.
- H. The rights and privileges granted Airline under this Agreement with respect to the performance of ground services and activities in connection with its Air Transportation Business at the Airport may be exercised by Airline for and on behalf of Airline's regularly scheduled or unscheduled services and those of its Affiliates. Airline may, subject to the prior written approval of Director, and, where applicable, the payment of fees or commissions as provided for in this Agreement, perform ground services for its Affiliate(s) using the Airport provided that Airline shall be solely responsible for the reporting to City of all landings, landed weights, and passengers of its Affiliate(s) and for the payment of all fees and amounts payable excluding PFCs, by or on account of such Affiliate(s) to City under this Agreement or under Title 14. It is understood and agreed that City reserves the right to control access to restricted areas and to collect reasonable fees or commissions for the provision of inflight catering, vending, ground transportation, ground support, or other services by Airline for any Affiliate(s) and for any services or facilities provided by or for Airline in competition with concessionaires and operators operating under an agreement with City.
- I. Shall park ground service or other equipment on the Terminal Building aircraft apron only at areas designated on Exhibit E or otherwise designated by Director.
- J. Shall not install any coin-operated or card operated machine(s) or device(s), except for: (1) machines for the sale of Airline's tickets or issuance of boarding passes located on Airline's Leased Premises or

other areas approved in writing by Director; or (2) beverage or snack machines as provided in Section 3.04 (F) above.

### **SECTION 3.05 AIRPORT USE SUMMARY**

Airline shall file with Director an Airport Use Summary, in a form acceptable to Director, providing the information specified below and such other information as Director may reasonably request regarding Airline's operation at the Airport. Airline shall, at all times, maintain a current version of such Airport Use Summary on file with Director. The Airport Use Summary shall include the following information:

- \* Names, addresses, and telephone numbers of Airline officials responsible for station operations, flight operations, properties, and facilities.
- \* The current and proposed schedules of Airline's flight activity at the Airport. Airline shall notify Director of schedule changes or the addition or deletion of flights at the Airport prior to or no later than the public announcement thereof.
- \* The description of Airline's fleet and identification of the type of Airline's aircraft that are serving or will serve the Airport. Airline shall provide notice of the introduction of any aircraft that is not being operated by Airline at the Airport as of the date of this Operating Agreement.
- \* Airline's aircraft recovery plan for disabled aircraft.

Such Airport Use Summary shall be updated and re-filed with Director whenever there is a change to the nature of Airline's operations at the Airport or whenever Director shall reasonably request the same.

## **ARTICLE 4 - PREMISES**

### **SECTION 4.01 PREMISES**

#### **A. Categories of Space.**

If applicable, Airline shall lease areas in or adjacent to the Terminal Building on an Exclusive Use, Joint Use, Common Use, Shared Use, or Preferential Use basis (or combination thereof) as follows and as more particularly delineated on Exhibits B-1 and B-2, as such exhibits may be modified.

B. Space in Terminal Building.

At the Effective Date of this Operating Agreement, Airline shall lease or use the areas in or adjacent to the Terminal Building shown on Exhibits B-1 and B-2. Airline's Leased Premises in the Terminal Building shall be subject to change from time to time by Director, after consultation with Airline. Any such changes shall be incorporated herein by Director transmitting to Airline replacement Exhibits B-1 and B-2.

C. City may, during the Term of this Operating Agreement, expand or modify the leasehold dimensions or location of Joint Use Space or Common Use Space. If City elects to expand or modify the dimensions or location of such space, Director shall consult with and consider any suggestions of Airline, but the approval of Airline shall not be required for any such expansion or modification by Director.

D. The dimensions on Exhibits B-1 and B-2, as such exhibits may be modified, shall be the basis for determining the amount of the rentals payable pursuant to Articles 5 and 6. Director shall issue new Exhibits B-1 and B-2 after any Terminal Building expansion or modification.

#### **SECTION 4.02 EQUIPMENT AND AIRCRAFT PARKING AREAS AND HOLDROOMS**

A. Aircraft Parking Areas, including associated aircraft loading positions, apron areas and loading bridges ("gates") as shown on Exhibit "B-2" as such exhibit may be amended from time to time by Director, and associated Joint Use Space in the Terminal Building ("holdrooms") shall be assigned to Airline by Director on a preferential, nonexclusive use basis. Airline shall have priority in using gate(s) and holdroom(s) assigned to it on a preferential use basis to accommodate its flights provided that Director may authorize other Air Transportation Companies to use such gate(s) and holdroom(s) in accordance with the provision of Section 4.03.

B. City reserves the right to reassign or recapture possession of one or more of Airline's preferentially assigned gate(s) and holdroom(s) if: (1) Airline's scheduled overall gate utilization falls below four (4) flights per gate per weekday and (2) Director determines that other suitable gate(s) are not available and there is a need for the use of such gate(s) by another Signatory Airline. Notice of such recapture or reassignment will be provided to Airline by written notice from Director requesting discussions with Airline and transmitting a revised Exhibit B-1 and B-2. Airline shall then have fifteen (15) days from receipt of said notice to respond to Director's notice either by accepting it or offering alternatives for consideration by the Director. At the end of this fifteen (15) day period, the Director may, at his or her discretion, accept the alternative, if any, or

proceed with the plan contained in the original notice. In the event of any reassignment or recapture, Airline will be entitled to payment by the Signatory Airline accommodated for the unamortized book value of any Airline-owned loading bridge or tenant improvements, and for any reasonable relocation costs. Accommodating Airline shall not be required to relocate until such time as this payment has been made.

- C. Airline shall park all its ground service equipment in its preferentially assigned Equipment Parking Area as set forth on Exhibit B-1. In the event Airline requires additional equipment parking, such parking shall be subject to availability, the written approval of Director, and applicable Rules and Regulations.
- D. Airline shall have the right to park one aircraft overnight per preferentially assigned gate. Airline may park more than one aircraft overnight per preferentially assigned gate subject to the prior approval of Director.
- E. During any construction or remodeling at the Terminal Building, City reserves the right, after consultation with a committee of local station managers selected by the Signatory Airlines, to temporarily reassign preferential use gates.
- F. Airline shall cooperate with City to accommodate other Air Transportation companies from time to time, as deemed necessary by Director for situations including, but not limited to, unscheduled flights (including charters), mechanical problems, and diversions due to weather.

#### **SECTION 4.03 ACCOMMODATION OF AIRLINE AND OTHER AIRLINES**

To maximize the use of terminal facilities at the Airport, to facilitate the entry of new Air Transportation Companies, and to accommodate the expansion plans of present Air Transportation Companies, Airline agrees, upon the request of Director, to accommodate in its Leased Premises any Air Transportation Company requesting facilities ("Requesting Airline") in accordance with the following procedure:

- A. In order to secure the use of Terminal Building facilities, a requesting airline may:
  - 1. Arrange to use City-controlled Terminal Building space and gates not preferentially assigned on a permit basis; or
  - 2. Contact Airline and other Signatory Airlines to request the use of such Leased Premises.
- B. In the event the Requesting Airline demonstrates to the satisfaction of Director that it has made all reasonable efforts to secure facilities without

success, Director shall then notify all Signatory Airlines in writing that, if Requesting Airline is not accommodated within fifteen (15) days from the date of said notice, Director shall select one of the Signatory Airlines to comply with the request for accommodation.

- C. At the end of said fifteen (15) day period, if Requesting Airline has not been accommodated, Director shall select Airline or another Signatory Airline to accommodate the Requesting Airline, taking into consideration such factors as current utilization of terminal facilities, schedule compatibility, union work rules, competitive relationships, and other relevant factors. Director shall send written notice to such selected Air Transportation Company (the "Accommodating Airline") requiring such airline to begin accommodating the Requesting Airline within thirty (30) days from the date of said notice. Director shall include in such notice the reason or reasons why such Accommodating Airline was selected.
- D. Upon receipt of said notice, the selected Accommodating Airline may submit written comments to Director contesting its selection and Director shall consider such comments before confirming or rescinding such selection. However, the decision of Director shall be final.
- E. Unless Director rescinds such selection within the thirty (30) day period specified in Section 4.03 (C), the Accommodating Airline shall accommodate the Requesting Airline by sharing its Leased Premises and aircraft parking positions on a timely, good faith basis and in a reasonable and equitable manner, subject to the following conditions:
  - 1. In case of a conflict between schedules of the Accommodating Airline and the Requesting Airline, the Accommodating Airline shall have preferential use of its Leased Premises and preferentially assigned Aircraft Parking Areas.
  - 2. The Accommodating Airline shall not require that the Requesting Airline obtain ground handling or other services from the Accommodating Airline.
  - 3. The Accommodating Airline may assess the Requesting Airline reasonable and non-discriminatory fees and charges for services rendered to, or Leased Premises shared with, Requesting Airline, which fees and charges shall be limited to Airline's actual direct and indirect costs of providing, maintaining, and operating the shared facilities and equipment plus a reasonable allowance for administration and profit not to exceed 15% of such costs. Airline may further require a payment bond or other third party guarantee from the Requesting Airline.

4. The Accommodating Airline may require the Requesting Airline to insure and indemnify the Accommodating Airline against liability arising out of the use of its facilities and equipment.

#### **SECTION 4.04 USE OF CITY LOADING BRIDGES**

- A. Any loading bridges financed and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned loading bridges by Airline shall be subject to the following terms and conditions:
  1. The loading bridges shall be operated only by employees, contractors, or agents of Airline, who are approved and qualified by Airline to operate the loading bridges.
  2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the loading bridges by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 9.02.
  3. Airline shall be solely responsible for the costs to replace or repair any damage to loading bridges or other property caused by the operation of the loading bridges by its employees, contractors, or agents.
  4. City, during the Term of this Operating Agreement, shall reasonably maintain and keep in good repair the City-owned loading bridges referred to herein.
  5. Airline shall pay the loading bridge charge as provided in Section 5.10.

#### **SECTION 4.05 USE OF CITY LIFTING DEVICE**

- A. Any lifting device owned and maintained by City shall be made available to all Air Transportation Companies serving the Airport on a common use basis unless assigned for preferential use.
- B. The use of City-owned lifting devices by Airline shall be subject to the following terms and conditions:

1. The lifting devices shall be operated only by employees, contractors, or agents of Airline who are approved and qualified by Airline to operate the lifting devices.
2. Airline shall be solely responsible for any and all damages, claims, or injuries which may be caused by the operation of the lifting devices by its employees, contractors, or agents, and shall indemnify and hold harmless City for such operation in accordance with Section 11.02.
3. Airline shall be solely responsible for the costs to replace or repair any damage to lifting devices or other property caused by the operation of the lifting devices by its employees, contractors, or agents.
4. City, during the Term of this Agreement, shall reasonably maintain and keep in good repair the City-owned lifting devices referred to herein.

#### **SECTION 4.06 REQUIREMENT TO REMAIN IN CONFINES OF EXCLUSIVE USE SPACE**

Airline shall, at all times, with regards to their Exclusive Use Space, occupy and use only that space that is designated their Exclusive Use Space. Failure of Airline to remain within the confines of its Exclusive Use Space shall be a breach of this Operating Agreement. Director shall notify Airline in writing of any infraction of this provision and, upon any continued infraction, City shall charge Airline double the normal specified monthly rent for the unauthorized occupancy or use of such Terminal Building space. Airline further agrees that it will, at all times, occupy and use the Joint Use Space so that its operations and passengers do not impede or inconvenience the operations or passengers of other Air Transportation Companies.

#### **SECTION 4.07 REASSIGNMENT OF LEASED SPACE DURING CONSTRUCTION**

Director may temporarily reassign any Leased Premises or Aircraft Parking Area during any construction after reasonable written notice is provided to Airline. The cost for any temporary relocation resulting from construction shall, at the discretion of City, be either borne by the airline necessitating the relocation or shall be included as part of the City's project cost. During the period when Airline is temporarily relocated, appropriate adjustments to rentals shall be made to reflect any differences between the area of the Leased Premises and the area of temporarily assigned premises.

#### **SECTION 4.08 SURRENDER OF THE PREMISES**

- A. Airline covenants and agrees that on expiration of the Term of this Operating Agreement, or on earlier termination as hereinafter provided, or on reassignment of the Leased Premises as heretofore provided, it will

peaceably surrender possession of the Leased Premises hereunder in good condition, reasonable wear and tear excepted, and City shall have the right to take possession of the Leased Premises. City shall not be required to give notice to quit possession at the expiration of the term of this Operating Agreement.

- B. Airline shall have the right, on expiration or early termination and within thirty (30) calendar days thereafter, at its expense to remove or dispose of all trade fixtures and equipment and other personal property installed or placed by Airline in, on, or about the Airport, subject to any valid lien that City may have thereon for unpaid rents or fees
- C. Any and all property not removed by Airline within the said thirty (30) day period shall, at the option of City, thereupon become a part of the property on which it is located, and title thereto shall thereupon vest in City. Airline agrees to reimburse City for any costs incurred by City if City elects to remove or dispose of any remaining Airline property after such thirty (30) day period. If City elects to remove or dispose of any remaining Airline property, it will use best efforts to remove or dispose of any Airline property in a reasonable amount of time.

#### **SECTION 4.09 ACCESS**

- A. Subject to the provisions herein, Title 14, the Rules and Regulations, and such other restrictions as City may impose with respect to Airline's use of Leased Premises, City hereby grants to Airline, its agents, suppliers, employees, contractors, passengers, guests, and invitees, the right and privilege of free and unrestricted access, ingress, and egress to Airline's Leased Premises and to public areas and public facilities of the Terminal Building.
- B. The ingress and egress provided for in Section 4.08(A) shall not be used, enjoyed, or extended to any person engaging in any activity or performing any act or furnishing any service for or on behalf of Airline that Airline is not authorized to engage in or perform under the provisions hereof unless expressly authorized in advance and in writing by Director.
- C. City shall have the right at any time or times to close, relocate, reconstruct, change, alter, or modify any such means of access provided for Airline's use pursuant to this Operating Agreement or otherwise, either temporarily or permanently, provided that reasonable notice to Airline and a reasonably convenient and adequate means of access, ingress, and egress shall exist or be provided in lieu thereof. City shall suffer no liability by reason thereof and such action shall in no way alter or affect any of Airline's obligations under this Operating Agreement.

- D. Airline agrees that all of its tenants, subtenants, patrons, invitees, agents, employees, or independent contractors must be authorized by the City to enter restricted areas as defined in Title 14. Airline agrees that no person authorized to enter a restricted area by virtue of this Operating Agreement shall permit any person who is not otherwise authorized to enter a restricted area unless such unauthorized person is, at all times while in the restricted area, in the company of an authorized person.
- E. Airline understands and agrees that, in the event the Federal Aviation Administration assesses a civil penalty against the City or Department for any violation of 49 CFR Part 1542 or any successor or additional regulation pertaining to security at the Airport, as a result of any act or failure to act on part of Airline, its tenants, subtenants, patrons, agents, servants, employees, invitees, or independent contractors, Airline shall, upon demand of City, immediately reimburse the City in the amount of the civil penalty assessed.

## **ARTICLE 5 - REPORTS, RENTALS, CHARGES, AND FEES**

### **SECTION 5.01 GENERAL**

- A. In consideration for use of the Leased Premises and for the various rights, licenses, and privileges granted hereunder and for the undertakings of City, Airline agrees to pay City, during the Term of this Operating Agreement, without deduction or set-off, rentals, charges, and fees to be calculated as set forth herein. City shall invoice Airline monthly for all such rentals, charges, and fees except landing fees, which shall be payable by Airline without invoice. Payment shall be made by Airline in accordance with Section 5.11 hereof.

### **SECTION 5.02 MONTHLY ACTIVITY REPORT**

- A. Airline shall furnish to Director, on or before the tenth (10th) day of each month, an accurate report of Airline's operations at the Airport during the preceding month, setting forth all data necessary to calculate the rentals, fees, and charges due under this Operating Agreement. Said report shall include, but shall not necessarily be limited to: (1) Airline's total number of Aircraft Arrivals for the month by type of aircraft, the Maximum Gross Landed Weight of each aircraft, and the Total Airline Landed Weight for the month to include any non-scheduled and charter operations; (2) the total number of Enplaned Passengers and Deplaned Passengers to include any non-scheduled and charter operations; (3) the number of Enplaned Passengers who are originating their air journeys at the Airport (rather than transferring from other flights of Airline or other Air

Transportation Companies at the Airport); (4) the number of Enplaned Passengers who are non-revenue passengers or frequent flier award coupon passengers as such terms are defined in 14 CFR Part 158, as amended; (5) the total number of Aircraft Arrivals and departures from non-preferentially assigned gates or City-owned loading bridges; (6) the number of arriving international passengers using the International Arrivals Area; (7) the weight of cargo, freight, mail, and express for such month; and (8) any other data needed to establish and assess rates and charges. Airline shall also report the activities set forth herein for any Affiliate or other Air Transportation Company or charter which is handled by or uses the Leased Premises of Airline.

- B. If Airline fails to furnish Director with the report required by Section 5.02(A), it shall be considered in default under this Operating Agreement and Airline's rentals, fees, and charges, as provided for hereafter, shall be determined by assuming that Airline's Total Airline Landed Weight and Enplaned Passengers for such month was one hundred fifty percent (150%) of its Total Airline Landed Weight and Enplaned Passengers during the most recent month for which such data are available for Airline and by applying the rates specified herein and the applicable City's Annual Budget Resolution. Any necessary adjustment in such rentals, fees, and charges shall be calculated after an accurate report is delivered to Director by Airline for the month in question. Resulting surpluses or deficits shall be applied as credits or charges to the appropriate invoices in the succeeding month.

### **SECTION 5.03 TERMINAL BUILDING RENTALS**

Airline shall pay to City for its Exclusive Use, Joint Use, Common Use, and Shared Use space in the Terminal Building, as set forth on Exhibits B-1 and B-2, monthly rentals based on annual rental rates to be calculated each Fiscal Year.

### **SECTION 5.04 ELECTRICITY CHARGES FOR EXTRAORDINARY USAGE**

Airline shall pay City charges for the extraordinary usage of electrical power in its Shared Use and Exclusive Use space and preferentially assigned gates based on the cost, without mark-up, to City for such extraordinary usage of electricity by Airline as arrived at through separate metering or computation by City. Airline shall report to Director any plans to decrease or increase its extraordinary usage of electrical equipment or electricity.

### **SECTION 5.05 LANDING FEES**

Airline shall pay to City monthly Landing Fees to be determined by multiplying the number of one thousand (1,000) pound units of Total Airline Landed Weight for

Airline during the month by the then-current Landing Fee Rate established by the City Annual Budget Resolution.

#### **SECTION 5.06 EQUIPMENT PARKING RENTALS**

Airline shall pay City, as rent for its preferentially assigned Equipment Parking Area, a monthly rental computed at the rate set forth in the applicable City Annual Budget Resolution.

#### **SECTION 5.07 SECURITY SCREENING FEE**

Airline shall pay City amounts sufficient to reimburse City for its share of City's actual cost of providing armed law enforcement support for the security screening operation as required by CFR Part 1542. The cost of such support shall be apportioned by City among Air Transportation Companies using the secured passenger boarding areas on the basis of the share of each Air Transportation Companies' Enplaned Passengers relative to the total Enplaned Passengers of all such Air Transportation Companies.

#### **SECTION 5.08 AIRLINE EQUIPMENT OR IMPROVEMENT CHARGES**

Upon the installation or provision by City of any Airline Equipment or Improvement, Airline shall pay for the use of such equipment or improvement amounts sufficient to amortize the cost paid by City, including applicable maintenance and operating expenses, all as determined by City.

#### **SECTION 5.09 INTERNATIONAL ARRIVALS AREA CHARGES**

Airlines shall pay amounts for the use of the common-use International Arrivals Area as set forth in the applicable City Annual Budget Resolution.

#### **SECTION 5.10 CITY-OWNED LOADING BRIDGE CHARGE**

Airline shall pay City a loading bridge charge on a monthly basis for the use of City-owned loading bridges preferentially assigned to Airline at a rate determined by City for the extraordinary costs of operation and maintenance required to support the operation of such loading bridges. Director may revise such loading bridge charge rate at the beginning of each Fiscal Year. Such loading bridge charge will remain in effect until such time that City acquires new loading bridges through usage of PFC's to replace the existing loading bridges.

#### **SECTION 5.11 PAYMENT PROVISIONS/INTEREST ON OVERDUE AMOUNTS**

- A. All Exclusive Use and Shared Use Rentals, Apron Use Fees, Equipment Parking Rentals, Airline Equipment Charges and any City-owned loading bridge charges on preferentially assigned gates shall be due and payable the first day of each month, in advance, without invoice.

- B. Landing Fees shall be due and payable on or before the twentieth (20<sup>th</sup>) day of each month, without invoice.
- C. All Joint Use, Common Use, Security Screening Fees, and other fees and charges shall be due and payable on invoice within thirty (30) days of the date of invoice.
- D. The acceptance by City of any payment made by Airline shall not preclude City from identifying the accuracy of computations in Airline's Monthly Activity Report, submitted to Director as provided in Section 5.02, or from recovering any additional payment actually due from Airline.
- E. If any payment is not received by City by the due date, City may, at its discretion, charge Airline interest at the highest rate permitted by law. All payments due and payable herein shall be paid in lawful money of the United States of America, without set-off, electronically by Automated Clearing House (ACH), or by check made payable to City and delivered or wired, as applicable, to the following address or account, or to such other address or account as City may notify Airline in writing from time to time:

Via Mail

Accounting Division  
El Paso International Airport  
P.O. Box 971278  
El Paso, Texas 79925-1278

## **SECTION 5.12 TAXES AND OTHER CHARGES**

Airline shall pay all taxes and governmental charges of any kind whatsoever that may be lawfully assessed against Airline or City, with respect to the Leased Premises, Airline's use and/or occupancy of the Leased Premises, or any improvements thereon, during the term of this Operating Agreement including any extensions or options periods granted thereto.

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

## **SECTION 5.13 PASSENGER FACILITY CHARGE**

City reserves the right to assess and collect PFC's subject to the terms and conditions set forth in the Aviation Safety and Capacity Expansion Act of 1990, Section

9110 (the PFC Act) and implementing regulations as may be supplemented or amended from time to time. Airline shall collect and pay all PFC's for which it is responsible under the provisions of 14 CFR Part 158. Failure by Airline to remit PFC's within the time frame required by 14 CFR Part 158 shall be deemed an event of default pursuant to Section 11.01.

#### **SECTION 5.14 RECORDS OF AIRLINE**

Airline shall keep and maintain a complete and adequate set of records of all landing weights and other information specified in Section 5.02 hereof or otherwise required for the calculation or payment of fees required under this Operating Agreement for the current Fiscal Year and the three (3) immediately preceding Fiscal Years, and shall make such records available for inspection by Director at any and all reasonable hours and times.

#### **SECTION 5.15 OTHER FEES AND CHARGES**

City expressly reserves the right to assess and collect (1) reasonable and nondiscriminatory fees for concessions and other services provided by Airline for others if such services provided by Airline would otherwise be available from a concessionaire or licensee of City; (2) reasonable and nondiscriminatory fees and charges for services or facilities not enumerated in this Operating Agreement, but provided by City and accepted by Airline, including, but not limited to, FIS facility fees, special maintenance of airline Leased Premises, equipment vehicle storage, disposal fees, utility fees, remote ramp aircraft parking fees, and gate usage per turn fees; and (3) reasonable and nondiscriminatory fee for any employee parking area(s) provided at the Airport.

Anything in this Operating Agreement to the contrary notwithstanding, this Section 5.15 shall not be interpreted or understood as contracting away the City's governmental authority and shall not be construed to waive any lawfully assessed taxes or any governmental charges.

#### **SECTION 5.16 RIGHT OF SET OFF**

City shall have the right to set off any past due amount(s) by applying all or a portion of current payments to such past due amount(s). Past due amounts may include sums due under prior Operating Agreements, this Operating Agreement, or for usage of the Airport as a non-signatory airline. In the event City exercises the right of set off it shall notify Airline. Airline shall be responsible for immediately submitting such a sum as will reflect the total amount needed to satisfy current amounts due.

#### **SECTION 5.17 SECURITY DEPOSIT**

Unless Airline is an affiliate of a Signatory Airline or Airline has provided regularly scheduled weekday passenger or cargo flights to and from the Airport for the eighteen (18) months prior to Airline's execution of this Agreement (or prior to the assignment of the Agreement to Airline) without committing an act or omission that would have been

an Event of Default under Section 11.01 of this Agreement, Airline agrees to pay a security deposit to City subject to the following conditions:

- A. City shall have the right to require Airline to provide to City a Security Deposit in an amount equal to three (3) months estimated fees and charges payable by Airline under Article 5 of this Agreement, to guarantee the faithful performance by Airline of its obligations under this Agreement and the payment of all fees and charges due hereunder. Airline shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months (including any period prior to Airline's execution of this Agreement or prior to the assignment of this Agreement to Airline during which Airline provided regularly scheduled passenger flights to and from the Airport) during which Airline commits no Event of Default under Section 11.01 of this Agreement (and for any such prior period, no act or omission that would have been such an Event of Default hereunder). City shall provide Airline with written notice that Airline must provide the Security Deposit required hereunder and Airline shall provide the Security Deposit within ten (10) days of issuance of the notice. Such Security Deposit shall be in such form and as shall be acceptable to City in its reasonable discretion. In the event that any such Security Deposit shall be for a period of less than the full period required by this Agreement, or if such Security Deposit is canceled, Airline shall provide a renewal or replacement Security Deposit for the period following the expiration or cancellation of such Security Deposit previously provided at least sixty (60) days prior to the date on which such previous Security Deposit expires or at least sixty (60) days prior to the effective date of such cancellation. City's rights under this Section 5.17 shall be in addition to all other rights and remedies provided to City under this Agreement.
  
- B. IF AIRLINE SHALL COMMIT AN EVENT OF DEFAULT UNDER SECTION 11.01 IN THE PAYMENT OF ANY FEES DUE UNDER THIS AGREEMENT, THE DEPARTMENT SHALL HAVE THE RIGHT, BY WRITTEN NOTICE TO AIRLINE GIVEN AT ANY TIME, TO IMPOSE OR REIMPOSE THE REQUIREMENTS OF SECTION 5.17(A) ON AIRLINE. IN SUCH EVENT, AIRLINE SHALL WITHIN TEN (10) DAYS FROM ITS RECEIPT OF SUCH WRITTEN NOTICE, PROVIDE THE DEPARTMENT WITH THE REQUIRED SECURITY DEPOSIT AND SHALL THEREAFTER MAINTAIN SUCH SECURITY DEPOSIT IN EFFECT UNTIL THE EXPIRATION OF A PERIOD OF EIGHTEEN (18) CONSECUTIVE MONTHS DURING WHICH AIRLINE COMMITS NO EVENT OF DEFAULT UNDER SECTION 11.01 OF THIS AGREEMENT. THE DEPARTMENT SHALL HAVE THE RIGHT TO REIMPOSE THE REQUIREMENTS OF SECTION 6517(A) ON AIRLINE EACH TIME AIRLINE COMMITS SUCH AN EVENT OF DEFAULT DURING THE TERM OF THIS AGREEMENT. THE DEPARTMENT'S RIGHTS UNDER SECTION 5.17(B) SHALL BE IN ADDITION TO ALL OTHER RIGHTS

AND REMEDIES PROVIDED TO THE DEPARTMENT UNDER THIS AGREEMENT.

City will also have the option to charge non-signatory landing fee rates if Airline does not comply with Section 5.17(A) above when required to do so.

## **SECTION 5.18 NO OTHER FEES AND CHARGES**

Except as provided in this Operating Agreement, no further rentals, fees, or charges shall be charged against or collected from Airline, its passengers, employees, shippers or receivers of freight or express, suppliers of materials, contractors or furnishers of services, by City for the premises, facilities, rights, licenses, and privileges granted to Airline under this Operating Agreement, unless mutually agreed upon between City and Airline.

## **ARTICLE 6 - CALCULATION OF RENTALS, CHARGES, AND FEES**

### **SECTION 6.01 RENTALS, CHARGES, AND FEES**

Rentals, charges, and fees shall, subject to the provisions of Section 6.06 hereof, be reviewed and recalculated annually based on the principles and procedures set forth in this Article 6, and shall become effective on the effective date of this Operating Agreement and each September 1<sup>st</sup> thereafter of each year of the Operating Agreement.

### **SECTION 6.02 ACCOUNTING RECORDS**

- A. City shall establish, and thereafter maintain, accounting records that will document the following items for each of the Airport Cost Centers: (1) revenues; (2) Maintenance and Operating Expenses; (3) annual debt service on Bonds; (4) Equipment and Capital Outlays; (5) any annual funding requirements pursuant to the Bond Ordinance; and (6) any other funding requirements imposed by law or judgments.
- B. At the request of Airline, City shall provide to Airline its annual budget and financial statements as well as any supplemental financial data reasonably required to assess the adequacy of rates and charges established under this Operating Agreement.

### **SECTION 6.03 COORDINATION PROCEDURES**

On or before the April 1 prior to the beginning of each Fiscal Year, Airline shall submit to Director, in writing, its Total Airline Landed Weight forecast for that Fiscal Year. City shall combine Airline's forecast with the Landed Weight forecasts of all Air

Transportation Companies and make such adjustments as City deems appropriate to arrive at an estimated Total Airline Landed Weight of all Air Transportation Companies to be used in the calculation of Landing Fee Rates.

## **ARTICLE 7 - MAINTENANCE AND OPERATION OF AIRPORT**

### **SECTION 7.01 DESIGNATION OF OPERATION AND MAINTENANCE RESPONSIBILITIES.**

In addition to the obligations of Airline and City set forth in this Article 7, responsibilities for maintenance, cleaning, and operation of the Airport shall be as set forth in Exhibit D, attached hereto and made a part hereof.

### **SECTION 7.02 CITY'S RESPONSIBILITIES**

- A. City shall, with reasonable diligence, prudently develop, improve, and at all times maintain and operate the Airport in a first class manner consistent with airports of similar size with qualified personnel and keep the Airport in an orderly, clean, neat and sanitary condition, and good repair, unless such maintenance, operation, or repair shall be Airline's obligation pursuant to Section 7.03 and Exhibit D.
- B. City shall, to the extent it is legally able to do so, use reasonable efforts to keep the Airport and its aerial approaches free from ground obstruction for the safe and proper use thereof by Airline.
- C. City shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided in accordance with this Section 7.02 and Exhibit D when such failure is due to mechanical breakdown or loss of electrical power not caused by City's negligence or any other cause beyond reasonable control of City.
- D. City shall operate the Airport and shall exercise these rights in accordance with applicable laws and regulations.

### **SECTION 7.03 AIRLINE'S RESPONSIBILITIES**

Subject to the provisions of Section 7.05:

- A. Airline shall, at all times, preserve and keep its Leased Premises in an orderly, clean, neat, and sanitary condition, free from trash and debris resulting from Airline's operations, provided, however, this requirement shall not be construed to mean Airline shall have janitorial responsibilities designated to be those of City pursuant to Exhibit D.

- B. Airline shall operate and maintain at its own expense any improvements and/or equipment installed by Airline for the exclusive use of Airline, except for infrastructure improvements and equipment and facilities serving the entire Terminal Building.
- C. Airline shall not erect, maintain, or display on its Leased Premises or anywhere in the Terminal Building in the public view any billboards, banners, advertising, promotional signs, or materials without the prior written approval of Director.

#### **SECTION 7.04 CITY'S RIGHT OF ENTRY**

City, by its Director or other authorized officers, employees, agents, contractors, subcontractors, or other representatives, shall have the right during normal business hours upon reasonable notice or, in the case of emergencies, without notice, to enter upon Airline's Leased Premises space, accompanied by an authorized Airline representative, if practicable, for the following purposes:

- A. To inspect such space to determine whether Airline has complied and is in compliance with the terms and conditions of this Operating Agreement.
- B. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary if Airline fails to perform its obligations under this Operating Agreement, and to recover the actual cost of such maintenance, cleaning, or repair from Airline, plus a fifteen-percent (15%) administrative charge from Airline on the next rent due.
- C. Upon reasonable notice, except in emergencies, to perform such maintenance, cleaning, or repair as City reasonably deems necessary and which is the responsibility of City under this Operating Agreement.
- D. For the purpose of exhibiting same to prospective tenants, purchasers or others.

The exercise of this right of entry shall not be deemed an eviction or disturbance of Airline's use or possession provided City shall exercise its best efforts not to interfere with Airline's normal operations in the Leased Premises.

#### **SECTION 7.05 ALTERATIONS AND IMPROVEMENTS**

- A. Airline shall make no repairs, alterations, additions, improvements to, or installations on the Leased Premises without the prior written approval of Director.

- B. Plans and specifications for any such work shall be filed with and subject to the approval of Director and all work shall be done in accordance with local ordinances and State and Federal laws and regulations.
- C. All Airline alterations and improvements other than movable furniture, personal property, equipment, and trade fixtures shall become part of the realty and title shall vest with City upon expiration, or early termination, of this Operating Agreement.

## **SECTION 7.06 ENVIRONMENTAL REGULATIONS**

Airline shall comply with the following environmental regulations:

- A. Airline shall not cause or permit any Hazardous Materials, as defined in Section 1.01 herein, to be stored or used on or about the Airport by Airline, its agents, or employees, except in compliance with Environmental Laws.
- B. Airline shall, at all times and in all respects in connection with its use and occupancy of the Airport, comply with all applicable Environmental Laws (as defined in Section 1.01 herein) Airline shall also comply with the terms of permits held by City as and to the extent such terms are applicable to Airline's activities which impact City's ability to comply with such permits including, but not limited to, the Airport stormwater permit issued pursuant to the Clean Water Act, the Municipal Separate Storm Water permit issued pursuant to the Clean Water Act or any reissued version of either permit, whether issued by the US GPA or the Texas Commission on Environmental Quality (TCEQ) or any predecessor agencies. This list of permits is provided by way of example only and is not intended to be fully inclusive. During the term of this Operating Agreement, if City becomes aware of other permits which are impacted by the Airlines activities, it will provide Airline with written notice of those permits.
- C. Airline shall, at its sole expense, procure, maintain in effect, and comply with all conditions of any permits, licenses, and other governmental and regulatory approvals required for Airline's use of the Airport, including, without limitation and as applicable, discharge of materials or wastes into or through any storm or sanitary sewer serving the Airport. Airline shall cause any and all Hazardous Materials for which Airline arranges for disposal off-site to be removed and transported solely by duly licensed haulers to duly licensed facilities for disposal. Airline shall in all respects handle, treat and manage any and all Hazardous Materials on or about the Airport in conformity with all applicable Environmental Laws or any successor laws thereto and prudent industry practices regarding the management of such Hazardous Materials. Upon the expiration or earlier termination of the term of this Operating Agreement, Airline shall cause all

Hazardous Materials stored on the Airport by Airline to be removed from the Airport and to be transported for use, storage, or disposal in accordance and compliance with all applicable Environmental Laws; provided, however, that Airline shall not take any remedial action in response to the presence of any Hazardous Materials on or about the Airport, nor enter into any settlement Operating Agreement, consent decree, or other compromise with respect to any claims relating to any Hazardous Materials in any way connected with the Airport without first notifying City in writing of Airline's intention to do so and affording City reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect City's interest with respect thereto.

- D. If at any time Airline shall become aware, or have reasonable cause to believe, that any Hazardous Material has come to be located on or about the Airport as a result of Airline's violation or potential violation of Environmental Laws, Airline shall, promptly upon discovering such presence or suspected presence of the Hazardous Material, provide City with written notice of that condition. In addition, Airline shall promptly notify City in writing of: (1) any enforcement, cleanup, removal, or other governmental or regulatory action instituted or threatened against Airline at the Airport pursuant to any Environmental Laws; and (2) any claim made or threatened by any person against Airline relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Materials at the Airport. Airline shall make available for review by City any reports made by Airline to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Materials on or removed from the Airport, including any complaints, notices, warnings, or asserted violations in connection therewith.

Airline shall also supply to City as promptly as possible, and in any event within five (5) business days after Airline first receives or sends the same, copies of all written claims, complaints, notices, warnings, or asserted violations relating in any way to Airline's compliance with Environmental Laws in connection with its use of the Airport. Airline shall, upon request, make available for review by City copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Airport by or on behalf of Airline.

## **ARTICLE 8 - DAMAGE OR DESTRUCTION OF PREMISES**

### **SECTION 8.01 DAMAGE OR DESTRUCTION**

- A. If the Leased Premises or any portions thereof, or buildings or structures of which such space may be a part, be damaged by fire or other casualty not caused by Airline, Director shall notify Airline within sixty (60) days

whether the space shall be repaired. If the space is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the particular building, rooms, or other portion of the Leased Premises rendered untenable shall be abated for the period from the occurrence of the damage to the completion of the repairs, provided that City shall exert its best effort to provide Airline with temporary substitute space, if available, at such rent as deemed necessary and reasonable by City, until such time as the repairs are completed.

If Director shall fail to notify Airline of its decision to repair any untenable Leased Premises within sixty (60) days after the destruction, City shall be deemed to have elected to terminate this Operating Agreement as to the space damaged and destroyed, and the Operating Agreement shall automatically terminate as to such space as of the date of the damage or destruction.

## **SECTION 8.02 DAMAGE CAUSED BY AIRLINE**

Notwithstanding the provisions of this Article 10, in the event that due to the negligence or willful act or omission of Airline, its employees, its agents, or licensees, Leased premises shall be damaged or destroyed by fire, other casualty or otherwise, there shall be no abatement of rent during the repair or replacement of said Leased Premises. To the extent that the costs of repair or replacement shall exceed the amount of any insurance proceeds payable to City by reason of such damage or destruction, Airline shall pay the amount of such additional costs to City.

## **ARTICLE 9 - INSURANCE AND INDEMNIFICATION**

### **SECTION 9.01 INSURANCE**

- A. Airline shall, without expense to City, and upon commencement of the term hereof, obtain and cause to be kept in force liability insurance coverage, with limits as hereinafter stated, insuring against the liabilities set forth in this Section.
- B. Such insurance shall include, by way of example but not by way of limitation, comprehensive general liability coverage and motor vehicle liability insurance coverage and shall not be in amounts less than hereinafter stated. Such insurance coverage shall be provided by policies issued by a company or companies of sound and adequate financial responsibility. Such insurance companies shall be qualified to do business and be in good standing in Texas. The comprehensive general liability policies shall include contractual liability coverage and shall make reference to this Agreement.

- C. Airline shall cause a certificate of insurance to be furnished to City within thirty (30) days from the effective date of this Agreement, evidencing such insurance coverage. A certificate of insurance shall be delivered to City 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:
1. A statement of the coverage provided by the policy;
  2. A statement certifying the City and its officers, directors, agents, and employees are listed as an additional insured in the policy;
  3. A statement of the period during which the policy is in effect;
  4. A statement that the annual premium or the advance deposit premium for such policy has been paid in advance; and
  5. An agreement by the insurance company issuing such policy that the policy shall not be cancelled or any of the provisions changed for any reason whatsoever without at least thirty (30) days' prior written notice to City.

If City is notified that any of the coverage required herein is to be canceled or changed in such a manner as not to comply with the requirements of this Agreement, Airline shall, prior to the effective date of such cancellation or change, obtain and provide City with certificates evidencing the reestablishment of the insurance of the insurance coverage required hereby. If Airline does not notify City by the effective date of such cancellation or change, this will constitute a breach by Airline and permit City to terminate this Agreement pursuant to Section 12.03.

D. The minimum limits of coverage shall be as follows:

1. Airline, at its own expense, shall procure and maintain for the benefit of City and itself, as their respective interests shall appear, aviation general liability insurance with insurance underwriters, satisfactory to City and with the following minimum limits:

For Aviation General Liability:

\$100,000,000 Combined Single Limit, Each Occurrence

For Aircraft liability:

\$50,000,000 for all airlines exclusively using aircraft with 60 or under passenger capacity;

\$100,000,000 for all others

2. Comprehensive motor vehicle liability policy in a minimum amount of five million dollars (\$5,000,000) for both bodily injury and property damage.
  3. Workers' compensation insurance in a minimum amount as required by State law and employer's liability in a minimum amount of one million (\$1,000,000) limit each accident, disease aggregate, and disease each employee.
- E. Insofar as said insurance provides protection against liability for damages to third parties for personal injury, death, and property damage, City shall be included as an additional insured throughout the term of the Agreement; provided such liability insurance coverage shall also extend to damage, destruction, and injury to City-owned or City-leased property and City personnel, and caused by, or resulting from the negligent work, acts, operations, or omissions of Airline, its officers, agents, employees, invitees, and independent contractors on the Airport. Airline may show City as an additional insured with respects to Airline's operation at the Airport, provided, that Airline shall then also show on the insurance policy that liability insurance coverage also includes contractual liability.
- F. Any and all of the above insurance coverages shall be on an "occurrence" basis, not on a "claims made" basis.
- G. City shall have no liability for any premiums charged for such coverage, and the inclusion of City as an additional insured is not intended to, and shall not, make City a partner or joint venturer with Airline in its operations at the Airport.

## **SECTION 9.02 INDEMNIFICATION**

- A. INDEMNITY. AIRLINE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES", FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER ("CLAIMS), TO THE FULL EXTENT ARISING OUT OF (A) ANY BREACH OF THIS AGREEMENT BY AIRLINE OR ITS AGENTS, EMPLOYEES, AFFILIATES, SUBTENANTS, OR CONTRACTORS, (COLLECTIVELY THE "AIRLINE PARTIES"); (B) ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE AIRLINE PARTIES HEREUNDER; OR (C) NEGLIGENCE OR WILLFUL MISCONDUCT OF THE AIRLINE PARTIES IN CONNECTION WITH**

**THIS AGREEMENT, THE CONSTRUCTION, DEVELOPMENT, OPERATION OR USE OF THE LEASED PREMISES, OR THE AIRPORT.**

**IT IS THE INTENTION OF THIS INDEMNITY SECTION THAT THE JOINT AND CONCURRING RESPONSIBILITY OF CITY AND AIRLINE BE BORNE COMPARATIVELY IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THIS PROVISION SHALL NOT CREATE ANY CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR AIRLINE NOR SHALL IT ENLARGE IN ANY WAY THE LIABILITY OF CITY OR AIRLINE, THIS PROVISION BEING INTENDED SOLELY TO PROVIDE FOR INDEMNIFICATION OF CITY FROM LIABILITY FOR DAMAGE TO THIRD PERSONS OR PROPERTY AS SET FORTH IN THIS PARAGRAPH.**

**AIRLINE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. MAINTENANCE OF THE INSURANCE REQUIRED UNDER THIS AGREEMENT SHALL NOT AFFECT AIRLINE'S INDEMNITY OBLIGATIONS. AIRLINE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF CITY OR AIRLINE, AS AIRLINE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THAT THE EXPENSES THEREOF SHALL BE PAID BY AIRLINE<sup>1</sup>. IN NO EVENT MAY AIRLINE ADMIT LIABILITY ON THE PART OF CITY WITHOUT THE PRIOR WRITTEN CONSENT OF THE EL PASO CITY ATTORNEY.**

- B. WAIVER OF CONSEQUENTIAL DAMAGES. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF AIRLINE'S CUSTOMERS, SUBTENANTS, AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.**
  
- C. CLAIMS AGAINST AIRLINE. IF ANY CLAIM, DEMAND, SUIT, OR OTHER ACTION IS MADE OR BROUGHT BY ANY PERSON OR ENTITY AGAINST THE AIRLINE ARISING OUT OF OR CONCERNING THIS AGREEMENT, THE AIRPORT, OR THE LEASED PREMISES, AIRLINE SHALL GIVE WRITTEN NOTICE THEREOF TO CITY WITHIN TEN (10) BUSINESS DAYS AFTER BEING NOTIFIED OF SUCH CLAIM,**

DEMAND, SUIT, OR ACTION. SUCH NOTICE SHALL ENCLOSE A TRUE COPY OF ALL SUCH CLAIMS, AND IF THE CLAIM IS NOT WRITTEN OR THE INFORMATION IS NOT DISCERNABLE FROM THE WRITTEN CLAIM, THE WRITTEN NOTICE SHALL STATE THE DATE OF NOTIFICATION OF ANY SUCH CLAIM, DEMAND, SUIT, OR OTHER ACTION; THE NAMES AND ADDRESSES OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY MAKING SUCH CLAIM OR THAT INSTITUTED OR THREATENED TO INSTITUTE ANY TYPE OF ACTION OR PROCEEDING; THE BASIS OF SUCH CLAIM, ACTION, OR PROCEEDING; AND THE NAME OF ANY PERSON AGAINST WHO SUCH CLAIM IS BEING MADE OR THREATENED. SUCH WRITTEN NOTICE SHALL BE DELIVERED EITHER PERSONALLY OR BY MAIL AND SHALL BE DIRECTLY SENT TO THE EL PASO CITY ATTORNEY, #2 CIVIC CENTER PLAZA, 9TH FLOOR, EL PASO, TEXAS 79901, OR TO SUCH REVISED ADDRESS AS NOTIFIED BY DIRECTOR.

- D. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO LIMIT CITY'S ABILITY TO ADJUST RENTAL RATES AND OTHER FEES IN ACCORDANCE WITH THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICABLE LAWS AND REGULATIONS. FURTHERMORE, NO PROVISION IN THIS AGREEMENT IS INTENDED TO LIMIT CITY'S ABILITY TO ADJUST LANDING FEES OR IMPOSE OTHER FEES IN ACCORDANCE WITH APPLICABLE LAWS AND REGULATIONS.
- E. THOSE PROVISIONS OF THIS SECTION THAT APPLY TO THE AIRLINE SHALL ALSO APPLY TO ANY PARTY HOLDING BY, THROUGH, OR UNDER THE AIRLINE.
- F. CITY ASSUMES NO RESPONSIBILITY FOR ANY PROPERTY PLACED IN OR ON THE LEASED PREMISES OR ANY PART THEREOF, AND CITY 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 LEASED PREMISES UNDER THIS AGREEMENT, UNLESS SAME IS CAUSED BY THE NEGLIGENCE OR WILLFUL ACT OF CITY, ITS OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.

### **SECTION 9.03 NON-LIABILITY OF CITY**

City shall not in any event be liable for any acts or omissions of Airline, its officers, agents, employees, invitees and independent contractors, or for any conditions resulting from the operations or activities of any such lessee, tenant, or concessionaire, Airline officers, agents, employees, invitees, or independent contractors, or for any

conditions resulting from the operations or activities of Airline's officers, agents, employees, invitees or independent contractors either to Airline or to any other person.

City shall not be liable for Airline's failure to perform any of the obligations under this Operating Agreement or for any delay in the performance thereof.

#### **SECTION 9.04 RELEASE OF LIABILITY REGARDING CERTAIN DAMAGES**

City shall not be liable for, and is hereby released from all liability to Airline, to Airline's insurance carrier, or to anyone claiming under or through Airline for any loss or damage whatsoever to the property or effects of Airline resulting from the accidental discharge or discharge beyond City's control, of water or other substances from pipes, sprinklers, or conduits, containers or appurtenances thereto, or for any damage resulting from the discharge or failure of electrical current regardless of cause or origin. The provisions of this Section 9.04 shall not be construed as a limitation of City's rights pursuant to Section 9.02, but are additional to the rights and exclusions from liability provided in Section 9.02.

### **ARTICLE 10 - ASSIGNMENT OR SUBLEASE**

#### **SECTION 10.01 GENERAL**

Airline shall not at any time transfer, convey, sublet, mortgage, pledge, or encumber its interest under this Operating Agreement or any part of the Leased Premises.

#### **SECTION 10.02 BANKRUPTCY**

Section 10.01 shall not apply to any valid assumption or assignment of this Operating Agreement, the Leased Premises, or any part thereof, by a trustee, or by Airline as a debtor in possession under the Bankruptcy Code of 1978, as amended, provided that adequate assurance of future performance as provided by the Bankruptcy Code of 1978, as amended, is to be provided, in writing, as a condition of the assumption or assignment of this Operating Agreement. Such assurance shall include but shall not be limited to:

- A. Adequate assurance of the reliability of the proposed source for the rentals, fees, and charges due under this Operating Agreement upon the assumption or assignment of this Operating Agreement;
- B. Adequate assurance that all other consideration due under this Operating Agreement shall be forthcoming after the assumption or assignment of this Operating Agreement; and
- C. The procurement of a bond from a financially reputable surety provider covering any costs or damages which City reasonably estimates City

would incur in the event that City, within three (3) years following the assumption or assignment of this Operating Agreement, becomes entitled to and exercises any right to reassign the Leased Premises covered by this Operating Agreement under Article 4.

### **SECTION 10.03 RELINQUISHMENT OF SPACE**

If Airline desires to relinquish any of its Exclusive Use space or preferentially assigned areas, Airline will notify Director in writing of the space available, and Director shall use best efforts to reassign the space to another airline. No assignment, vacation, transfer, conveyance, or sublease by Airline shall relieve Airline of its responsibility for payment of rentals, fees, and charges and performance of all other obligations provided in this Operating Agreement without specific written consent by City to such assignment, vacation, transfer, conveyance or sublease.

### **SECTION 10.04 CONSENT**

Consent by City to any type of transfer provided for by this Article 10 shall not in any way be construed to relieve Airline from obtaining further consent for any subsequent transfer or assignment of any nature whatsoever.

### **SECTION 10.05 CORPORATE REORGANIZATION**

Notwithstanding anything contained in this Article 10 to the contrary, no consent shall be required for any transfer or assignment of Airline's interest in this Operating Agreement by operation of law or otherwise in connection with a merger, consolidation or other corporate reorganizations, or in connection with a sale of all or substantially all of Airline's assets.

## **ARTICLE 11 - DEFAULTS**

### **SECTION 11.01 DEFAULT**

If Airline: (1) fails to pay rent or any other payment past due hereunder within ten (10) calendar days after receipt of written notice of a past due account; (2) fails to commence immediately to keep and perform any of its other covenants and Operating Agreements within ten (10) calendar days after receipt of written notice of such failure; or (3) fails to continue to complete, in a timely manner, any of its covenants and Operating Agreements after performance is commenced, or after the filing of any petition, proceedings, or action by, for, or against Airline under any insolvency, bankruptcy, or reorganization act of law, then, at the election of City:

- A. Without terminating this Operating Agreement, City may reenter the Leased Premises and improve and relet all or any part of it to others at its sole discretion. Any costs of renovation necessitated by the neglect of Airline, its agents, or its employees and an administrative fee to City for all

costs incurred, shall be set off against relet rentals received. Airline shall promptly reimburse City for any deficiency in rentals or other payments received under such reletting, as compared to Airline's obligations hereunder.

- B. At any time before or after a reentry and reletting as provided in Section 11.01(A), City may terminate Airline's rights under this Operating Agreement as provided in Section 12.03, without any restriction upon recovery by City for past due rentals and other obligations of Airline. City shall have all additional rights and remedies as may be provided to landlords by law.
- C. Notwithstanding any of the provisions hereof, automatically and immediately upon the occurrence of an event of default by Airline, the term of this Operating Agreement shall convert to month-to-month, commencing on the date of the automatic conversion and shall terminate upon thirty (30) days written notice from City to Airline. The conversion of the term of this Operating Agreement pursuant to this Section shall not discharge any of Airline's obligations hereunder nor affect any of City's other remedies set forth herein; provided, however, that the termination of this Operating Agreement shall discharge subsequent Airline obligations hereunder.

## **ARTICLE 12 - TERMINATION**

### **SECTION 12.01 EVENTS PERMITTING TERMINATION BY AIRLINE**

Airline may terminate this Operating Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving City ninety (90) calendar days advance written notice.

### **SECTION 12.02 CONDITIONS OF PREMISES AT TERMINATION**

Upon termination of this Operating Agreement, Airline shall yield and deliver to City the Leased Premises promptly and in a clean, sanitary condition, and, if necessary, restored to the satisfaction of Director, reasonable wear and tear excepted.

### **SECTION 12.03 EVENTS PERMITTING TERMINATION BY CITY**

City may terminate this Operating Agreement and all of its future obligations hereunder, at any time that Airline is not in default in its payments or other obligations to City hereunder, by giving Airline ninety (90) calendar days advance written notice

In addition, City may terminate this Operating Agreement and all of its obligations hereunder upon sixty (60) calendar days' written notice and may thereafter exercise all

rights of entry and reentry upon the Leased Premises, with or without process of law, upon or after the occurrence of any one of the following events:

- A. Airline is 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 Director has notified Airline in writing that payment was not received when due;
- B. Airline files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Airline's property;
- C. Airline makes any general assignment for the benefit of creditors;
- D. Airline abandons the Leased Premises;
- E. Airline defaults in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Airline, and such default continues for a period of thirty (30) days after receipt of written notice from Director to cure such default;
- F. Airline is adjudged bankrupt in involuntary bankruptcy procedures;
- G. Airline is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Airline where such receivership is not vacated within sixty (60) days after the appointment of such receiver;
- H. The abolition, limitation, or restriction by any act of the Texas Legislature or Law of Congress of the powers of City under which these premises are being leased, except with respect to legislation that grants authority to a successor;
- I. Airline fails to remit PFC revenue to City within the time limits established by federal regulation;
- J. Required redevelopment of the Airport caused by circumstances unplanned or uncontrolled by the Airport which necessitates relocation of Airline from the Leased Premises; or
- K. Airline violates any local, state, or federal laws, rules or regulations that relate to the performance of this Operating Agreement.

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

Failure of City to declare this Operating Agreement canceled upon the default of Airline for any of the reasons set out shall not operate to bar or destroy the right of City

to cancel this Operating Agreement by reason of any subsequent violation of the terms of this Operating Agreement.

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

## **ARTICLE 13 - GENERAL PROVISIONS**

### **SECTION 13.01 RULES AND REGULATIONS**

- A. Airline shall observe and obey all Rules and Regulations established, promulgated, or adopted consistent with this Operating Agreement from time to time during the term hereof, by City governing conduct on and operations at the Airport and use of its facilities. Copies of the Rules and Regulations shall be forwarded to Airline's local manager upon request of Airline.
- B. Airline shall not violate, nor knowingly permit its officers, agents, employees, invitees or independent contractors acting on Airline's behalf to violate any such Rules and Regulations.

### **SECTION 13.02 COMPLIANCE WITH LAW**

- A. Airline shall not use the Leased Premises or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, invitees, or licensees for any illegal purposes and shall, at all times during the term of this Operating Agreement, comply with all applicable ordinances and laws of any City, county, or state government or of the U.S. Government, and of any political division or subdivision or agency, authority, or commission thereof which may have jurisdiction to pass laws or ordinances or to make and enforce rules or regulations with respect to the uses hereunder or the Leased Premises.
- B. At all times during the term of this Operating Agreement, Airline shall, in connection with its activities and operations at the Airport:
  - 1. Comply with and conform to all present and future statutes and ordinances, rules and regulations promulgated thereunder, of all federal, state, and other government bodies of competent jurisdiction that apply to or affect, either directly or indirectly, Airline

or Airline's operations and activities under this Operating Agreement.

2. Make, at its own expense, all nonstructural improvements, repairs, and alterations to its Exclusive Use space (subject to prior written approval of City), equipment, and personal property that are required to comply with or conform to any such statutes and ordinances, and regulations which are promulgated or enacted by City.
3. Be and remain an independent contractor with respect to all installations, construction, and services performed by the Airline or on behalf of Airline hereunder.

### **SECTION 13.03 NONDISCRIMINATION**

Airline, for itself its heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree as follows:

- A. That no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises.
- B. That in the construction of any improvements on, over, or under the Leased Premises and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, age, disability, or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
- C. That Airline shall use the Airport in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. Airline shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.
- D. That, in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate this Operating Agreement and re-enter and repossess the Leased Premises and the improvements thereon, and hold the same as if said Operating Agreement had never been made or issued.

## **SECTION 13.04 AFFIRMATIVE ACTION**

Airline 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 City, to insure that no person shall, on the grounds of race, creed, color, sex, age, disability, or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Section. Airline assures that it will require that its covered suborganizations (sublessees) provide assurances to City, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their suborganizations (sublessees) to the same effect.

## **SECTION 13.05 NOTICES**

- A. Any notice under the terms of this Operating Agreement shall be in writing. If such notice is given by Airline, it shall be submitted to Director of Aviation, El Paso International Airport, 6701 Convair Road, El Paso, Texas 79925-1091, or to such revised address as notified by Director. If given by Director, such notice shall be submitted to the address of Airline at the following address:
- B. If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.
- C. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Either party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to the other party in the manner set forth in this Section.

## **SECTION 13.06 SUBORDINATION TO AGREEMENTS WITH U. S. GOVERNMENT**

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

## **SECTION 13.07 NONWAIVER OF RIGHTS**

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

## **SECTION 13.08 FEDERAL AVIATION ACT, SECTION 308**

Nothing herein contained shall be deemed to grant to Airline any exclusive right or privilege within the meaning of Section 308 of the Federal Aviation Act, as amended or succeeded, for the conduct of any activity on the Airport, except that, subject to the terms and provisions hereof, Airline shall have the right to exclusive possession of the Exclusive Use space leased to Airline under the provisions of this Operating Agreement.

## **SECTION 13.09 SEVERABILITY**

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

## **SECTION 13.10 HEADINGS**

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

## **SECTION 13.11 ASSIGNMENT BY CITY OR OTHER SUCCESSOR IN INTEREST**

City may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest. City, airport authority, or other successor in interest may assign, pledge, or take other appropriate action with respect to this Operating Agreement and their rights and interests hereunder for any purpose relating to the issuance of Bonds or other revenue generating devices.

## **SECTION 13.12 REDEVELOPMENT**

If this Operating Agreement is terminated as provided by Section 12.03 (K) as a result of physical changes associated with the development of the Airport, Airline waives

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

### **SECTION 13.13 REMOVAL OF DISABLED AIRCRAFT**

Airline shall promptly remove any of its disabled aircraft from any part of the Airport (including, without limitation, runways, taxiways, aprons, and aircraft parking positions) and place any such disabled aircraft in such storage area as may be designated by Director. Airline may store such disabled aircraft only for such length of time and on such terms and conditions as may be established by City. If Airline fails to remove any of its disabled aircraft promptly, City may, but shall not be obligated to, cause the removal of such disabled aircraft; provided, however, the obligation to remove or store such disabled aircraft shall be consistent with federal laws and regulations, including those of the FAA and the National Transportation Safety Board (NTSB). Airline agrees to reimburse City for all costs of such removal; and Airline, furthermore, hereby releases City from any and all claims for damage to the disabled aircraft or otherwise arising from or in any way connected with such removal by City.

### **SECTION 13.14 QUIET ENJOYMENT**

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

### **SECTION 13.15 OPERATING AGREEMENT SUBJECT TO COVENANTS IN DEED**

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

### **SECTION 13.16 FORCE MAJEURE**

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

### **SECTION 13.17 ENTIRE OPERATING AGREEMENT**

This Operating Agreement, together with all exhibits attached hereto, constitutes the entire Operating Agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Operating Agreement may be amended only in writing, and executed by duly authorized representatives of the parties hereto.

### **SECTION 13.18 TIME IS OF THE ESSENCE**

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

### **SECTION 13.19 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 Operating 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 13.20 OPERATING AGREEMENT MADE IN TEXAS**

The laws of the State of Texas and any applicable federal law shall govern the validity, interpretation, performance and enforcement of this Operating Agreement. Venue shall be in the courts in El Paso County, Texas or in the federal district courts of the Western District of Texas or in the U.S. Department of Transportation, as applicable.

### **SECTION 13.21 CUMULATIVE RIGHTS AND REMEDIES**

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

### **SECTION 13.22 INTERPRETATION**

Words of gender used in this Operating 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 13.23 OPERATING AGREEMENT MADE IN WRITING**

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

### **SECTION 13.24 SUCCESSORS AND ASSIGNS**

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

## **SECTION 13.25 AUTHORIZATION TO ENTER LEASE**

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

## **SECTION 13.26 COMPLIANCE WITH ADA AND OTHER DISABLED ACCESS LAWS**

Airline agrees that with respect to the Leased Premises, Airline shall be responsible, at Airline's cost, for compliance with the Americans with Disabilities Act of 1990 ("ADA", 42 U.S.C. §§12101 et seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto. Airline recognizes that City is a public entity subject to Title II of the ADA. To the extent permitted by law, Airline shall assume and be obligated to comply with any obligations to which City may be subject to under Title II of the ADA with respect to any programs, services, activities, alterations, or construction conducted or undertaken by Airline in the Leased Premises. Airline shall also be responsible, at Airline's cost, for compliance with any other applicable disabled accessibility laws, including, but not limited to, the Air Carriers Access Act ("ACAA", 49 U.S.C. §41705), and regulations implementing the ACAA.

## **SECTION 13.27 MOST FAVORED NATIONS**

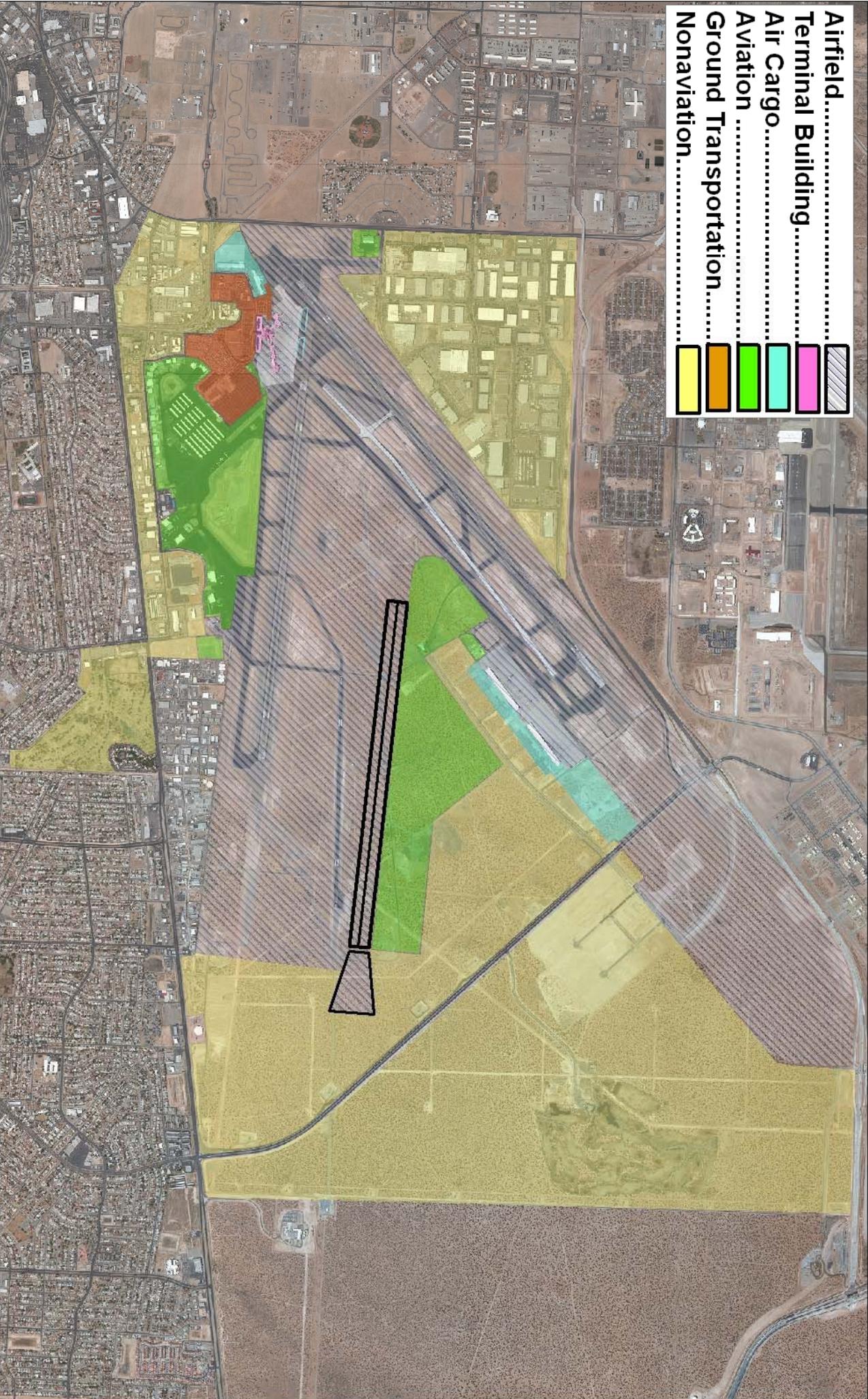
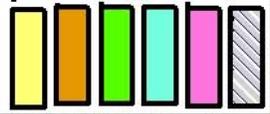
Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rentals, charges, and fees with respect to facilities or equipment directly and substantially related to providing an Air Transportation Business as are applicable to all Air Transportation Companies which make similar use of the Airport and which use the same or similar facilities or equipment, subject to reasonable classifications such as tenants or non-tenants and Signatory Airlines or non-signatory airlines. Classification as a Signatory Airline shall not be unreasonably withheld by the City provided the Air Transportation Company requesting such classification assumes obligations substantially similar to those imposed on other Signatory Airlines.

**(SIGNATURES BEGIN ON THE FOLLOWING PAGE)**

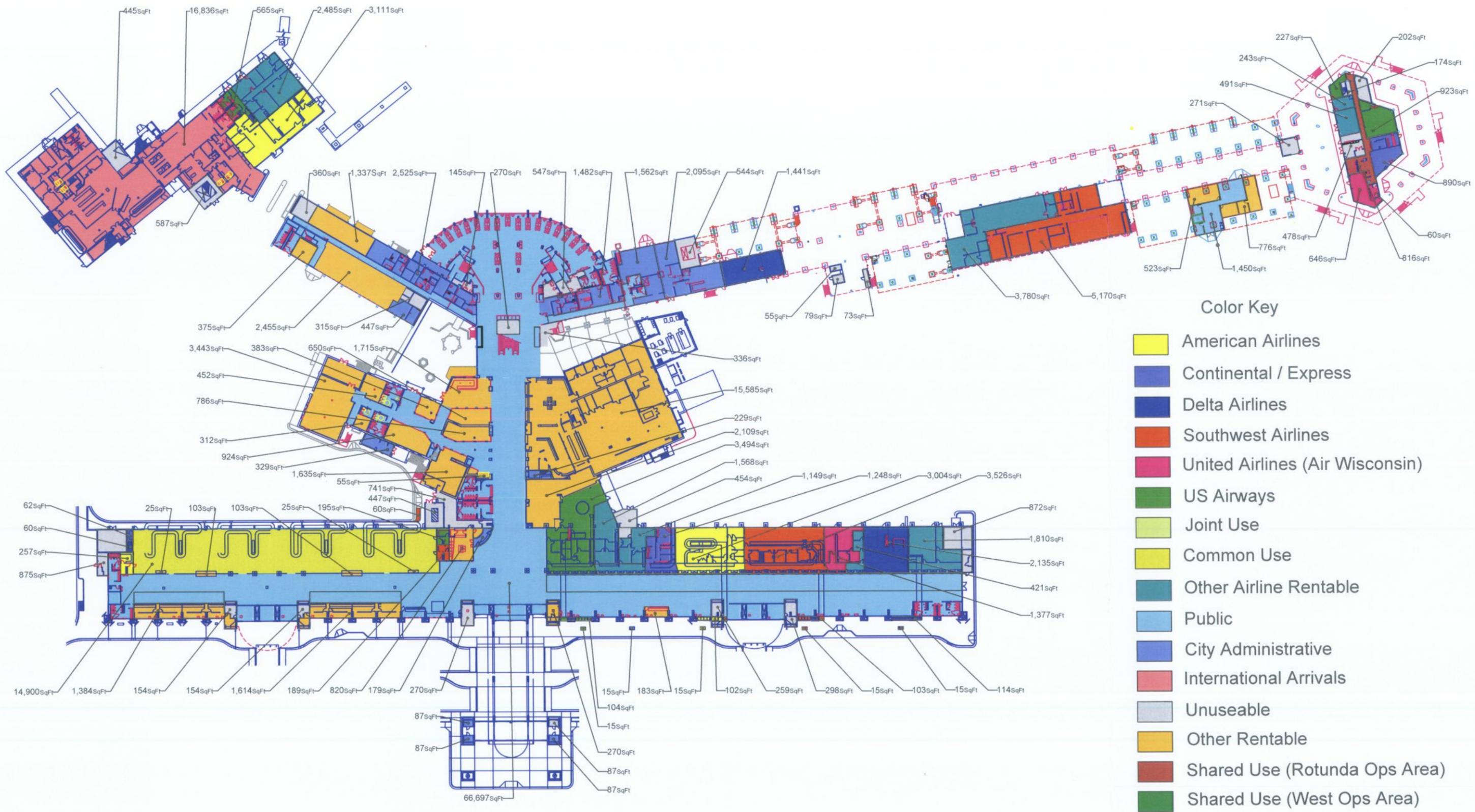




- Airfield.....
- Terminal Building.....
- Air Cargo.....
- Aviation.....
- Ground Transportation.....
- Nonaviation.....

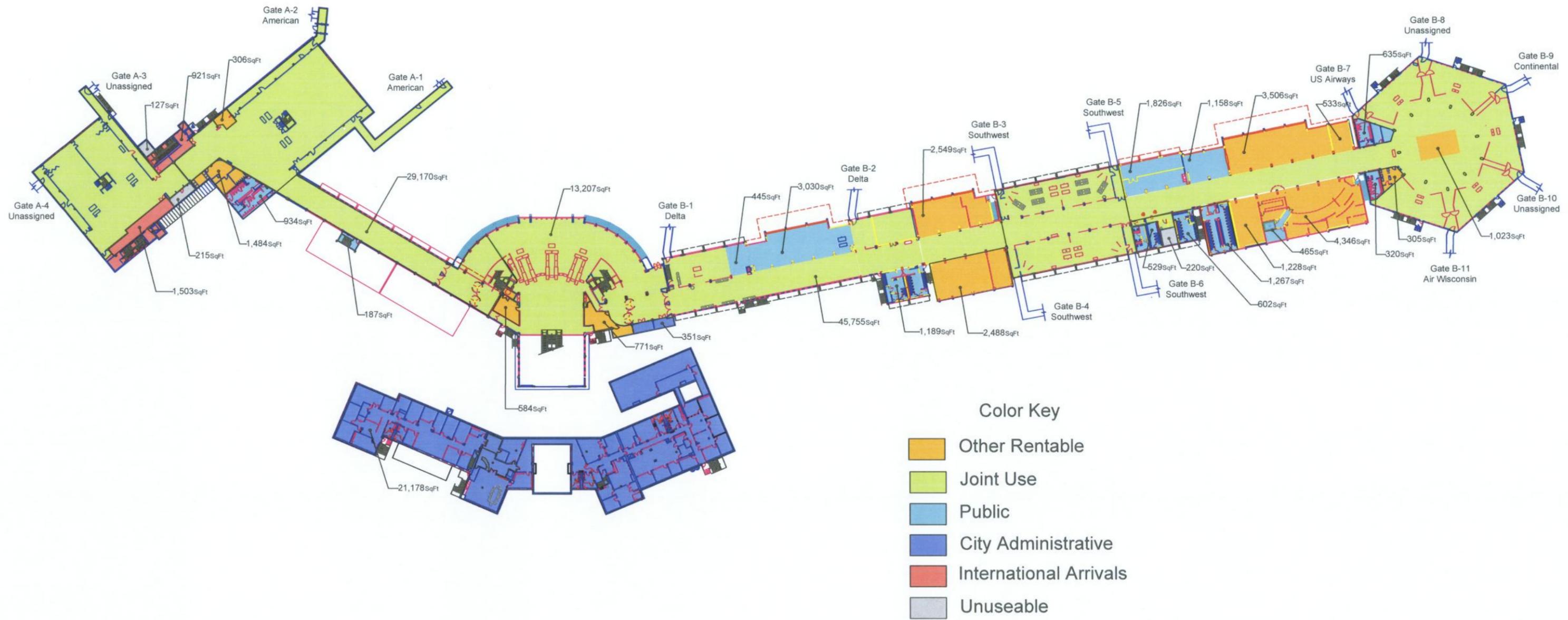


**El Paso International Airport    Airline Operating Agreement    Cost Center Map    Exhibit "A"**



El Paso International Airport Airline Operating Agreement and Terminal Building Lease

Revised Exhibit B-1, drawing depicts terminal as of 02-01-2010 Level 1



El Paso International Airport Airline Operating Agreement and Terminal Building Lease

Revised Exhibit B-2, drawing depicts terminal as of 02-01-2010 Level 2

Exhibit C-1

**Table 8**

Terminal Rental Rate (Fiscal Year ending August 31)

		Proposed Budget	Estimated	Proposed Budget
		2012	2012	2013
<b>Terminal Building Expenses</b>				
M&O Expenses (Direct and Indirect)		\$12,517,889	\$11,828,618	\$12,793,683
M&O Reserve (3 Months of M&O)		113,403	(58,915)	241,266
Equipment and Capital Outlays		65,000	65,000	55,000
Debt Service		1,118,721	1,118,721	1,118,301
Debt Service Coverage		(519)	(519)	(105)
Deficiency in Renewal and Replacement Account		0	0	0
Deposits to Other Reserve Accounts		0	0	0
Assessments, Judgments, and Settlements		0	0	0
<b>Total Terminal Building Expenses</b>	<b>[A]</b>	<b>\$13,814,495</b>	<b>\$12,952,906</b>	<b>\$14,208,144</b>
Less:				
Direct Electricity Charges	<b>[B]</b>	\$0	\$0	\$0
Passenger Security Screening Fees	<b>[C]</b>	0	0	0
City-Owned Loading Bridges	<b>[D]</b>	14,400	14,400	14,400
<b>Net Terminal Building Expenses</b>	<b>[E]=[A]-[B]-[C]-[D]</b>	<b>\$13,800,095</b>	<b>\$12,938,506</b>	<b>\$14,193,744</b>
Usable Space (square feet)	<b>[F]</b>	332,898	332,898	332,898
<b>Average Rental Rate</b>	<b>[G]=[E]/[F]</b>	<b>\$41.45</b>	<b>\$38.87</b>	<b>\$42.64</b>
Airline Rented Space (square feet)	<b>[H]</b>	132,926	132,926	132,926
<b>Airline Rental Revenue</b>	<b>[G]*[H]</b>	<b>\$5,509,783</b>	<b>\$5,166,834</b>	<b>\$5,667,965</b>

Source: El Paso International Airport, Ricondo & Associates Inc., May 2012.

Prepared by: Ricondo & Associates, Inc., May 2012.

## Exhibit C-2

**Table 9**

Landing Fee (Fiscal Year ending August 31)

		Proposed Budget	Estimated	Proposed Budget
		2012	2012	2013
<b>Airfield Expenses</b>				
M&O Expenses (Direct and Indirect)		\$4,731,395	\$4,500,289	\$4,783,153
M&O Reserve (3 Months of M&O)		(28,102)	(85,878)	70,716
Equipment and Capital Outlays		137,750	137,750	70,000
Debt Service (net of PFC Revenues, plus Coverage)		0	0	0
Deficiency in Renewal and Replacement Account		0	0	0
Deposits to Other Reserve Accounts		0	0	0
Assessments, Judgments, and Settlements		0	0	0
<b>Total Airfield Costs</b>	<b>[A]</b>	<b>\$4,841,043</b>	<b>\$4,552,160</b>	<b>\$4,923,869</b>
<b>Credit for Other Airfield Revenues</b>				
Non-Signatory Landing Fees		\$141,283	\$1,038,221	\$147,729
Equipment Parking Rentals		32,000	32,000	32,000
Gate Use Fees		0	0	0
Air Cargo Apron Rentals		296,200	296,170	227,500
RON Fees		16,700	16,700	15,500
Fuel Flowage Fees		498,000	364,435	469,000
Other Miscellaneous Revenue		15,000	10,721	15,000
<b>Total Airfield Credit</b>	<b>[B]</b>	<b>\$999,183</b>	<b>\$1,758,247</b>	<b>\$906,729</b>
<b>Signatory Landing Fee Requirement</b>	<b>[C]=[A]-[B]</b>	<b>\$3,841,860</b>	<b>\$2,793,913</b>	<b>\$4,017,140</b>
<b>Signatory Landed Weight (1,000 lb units)</b>	<b>[D]</b>	<b>2,674,191</b>	<b>2,064,199</b>	<b>2,674,191</b>
<b>Signatory Landing Fee Rate (per 1,000 lbs)</b>	<b>[E]=[C]/[D]</b>	<b>\$1.44</b>	<b>\$1.35</b>	<b>\$1.50</b>
<b>Non-Signatory Landing Fee Rate (per 1,000 lbs)</b>	<b>[F]=[E]*1.25</b>	<b>\$1.80</b>	<b>\$1.69</b>	<b>\$1.88</b>
<b>Non-Signatory Landed Weight</b>				
Non-Signatory Airlines		66,290	69,281	66,290
Non-Signatory Cargo		12,384	544,366	12,384
<b>Total Non-Signatory Landed Weight</b>	<b>[G]</b>	<b>78,674</b>	<b>613,647</b>	<b>78,674</b>
<b>Landing Fee Revenue</b>				
<b>Signatory Landing Fee Revenue</b>	<b>[D]*[E]</b>	<b>\$3,841,860</b>	<b>\$2,793,913</b>	<b>\$4,017,140</b>
<b>Non-Signatory Landing Fee Revenue</b>	<b>[F]*[G]</b>	<b>141,283</b>	<b>1,038,221</b>	<b>147,729</b>
<b>Total Landing Fee Revenue</b>		<b>\$3,983,143</b>	<b>\$3,832,134</b>	<b>\$4,164,869</b>

Source: El Paso International Airport, Ricondo & Associates Inc., May 2012.

Prepared by: Ricondo & Associates, Inc., May 2012.

**OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES  
AIRLINES AND CITY**

The following matrix identifies the responsible party (either the City or Airline) who shall, at its sole cost, be responsible for the maintenance, repair, service, and/or provision of the specifically identified Premises, appurtenances, or services in connection with the operation or maintenance. The City shall not be responsible for any prior or subsequent installation, appurtenance or system by Airline. The City shall not be responsible for any prior or subsequent Airline modification of City-provided Airline Premises, appurtenance, system or service. Airline shall have the duty to restore the Premises, at its sole cost, into the original condition prior to vacating Airline's Premises, including the de-installation of any Airline modification and Airline appurtenance, system or service, at the sole discretion of the City. If Airline is positively determined to have damaged Premises or misused an City-provided appurtenance or system, said Airline may be charged for maintenance and repairs.

**NOTE 1:** All installations, repairs, replacements, alterations, or improvements undertaken by Airline must first be submitted for approval by the City.

**NOTE 2:** The responsibilities of the City listed below apply to normal wear and tear only. Any damage caused by Airline's negligence will be the responsibility of the Airline.

**NOTE 3:** All operations, maintenance and service responsibilities in Public Use Space is the responsibility of the City, except when damage is caused by Airline's negligence.

**NOTE 4:** Airline shall notify City, in writing, of any maintenance or repairs needed which are the responsibility of the City.

**NOTE 5:** City, at its sole discretion, may be able to perform certain maintenance or improvements which are Airline responsibilities upon Airline's written request. If the total dollar amount for maintenance or improvements performed by City is equal to or more than \$100, City will invoice the Airline time and materials plus a \$40.00 administrative charge for such work. Work performed by City totaling less than \$100 will not be charged back to the Airline.

LEGEND	
ELP = City	N/A = Not Applicable
A = Airline	

	SPACE						
	EXCLUSIVE				SHARED	JOINT	COMMON
	TICKET COUNTER AREAS	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED SPACE	HOLD ROOMS	BAG CLAIM
<b>A. OPS, MAINTENANCE AND SERVICE AREAS</b>							
<b>BUILDING - EXTERIOR</b>							
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation and Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Lighting Mounted on Outside of Building	N/A	ELP	N/A	ELP	ELP	ELP	ELP
Roof	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Walls and Load-Bearing Structures	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Windows	N/A	N/A	N/A	ELP	ELP	ELP	ELP
<b>BUILDING INTERIOR</b>							
Backwall Finish and Signage	A	N/A	A	N/A	N/A	A	N/A
Counter Shell/Exterior Casement, Countertops	ELP	N/A	N/A	N/A	N/A	ELP	N/A
Counter Insert Cabinetry, Kiosks	A	N/A	N/A	N/A	N/A	A	N/A
Ceiling Tiles	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Doors	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Flooring: Carpet & Tile	A	A	A	A	A	ELP	ELP
Furnishings and Fixtures	A	A	A	A	A	ELP	ELP
HVAC: Building System Maintenance & Air Distribution	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Insulation/Weather-stripping	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Interior Wall Windows	A	A	A	A	A	ELP	ELP
Paint and Wall Finishes <sup>1</sup>	A	A	A	A	A	ELP	ELP
Passenger Seating - Installation and Maintenance	N/A	N/A	N/A	N/A	N/A	ELP	ELP
Stanchions	ELP	N/A	A	N/A	N/A	A	N/A
<b>COMMUNICATIONS</b>							
Public Address System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Communication Lines/Conduit: To D-Mark <sup>2</sup>	A	A	A	A	A	A	A
Communication Lines/Conduit: From D-Mark <sup>2</sup>	ELP	ELP	ELP	ELP	ELP	ELP	ELP
FIDS (City owned)	N/A	N/A	N/A	N/A	N/A	ELP	ELP
<b>DOOR LOCKS, LOCKSETS AND KEYS</b>							
ELP-Required locks, locksets and keys <sup>3</sup>	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Non-ELP required	A	A	A	A	A	ELP	ELP
<b>EQUIPMENT AND COMPUTER SYSTEMS</b>							
Airline Proprietary Computer System	A	A	A	A	N/A	A	N/A
Airline Ticketing and Gate Equipment	A	A	A	A	N/A	A	N/A
Broadband Access	A	A	A	A	N/A	A	N/A
Radio, Meteorological and Aerial Navigation Equipment	A	A	A	A	N/A	A	N/A
Ticket Counter Scales	A	N/A	N/A	N/A	N/A	N/A	N/A
<b>FIRE ALARM SYSTEM &amp; OTHER EQUIPMENT</b>							
Fire Alarm System	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Fire Extinguishers <sup>4</sup>	A	A	A	A	A	ELP	ELP

**OPERATIONS, MAINTENANCE AND SERVICE RESPONSIBILITIES  
AIRLINES AND CITY**

	SPACE						
	EXCLUSIVE				SHARED	JOINT	COMMON
<b>A. OPS, MAINTENANCE AND SERVICE AREAS</b>	TICKET COUNTER AREAS	ATO SPACE	BAGGAGE SERVICE OFFICE	OPS & MAINTENANCE SPACE	SHARED	HOLD ROOMS	BAG CLAIM
<b>FIXTURES, ELECTRICAL/ENERGY</b> (CON'T.)							
Bulb & Tube Replacement (real property installed)	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Maintenance	ELP	ELP	ELP	ELP	ELP	ELP	ELP
Power supply protection <sup>5</sup>	A	A	A	A	A	A	ELP
<b>JANITORIAL AND RECYCLING SERVICES</b>							
Recycling of Paper, Plastic and Cardboard <sup>6</sup>	A	A	A	A	N/A	ELP	ELP
Tenant Space (including Floors and Tenant Restroom Areas)	A	A	A	A	ELP	ELP	ELP
Window Cleaning - Appurtenant to Tenant Space (Int. & Ext.)	A	A	A	A	ELP	ELP	ELP
Window Cleaning - All Others (Interior & Exterior)					ELP	ELP	ELP
Shampoo Carpets/Wax Floors	ELP	A	A	A	ELP	ELP	ELP
<b>PEST CONTROL</b>							
Rodents and Insects <sup>7</sup>	ELP	ELP	ELP	ELP	ELP	ELP	ELP
<b>PLUMBING AND SEWER</b>							
Incoming Water Line from Common Use Water Line to Fixture	N/A	ELP	N/A	ELP	ELP	N/A	N/A
Sanitary Sewer Line	N/A	ELP	N/A	ELP	ELP	N/A	N/A
Restrooms/Breakrooms (Fixture Repair & Replacement)	N/A	A	N/A	A	ELP	N/A	N/A
<b>SIGNS</b>							
Ticket Counter Backwall/Above Ticket Counter	A	N/A	A	N/A	N/A	N/A	N/A
Concourses: Podium Backwall/Holdroom walls	N/A	N/A	N/A	N/A	N/A	A	N/A
Directional/Informational Signage	ELP	N/A	N/A	N/A	N/A	ELP	ELP
<b>TRASH REMOVAL</b>							
Trash Removal (City will provide dumpster/compactor )	A <sup>8</sup>	A	A	A	A	ELP <sup>9</sup>	ELP

	SPACE		
	TICKET COUNTER	BAG MAKEUP	BAG CLAIM
<b>B. BAGGAGE CONVEYANCE SYSTEM</b>			
<b>BAGGAGE CONVEYANCE SYSTEM AND CAROUSELS</b>			
Repair and Maintenance	A	A	ELP

	RESPONSIBILITIES					
	SNOW REMOVAL	RAMP SCRUBBING	PAVEMENT PAINTING	SPILLS	MAINTENANCE	JANITORIAL AND TRASH REMOVAL
<b>C. RAMP AREAS</b>						
<b>JET BRIDGES (City Owned)</b>					ELP	A <sup>10</sup>
<b>LIFTING DEVICE (City Owned)</b>					ELP	
<b>RAMP MAINTENANCE (Including Jet Bridge Ramp Areas)</b>	ELP	ELP	ELP	A <sup>11</sup>		ELP

**FOOTNOTES:**

<sup>1</sup>City will paint walls one time during the five year term of the agreement. Airline will be charged back for any additional paint requests.

<sup>2</sup>D-Mark is defined as the point in the terminal building where telecommunication's lines ends and the City's begins.

<sup>3</sup>Replacement of keys will be charged back to Airline

<sup>4</sup>Airlines are responsible for their own ramp gate fire extinguishers.

<sup>5</sup>Airline is responsible for providing adequate power supply protection for all vital services and important equipment sensitive to voltage drops, voltage spikes, or temporary power outages as may occur from time to time.

<sup>6</sup>City will provide dumpsters for recyclables.

<sup>7</sup> Regularly scheduled service only.

<sup>8</sup>Airline will remove trash from curbside check-in counter.

<sup>9</sup>City will remove trash from containers for public use. Airline will remove trash from their operations.

<sup>10</sup>Airline shall safely and properly collect and dispose of bio-hazards and other hazmat from their aircraft and provide trash removal from their jet bridges.

<sup>11</sup>City will mitigate any ineffective response and charge Airline for the clean-up.

**Preferentially Assigned Equipment  
Parking Spaces. All Parking Spaces  
1,600 Sq Ft.**



**El Paso International Airport**

**Airline Operating Agreement**

**Exhibit "E"**