



CITY OF HOUSTON

Sylvester Turner

Mayor



Mario C. Diaz
Director of Aviation
Houston Airports
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Houston, Texas 77032
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December 19, 2023

Via electronic mail; jane.johnson@faa.gov

Ms. Jane Johnson
Airports Policy Branch (APP-510)
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Houston Airport System Competition Plans Update

Dear Ms. Johnson:

In accordance with the requirements of Section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), Pub. L. No. 106-181 (April 5, 2000), codified as Title 49 U.S.C., Sections 40117(k) and 47106(f), and FAA Order 5100.38D, Change 1 (Order 5100), we hereby submit this letter and supporting materials to update our competition plans for Houston's George Bush Intercontinental Airport (IAH) and William P. Hobby Airport (Hobby, or HOU).

The FAA's Competition Plan Covered Airport List for FY 2024, issued on October 10, 2023, shows both airports as subject to competition plan updates "only when triggered". Both airports – IAH, which is a large hub airport and for which the FAA approved a competition plan update in 2015, and HOU, a medium hub airport for which the FAA approved a competition plan update in 2013 – have experienced triggering events, namely new and updated lease agreements, as follows:

1. At IAH, a new Terminal D International Facilities Agreement (IFA); and
2. At HOU, a Use and Lease (U&L) Amendment with Southwest Airlines (Southwest).

This letter and accompanying materials address these developments.

Council Members: Amy Peck Tarsha Jackson Abbie Kamin Carolyn Evans-Shabazz Dave Martin Tiffany D. Thomas Mary Nan Huffman Karla Cisneros
Robert Gallegos Edward Pollard Martha Castex-Tatum Mike Knox David W. Robinson Michael Kubosh Letitia Plummer
Sallie Alcorn

Controller: Chris Brown

I. HAS COMPLIANCE DISPOSITION

Houston is very mindful of its obligations under Federal law to reasonably accommodate all air carriers seeking to provide service at our airports, including competition plan requirements and the obligations of the FAA grant assurances accepted in connection with Airport Improvement Program grants. In negotiating these new agreements, we have prioritized these obligations, and we continually strive to enhance competition at both airports. As described in this letter and shown in the attachments, we believe that these developments, which are part of our long-term plan to continue introducing significant new capacity and expanded access for carriers at both airports, combined with other very positive trends – such as the introduction of multiple new entrant carriers and new routes, and the enhanced availability of low fare options for our passengers – further strengthen and enhance competition at the Houston Airports.

We also took into account comments from the FAA in connection with prior competition plan updates, and, as discussed below, we have implemented changes to address them. We respectfully ask that the FAA approve these updates. We of course stand ready to address any questions or other concerns the agency might have.

II. NEW LEASE (IAH) AND U&L AMENDMENT (HOU)

1. IAH: New Terminal D IFA

In our 2015 competition plan update for IAH, approved by the FAA in August of that year, we provided details regarding the major expansion plan entitled the International Terminal Redevelopment Program (ITRP), a multi-year, multi-element project that is designed not only to increase capacity, access, and support for carriers, but also to significantly improve the experience for passengers, through the addition of an extensive array of new amenities. That project is now well on its way to completion, and is comprised of three elements, namely:

- Terminal D Renovation: this involves a comprehensive refurbishment, including updates to finishes, lighting, ceilings, walls, furniture, and bathrooms, accompanied by the installation of state-of-the-art international lounges, and expanded facilities for food and beverage and other retail services for passengers;
- Expansion of IAH's gate capacity with a new D West Pier, which will connect seamlessly with the renovated Terminal D discussed above, enabling the expansion of the international common use facility from six (6) common use wide-body gates to fifteen (15) such gates, providing additional opportunities for new international carriers to serve IAH, and existing carriers to grow their presence there; and
- A new processor building that will serve as a hub for checking in passengers and conducting security screenings before they proceed to their gate concourses (i.e., Terminal D to the north, or Terminal E to the south).

The new IFA, developed this year and enclosed in a template version as Attachment A, is part of this expansion and an important component of the overall ITRP program. The IFA defines the terms and conditions by which airlines may use the airfield for operations, lease space in Terminal D, and have common use of ticket counters, aircraft gates, and the Federal Inspection Services (FIS) facilities at IAH. It also implements interim understandings reached with United in 2018 through an Amended and Restated MOA (see Attachment B). That MOA addressed items discovered during the ITRP planning process and also reflected changes to address matters raised by the FAA. It focused on updates to various IAH terminals, and included new provisions concerning United's scheduling rights (see Section 6), and gate use (see Section 6.3 implementing a five daily turns requirement, and Section 8.). See also Section 9.1, which addresses the U&L changes to be negotiated in the IFA.

Sixteen foreign carriers already have executed a lease agreement based on the 2023 IFA template; airlines wishing to be non-signatory carriers will pay an additional administrative fee. The execution date for these signatory carrier agreements was October 23, 2023, and each will expire on June 30, 2034. HAS is in the process of finalizing IFAs with a few other carriers based on the IFA template. Also attached is one of the executed IFAs, namely that with British Airways (Attachment C).¹

In addition to foreign carrier use, United will under the IFA be allowed to have ten-year preferential scheduling rights on three gates on the west side of the Terminal D West Pier once construction is complete, subject to a new gate use requirement and additionally subject to a subordination and accommodation provision in the event that the north pier of Terminal D is fully utilized during peak periods. See Section 4 of the IFA.

We have enclosed as Attachment D a summary of the IFA's key terms, namely materials submitted to, and approved by, the Houston City Council (Council). Note that City law provides that the execution date for these agreements is the date on which they are countersigned by the City's Controller, hence the October 23, 2023 trigger date.

2. HOU: Use and Lease Amendment No.2

In 2013, the City entered into a U&L agreement covering operations at Hobby. Following an FAA competition plan review in 2015, the City and Southwest entered into Amendment No.1

¹ The carriers that have executed the IFA through today's date are as follows. All these IFAs are based on the template provided as Attachment A, and all have the same effective and termination dates, namely October 23, 2023 – June 30, 2034: Aeromexico; Air France; Air New Zealand; All Nippon Airways; British Airways; Emirates; EVA Airways; KLM; Lufthansa; Qatar Airways; Singapore Airlines; TACA; Turkish Airlines; United Airlines; Viva Aerobus; Volaris; and Volaris El Salvador. In due course HAS anticipates that Air Canada, Air China, Spirit, and WestJet also will sign an IFA. (Common names of carriers are used throughout. We have not attached all sixteen executed IFAs, only the British Airways lease as a representative sample, but of course we would be pleased to provide all of them if the FAA so wishes.)

to that agreement to include provisions regarding Passenger Facility Charges (PFCs) and clarification regarding gate usage, which was approved by the FAA in 2013.

In 2015, Southwest Airlines, which added international services to its existing domestic services from HOU that year, constructed a West Concourse with five international gates, four of which it leased preferentially, and one of which was reserved as a common use City gate. Under the U&L, the City purchased the completed West Concourse, taking over full control.

As a result of Southwest's ongoing expansion of services at Hobby, it became clear that additional capacity was needed at that airport. In addition, since 2015, the City has welcomed new foreign carriers at HOU, which has increased competition but also has further expanded capacity needs. Accordingly, the City entered into Amendment No.2 to the U&L agreement designed to expand the West Concourse with seven additional gates (Attachment E). Of these, Southwest will lease six preferentially, and there will be one additional common use City gate for domestic or international services (for a total of two such gates), increasing gate availability for new services by carriers other than Southwest. Amendment No.2 was approved by City Council on August 30, 2023, and will expire on June 30, 2040; see Attachment F. Southwest leases ticket counters, queueing areas, baggage makeup areas, aircraft gates, hold rooms, and aircraft apron areas on a preferential basis, while all HOU airlines use the baggage claim area, the FIS, and the security checkpoint. This amendment reflects the interim understanding reached between HAS and Southwest in their 2022 Memorandum of Agreement regarding the West Concourse Expansion Project (see Attachment G).

Under the new amendment, Southwest will convert to a leased square footage rate methodology for its gates in the west concourse, and the City will assume the cost of 1/6 of those gates (2 of 12). As addressed in Section II of the Amendment, a five-turn requirement (replacing a four-turn minimum) will be implemented once similar agreements are made with American and Delta ("Conditioned upon all Signatory Airlines other than [Southwest] having agreed in writing to an average Gate utilization requirement of five (5) Turns each day per Gate assigned to such Signatory Airline..."). We do not have an exact time frame for this development, but we anticipate this occurring within the next couple of years.

We have enclosed as Attachment H a summary of the Amendment's terms, namely materials submitted to, and approved by, Council.

III. OVERVIEW OF ACTIONS TAKEN TO ADDRESS PRIOR FAA CONCERNS

In developing the new agreements, we reviewed the FAA's comments and have taken multiple actions to address them:

Preferential and Common Use Gates and Ramps

- In prior reviews of HAS's competition plans, the FAA noted that it hoped to see the conversion of any non-SFL agreements from exclusive to preferential or common use at the first opportunity available. As the FAA knows, at IAH, Terminals B and E are

exclusive-SFLs, funded by United. They remain under SFL agreements based on the extensive financial commitments made by that carrier to develop these facilities. However, as noted in this letter, any airline wishing to serve IAH has access options available. Under the new IFA, Terminal D will be common use for the majority of gates, and preferential only as to three widebody gates on the west side of the West Pier. See Section 4 of the IFA (Attachment A). In addition, an updated rates and charges methodology has been implemented to better allocate costs by share of passenger traffic rather than fixed cost methods. Terminal A will continue to have both preferential and common use. HAS intends to adopt only that approach as to future agreements covering operations in Terminal A.

Minimum Gate Usage

IAH:

- In its review of the IAH 2015 update, the FAA indicated that it hoped to see a higher requirement on minimum gate usage, with a five-turn rather than a four-turn gate requirement. Accordingly, HAS is increasing the minimum gate usage requirement at IAH Terminal A and D from four to five, with guidance as to how aircraft from different design groups shall be counted. See Section 4 of the IFA (Attachment A).
- While IAH's Terminal D is mainly a common-use facility, our construction is adding three widebody gates on the west side of that pier, which will be preferentially leased to United for 10 years with a five-turn per gate minimum usage, while the three widebody gates on the east side of that pier will be common-use.

HOU:

- As noted above, Southwest's five-turn requirement will become effective as soon as HAS amends Delta's and American's HOU use and lease agreements to match this term.

FAA IAH Terminal B

- In connection with its review of HAS's 2015 competition plan update for IAH, the FAA also noted that there did not appear to be a minimum gate use requirement in Terminal B-South.

The FAA may have seen the news last month about the recent agreement in concept between United and the City regarding the planned transformation of IAH Terminal B. This landmark project will make an additional, highly significant contribution to the capacity, access, and enhanced passenger experience at IAH, reconfiguring and enhancing 40 gates for domestic and international travel, and providing a cutting-edge experience for travelers. Among other goals, the Terminal B processor will be significantly expanded, 1960s-era flight stations in Terminal B North will be replaced with two new state-of-the-art concourses that will serve both narrow and wide body aircraft, and Terminal B South will be renovated to allow for 18 large regional jets.

Last month the City and United agreed to a new Memorandum of Agreement (Terminal B Redevelopment MOA) addressing this project, approval of which is pending before City Council. The MOA reflects a commitment by the City to enable expanded capacity for Terminal B operations as well as shared facilities such as airport roadways and utilities that will benefit all IAH affected airlines. It also includes several protections for airlines utilizing other areas of IAH from potential construction impacts in Terminal B, including by engaging Terminal A carrier representatives on key committees reviewing work on the Terminal B project. In particular it focuses on improvements and expansion of the Terminal B processor, replacement of the Terminal B North Concourse to provide 22 narrow-body aircraft equivalent gates, and replacement of the gate configuration on Terminal B South to provide 18 large regional gates. No lease documents have yet been signed, but of course we will at the appropriate time submit any required competition plan updates. In the meantime, we have attached HAS's recent press release regarding this project (Attachment I). It is the City's goal to address the five-turn provision in Terminal B in the negotiations with United concerning an amendment to the SFL, which we anticipate will begin in 2024.

IAH PFC Language Revisions

- In its comments regarding the prior IAH update, and while recognizing that lease language regarding PFCs was intended to maintain a competitive cost structure, the FAA noted that it may have given the impression of an overly close participation by carriers concerning the application of PFCs. In connection with the updated IAH and HOU agreements addressed in this update, and per the FAA's guidance, no agreements or informal understandings have been made with the lease parties as to specific use of PFCs, the language in question has been removed, and HAS will not include such language in future agreements. We believe that to the extent necessary, the updated language makes clear that leaseholders cannot impair the City's authority to impose or use PFCs. See, e.g., § 14.03 of the IFA (Attachment A).

FAA Terminal C South

In its 2015 review of IAH's last competition plan update, the FAA commented on Terminal C South, including as to United's exclusive use, sublease rates, and lease term. As always, the City has given careful consideration to these comments. As the FAA recognized at that time, the unique circumstances at IAH warrant such an arrangement. United has invested heavily in developing facilities at IAH that have enabled extensive new services in Houston, and the lease term reflects the extent of the investments and the City's plan for eventual buyout.

However, Terminal C South is but one of several terminals at IAH, and as noted elsewhere herein, overall the City through its ITRP is implementing extensive renovations that have and will in the future significantly expand capacity and enable enhanced access for all carriers. As shown in Section IV of this letter, since our last update not only have the Houston Airports welcomed numerous new carriers at IAH, but in addition, existing carriers have added extensive amounts of new service. United

currently is fully utilizing all the available gates in Terminal C South and we have not received any applications for subleases in that terminal. In addition, the City has not refused access to any carrier. Thus overall, the competitive situation has improved enormously since our last update, which among other things is evidenced by the significant increase in low fare opportunities at IAH and by the large decrease in fare premiums – factors that reflect increased competition and extensive new benefits for the traveling public. We will, of course, continue to consider the FAA’s comments as future lease documentation is developed.

IV. Implementation of Enhancements to Competition at Both Airports

Since our 2015 update to you, we have redoubled our efforts to secure additional domestic and international services to our airports, and we are able to report considerable success.

A critical development was the reintroduction to HOU in 2015 of international service following a multi-decade absence, combined with the opening of a new state-of-the-art FIS that not only provides passengers with world-class facilities, but also has been a major factor in the introduction of new air service and new carriers.

As shown in Attachment J, between 2015 and now, and despite the negative impact of the Covid pandemic on air service, HAS has welcomed literally dozens of new services, as well as multiple new carriers to our airports. For example, in 2015 alone, Southwest added service at HOU to nine international markets, and Spirit began service to HOU and added service to seven international markets. That same year at IAH, WestJet added service from Calgary; ANA began service to Tokyo; Volaris added Guadalajara service; and Interjet began service to Mexico City.

Attachment J also reveals many similar success stories in the years since then – e.g., new Singapore Airlines, Air Canada, AirBridge Cargo, and Vacation Express service at IAH in 2016; new international service from United, Volaris and BahamasAir in 2017, as well as the entrance of a new cargo carrier providing international services, namely CargoLogicAir; the addition of new domestic and international routes in 2018 (including to Australia and the Cayman Islands); a new international carrier at IAH in 2019 (Ethiopian Airlines); extensive new air service additions in 2020-2022, and the entrance of Allegiant at HOU; and this year two new entrant airlines (Volaris El Salvador and GlobalX), and multiple additional international and domestic services at IAH, including the introduction of three new cargo carrier entrants. Furthermore, two new international passenger services are already planned for the spring of 2024. We believe this is very strong evidence of our pro-competitive approach and situation.

These competitive enhancements are reflected in DOT’s own reports, such as the Department’s Domestic Airline Fares Consumer Report addressing data through the 2nd quarter of 2023, which among other things shows that the low fare choices for passengers at IAH and HOU are at or near historic highs, and that the fare premiums paid by passengers at both airports are near historic lows, both very good news from a competition perspective.

HAS understands that, per the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95 (Feb. 14, 2012), it is no longer required that airports include data in their updates regarding air fare levels and patterns of service. However, because the information contained in these DOT reports shows the competitive situation of both IAH and HOU in a very favorable light, we wanted to mention it.

Specifically what it shows is that in terms of low fare availability and fare premiums, both HAS airports compare very favorably with many other U.S. airports. For example, in the 2nd quarter of 2023 (the latest such data available), the percentage of passengers traveling in low fare markets at HOU was 98%, and at IAH 77%, while at IAD the figure was a mere 32%, at ORD 52%, at DFW 61%, and at DCA only 63%.

Insofar as fare premiums are concerned, both IAH and HOU compare very favorably with their peer airports. For example, there is a negative premium of 4% at HOU (i.e., passengers pay significantly less than the average), while at many other U.S. airports they pay considerably more: e.g., +8% at ATL; +13% at DFW; +14% at ORD and DCA; +17% at CLT; and +18% at IAD.

Meanwhile at IAH the fare premium for that quarter was only +8%, which represents an extraordinary improvement over the situation just a few years ago. For example, in the second quarter of 2021, it was +14%. While the data for that quarter may have been impacted by the pandemic, the percentage at IAH has been historically high – e.g., in the pre-pandemic second quarter of 2019, it was +17%, and so the current figures show that consumers are experiencing significantly enhanced benefits over those available just a few years ago.

V. Additional FAA Table W-4 Requirements

Addressing the remaining requirements of Order 5100.38D, Change 1, W-7, Competition Plan Update Contents, including Table W-4:

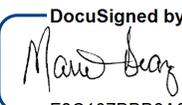
- **Changes From Last FAA Approval:** These are addressed in Sections II and III above.
- **Reasons for Not Instituting FAA Recommendations:** All have been implemented or are underway or under consideration, or in the planning process for future negotiations.
- **Responses to FAA Questions:** No questions have yet been presented to HAS.
- **Public Availability:** The financial reports required by 49 USC § 47107(a)(15) are made available on the Houston Airports' website at <https://www.fly2houston.com/biz/about/investor-relations>. We would like to note that in 2022, Houston Airports was awarded the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association of the United States and Canada for its annual comprehensive report. This is the highest form of recognition in governmental accounting and financial reporting, and is

awarded by an impartial panel that judged Houston's report to be of the highest standards.²

Finally, we want to address a matter related to the effective date of the HOU Amendment, which has an execution date of August 30, 2023. Based on Order 5100, we now understand that, given that Order's post-execution 60-day filing requirement, this update should have been filed by late October. We apologize for this oversight. Because of the many infrastructure enhancements currently being implemented at our airports, we are in the midst of negotiations concerning various tenant arrangements, and it was our original intention to include additional agreements in this update. Due to the time frame for final execution of certain items being extended beyond what we had anticipated, we are at this time filing this update only as to the IAH IFA and the HOU Amendment, and we inadvertently allowed the deadline for the HOU update to slip, for which we apologize. Also by way of further explanation, within a very short time period HAS experienced some significant staff changes, hence the oversight. We will of course file any future required updates once triggered. In addition, we have implemented new procedures to ensure counsel review following triggering events. In the meantime, we hope your office will understand that this occurrence does not reflect any negative compliance intentions.

We greatly appreciate the assistance and guidance that your office and others at the FAA provide to us regarding our ongoing efforts to enhance and improve our airports and their competitive position. The same is true of the Texas Airports District Office and the Southwest Region offices, and we have copied them on this letter. We look forward to your response, and any questions or comments you may have. We would be pleased to welcome you for a visit at any time.

Sincerely,

DocuSigned by:

F8C107BBB8A045F...
Mario C. Diaz

Director, City of Houston Department of Aviation

Attachments:

- A: IAH Terminal D IFA Template
- B: City-United Amended and Restated Memorandum of Agreement 2018
- C: IAH Terminal D IFA with British Airways
- D: IAH Terminal D IFA Summary for Council
- E. HOU U&L Amendment No.2
- F: HOU U&L Amendment No.2 Summary for Council

² See Houston Airports wins prestigious award for financial reporting (October 14, 2022) (<https://www.fly2houston.com/newsroom/articles/houston-airports-wins-prestigious-award-financial-reporting>).

G: HOU City-Southwest Memorandum of Agreement 2022

H: HOU MOA 2022 Summary for Council

I: HAS Press Release, United, Houston Airports invest more than \$2B in Terminal B Transformation, Nov 7 2023

J: HAS Summary of New Carriers and New Air Service Jan 2015-Mar 2024

cc: Francisco Cuellar, HAS Chief Commercial Officer 

FAA Southwest Region Director: Mr. Ignacio Flores (Ignacio.Flores@faa.gov)

ADO: Mr. Jesse Carriger: Jesse.Carriger@faa.gov



Attachment A

IAH Terminal D IFA Template

HAS 5/1/23

INTERNATIONAL FACILITIES AGREEMENT
by and between CITY OF HOUSTON and XXXX

TABLE OF CONTENTS

Article I. DEFINITIONS.....8

Section 1.01 Definitions.....8

Article II. RIGHTS AND PRIVILEGES.....17

Section 2.01 Use of Airport.....17

Section 2.02 Ground Handling.....18

Section 2.03 Rights Reserved by City19

Section 2.04 Limitations of Use of Airport.....19

Section 2.05 Confidentiality.....21

Section 2.06 Parking.....21

Section 2.07 Ingress and Egress22

Section 2.08 Sales or Distribution of Food/Beverages.....22

Section 2.09 Use of FIS Facilities23

Section 2.10 Use of Terminal D by Foreign Flag Airlines23

Article III. TERM.....25

Section 3.01 Term.....25

Section 3.02 Airline’s Rights Upon Expiration or Early Termination of Agreement.....25

Article IV. PREMISES.....26

Section 4.01 Terminal D Premises Pre-DBO of the ICP.....26

Section 4.02 Terminal D, ICP Premises After DBO of the ICP26

Section 4.03 Terminal D Premises During and After Construction of Improvements.....28

Section 4.04 Surrender of Premises28

Section 4.05 Covenant Against Liens.....29

Section 4.06 City Right of Entry29

Section 4.07	Quiet Enjoyment	29
Article V. RENTALS, FEES, AND OTHER CHARGES		30
Section 5.01	General.....	30
Section 5.02	Statistical Report.....	30
Section 5.03	Terminal D and ICP Rentals and Charges.....	31
Section 5.04	Landing Fees.....	32
Section 5.05	Fines or Penalties	32
Section 5.06	Other Fees and Charges	32
Section 5.07	Security Deposit	33
Section 5.08	Payment Provisions.....	33
Section 5.09	No Other Fees and Charges	34
Article VI. CALCULATION OF RENTALS, FEES, AND OTHER CHARGES		35
Section 6.01	General.....	35
Section 6.02	Terminal D and ICP Rentals and Other Charges.....	35
Section 6.03	Central FIS Fees.....	37
Section 6.04	Skyway Charges	38
Section 6.05	Landing Fee Rate	39
Section 6.06	Mid-Year Rate Adjustments.....	40
Section 6.07	Year-End Adjustment to Actual and Settlement	40
Section 6.08	International CPE Cap.....	41
Section 6.09	Domestic and Pre-Cleared Charges	41
Section 6.10	Concession Areas and Revenue Sharing.....	41
Article VII. CONSTRUCTION OF IMPROVEMENTS		43
Section 7.01	Construction by Airline--General	43
Section 7.02	Future Capital Improvements	43

Article VIII. OPERATION AND MAINTENANCE.....	45
Section 8.01 Obligations of City	45
Section 8.02 Obligations of Airline	46
Article IX. INDEMNIFICATION	48
Section 9.01 RELEASE AND INDEMNIFICATION OF CITY	48
Section 9.02 INDEMNIFICATION PROCEDURES.....	50
Article X. INSURANCE	51
Section 10.01 General.....	51
Section 10.02 Risks and Minimum Limits of Coverage	51
Section 10.03 Other Provisions.....	52
Article XI. DAMAGE OR DESTRUCTION OF PREMISES.....	55
Section 11.01 Premises Inhabitable	55
Section 11.02 Premises Uninhabitable.....	55
Section 11.03 Automatic Termination	55
Section 11.04 Airline Improvements.....	55
Section 11.05 Insurance	55
Article XII. TERMINATION	57
Section 12.01 Termination by City	57
Section 12.02 Termination by Airline.....	58
Article XIII. ASSIGNMENT AND SUBLETTING.....	60
Section 13.01 Assignment and Subletting.....	60
Article XIV. MISCELLANEOUS PROVISIONS	61
Section 14.01 Rules and Regulations	61
Section 14.02 Compliance with Law	61
Section 14.03 Passenger Facility Charges	64

Section 14.04 Payment of Taxes64

Section 14.05 Right to Lease to United States Government64

Section 14.06 Notice or Consent.....65

Section 14.07 Rights Reserved to City65

Section 14.08 Governing Law and Venue65

Section 14.09 Favored Nations65

Section 14.10 Notices66

Section 14.11 State and Local Required Contracting Provisions66

Section 14.12 City’s Right to Audit Books and Records.....67

Section 14.13 Force Majeure.67

Section 14.14 Non-Waiver67

Section 14.15 Place of Payments68

Section 14.16 Nonliability of Individuals.....68

Section 14.17 Remedies to be Nonexclusive69

Section 14.18 Exclusiveness of Airline’s Rights.....69

Section 14.19 Other Land and Buildings Excluded69

Section 14.20 Titles.....69

Section 14.21 Invalid Provisions.....69

Section 14.22 Enforcement69

Section 14.23 Operation of Airport.....70

Section 14.24 Entire Agreement.....70

Section 14.25 Successors and Assigns70

Section 14.26 Subordination to Financing Agreements70

Section 14.27 Living Wage Executive Order70

Section 14.28 Additional Federal Requirements71

Section 14.29 Waiver of Visual Artists Rights74
Section 14.30 Incorporation of Exhibits75
Section 14.31 Signatures75

TABLE OF EXHIBITS

EXHIBIT A	Airport Layout Plan
EXHIBIT B	Central FIS Map
EXHIBIT C	Reserved
EXHIBIT D	Affiliate Agreement of Responsibility
EXHIBIT E	Affiliate Acknowledgment and Reporting Agreement
EXHIBIT F	Terminal D Cost Centers
EXHIBIT G	Reserved
EXHIBIT H	Monthly Statistical Report Form
EXHIBIT I	Illustrative Self-Invoicing Form
EXHIBIT J	Sample Letter of Credit
EXHIBIT K	Rates and Charges Methodology
EXHIBIT L	Maintenance Matrix

INTERNATIONAL FACILITIES AGREEMENT

This International Facilities Agreement (“**Agreement**”) is made and entered into on the date of countersignature by the City Controller (“**Effective Date**”) by and between the City of Houston, Texas, a municipal corporation and home-rule city principally situated in Harris County (“**City**”) and _____, [a foreign flag carrier airline of **COUNTRY**] OR [a **US STATE** corporation] doing business in the State of Texas (“**Airline**”).

WHEREAS, City is the owner of the George Bush Intercontinental Airport/Houston (“**Airport**” as identified on **Exhibit A**, attached hereto and made a part hereof for all purposes), located in City; and

WHEREAS, Airline is engaged in the business of commercial air transportation of persons, property, cargo, and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States Government to engage in such business; and

WHEREAS, City owns and operates the Mickey Leland International Airlines Building (“**Terminal D**”), which is used primarily for International Flights; and

WHEREAS, Airline has requested City grant it certain rights, privileges and services in connection with the use of the Airport, Terminal D, International Central Processor (“**ICP**”), and the Central FIS in the conduct of Airline’s business as a scheduled air carrier; and

WHEREAS, City is willing to grant Airline such rights, privileges and services upon the terms and conditions and for the consideration stated in this Agreement; and

WHEREAS, City and Airline deem it desirable to enter into a written agreement setting forth the respective rights, privileges, obligations and duties of the parties hereto and defining the rights, services and privileges granted and the terms, conditions and consideration on which they are granted;

NOW, THEREFORE, for and in consideration of the use of the Premises and the mutual covenants contained in this Agreement and the rentals, charges and fees to be paid by Airline, it is agreed and understood by and between City and Airline as follows:

ARTICLE I.
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:

“**2018 MOA**” means that certain Amended and Restated Memorandum of Agreement for the Redevelopment of Terminals at IAH, dated December 7, 2018 by and between City and United.

“**50% of HAS Concession Revenues**” is defined in Section 6.10(B).

“**Affiliate**” means any subsidiary air carrier that either (a) is wholly owned by the Airline, or any parent airline which wholly owns the Airline, or any sister airline which is wholly owned by the same company which wholly owns the Airline (a “**Subsidiary**”) provided that Airline shall be responsible for the operations at the Airport of such Subsidiary (including payment of all related fees and charges incurred by such subsidiary) until such time as Airline notifies City at least ninety (90) days in advance that Airline will no longer be responsible for such payments (and at the end of such period of responsibility, the subsidiary shall cease to be a “Subsidiary” under this clause (a)), or (b) conducts all or a portion of its air carrier operations at the Airport during the term of this Agreement under the same or substantially same trade name or livery as Airline, pursuant to a capacity purchase or similar agreement with Airline, but such air carrier shall be considered an “Affiliate” under this clause (b) only with respect to such operations conducted by or behalf of the Airline and using the same or substantially the same trade name or livery as Airline and only if Airline shall have agreed to be responsible for such operations, including payment of all related fees and charges. Such agreement shall be evidenced by the (i) Airline’s execution and delivery to the Director of an Agreement of Responsibility in substantially the form attached as **Exhibit D**, attached hereto and made a part hereof for all purposes and (ii) the air carrier shall have executed and delivered to the Director an Acknowledgment and Reporting Agreement in substantially the form attached as **Exhibit E**, attached hereto and made a part hereof for all purposes.

“**Air Transportation Business**” is defined in Section 2.01.

“**Airfield**” means the runways, taxiways, taxi lanes, and apron areas (other than apron areas associated with a specific terminal, other leased apron areas and common use cargo aprons), navigational aids, hazard designation and warning devices, airfield security roads and fencing, blast fencing, lighting, clear zones and safety areas for landing, taking off and taxiing of aircraft, aviation easements, and land utilized in connection therewith or acquired for such purpose at the Airport.

“**Airline**” is defined in the first paragraph of this Agreement and any Subsidiary of Airline.

“**Airport**” means George Bush Intercontinental Airport/Houston, as generally depicted in **Exhibit A**, as it now exists or may be modified or expanded from time to time in the future.

“**Airport Cost Centers**” means the facilities and areas to be used in accounting for Airport costs for the purposes of calculating rates and charges hereunder, as such areas now exist or may hereafter be modified or expanded.

“**Airport System**” means all airport, heliport, vertiport and aviation facilities, or any interest therein, now or from time to time hereafter owned, operated or controlled in whole or in part by City, together with all properties, facilities and services thereof, and all additions, extensions, replacements and improvements thereto, and all services provided or to be provided by City in connection therewith, but expressly excluding Special Facilities. The Airport System currently includes George Bush Intercontinental Airport/Houston, William P. Hobby Airport, and Ellington Airport.

“**Amortization**” means the level annual charge required to recover the net cost of a Capital Improvement over the Useful Life of such Capital Improvement at City’s Cost of Capital.

“**Amount Available for HAS Revenue Credits**” is defined in Section 6.10(B).

“**Applicable Laws**” means, collectively, all applicable laws, statutes, codes, (including City’s Building Code, Fire Code, HAS electrical standards, and any current HAS TIP (as defined below)), judicial decisions, ordinances, regulations (including federal grant assurances governing the Airport), rulings, zoning ordinances, restrictive covenants, directives, HAS airport rules and regulations, certificates, permits, requirements or orders enforceable by all federal, state and local government authorities having jurisdiction over the Airport, including, but not limited to, the FAA, the Transportation Security Administration (TSA), and Texas Commission on Environmental Quality (TCEQ).

“**Base Capital Charge**” means the fixed annual charge per square foot to be charged for certain Premises as herein provided which have been not demolished or replaced, the original cost of which has been fully amortized.

“**Best Efforts**” means in connection with a party’s taking of an action or attempting to cause a specific result to occur, means that the party obligated to use its Best Efforts in such regard shall use all commercially reasonable efforts under the then applicable circumstances, as considered in good faith by the party so obligated, to take action or cause such result to occur; it being agreed, however, that without limiting the generality of the foregoing, when describing an obligation of City, “Best Efforts” shall not include the obligation to invoke City’s police powers or any other power or authority solely from City’s status as a municipal corporation.

“**Bond Ordinances**” means any and all ordinances adopted by City which authorize debt secured by Net Revenue of HAS, whether senior lien, subordinate lien, or inferior lien.

“**Capital Improvement**” means any improvement or asset, or series of related improvements or assets, acquired or constructed by City at the Airport, including without limitation any security facilities or equipment, which has a net cost of \$150,000 or more (adjusted annually for changes in the Consumer Price Index from July 1, 1998 to a maximum of \$300,000) and a Useful Life of more than one year (but excluding facilities acquired or constructed with the proceeds of special facility revenue bonds which are secured solely by the net rent payable under the special facility lease for such facility and which debt service is in fact retired in such manner,

unless such facilities are subsequently acquired by City). For the purposes of this Agreement, the net cost of each Capital Improvement shall be the total cost (including actual construction costs; architectural and engineering fees, program management fees, testing and inspection fees, construction management fees, permit fees, and other direct or allocable fees; interest during construction; and allocable out-of-pocket financing costs) less any grants-in-aid, PFCs or similar amounts used in financing the Capital Improvement.

“**Central FIS**” means that area shown on **Exhibit B**, attached hereto and made a part hereof for all purposes, situated immediately south of Terminal D together with the sterile and secure corridors connecting the Central FIS to Terminals D and E, lounge areas in that Central FIS, and the Public Areas thereof, and the fixtures and equipment located therein used by various agencies of the United States for the inspection and processing of passengers arriving on International Flights, together with the baggage claim, luggage storage, and baggage recheck areas and those areas appurtenant thereto.

“**Central FIS Charge**” is defined in Section 5.03(H).

“**Central FIS Cost Centers**” means the direct cost centers for the areas to be used in accounting for costs of the Central FIS for the purposes of calculating rates and charges hereunder, as depicted in **Exhibit B**, as such areas now exist or may hereafter be modified or expanded and as more particularly described below:

“**City**” means the City of Houston, Texas, or such other agency, board, authority, or private entity that may succeed to the jurisdiction of City over the Airport.

“**Common Use Terminal Equipment**” or “**CUTE**” means Airport-provided equipment used for passenger processing.

“**Common Use VIP Club**” means the common use lounge space in Terminal D as shown on **Exhibit B**.

“**Common Use VIP Club Charge**” is defined in Section 5.03(G).

“**Cost of Capital**” means (a) for Capital Improvements financed with Airport System Revenue Bonds, the effective interest rate on the Bonds used to finance the particular Capital Improvement and (b) for Capital Improvements financed with other Airport funds, the current Revenue Bond Index (of 22- year+, “A” rated bonds) published daily in the Wall Street Journal (or successor publication thereto), for the end of the latest month preceding the calculation of the rates and charges, but no later than June 30, of the fiscal year the Capital Improvement is placed in service.

“**Date of Beneficial Occupancy**” or “**DBO**” means the date(s) on which the Director certifies that a particular facility is sufficiently completed to enable use and occupancy for its intended purpose, as evidenced by a certificate executed by the Director and a Certificate of Occupancy issued by City.

“**Deplaned Passengers**” means passengers (not including flight crew, but including other non-revenue passengers) disembarking at the Airport.

“**Director**” means the Director of City’s Houston Airport System, or their designee, or such other officer to whom the duties and authority of the Director may be assigned by the City Council of City or by any agency, board or authority which may subsequently succeed to the jurisdiction of City over the Airport. The Director may designate an individual to perform all or a part of the duties of the Director hereunder from time to time.

“**Domestic and Pre-Cleared Charge**” is defined in Section 5.03(D).

“**Domestic Flights**” means those flights originating and terminating in the continental United States, Alaska or Hawaii or any of the possessions or territories of the United States.

“**Effective Date**” means the date identified on the first page of this Agreement.

“**Enplaned Passenger**” means a person departing at the Airport using an airline as a paying or non-paying passenger including connecting passengers, but not including a through passenger who does not change aircraft.

“**Environmental Laws**” means any Applicable Laws which governs Hazardous Materials or relate to the protection of human health, safety or the environment, applicability of which are invoked by the conduct of Airline’s business operations at the Airport and shall include but not be limited to: the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq.; and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; the Clean Water Act, 33 U.S.C., Section 1251, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; or their State counterparts.

“**FAA**” means the Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.

“**FIS**” means those areas of the Airport, together with the fixtures and equipment located therein, used by various agencies of the United States for inspection and processing of arriving international passengers.

“**Fiscal Year**” means City’s fiscal year and means the twelve-month period commencing July 1 and extending through June 30 of the following calendar year, or such other fiscal year as City Council may establish by ordinance.

“**Gate**” means an aircraft parking position from which passengers may be enplaned or deplaned, together with an associated loading bridge (if applicable), and the associated portion of the Departure Area (including seating area and gate podium), or Arrival Area. The aircraft parking position may either be contiguous to Terminal D or a designated remote or “hardstand” aircraft parking position now or in the future.

“Ground Handling Agreement” means an agreement between Airline and a third party (including another airline) governing the provision of Ground Handling Services by Airline to another airline or to Airline by a third party.

“Ground Handling Services” means any of the following: on and off loading of passengers (including ticketing), baggage, mail or cargo; into-plane fueling; in-flight catering; servicing aircraft lavatories; providing ground power, potable water and preconditioned air; cleaning the interior of aircraft; and any other similar ground services.

“HAS Amount Available for Revenue Sharing” is defined in Section 6.10(B).

“HAS Concession Revenues” means revenue derived by City from all inside terminal concessions, parking revenues net of any parking management contract, rental car revenues, and hotel fees, at any airport operated by City.

“HAS Debt Service Coverage” means, over any given fiscal year, Net Revenues divided by total HAS-wide debt service payments exclusive of any extraordinary reductions for federal relief grants.

“HAS Revenue Sharing Cap” is defined in Section 6.10(B).

“Hazardous Materials” means any and all substances, materials, wastes, pollutants, oils, or governmentally-regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to, asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, PFAS, PFOA, or other per- and polyfluoroalkyl substances or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment or which may impair the beneficial use of property for Airport purposes. Hazardous Materials shall also mean any and all hazardous materials, hazardous wastes, toxic or hazardous substances, or substances regulated under any Environmental Laws.

“Houston Airport System” or **“HAS”** means City’s organizational entity which has responsibility for the operation and administration of City’s airports.

“International Arrival Charge” is defined in Section 5.03(C).

“International CPE” means the cost per Enplaned Passenger for total terminal fees payable for International Arrival Fees, International Departure Fees, and Ticketing Fees payable by airlines operating in Terminal D and the ICP.

“International CPE Cap” is defined in Section 6.08.

“International Central Processor” or **“ICP”** means the consolidated international central processor (including a ticketing hall, security checkpoint, checked baggage inspection system (**“CBIS”**), baggage claim and roadway and curbside improvements, and all Public Areas thereof),

to be completed as of the Date of Beneficial Occupancy, serve both Terminals D and E at the Airport, and which may include future expansions or additional overflow ticketing facilities.

“International Departure Charge” is defined in Section 5.03(B).

“International Facilities Access and Assignment Policy” or **“IFP”** means the Airport Operating Instruction document as it now exists or may be modified from time to time by the Director, addressing access to and assignment of Gates in Terminal D and ticket counter positions in the ICP, and baggage claim and baggage re-check facilities in the Central FIS; provided, that no modification thereof shall adversely affect any rights of Airline that are specifically provided for in this Agreement. The IFP in effect as of the effective date of this Agreement is incorporated by reference and will be distributed to Airline.

“International Flights” means those flights originating in a foreign country and arriving at the Airport or those flights originating at the Airport and terminating in a foreign country.

“International Terminal Complex” or **“ITC”** means Terminal D, Terminal E lobby and ticketing hall, the ICP (upon DBO), and the Central FIS together with related parking and roadway facilities and infrastructure.

“ITRP Phase 1” is defined in the 2018 MOA and includes (1) D West Pier and Terminal D Renovations; (2) ICP, including consolidated screening, CBIS, baggage claim improvements and (3) Modifications to the FIS building as detailed in the 2018 MOA.

“Living Wage Executive Order” is defined in Section 14.27.

“Maximum Gross Certified Landing Weight” means the maximum gross landing weight in 1,000 pound units as certified by the FAA for landing of an aircraft.

“Net Revenues” is defined in the Bond Ordinances, currently deemed to be that portion of the Gross Revenues remaining after the deduction of the Operation and Maintenance Expenses, also defined in the Bond Ordinances.

“Non-Terminal Concession Areas” is defined in Section 6.10(A).

“Operation and Maintenance Expenses” or **“O&M Expenses”** means all reasonable and necessary current expenses of City, paid or accrued, of operating, maintaining, repairing, and administering the Airport; including, without necessarily limiting thereto, salaries and wages, fringe benefits, contractual services, utilities, professional services, police protection services, fire protection services, administrative expenses, the cost of materials and supplies used for current operations, equipment, insurance premiums, the reasonable charges of any paying agents and any other depository bank pertaining to the Airport, as well as overhead expenses of (a) HAS (which shall be fairly and equitably allocated among City’s airport facilities in accordance with generally accepted accounting practices) and (b) other City departments whose services are directly related or reasonably allocable to the administration of the Airport (which shall be determined in accordance with a City-wide administrative cost allocation plan then in effect); provided, however, Operation and Maintenance Expenses shall not include any allowance for depreciation, payments in lieu of taxes, Capital Improvements or any charges for the accumulation of reserves for capital

replacements, or charges resulting from the negligence or breach of existing agreements by City, its employees or contractors.

“**Passenger Facility Charge**” or “**PFC**” means the fees authorized by 49 U.S.C. Section 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the term of this Agreement.

“**Pre-cleared International Flight**” means an International Flight whose passengers have been processed through a federal inspectional services area or other facility approved by the United States government prior to arrival to the Airport or any of the possessions or territories of the United States and therefore is not required to process through the Airport’s FIS.

“**Preferential Use**” means the right to use a Gate or a ticket counter position on a priority or preferential use (but not exclusive use) basis for Airline’s scheduled flights.

“**Preferential Use Area**” means the area described in **Exhibit F**, attached hereto and made a part hereof for all purposes, that is for Airline’s Preferential Use.

“**Premises**” means the Exclusive Use and Preferential Use Areas designated for Airline’s use, as set forth in **Exhibit F**, and common use areas of Terminal D, ICP, and the Central FIS set forth in Section 4.01 and Section 4.03.

“**Public Area**” means the Terminal D Public Area and that area of ICP and the Central FIS, together with the furniture, fixtures, and equipment located therein, designated for public circulation including the secure bridges connecting to Terminal D and Terminal E, public waiting area (“meeter/greeter” area), restrooms, and other public use functions and activities, but not including areas leasable by concessions or used for concession services as shown on **Exhibit B**, which shall be modified as newly constructed areas are completed.

“**Renewal and Replacement Fund**” means the Airport System Renewal and Replacement Fund established by City’s Bond Ordinances.

“**Security Checkpoint Charge**” is defined in Section 5.03(F).

“**Skyway**” means the automated people mover system which connects all the existing terminals at the Airport and the Maintenance Facility Link.

“**Skyway Charge**” is defined in Section 5.03(I).

“**Subway**” means the underground portion of the inter-terminal passenger transportation system that connects all the existing terminals at the Airport and the Maintenance Facility Link.

“**Systems**” means the systems, facilities and improvements located on and serving the Airport, including but not limited to: (a) the access roads and other roadways serving the terminal complex; (b) the Subway; (c) the heating, ventilation, and air conditioning (HVAC) plant and related distribution systems; (d) elevators/escalators and mechanical areas and systems; and (e) the incinerators/compactors.

“**Systems Costs**” means the total of annual Operation and Maintenance Expenses and annual Amortization charges associated with each of the Systems.

“**Term**” is defined in Section 3.01.

“**Terminal A**” means Terminal A of the Airport, as it as it may be modified or expanded and all appurtenances thereto.

“**Terminal Concession Areas**” is defined in Section 6.10(A).

“**Terminal D**” means the Mickey Leland International Airlines Building and associated apron areas primarily used for International Flights, as it may be modified or expanded and all appurtenances thereto, including Public Areas thereof.

“**Terminal D Cost Centers**” means the direct cost areas to be used in accounting for Airport costs for the purposes of calculating compensatory rates and charges hereunder, as depicted in **Exhibit F**, attached hereto and made a part hereof for all purposes, as such areas now exist or may hereafter be modified or expanded and as more particularly described below:

- a. “**Aircraft Apron Area**” means the areas where aircraft are parked during the loading and unloading of passengers, baggage, cargo and mail and the fueling and other servicing of the aircraft, including (1) the aircraft parking apron immediately adjacent to Terminal D and (2) the north remote apron, together with (3) the cost of City’s busing operations to and from Terminal D and the north remote apron.
- b. “**Arrival Area**” means the terminal corridors used by deplaning passengers for access to the FIS excluding the sterile corridor bridge.
- c. “**Baggage Make-up Area**” means that area, together with all fixtures and equipment located therein, designated for the sorting of outbound baggage.
- d. “**Departure Area**” means the area, together with the furniture, fixtures and equipment located therein, designated for the check-in and seating of passengers waiting to board an aircraft for a departing flight.
- e. “**Exclusive Use Area**” means the areas leased exclusively to Airline or other airlines for maintenance and operations, VIP club rooms, and administrative offices.
- f. “**International Central Processor**” means the ICP.
- g. “**Loading Bridges**” means the passenger loading bridges at each of the gates in Terminal D providing passenger access to and egress from aircraft parked at the aircraft parking apron contiguous to the terminal.

h. “**Non-FIS Baggage Claim Area**” means the pre-cleared and domestic baggage claim area for passengers that are not required to process through the Central FIS.

i. “**Security Checkpoint Area**” means the area, together with the fixtures and equipment located therein devoted to the security screening of departing passengers.

j. “**Terminal D Public Area**” means that area of Terminal D, together with the furniture, fixtures, and equipment located therein, designated for public circulation including the restrooms, and other public use functions and activities, but not including areas leasable by concessions or used for concession services as shown on **Exhibit F**.

“**Terminal E**” means a concourse building and associated aircraft apron and fuel distribution system situated immediately south of the Central FIS.

“**Ticketing Charge**” is defined in Section 5.03(E).

“**TIP**” means the HAS Tenant Improvement Program, as referenced at www.fly2houston.com/TIP and www.fly2houston.com/biz/resources/building-standards-and-permits, or at such other public website address designated for the Houston Airport System.

“**Total Landed Weight**” means the sum of the Maximum Gross Certified Landing Weight for all of Airline’s arrivals over a stated period of time as rounded up to the nearest thousand-pound unit for all Landing Fee computations.

“**United**” means United Airlines, Inc., a Delaware corporation.

“**United Terminal E Lease**” means the Terminal E Lease and Special Facilities Lease Agreement dated August 1, 2001, by and between City and Continental Airlines, Inc. (now known as United Airlines, Inc.), as the same may have been or may be amended from time to time.

“**Usable Space**” means, with respect to any terminal building or portion thereof, gross square footage less the square footage of mechanical and utility space.

“**Useful Life**” means the estimated period of time that a Capital Investment is to be recovered through the Amortization process. In general, Useful Lives will be assigned to Capital Improvements by the Director based on generally accepted airport accounting practices. For purposes of calculating rates and fees under this Agreement, terminal improvements financed by City will be assigned the following Useful Lives: (a) new facilities-25 years, (b) renovations to existing facilities-20 years, (c) new passenger loading bridges and baggage conveyor equipment-15 years.

ARTICLE II.
RIGHTS AND PRIVILEGES

Section 2.01 Use of Airport

Nothing contained in this Agreement shall affect City's or Airline's rights or obligations contained in any other agreement between City and Airline with respect to any area of the Airport other than Terminal D or the ICP at the Airport or any other area of the Airport. As long as it does so in accordance with the terms and provisions of this Agreement, Airline may utilize Terminal D, the ICP and other facilities located at the Airport (other than the Exclusive Use Areas of others, and subject to other airlines' Preferential Use rights) for the purpose of conducting Airline's business of a scheduled air carrier certificated or otherwise authorized by the United States Government to engage in the business of commercial air transportation of persons, property, cargo, and mail ("**Air Transportation Business**") in common with all other scheduled airlines using the Airport. The privileges granted hereby include the following:

A. The use of the Airfield, including landing field areas, aprons, roadways, runways, taxiways, runway and taxiway lights, beacons, facilities, equipment, improvements, services and other conveniences for flying, landing, taxiing and takeoffs of aircraft.

B. The landing, taking-off, flying, taxiing, towing, loading and unloading of aircraft and other equipment used by Airline in its operation of its Air Transportation Business.

C. The repairing, maintaining, conditioning, servicing (to include exterior aircraft cleaning), testing, including engine "run-ups" and emergency maintenance of aircraft engines and systems, loading, unloading, parking and storing of aircraft or other equipment of Airline in areas on the Airport designated by the Director for such purposes.

D. The use, in common with the other airlines, of (a) the Aircraft Apron Area, the Loading Bridges, the Arrival Area, the Departure Area the Baggage Make-up Area, the Non-FIS Baggage Claim Area, in each case, serving Terminal D and (b) the FIS, the International Central Processor, and the Security Checkpoint Area.

E. The training of personnel employed by or to be employed by Airline including employees of Airline's contract service providers.

F. The installation, maintenance and operation, at Airline's expense, by Airline alone, or in conjunction with any other airline or airlines who are lessees at the Airport or through a nominee, of radio, telephone/cellular, and data communications equipment and meteorological and aerial navigation equipment and facilities in or on the Premises leased exclusively to Airline for use by Airline in the conduct of its Air Transportation Business; provided, however, that any exterior installations shall be subject to the prior written approval of the Director and, whether interior or exterior, shall not interfere with the Airport navigation aids or with similar rights granted to other tenants or governmental agencies. In the event of such interference, the Director may require removal, relocation, or modification to eliminate such interference.

G. The selling, exchanging or disposing of gasoline, oil, grease, lubricants, fuels, or propellants for use by Airline in connection with the conduct of its Air Transportation Business (in compliance with Applicable Laws and any applicable agreement therefor).

H. The purchasing or otherwise obtaining of services or personal property of any nature including aircraft, engines, accessories, gasoline, oil, greases, lubricants, fuels, propellants, food, beverages, and other equipment, parts or supplies necessary to Airline in the conduct of its Air Transportation Business and in the exercise of its rights and privileges granted and in the discharge of the obligations imposed upon Airline in this Agreement.

I. The installing, maintaining, and operation, without cost to City, by Airline alone or in conjunction with any other airline lessee or lessees on the Airport, of communication systems between suitable locations in the terminal area, subject to the approval of the Director as to location of the installation of said system.

J. The transporting, directly or through a nominee of Airline's choice, of Airline's employees, passengers, cargo, property (including baggage) and mail to, from and at the Airport.

K. Subject to the prior written approval of the Director (which approval may be withheld at Director's sole discretion), the installation and maintenance at Airline's expense, on Premises leased exclusively to it or under its control, of advertising or identifying signs representing its business. Such signs shall be uniform in size, type and location as approved by the Director and shall be consistent with published HAS signage criteria.

L. The conduct of any other operation or activity that is necessary for or related to Airline's Air Transportation Business, subject to the provisions of Section 2.03.

Section 2.02 Ground Handling

A. To the extent permitted by the Airport's rules and regulations, Airline may contract with, or receive from other airlines serving the Airport or other companies, Ground Handling Services for Airline's aircraft, provided that Airline provides advance written notice to the Director of such arrangements and uses reasonable efforts to ensure that such other airline or other company shall have entered into an operating permit or agreement or other similar contract with City prior to commencing Ground Handling Services with Airline; and provided further that City may issue a request for proposals for Ground Handling Services to be performed by third parties if City, in its discretion, determines that such program is necessary for the safe and efficient operation of the Airport.

B. Airline may provide Ground Handling Services to aircraft of other airlines using the Airport provided that Airline provides advance written notice to the Director of such arrangements and uses its Best Efforts to ensure that such other airline has entered into an operating permit or agreement or similar contract with City prior to conducting its operations at the Airport. If Airlines provides Ground Handling Services, Airline's insurance, as required in this Agreement, shall provide insurance coverage for such Ground Handling Services.

Section 2.03 Rights Reserved by City

A. Except as otherwise provided in this Agreement, City reserves the exclusive right to itself, its agents and its franchisees, to operate all concession services (including, but not limited to, food/beverage and news/gift concessions, common use lounges, specialty retail shops and carts, sleep pods, vending machines, pay telephones, fax machines and other voice and data telecommunications systems, advertising displays, baggage lockers and baggage carts) in the Public Areas and concession areas of Terminal D (including Public Areas such as Arrival Area, Departure Area, and FIS), the ICP, and the Central FIS and to retain the revenue therefrom; provided however, that City agrees that no concession services shall be located or operated by City or its nominees in any Exclusive Use Area without Airline's prior consent and providing that City shall not exercise such right in a manner that will materially impede passenger ingress or egress or Airline's business operations.

B. City shall operate all concessions and provide such other services, with reasonable due consideration to requests made by Airline, for scheduled airline passenger operations at the Airport as it deems necessary or appropriate. Nothing in this Agreement shall limit or preclude City from operating whatever concessions or providing whatever services it may desire at any and all airports and other facilities owned by City; provided, however, nothing contained herein shall affect rights of any airline pursuant to any agreement between such airline and City.

C. City, in its discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Airline from erecting or permitting to be erected, any structures on the Airport which, in the reasonable opinion of Airport, would limit the usefulness of the Airport or constitute a hazard to aircraft; provided, however, City's exercise of its rights set forth herein with respect to development of other portions of the Airport, shall be subject to rights of Airline under other agreement(s), if any, with City.

D. Any rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement or pursuant to another agreement between Airline and City are reserved for City.

Section 2.04 Limitations of Use of Airport

A. **Use of Facilities.** Airline shall not knowingly permit any act or omission at or about the Airport that:

1. may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, heating and air conditioning system, utility fire protection system, sprinkler system, alarm system, fire hydrants and hoses, firefighting foam collection and treatment systems, glycol collection and treatment systems, security systems, and other Systems if any, installed or located on or within the Premises or the Airport; or

2. be unlawful or conflict with or violate Applicable Laws; or

3. be in conflict with Federal Aviation Regulations Part 139 or jeopardize the Airport's operating certificate; or
4. create an unreasonable nuisance; or
5. obstruct or interfere with the rights of other users of the Airport; or;
6. commit or suffer to be committed any waste; or
7. place any loads upon the floor, walls, or ceiling which endanger the structure; or
8. obstruct the sidewalk or passageways or stairways or escalators.

B. **Insurance Requirements Compliance.** Airline shall not knowingly permit any act upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies (copies of which, together with premium schedules, shall be furnished to Airline on request) covering the Airport or any part thereof.

C. **Waste Disposal.** Airline shall not dispose of or knowingly permit disposal of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products shall first be properly treated by equipment installed for that purpose or otherwise disposed of pursuant to law. In addition to obtaining approval from the governmental agencies regulating equipment and disposal described in this paragraph, Airline shall also obtain the approval of the Director. All such disposal shall comply with all Applicable Laws and shall be in compliance with Section 14.02 of this Agreement.

D. **Flammable Liquids.** Airline shall not keep or store, during any 24-hour period, flammable liquids within the enclosed portion of the Premises in excess of Airline's working requirements during said 24-hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and approve by a governmental agency with authority to inspect such facilities for safety compliance. Any such liquids having a flash point of less than 100°F shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. **Engine Run-ups.** Airline shall perform aircraft engine run-ups only at locations and during time periods approved in writing in advance by the Director.

F. **Removal of Disabled Aircraft.** As soon as reasonably possible after release from proper authorities, Airline shall remove any of its disabled aircraft from the airfield or aprons, shall place any such disabled aircraft only in such storage areas as may be reasonably designated by the Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by City. In the event Airline shall fail to remove any of its disabled aircraft as soon as reasonably possible, Director may, after at least two (2) days written notice, but shall not be obligated to, cause the removal of such disabled aircraft. Airline shall pay to City, upon receipt of an invoice, the costs incurred for such removal plus fifteen percent (15%).

G. **Security.**

1. Airline shall comply with all HAS, TSA, FAA and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for the Airline's non-compliance with the provisions of Title 49 Code of Federal Regulations, Parts 1540 and 1542, as amended from time to time, or by other agencies for non-compliance with laws or regulations applicable to the Airline's operations. Within ten (10) days of notification in writing, Airline shall reimburse City for any fine or penalty assessed against City because of Airline's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations. Airline shall be responsible for any requirements (and costs associated therewith) of the Federal Aviation Administration, Department of Homeland Security (DHS), and the Houston Airport System (as applicable) regarding employee background checks and badging.

2. Airline shall use Best Efforts to prevent unauthorized persons from gaining access to restricted flight and aircraft operational areas through portions of the Airport under Airline's control. In the event that security guards or other similar personnel are required under any federal regulation or otherwise in order to prevent trespass and unauthorized access to flight and aircraft operational areas through portions of the Airport under Airline's control, the costs of such personnel and all expenses related thereto shall be paid by Airline.

3. Airline, its officers, employees, agents, and those under its control, shall comply with security measures (a) required of Airline by the FAA, the TSA, Customs and Border Protection ("CBP") or City in accordance with applicable requirements of the FAA, the TSA, CBP or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA, the TSA, CBP or their authorized successor(s) and applicable to Airline or its operations.

H. **Other.** Airline's use of the Airport shall be limited to activities directly connected to its Air Transportation Business, and Airline shall not enter into activities that compete with City in City's development of any revenue from Airport passengers, tenants, and other users.

Section 2.05 Confidentiality

Airline shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect Sensitive Security Information that may come into Airline's possession as a result of this Agreement.

Section 2.06 Parking

A. In the event City develops or causes to be developed an area or areas at the Airport as common parking facilities for the employees of Airline and other Airport tenants, the Director, in consultation with the Airline, will determine a reasonable charge for the use of such facilities to cover return on capital investment and costs associated with their development, operation, supervision and maintenance. Public vehicular parking facilities will be provided by City at reasonable charges to be determined by City.

B. Only Airline and other airport employees may park in designated Airport employee parking facilities.

Section 2.07 Ingress and Egress

Subject to the other provisions of this Agreement and to the rules and regulations adopted by City under the provisions of Article XIV, the following privileges of ingress and egress are granted with respect to the Airport:

A. **For Airline, its agents, employees, contractors, subcontractors and permitted sublessees and assigns:** To the Public Areas of the Airport and to those areas and facilities designated in this Agreement for Exclusive Use by Airline or by Airline in common with other airlines. This right shall extend to Airline's aircraft, vehicles, machinery and equipment used in its air transportation business.

B. **For Airline's passengers, guests and invitees:** To areas leased exclusively to Airline and to areas provided for use of Airline's passengers, guests and invitees in common with those of other airlines and to Public Areas and public facilities. This privilege shall extend to vehicles of such passengers, guests and invitees.

C. **For Airline's suppliers of materials and furnishers of service:** To the Public Areas of the Airport and to the Airline's Exclusive Use Areas and Preferential Use Areas and facilities leased exclusively or preferentially to Airline and to areas and facilities provided for the common use by Airline or its suppliers of materials and furnishers of services. This privilege shall extend to vehicles, machinery or equipment of such suppliers and furnishers used in their business of furnishing such supplies and services to Airline.

D. The ingress and egress provided for above shall not be used, enjoyed or extended to any person, airline or vehicle 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 unless expressly authorized by the Director.

E. City may, at any time, temporarily or permanently close, consent to or request the closing of any roadway or other right of way for such access, ingress, or egress, whether inside or outside Terminal D, so long as a means of access, ingress or egress reasonably equivalent to that formerly provided, and not adverse to Airline's continued use and enjoyment of Terminal D is substituted therefor and is concurrently made available therefor. Airline understands and agrees that there will be inconveniences caused by construction of improvements to the Airport from time to time and Airline hereby releases and discharges City from any and all claims, demands or causes of action which Airline now or at any time hereafter may have against City arising or alleged to arise out of the closing of any right of way or other area used as such whether within or outside of the Airport so long as City makes available a means of free access, ingress or egress reasonably equivalent to the existing prior to each such modification, if any.

Section 2.08 Sales or Distribution of Food/Beverages

A. **Distribution of In-Flight Food/Beverages.** The distribution, serving or sale of food or beverages (including alcoholic beverages) meant to be consumed aboard Airline's aircraft by Airline or its in-flight catering provider shall be limited to Airline's passengers who are in the passenger loading bridge or entrance to the passenger loading bridge and in the process of boarding

Airline's aircraft. The provisions of this section notwithstanding, all distribution of alcoholic beverages shall comply with Applicable Laws.

B. **Club Rooms.** Airline shall have the right to utilize space in Terminal D for the purpose of maintaining and operating club rooms or lounges for its passengers, and those of its Affiliates and of its code-share alliance partners only. Airline shall have the right to serve beverages, including alcoholic beverages, and appetizers therein with or without charge and subject to all Applicable Laws, regulations and ordinances; provided, however, that City reserves the right to charge Airline applicable percentages of its gross revenues from (1) entrance fees or charges for Airline's clubs or lounges, if any, in Terminal D; and (2) the sale of food and beverages consistent with the percentages charged to its food and beverage concessionaires at the Airport, not to exceed 15% on the sale of food and nonalcoholic beverages and 20% on the sale of alcoholic beverages, provided that no such payment shall be required with respect to items obtained from concessionaires already obligated to make such payments to City with respect to such obtained items. Recognizing that the new Airport common-use lounge may not be open upon the countersignature date of this Agreement, Airline shall be allowed on a temporary basis only to continue to allow access to its club room or lounges to airlines that are not current code-share alliance partners or Affiliates only, and all other contracts, memberships or partnerships shall remain prohibited. Nothing contained herein shall preclude Airline from having membership programs or other Airline carrier-specific lounge access benefits associated with a credit card or charge card, such as those included with or obtained through Airline's co-branded credit cards and the City shall not have a right to charge a percentage on gross receipts for such membership programs and benefits. Upon the opening of the Airport common-use lounge, no sharing other than that to Affiliates or code-share alliance partners, as stated above, may occur.

C. **Vending Machines.** Airline or its nominee may install, maintain, and operate vending machines in Airline's Exclusive Use Area not accessible to the public for the purpose of providing and making available foods, beverages and sundry food items to Airline's employees only.

D. **Other Distribution of Food/Beverages Prohibited.** Except as allowed in this Agreement, all other serving, distribution or sale of food or beverages by Airline at the Airport is prohibited. Notwithstanding the foregoing, for the avoidance of doubt, except in connection with emergency situations or irregular operations, or for employees in Exclusive Use Areas, or except as permitted in the reasonable determination of Director, Airline shall not be permitted to provide food or beverage service in any other areas of the Airport unless permitted to do so pursuant to another agreement with City.

Section 2.09 Use of FIS Facilities

During the term of this Agreement, all arriving international passengers, except those arriving on Pre-cleared International Flights, shall be processed through the FIS.

Section 2.10 Use of Terminal D by Foreign Flag Airlines

During the term of this Agreement, all foreign flag airlines serving the Airport as of July 1, 2004 (other than Pre-Cleared International Flights) shall operate out of Terminal D and the ICP;

HAS 5/1/23

provided that this section or anything contained in this Agreement is not intended (and shall not be construed) to limit United's rights under the United Terminal E Lease or United's ability to provide Ground Handling Services at, or to lease or sublease any of Terminal E at the Airport (or the ability of any foreign flag carrier to be ground handled at, or use such areas of Terminal E) when use thereof by any such foreign flag carrier is permitted under the United Terminal E Lease.

ARTICLE III.
TERM

Section 3.01 Term

The term (the “**Term**”) of this Agreement shall begin on the Effective Date and shall expire on June 30, 2034; provided the Director or Airline may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other party.

Section 3.02 Airline’s Rights Upon Expiration or Early Termination of Agreement

Upon expiration or early termination of this Agreement, all of Airline’s rights, authority, and privileges to use the Premises, services and facilities of the Airport granted pursuant to this Agreement shall cease (except as specifically provided in Section 4.04(A)).

ARTICLE IV.
PREMISES

Section 4.01 Terminal D Premises Pre-DBO of the ICP

A. **Exclusive Use Areas.** Airline hereby leases from City and City hereby leases to Airline for its exclusive use the areas in Terminal D, as shown in **Exhibit F** for all purposes, as summarized below:

<u>Type of Space</u>	<u>Effective Date Area (Sq. Ft.)</u>
Administrative Offices	XXX
Sales Counter	XXX
VIP Club Rooms	XXX
Maintenance	XXX
Storage	XXX

Section 4.02 Terminal D, ICP Premises After DBO of the ICP

A. **Exclusive Use Areas.** After DBO of the ICP, Airline hereby leases from City and City hereby leases to Airline for its exclusive use the areas in the International Central Processor, and Terminal D, if applicable, as shown in **Exhibit F**, as summarized below:

<u>Type of Space</u>	<u>Area (Sq. Ft.)</u>
Administrative offices (ATO)	TBD
VIP club rooms	TBD
Operations	TBD
Maintenance	TBD
Storage	TBD

The square footages of these areas are subject to final verification based on as-built drawings which will be reflected in a substitute **Exhibit F**. Upon written request by Airline, the Director shall have the right to increase or decrease the area leased by Airline, by issuing a letter indicating the changed square footage, as of the date stated in the notice, with a replacement exhibit showing the changed leased area, without having to send an amendment to this Agreement to City Council.

B. **Gates.** After DBO of the West Pier, the use of Terminal D gates shall be as follows:

1. **Gates on west side of West Pier.** United shall be granted Preferential Use and scheduling rights at all times of the day for each of the three (3) widebody gates (which shall be collectively capable of simultaneously handling five (5) narrow-body aircraft departures or arrivals) on the west side of the West Pier as shown on **Exhibit F** in Terminal D anticipated to be known as Gates 2, 4 and 6 (which may be renumbered at the discretion of the Director); provided that for each such gate, United meets the Gate Use Requirement for Terminal D carriers as provided below. United's Preferential Use and scheduling rights shall expire after ten

(10) years from the date (which date shall be memorialized in a notice signed by United and City) on which the last of such gates are made available to and are ready for use by United; provided, however, if all international widebody gates in the North Concourse of Terminal D are fully utilized during the peak period, as provided in this Agreement, then during such 10-year period, United's preferential scheduling and use rights on the west side of the West Pier shall be subordinate, upon no less than one hundred fifty (150) days' prior written notice from City to United, to City's right to accommodate an international carrier, using the FIS, during the peak period for the time period necessary to accommodate an International Flight on a gate on the west side of the West Pier. With the exception of United's Preferential Use and scheduling rights defined herein, use of the other gates in Terminal D will be common use in accordance with the IFP, as may be amended from time to time.

2. **“Gate Use Requirement”**, as to each Preferential Use gate in Terminal D, shall be defined as operating on each gate, for the six (6) days of each week during which an airline operates the greatest number of departing flights in a rolling three (3) month period of at least five (5) daily “narrow body-equivalent aircraft departures”. Narrow body-equivalent aircraft departures shall (i) include only those departures of aircraft with onboard passengers, and (ii) be based on “airplane design group” (ADG-III), as defined in FAA Advisory Circular 150/5300-13, and as provided in the table below:

<u>ADG</u>	<u>Narrow Body Equivalent Aircraft Departure</u>
I	.50
II	.75
III	1.0
IV	1.4
V	1.8
VI	2.0

3. **All Other Gates in Terminal D.** Except as provided above with respect to United’s rights to Preferential Use and scheduling rights, (a) gates shall be made available to all airlines using Terminal D on a common use basis, and (b) Airline shall have the right to use such gates, in common with all other airline users of Terminal D, subject to the access and assignment procedures set forth in the IFP.

4. **Hardstand Gates.** Aircraft parking positions at the north remote apron shall be available and may be used for regularly scheduled Terminal D operations, as well as for irregular operations of primary Gate users and other aircraft operations or parking as may be directed by the Director. The remote aircraft parking positions associated with Terminal D will be allocated and used in accordance with the IFP.

5. **Common Use Areas.** Airline and others permitted such use as in this Agreement provided shall have the right to use, in common with all other airline users, the

Arrival Area, the Departure Area, the ICP, the Baggage Make-up Area, the Security Checkpoint Area, the Common Use VIP Club and the Non-FIS Baggage Claim Area in Terminal D and the FIS subject to the access and assignment procedures of the IFP. Upon completion of any improvements to Terminal D that do not affect Airline's Exclusive Use Areas, Director will prepare and distribute updated exhibits.

Section 4.03 Terminal D Premises During and After Construction of Improvements

A. Additional modifications may be made to Airline's Exclusive Use Areas in Terminal D and to the Terminal D common use areas as a result of improvements to Terminal D and the ICP. Airline may be required to relocate to and operate out of space different from that shown in **Exhibit F** and stated in Section 4.01 or 4.02 above, and in such case City shall, at Airline's request, cover the actual and reasonable cost of such move (whether in connection with a temporary relocation, a permanent relocation or relocation following the temporary relocation) and provide Airline comparable space to which City has agreed to provide Airline under this Agreement to the extent practicable. If Airline is required to temporarily or permanently relocate to and operate out of different space, Airline's **Exhibit F** will be modified to reflect such interim change in square footage and space location by letter agreement. Upon completion of such Terminal D improvements, or ICP completion, as may affect Airline and the Date of Beneficial Occupancy of Airline's new space has been established in writing by the Director, a final **Exhibit F** dated as of the Date of Beneficial Occupancy will be prepared by Director and such **Exhibit F** shall become a part of this Agreement and shall supersede all other versions of **Exhibit F**.

B. The parties acknowledge that there may be future construction that may result in the elimination or reconfiguration of one or more Terminal D Gates. During and after any such construction, and to the extent affected thereby, priorities for the use of Terminal D gates shall be determined by Director in accordance with the IFP, as may be amended from time to time.

Section 4.04 Surrender of Premises

A. Upon expiration or early termination of this Agreement, Airline shall surrender the Premises to City in a good, clean condition excepting, however, (1) reasonable wear and tear that could not be prevented through routine maintenance required to be done by Airline, (2) damage by fire and other casualty, and (3) acts of God or the public enemy.

B. Except as otherwise provided in this Section, all equipment, trade fixtures, and other personal property installed or placed by Airline in the Premises or on or about the Airport pursuant to this Agreement and which can be removed without structural damage to the Premises or any other City-owned property, shall remain the property of Airline unless otherwise provided in agreements between Airline and City, and Airline shall have the right at any time during the term of this Agreement and prior to its expiration or early termination to remove any and all of said property from the Airport provided Airline is not in default in its payments hereunder (beyond all applicable notice and opportunity to cure periods). Airline agrees to repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of the removal of Airline's property shall be restored at Airline's expense to substantially the same condition as, or better condition than it was prior to such damage. While Airline may paint its Exclusive Use Areas

with branded coloring or logos during its occupancy, upon surrender of its Premises, Airline may be required to restore wall finishes to a neutral color included in Airport design standards. Any and all property not removed by Airline within thirty (30) days after the expiration of this Agreement, or, in case of earlier termination of this Agreement, within sixty (60) days after receipt by Airline of a written notice from the Director to remove such property, shall thereupon become a part of the land upon which it is located and title thereto shall thereupon vest in City; and City reserves the right to remove such property not so removed by Airline, and if such removal is accomplished within the 30-day period after the expiration of this Agreement or the 60-day period referred to above (after the early termination of the Agreement), such removal by City shall be at Airline's expense.

Section 4.05 Covenant Against Liens

Airline shall not cause nor permit any lien against the Premises or any improvements thereto to arise out of or accrue from any action or use thereof by Airline; provided, however, that Airline may in good faith contest the validity of any alleged lien.

Section 4.06 City Right of Entry

City may enter upon Airline's Premises (1) at any time for any purpose necessary, incidental to or connected with the performance of Airline's obligations hereunder, or in the exercise of City's governmental functions, and (2) upon the termination or cancellation of this Agreement, and such entry or reentry shall not constitute a trespass nor give Airline a cause of action for damages against City. For Exclusive Use Areas, Director will provide reasonable notice based on the circumstances (except in the case of emergencies when notice shall not be required) and shall enter the Premises without materially disrupting Airline's operations.

Section 4.07 Quiet Enjoyment

Upon payment by Airline of the rentals, fees and charges as in this Agreement required and subject to performance and compliance by Airline of the covenants, conditions, and agreements on the part of Airline to be performed and complied with hereunder, Airline shall peaceably have and enjoy the rights, uses and privileges of the Airport, its appurtenances and facilities as granted in this Agreement.

ARTICLE V.
RENTALS, FEES, AND OTHER CHARGES

Section 5.01 General

In consideration for the use of the Premises, facilities, rights, 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, except as provided in this Agreement, certain rentals and other charges as set forth in this Article V and as recalculated according to the procedures of Article VI.

Section 5.02 Statistical Report

A. **Contents of Report.** Airline shall submit in writing to the Director on or before the fifteenth (15th) day of each month the following statistical information relative to its scheduled, nonscheduled and charter operations at the Airport for the immediately preceding calendar month, in a format consistent with that provided in **Exhibit H**, attached hereto and made a part hereof for all purposes, as it may be changed from time to time:

1. Total number of Enplaned and Deplaned Passengers, by terminal and by type of operation (Domestic Flights, International Flights, and Pre-Cleared International Flights);
2. Total number of originating, in-transit, and connecting passengers, by terminal;
3. Total number of landings by type of aircraft and Maximum Gross Certified Landing Weight by type of aircraft;
4. Total pounds of air cargo enplaned and deplaned; and
5. Total pounds of air mail enplaned and deplaned.

B. **Right to Request Additional Information.** The above statistical information shall be in addition to any other information required by the IFP or by this Agreement to be submitted by Airline each month for City's use in calculating landing fees, Terminal D and ICP rentals and charges, Skyway Charges, Central FIS fees, and other charges pertinent to Airline's operations in Terminal D and the ICP.

C. **Failure to Provide Statistical Report.** If Airline fails to timely furnish City with any of the information required under this Section 5.02, the rentals, fees, and charges due under this Agreement may be determined by assuming that Airline's activity (and its Affiliates) in any month for which Airline fails to report its activity is equal to Airline activity during any of the previous twelve (12) months for which Airline submitted the monthly report. Any necessary adjustments in Airline's charges will be calculated after an accurate report is delivered to City by Airline for the month in question, but shall not relieve Airline of the obligation to pay interest or penalties due on such payments.

D. **PFCs.** If Airline is required to collect PFCs, Airline must submit a written report to City identifying the PFCs collected for the benefit of City on a date no later than the last day of the calendar month following the month of collection.

Section 5.03 Terminal D and ICP Rentals and Charges

A. **Exclusive Use Rentals.** Airline shall pay City monthly rentals for its use of Exclusive Use Areas, calculated by multiplying the number of square feet Airline rents as Exclusive Use Areas in Terminal D by the annual rental rate for Terminal D calculated each Fiscal Year in accordance with Section 6.02(C).

B. **International Departure Charge.** Airline shall pay City an International Departure Charge for its use of the Departure Area, Aircraft Apron Area, and Loading Bridges for International Flights calculated by multiplying Airline's total Enplaned Passengers from International Flights in Terminal D for each month by the annual International Departure Charge calculated each Fiscal Year in accordance with Section 6.02(C).

C. **International Arrival Charge.** Airline shall pay City an International Arrival Charge for its use of the Arrival Area, Aircraft Apron Area, and Loading Bridges for International Flights, other than Pre-Cleared International Flights, calculated by multiplying Airline's total Deplaned Passengers from such flights in Terminal D for each month by the annual International Arrival Charge calculated each Fiscal Year in accordance with Section 6.02(C).

D. **Domestic and Pre-Cleared Charge.** Airline shall pay City a Domestic and Pre-Cleared Charge for its use of the Arrival Area, Departure Area, Aircraft Apron Area, Non-FIS Baggage Claim Area, and Loading Bridges for Domestic Flights and Pre-Cleared International Flights calculated by multiplying Airline's total Deplaned Passengers arriving on such flights for each month by the Domestic and Pre-Cleared Charge calculated each Fiscal Year in Section 6.02(C) and Section 6.09.

E. **Ticketing Charge.** Airline shall pay City a Ticketing Charge for its use of the ICP and Baggage Make-up Area calculated by multiplying Airline's total Enplaned Passengers in Terminal D for each month by the annual Ticketing Charge calculated each Fiscal Year in accordance with Section 6.02(C). For the purposes of calculating ticketing charges, Airline's monthly Enplaned Passengers shall exclude: (i) in-transit passengers, (ii) passengers enplaned on flights for which ticketing and baggage check-in services are not provided in Terminal D or the ICP, and (iii) passengers for whom Airline is required to pay a ticketing charge pursuant to another agreement between City and Airline.

F. **Security Checkpoint Charge.** Airline shall pay City a Security Checkpoint Charge for its use of the Security Checkpoint Area calculated by multiplying Airline's Enplaned Passengers using the Security Checkpoint Area for each month by the annual Security Checkpoint Charge calculated each Fiscal Year in accordance with Section 6.02(C).

G. **Common Use VIP Club Charge.** Airline shall pay City a Common Use VIP Club Charge for its use of the Common Use VIP Club calculated by multiplying Airline's passengers using the club for each month by the Common VIP Club Charge calculated each Fiscal Year in Section 6.02(C).

H. **Central FIS Charge.** Airline shall pay City a Central FIS Charge for the processing of Deplaned Passengers from International Flights (other than Pre-Cleared International Flights) in the Central FIS calculated by multiplying Airline's total Deplaned Passengers for such International Flights for each month by the Central FIS Charge calculated each Fiscal Year in accordance with Section 6.03.

I. **Skyway** Airline shall pay City a Skyway Charge calculated by multiplying Airline's total Enplaned Passengers for the applicable month by the Skyway Charge calculated each Fiscal Year in accordance with Section 6.04.

Section 5.04 Landing Fees

Airline shall pay City for its use of the Airfield monthly landing fees calculated by multiplying Airline's Total Landed Weight for the applicable month by the Landing Fee rate calculated each Fiscal Year in accordance with Section 6.05. City will use its best efforts to charge and collect landing fees from all commercial air transportation users of the Airfield as Director may reasonably determine. As determined by City, the fees payable by noncommercial air transportation users for the use of the Airfield may be based on some method other than aircraft landed weight.

Section 5.05 Fines or Penalties

Any fines or penalties assessed against City because of noncompliance of Airline or its agents with any Applicable Laws shall promptly be reimbursed to City by Airline within thirty (30) days of Airline's receipt of written notice from the Director setting forth the amount of such fine or penalty; provided, however, that such payment shall not be construed as waiving Airline's right to contest such fine or penalty.

Section 5.06 Other Fees and Charges

A. **Utilities.** With respect to its Premises and Airline-installed equipment, machinery and facilities, Airline agrees to pay all water, sewage, electricity, gas, telephone and other utility charges which may be charged to Airline for the use thereof, if such charges are separately assessed or metered as appropriate to Airline. Utility bills for metered utilities furnished by City will be paid monthly or less frequently depending on billing schedule established by City. For those areas not separately metered, including Exclusive, Preferential Use and common space, charges for utility services (other than illumination which is to be provided by City and included in the base rental rate) will be assessed by City on a proportionate basis related to area leased or number of utility connections or fixtures served. Meters will be installed where it is economically and mechanically feasible.

B. **Airport Symbols.** Airline shall have no right to use the trademarks or symbols, either directly or indirectly, in connection with any production, promotion service or publication without the prior written discretionary consent of the Director.

C. **Other.** City reserves the right to assess, and Airline agrees to pay, reasonable charges for the use of City-provided facilities and equipment including but not limited to: telecommunications trunk equipment charges, employee parking facilities, security identification

badges, CUTE (including paper stock and bag tags), and any Additional Fees (as defined in the IFP) assessed under the IFP.

Section 5.07 Security Deposit

A. **Power to Assess.** Prior to Airline commencing service at the Airport, City shall have the right to charge Airline a security deposit in an amount equal to three (3) times Airline's estimated rentals and fees during its first three months of operation under this Agreement. In the event Airline, at any time during the Term of this Agreement, fails to make any of the payments required under this Article V when due, City reserves the continuing right to require a security deposit in an amount equal to three (3) times Airline's average monthly amount of rentals and fees payable under this Agreement (provided, however, if Airline has more than one lease or agreement requiring a security deposit for Landing Fees the security deposit shall be calculated in total, rather than by individual agreement), during the immediately preceding three-month period.

B. **Form of Security Deposit.** Airline's initial security deposit, if any, shall be provided to City by Airline, as a letter of credit or in such other form specified by the Director, a sample of which is attached as **Exhibit J**, attached hereto and made a part hereof for all purposes, within thirty (30) days of commencing service under this Agreement. At the termination of this Agreement, and if Airline and its Affiliates have performed all their duties under this Agreement, including payment of all rentals, fees and other charges, City will return the security deposit to Airline within thirty (30) days of expiration or earlier termination of this Agreement.

Section 5.08 Payment Provisions

A. **ITC Rentals and Charges.**

1. Exclusive Use Area rentals shall be due and payable on the first (1st) day of each month without invoice from City.

2. International Arrival Charges, International Departure Charges, Domestic and Pre-Cleared Charges, Ticketing Charges, Security Checkpoint Charges, Common Use VIP Club Charges, Central FIS Charges, and Skyway Charges shall be due and payable, without invoice, on the fifteenth (15th) day following the last day of the applicable month. Such rentals and charges shall be calculated on the illustrative self-invoicing form set forth in **Exhibit I**, as may be changed from time to time, and transmitted to City together with Airline's monthly statistical report for the month on or before the fifteenth (15th) day following the last day of the applicable month as required by Section 5.02.

B. **Landing Fees.** Landing fees for each month shall be due and payable without invoice from City on or before the fifteenth (15th) day following the last day of such month.

C. **Other Fees.** All other rentals, fees, and charges required hereunder shall be due and payable within thirty (30) days of the date of Airline's receipt of the invoice therefor.

D. **Right of City to Verify Airline's Payment.** The acceptance of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline or preclude

Airline from later demonstrating that Airline's report was inaccurate and that a lesser amount was properly owed (and to recover any such overpayment).

E. **Interest on Overdue Amounts.** Any payment not received within five (5) days of the due date may accrue interest at the rate of one and a half percent (1.5%) per month from the due date until the date when full payment is made.

F. **Form of Payment.** Payments shall be made to the City of Houston – Houston Airport System and shall be sent in accordance with Section 14.15.

Section 5.09 No Other Fees and Charges

City agrees that it will not impose any rental, fee or charge, direct or indirect, on Airline for the exercise and enjoyment of the rights and privileges granted in this Agreement except those rentals, fees and charges provided for in this Agreement, and such other rentals, fees and charges as are mutually agreed upon by City and Airline; provided, however, there is excepted from this provision any and all fees and charges imposed, authorized or required by any law of any governmental authority other than HAS. This provision is not intended to prevent City from making agreements concerning rentals, fees and charges with individuals or firms providing goods or services to City.

ARTICLE VI.
CALCULATION OF RENTALS, FEES, AND OTHER CHARGES

Section 6.01 General

For each Fiscal Year thereafter through the term of this Agreement, rentals and other charges will be reviewed and calculated based on the principles and procedures set forth in this Article VI. The methodology for the calculation of airline rentals and other charges described in this Article VI is illustrated in **Exhibit K**, attached hereto and made a part hereof for all purposes. For rate setting purposes, the calculations will be made on the basis of HAS estimates of costs and expenses and estimates of enplaned and deplaned passengers, flight arrivals and departures, and total landed weight and shall be provided to Airline at least thirty (30) days prior to the beginning of the Fiscal Year. For final settlement purposes all calculations will be made on the basis of actual costs and expenses incurred and actual passenger and flight activity and will be provided to Airline as soon as possible following the completion of the annual audit of the HAS's financial statements.

Section 6.02 Terminal D and ICP Rentals and Other Charges

A. **General.** City will apply existing cost allocation and compensatory rate-making concepts and procedures, as described immediately below, in calculating Terminal D rentals and other charges except where otherwise expressly provided in this Agreement.

B. **Cost Elements.** The total costs of the Terminal D Cost Centers will be calculated by adding together the following amounts, excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to Terminal D and the ICP.

2. Amortization of the unamortized net cost of each Capital improvement in or allocable to Terminal D and the ICP.

3. A charge equal to 0.20 times the Amortization of the net cost of each Capital Improvement in or allocable to Terminal D or the ICP placed in service on or after the date of beneficial occupancy of any component of ITRP Phase 1 between such date of beneficial occupancy and the end of Fiscal Year 2033 (June 30, 2033).

4. Interest on the cost of land allocable to Terminal D or the ICP computed at City's historical average Cost of Capital.

5. Systems Costs allocable to Terminal D or the ICP.

6. A Base Capital Charge of \$2.50 per square foot for all areas of Terminal D or the ICP which have not been demolished or replaced, the original cost of which has been fully amortized.

7. Replenishment of the Renewal and Replacement Fund allocable to Terminal D or the ICP, if necessary, as required by the Bond Ordinances.

C. **Rate Calculations.** Cost elements will be directly assigned to Terminal D Cost Centers where traceable or, where not directly traceable, allocated among Terminal D Cost Centers based on the square footage of Usable Space in those Cost Centers or such other reasonable method as the Director deems most appropriate under the circumstances based on the benefits received by the particular cost centers. The total annual costs allocable to each of the Terminal D Cost Centers will then be divided by the following units to determine the rate to be charged for the use of each such cost center, provided that the available amounts of Domestic and Pre-Cleared Charges available pursuant to Section 6.09(D) (if any) shall be subtracted from the total costs of allocable to the Departure Area, Arrival Area, Aircraft Apron Area, Loading Bridges, ICP and Baggage Makeup Areas:

<u>Rate/Fee</u>	<u>Cost Centers</u>	<u>Units (Divisor)</u>	<u>Basis of Charge</u>
Space Rentals	Exclusive Use Area	Square feet of exclusive use space	Per square foot
International Departure Charge	Departure Area; Aircraft Apron Area (pro rata) ¹ ; Loading Bridges (pro rata) ¹	Enplaned Passengers from International Flights in Terminal D	Per Enplaned Passenger on an applicable flight
International Arrival Charge	Arrival Area; Aircraft Apron Area (pro rata) ¹ ; Loading Bridges (pro rata) ¹	Deplaned Passengers from International Flights (other than Pre-Cleared Flights) in Terminal D	Per Deplaned Passenger on applicable flight
Domestic and Pre-cleared Charge	Non-FIS Baggage Claim Area, and, where available, the Arrival Area; Departure Area; and ICP, in accordance with Section 6.09; Aircraft Apron Area; Loading Bridges	Enplaned or Deplaned Passengers from Domestic Flights or Pre-Cleared International Flights using such areas	Per Enplaned or Deplaned Passenger on applicable flights

¹ Costs associated with the Aircraft Apron Area and the Loading Bridges for Enplaned Passengers and Deplaned Passengers of International Flights will be allocated proportionally between the International Departure Charge and the International Arrival Charge for Terminal D.

<u>Rate/Fee</u>	<u>Cost Centers</u>	<u>Units (Divisor)</u>	<u>Basis of Charge</u>
Ticketing Charge	Ticketing areas in Terminal D or the ICP; Baggage Make-up Area and the costs of providing uniformed security officers required under Federal Aviation Regulations Part 107.4 which costs shall be allocated to the ICP.	Enplaned Passengers (excluding in-transit passengers and Enplaned Passengers on flights for which ticketing and baggage check-in is not provided in Terminal D or the ICP)	Per enplaned passenger on applicable flights
Security Checkpoint Charge	Security Checkpoint Area	Enplaned Passengers using the Security Checkpoint Area	Per enplaned passenger using Security Checkpoint Area
Common VIP Club Charge	Common VIP Club	Per Passenger using Common VIP Club	Per Passenger Using Common VIP Club

Airline shall then pay (i) monthly space rentals calculated by multiplying the required space rental rate, as computed above, by the total square footage of Airline’s Exclusive Use Area and dividing by 12; and (ii) all other charges calculated by multiplying the applicable rates by Airline’s applicable activity for such month in accordance with Section 5.03(B) through Section 5.03(G).

Section 6.03 Central FIS Fees

A. **Cost Elements.** The total costs of the Central FIS will be calculated by adding together the following amounts, excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed to City by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to the Central FIS.
2. Amortization of the unamortized net cost of each Capital improvement in or allocable to the Central FIS.
3. A charge equal to 0.20 times the Amortization of the net cost of each Capital Improvement in or allocable to the Central FIS placed in service on or after the date of beneficial occupancy of any component of ITRP Phase 1 between such date of beneficial occupancy and the end of Fiscal Year 2033 (June 30, 2033).

4. Interest on the cost of land allocable to the Central FIS computed at City's historical average Cost of Capital.

5. Systems Costs allocable to the Central FIS.

6. A Base Capital Charge of \$2.50 per square foot for all areas of the Central FIS which have not been demolished or replaced, the original cost of which has been fully amortized.

7. Replenishment of the Renewal and Replacement Fund allocable to Central FIS, if necessary, as required by the Bond Ordinances.

B. **Rate Calculations.** The total annual costs allocable to the Central FIS will be divided by the number Deplaned Passengers from International Flights (excluding Pre-cleared International Flights) using the Central FIS to determine the Central FIS Charge. Airline will pay Central FIS charges in accordance with Section 5.03(H).

Section 6.04 Skyway Charges

A. **Cost Elements.** Airline shall pay City monthly amounts sufficient to reimburse City for the total annual costs of the Skyway allocable to Terminal D, which will be calculated by adding together the following amounts, excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed to City by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to the Skyway.

2. Amortization of the net cost of each Capital Improvement associated with the Skyway; provided, however, that only costs associated with the Skyway incurred subsequent to this Agreement, if any, shall be recoverable from future Skyway Charges.

3. Interest on the cost of land allocable to the Skyway computed at City's historical average Cost of Capital.

4. A charge equal to 0.20 times the Amortization of the net cost of each Capital Improvement in or allocable to Skyway placed in service on or after the date of beneficial occupancy of any component of ITRP Phase 1 between such date and the end of Fiscal Year 2033 (June 30, 2033).

5. Systems Costs allocable to the Skyway.

6. A Base Capital Charge of \$2.50 per square foot for all areas of the Skyway which have not been demolished or replaced, the original cost of which has been fully amortized.

7. Replenishment of the Renewal and Replacement Fund allocable to the Skyway, if necessary, as required by the Bond Ordinances.

8. The reallocation of the direct and indirect cost of the space utilized within the terminal complex by HAS and designated as “HAS Space” on all applicable space exhibits, which exhibits may be modified from time to time to reflect the actual use of such space. Said reallocation shall be based upon each individual cost center’s direct expenses as a percentage of the Airport’s total direct expenses.

B. **Rate Calculations.** The total annual costs of the Skyway will be divided by the total number of annual Enplaned Passengers using terminals served by the Skyway to derive the annual Skyway Charge Rate per Enplaned Passenger. Airline will pay Skyway Charges in accordance with Section 5.03(I).

Section 6.05 Landing Fee Rate

A. The total costs of the Airfield will be calculated by adding together the following amounts excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed to City by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to the Airfield.
2. Amortization of the unamortized net cost of each Capital improvement in or allocable to the Airfield.
3. Interest on the cost of and allocable to the Airfield computed at City’s historical average Cost of Capital.
4. Systems Costs allocable to the Airfield.
5. Replenishment of the Renewal and Replacement Fund allocable to the Airfield, if necessary, as required by the Bond Ordinances.

B. The net costs of the Airfield will then be calculated by subtracting revenues from general aviation fuel flowage fees from the total costs of the Airfield, but only if and to the extent City’s bond counsel is of the opinion such subtraction will not affect the tax-exempt status of City’s Airport System Revenue Bonds. The Landing Fee rate will then be calculated by dividing the net costs of the Airfield by the Total Landed Weight of all airlines using the Airport.

C. Airline shall pay monthly landing fees calculated by multiplying the Landing Fee rate, as computed above, by the Total Landed weight of all Airline’s arriving aircraft for each month in accordance with Section 5.04.

Section 6.06 Mid-Year Rate Adjustments

A. In the event that, at any time during a Fiscal Year, the Total Costs of Terminal D and the ICP, the Central FIS, the Skyway, or Airfield that is allocable to the airlines, or the Total Landed Weight of all airlines serving the Airport, is projected by City to vary ten percent (10%) or more from the estimates used in setting the Terminal D rentals and fees, the Central FIS rentals and fees, or the Landing Fee rate, such rates may be adjusted either up or down for the balance of such Fiscal Year, provided that such adjustment is deemed necessary by City.

B. An upward adjustment shall only be used to ensure that adequate revenues will be available from such fees to recover 120% of the total estimated total costs of the particular airline supported cost center.

C. For each such adjustment, Director shall provide Airline with a written explanation of the basis for the rate adjustment(s) and will provide sixty (60) days' advance written notice before putting such adjustment(s) into effect. Unless extraordinary circumstances warrant additional adjustments, City will seek to limit such rate adjustments to no more than once each Fiscal Year.

Section 6.07 Year-End Adjustment to Actual and Settlement

A. As soon as possible following the close of each Fiscal Year, City shall furnish Airline with an accounting of the costs and expenses actually incurred, revenues and other credits actually realized (reconciled to the audited financial statements of the Airport System), and actual Enplaned and Deplaned passengers, flight arrival and departures at Terminal D, and Total Landed Weights during such Fiscal Year with respect to each of the components of the calculation of Terminal D and ICP rentals and fees, Central FIS charges, Skyway charges, and the Landing Fee Rate in this Article VI and shall recalculate the rates, fees, and charges required for the Fiscal Year based on those actual costs and revenues. If requested by an airline, Director shall convene a meeting of the airlines to discuss the calculation of the year-end settlement.

B. In the event that Airline's rentals, fees, and charges billed and paid during the Fiscal Year were more than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), or exceed the International CPE Cap, such excess amount shall be credited to Airline's next payment within sixty (60) days of the calculation of such final settlement.

C. In the event that Airline's rentals, fees, and charges billed and paid during the Fiscal Year were less than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such deficiency shall be billed to Airline and payable by Airline within sixty (60) days of the date of Airline's receipt of the invoice therefor. However, in the event that the amount of the Airline deficiency is more than (10%) of total rentals, fees, and charges billed and paid by Airline during the Fiscal Year (which deficiency must be at least \$350,000 for United and \$25,000 for other airlines), Airline may pay the deficiency to City in equal monthly installments without interest over the remaining months of the current Fiscal Year or three (3) months whichever is longer.

Section 6.08 International CPE Cap

Notwithstanding any other provision of this Article VI to the contrary, City will not levy fees or charges pursuant to this Agreement which would result in Airline's International CPE to exceed 150% of that same International CPE for Fiscal Year 2018, adjusted annually thereafter for cumulative inflation as shown and depicted in **Exhibit K** (the "**International CPE Cap**").

Section 6.09 Domestic and Pre-Cleared Charges

A. Domestic and Pre-Cleared Charges will be assessed at a rate per Enplaned Passenger equal to the then-current total average cost per Enplaned Passenger for use of facilities in Terminal A, including the use of ticket counters, outbound baggage, inbound baggage, baggage claim, holdrooms and ramps in Terminal A.

B. Domestic and Pre-Cleared Charges will first be used to cover the cost of the Non-FIS Baggage Claim Area.

C. If (1) the Domestic and Pre-Cleared Charges collected by City exceed the amounts required to cover the costs of the Non-FIS Baggage Claim Area; and (2) the International CPE exceeds the International CPE Cap either on an annual or cumulative basis during the first five years following DBO of ITRP Phase 1, City agrees to apply the amount of Domestic and Pre-Cleared Fees that exceeds the amounts necessary to cover the costs of the Non-FIS Baggage Claim Area to pay for costs of International Arrival Charges, International Departure Charges and Ticketing Charges that would have been payable by all airlines but for the International CPE Cap.

D. If the Domestic and Pre-Cleared Charges collected by City exceed the costs described in Sections 6.09(B) and 6.09(C), City agrees to apply the amount of Domestic and Pre-Cleared Fees that exceeds such amounts to reduce the amounts of International Arrival Charges, International Departure Charges, and Ticketing Charges as described in Section 6.02(C).

Section 6.10 Concession Areas and Revenue Sharing

A. **Cost.** City will be responsible for all costs associated with concession areas of Terminal A, Terminal D, the Central FIS, and the ITC (the "**Terminal Concession Areas**"), and public parking, the ICP parking structure, rental car and ground transportation facilities and the concession areas of all Public Areas other than those included in Terminal Concession Areas ("**Non-Terminal Concession Areas**").

B. **Concession Revenue Credits.** In the event that the HAS Debt Service Coverage ratio exceeds 1.50 at the end of any fiscal year following the date of beneficial occupancy of ITRP Phase 1 between such date of beneficial occupancy and through and the end of Fiscal Year 2033 (June 30, 2033), City shall issue revenue sharing credits for the Terminal Concession Areas and the Non-Terminal Concession Areas to signatory airlines having this revenue-sharing provision in its use and lease agreement as follows:

1. City shall calculate the excess of Net Revenues over the HAS Debt Service Coverage ratio of 1.50 (the "**HAS Revenue Sharing Cap**").

2. City shall calculate fifty percent (50%) of HAS Concession Revenues (“**50% of HAS Concession Revenues**”).

3. City shall calculate the total amount available for revenue sharing in the HAS (the “**HAS Amount Available for Revenue Sharing**”) as follows:

(a) If 50% of HAS Concession Revenues is less than or equal to the HAS Revenue Sharing Cap, the HAS Amount Available for Revenue Sharing shall be 50% of HAS Concession Revenues; or

(b) If 50% of HAS Concession Revenues is greater than the HAS Revenue Sharing Cap, the HAS Amount Available for Revenue Sharing shall be the HAS Revenue Sharing Cap.

4. City shall calculate the “**Amount Available for HAS Revenue Credits**” by multiplying the IAH share of HAS Concession Revenues by the HAS Amount Available for Revenue Sharing.

5. City shall then:

(a) determine the proportion of the Amount Available for HAS Revenue Credits allocable to Terminal Concession Areas and Non-Terminal Concession Areas; and

(b) calculate Airline’s Concession Revenue Credits associated with the amount allocable to Terminal Concession Areas based on Airline’s share of total Enplaned Passengers in Terminals A and D for the prior fiscal year.

(c) calculate Airline’s Concession Revenue Credits associated with the Amount Available for HAS Revenue Credits allocable to Non-Terminal Concession Areas based on Airline’s share of total Enplaned Passengers excluding connecting passengers at the Airport for the prior fiscal year.

6. At the end of the fiscal year, City shall calculate, based upon timely-filed statistical reports, and notify Airline of any Concession Revenue credits within thirty (30) calendar days of receiving (a) such statistical reports; and (b) all relevant concession vendor reports for the prior fiscal year. Concession Revenue credits will then be issued within thirty (30) calendar days of such notification. Concession Revenue credits will be issued as a credit against Airline’s future rentals and fees at the Airport. Airline must provide its statistical reports by the due date required under this Agreement, for such Enplaned Passengers numbers to be utilized for purpose of the calculation under this Section 6.10(B).

7. For illustrative purposes only, **Exhibit K** provides an example of the calculation of Revenue Sharing credits under this Section 6.10(B).

ARTICLE VII.
CONSTRUCTION OF IMPROVEMENTS

Section 7.01 Construction by Airline--General

A. **General Approval of Plans.** Airline may construct or install at its own expense any improvements, facilities or equipment, and any additions thereto, in the Premises; provided, however plans and specifications of any such proposed construction or installation, including any alteration or addition thereto, shall be submitted to and receive the written approval through the TIP process prior to the commencement of construction, alteration or installation. All such construction, alteration, or installation may be made only after obtaining requisite building or construction licenses and permits, construction bonds, if applicable, and, in addition to usual City inspection, shall be subject to inspection and approval by HAS TIP group to see that said approved plans and specifications are being followed. All such construction, alteration, and installation shall be designed and carried out in accordance with the HAS' TIP standards as may be amended in any reasonable manner from time to time which is incorporated herewith by reference. Upon completion of construction, Airline shall provide Director with as-built drawings of the improvements on auto-CADD, BIM or as otherwise required by TIP standards.

B. **Airline Right to Select Architects and Contractors.** No restrictions shall be placed on Airline as to architects, builders or contractors that it may employ in connection with any construction, installation, alteration, repair or maintenance by Airline in Exclusive Use Areas.

C. **Title to Airline-Constructed Improvements.** Title to all Airline-constructed improvements in the Premises, other than the equipment, trade fixtures and personal property that Airline is permitted to remove under the provisions of Section 4.04, shall vest in City immediately upon completion thereof.

D. **Contractor Indemnity and Warranty.** Airline will use its Best Efforts to provide an indemnity from its construction contractors to City to the same extent as Airline obtains an indemnity from such contractor. Additionally, Airline will use its Best Efforts to cause all construction contractor warranties to inure to the benefit of City if and to the same extent they inure to the benefit of Airline.

Section 7.02 Future Capital Improvements

City may expand, repair, alter, and improve the Airport, including, without limitation adding or removing Public Areas, concession space or Gates in Terminal D, the ICP and the Central FIS as Director, in his sole judgment, may deem necessary to provide required facilities in the interest of the public and City, to include and not limited to all roadways, parking areas, terminal facilities, apron areas, landing areas and taxiways as it may reasonably see fit, free from any liability to Airline for loss of business or damages of any nature whatsoever to Airline occasioned during the making of such improvements, repairs, alterations and additions. Director will confer and coordinate with Airline and the other airlines serving the Airport regarding planned Capital Improvements at the Airport, and, at least annually, provide the airlines with a detailed schedule of such planned Capital Improvements. However, City will retain the discretion to make capital investment decisions and issue bonds, as needed, to ensure that adequate facilities are provided on

HAS 5/1/23

a timely basis to meet public and airline needs. The provisions of this Section shall, in all cases, be subject to Airline's rights and obligations under other agreements between City and the Airline with respect any portion of the Airport.

ARTICLE VIII.
OPERATION AND MAINTENANCE

Section 8.01 Obligations of City

A. **Common Use Airport Facilities.** City agrees to operate, maintain and keep in good repair the areas and facilities provided by City for the common use of the airlines and the public in accordance with the practices of a reasonably prudent airport operator. City agrees to use its best efforts to keep the Airport free from obstructions and to do all things reasonably necessary for the safe, convenient and proper use of the Airport by those who are authorized to use the same.

B. **Exclusive Use Areas.** In Exclusive Use Areas of Terminal D, City will (1) furnish only structural maintenance of City-constructed facilities, (2) provide maintenance and operation of City-installed equipment and systems and outside window and building cleaning, (3) use reasonable efforts to furnish sufficient heat and air conditioning through its installed systems in those areas so equipped for such services and (4) install and furnish electrical power for interior area lighting (as shown in **Exhibit L**, attached hereto and made a part hereof for all purposes).

C. **Aircraft Apron Area.** City shall provide structural maintenance for the Aircraft Apron Area at Terminal D, maintain apron area lighting, and shall perform all aircraft parking position painting. Airline may request that City modify aircraft parking position paintings by submitting a stamped drawing showing requested changes to the Director. The Director may approve or deny such requests in the Director's sole discretion.

D. **Passenger Loading Bridges and Baggage Handling Systems.** City shall provide maintenance (including routine and scheduled maintenance) and cleaning for all City-owned passenger loading bridges and baggage handling systems in Terminal D (as shown in **Exhibit L**).

E. **Public Areas of the ITC**

1. Except as may otherwise be provided in this Agreement, City will operate, maintain and keep in good, sanitary and neat condition and repair the public use areas of Terminal D, the ICP, the Skyway and the Central FIS (except for those areas leased to others for their exclusive use) and all additions, improvements and facilities now or hereafter provided by City at or in connection with the terminal buildings and for common use by all airlines and the public, excepting any improvements or facilities constructed or installed by Airline, either individually or jointly with others, and those that Airline has agreed under the provisions of this Agreement to operate or maintain as aforesaid.

2. Except as may otherwise be provided in this Agreement, City will keep the roof, structure and utility systems of the terminal buildings in good repair. City will keep the Public Areas adequately supplied, equipped and furnished to accommodate the public using same and will operate and maintain directional signs in said Public Areas, including by way of example, but not by way of limitation, signs indicating the location in the terminal buildings of public facilities provided by City on the Airport.

3. City will use reasonable efforts to provide (1) sufficient heat and air conditioning to those areas on the Airport equipped for such service; (2) illumination and drinking water in the Public Areas; and (3) such janitorial and cleaning services as necessary to keep the public use areas of the terminal buildings and areas adjacent thereto in a reasonably presentable and usable condition at all times (as shown in **Exhibit L**).

Section 8.02 Obligations of Airline

A. **Exclusive Use Areas.** Airline shall provide all maintenance in the Exclusive Use Areas of Terminal D not otherwise provided by City under Section 8.01. Airline shall furnish all janitorial services including the removal of trash, all maintenance and operation of Airline-installed improvements and systems in its Exclusive Use Areas. Airline shall provide electrical relamping, all decorating and redecorating when required in the Exclusive Use Area. Airline shall maintain plumbing lines, including clogged drains, installed by Airline in the Exclusive Use Areas or elsewhere in the ITC. At all times the Exclusive Use Areas shall be maintained in accordance with all applicable ordinances, rules, statutes, and regulations (as amended from time to time) of any governmental entity having jurisdiction. Airline shall maintain the Exclusive Use Areas in a neat, clean, sanitary, and operable condition (as shown in **Exhibit L**).

B. **Nonexclusive Use Areas.** Airline shall furnish all maintenance and operation of Airline-installed improvements and systems in any areas that are not Airline's Exclusive Use Areas of the ITC. Airline will conduct its operations in areas that are not Airline's Exclusive Use Areas of the ITC in a neat, clean, and sanitary way and shall dispose of all trash or Hazardous Materials generated by its use of such areas in receptacles designated by Director. In addition, Airline shall repair any damages caused by airline in such areas, including, without limitation, damage caused by Airline's use of an Exclusive Use Area.

C. **Passenger Loading Bridges.** Airline shall not modify or attach personal property or signage to City-owned passenger loading bridges, or store Airline's personal property or equipment in City-owned passenger loading bridges, without the advanced written approval of the Director which approval may be withheld at Director's sole discretion. City shall maintain City-owned passenger loading bridges in accordance with **Exhibit L** and Airport policies and procedures. Airline shall dispose of all trash or Hazardous Materials generated by its use of passenger loading bridges in receptacles designated by Director, and shall not damage any passenger loading bridges with Airline's equipment. Airline shall be responsible for trash removal in all Gate areas and all passenger loading bridges used by Airline at the end of each of its flights.

D. **Airline-Constructed Improvements.** Airline shall cause all improvements and facilities, and additions thereto, constructed or installed by Airline (and which are not operated or managed by City), either alone or in conjunction with other airline tenants, and all vehicles and equipment operated by Airline on the Airport to be kept and maintained in a safe condition and in good repair (except those repairs and maintenance undertaken by City in Section 8.01) in accordance with uniform standards applicable to all Airport tenants as established from time to time by the Director. Airline shall keep the Exclusive Use Areas and improvements thereon in a sanitary and neat condition and, during construction, shall cause compliance with all health, safety and other Applicable Laws and requirements; provided, however, that notwithstanding anything in this

Agreement to the contrary, Airline shall not be obligated to make any capital repairs or structural alterations to so comply, unless necessitated as a result of Airline's construction activities.

E. **Performance by City upon Failure of Airline to Maintain.** In the event Airline fails within thirty (30) days after receipt of written notice from City to perform any obligation required under this Section 8.02 to be performed by Airline, City may enter the premises involved, without such entering causing or constituting a termination of this Agreement or an interference with the possession of said premises by Airline, and do all things reasonably necessary to perform such obligation. Director may charge Airline the reasonable cost and expense of performing such obligation and Airline agrees to pay to City upon demand such charge in addition to any other amounts payable by Airline hereunder; provided, however, that if Airline's failure to perform any such obligation endangers the safety of the public, the employees or property of City, or other tenants of the Airport and Director so states in its written notice to Airline, City may perform such obligation of Airline at any time after the giving of such notice and charge to Airline the reasonable cost and expense of such performance which Airline shall pay as aforesaid.

ARTICLE IX.
INDEMNIFICATION

Section 9.01 RELEASE AND INDEMNIFICATION OF CITY

A. AIRLINE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS HEREBY RELEASES AND DISCHARGES CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS AGENTS, EMPLOYEES AND OFFICERS (COLLECTIVELY IN THIS SECTION “**CITY**”) FROM ANY LIABILITY OF CITY FOR (I) ANY DAMAGE TO PROPERTY OF AIRLINE OR (II) FOR CONSEQUENTIAL DAMAGES SUFFERED BY AIRLINE, WHERE ANY SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, EXCEPT WHERE SUCH DAMAGE IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE THAT THE ABOVE-REFERENCED RELEASE IN FAVOR OF CITY SHALL NOT BE APPLICABLE TO AND DOES NOT RELEASE CITY’S VENDORS, AGENTS, AND ASSIGNS FOR DAMAGES CAUSED TO THE PROPERTY OF AIRLINE, INCLUDING BUT NOT LIMITED TO AIRCRAFT, AIRCRAFT ENGINES AND RELATED PROPERTY OF AIRLINE USED IN CONNECTION WITH AIRLINE’S OPERATIONS UNDER THE TERMS OF THIS AGREEMENT, AS A RESULT OF THE NEGLIGENCE AND/OR OTHER FAULT OF CITY’S VENDORS, AGENTS, AND ASSIGNS.

B. WITH NO INTENT TO LIMIT AIRLINE’S ENVIRONMENTAL INDEMNIFICATION SET FORTH IN SECTION 14.02(D), AIRLINE EXPRESSLY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD CITY COMPLETELY HARMLESS FROM AND AGAINST (BUT SUBJECT TO SECTION 9.01(D) AND SECTION 9.01(E)): (I) ANY AND ALL LIABILITIES, LAWSUITS, CAUSES OF ACTION, LOSSES, CLAIMS, JUDGMENTS, DAMAGES, FINES OR DEMANDS ARISING BY REASON OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED ERRORS, OMISSIONS, OR NEGLIGENT ACTS OF AIRLINE OR OF CITY IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, BODILY INJURY, ILLNESS, PHYSICAL OR MENTAL IMPAIRMENT, DEATH OF ANY PERSON, OR THE DAMAGE TO OR DESTRUCTION OF ANY REAL OR PERSONAL PROPERTY; AND (II) ALL REASONABLE, OUT-OF-POCKET COSTS INCURRED TO ESTABLISH CITY’S RIGHT TO INDEMNIFICATION HEREUNDER; AND (III) ALL COSTS FOR THE INVESTIGATION AND DEFENSE OF ANY AND ALL LIABILITIES, LAWSUITS, CAUSES OF ACTION, LOSSES, CLAIMS, JUDGMENTS, DAMAGES, FINES OR DEMANDS INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES, COURT COSTS, DISCOVERY COSTS AND EXPERT FEES. SUBJECT TO SUBSECTIONS SECTION 9.01(D) AND SECTION 9.01(E), AIRLINE’S AGREEMENT TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY EXPRESSLY EXTENDS TO THE ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE OF CITY AND AIRLINE.

C. UPON THE FILING BY ANYONE OF ANY TYPE OF CLAIM, CAUSE OF ACTION OR LAWSUIT AGAINST CITY FOR ANY TYPE OF DAMAGES ARISING OUT OF INCIDENTS FOR WHICH CITY IS TO BE INDEMNIFIED BY AIRLINE PURSUANT TO THIS SECTION 9.01, CITY SHALL, AS SOON AS PRACTICAL, AND, IN ANY EVENT,

WITHIN (45) DAYS OF CITY BECOMING AWARE THEREOF, NOTIFY AIRLINE OF SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT. IN THE EVENT THAT AIRLINE DOES NOT SETTLE OR COMPROMISE SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AT ITS OWN COST, TO THE EXTENT AIRLINE IS REQUIRED TO INDEMNIFY CITY PURSUANT TO THIS SECTION 9.01, THEN AIRLINE SHALL UNDERTAKE THE LEGAL DEFENSE OF SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AT ITS OWN COST (SUBJECT TO SECTION 9.01(E) THROUGH COUNSEL OF RECOGNIZED CAPACITY OR OTHERWISE NOT REASONABLY DISAPPROVED BY CITY BOTH ON BEHALF OF ITSELF AND ON BEHALF OF CITY (ASSUMING NO CONFLICTS OF INTEREST EXIST) UNTIL FINAL DISPOSITION, INCLUDING ALL APPEALS. CITY MAY, AT ITS SOLE RISK, COST AND EXPENSE, PARTICIPATE IN THE LEGAL DEFENSE OF ANY SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT BY AIRLINE TO DEFEND AGAINST SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT WITHOUT SUCH PARTICIPATION AFFECTING AIRLINE'S OBLIGATION UNDER THIS AGREEMENT. ANY FINAL JUDGMENT RENDERED AGAINST CITY FOR ANY CAUSE FOR WHICH CITY IS TO BE INDEMNIFIED AGAINST PURSUANT TO THIS SECTION 9.01 SHALL BE CONCLUSIVE AGAINST AIRLINE AS TO LIABILITY AND AMOUNT UPON THE EXPIRATION OF THE TIME FOR ALL APPEALS.

D. THE PROVISIONS OF SECTION 9.01(B) AND SECTION 9.01(C) SHALL NOT APPLY TO ANY CLAIM OR DEMAND (I) TO THE EXTENT ARISING FROM THE NEGLIGENCE OF CITY WHEN CITY IS MORE THAN 50% LIABLE, UNDER THIS AGREEMENT, OR FROM THE BREACH OF CITY'S EXPRESS OBLIGATIONS HEREUNDER; OR (II) IF SUCH CLAIM OR DEMAND RELATES TO ANY ACT OR OMISSION OCCURRING OUTSIDE THE PREMISES LEASED EXCLUSIVELY, COMMONLY, OR PREFERENTIALLY TO AIRLINE UNDER THIS AGREEMENT, UNLESS AIRLINE IS MORE LIABLE FOR (I.E., IS MORE AT FAULT FOR) SUCH CLAIM OR DEMAND THAN EACH OTHER PARTY TO SUCH CLAIM OR DEMAND; (III) TO THE EXTENT THE CLAIM OR DEMAND IS COVERED UNDER THE INSURANCE AVAILABLE TO CITY AS AN ADDITIONAL INSURED UNDER ARTICLE X; (IV) TO THE EXTENT THE CLAIM OR DEMAND IS COVERED UNDER A THIRD PARTY INSURANCE POLICY OWNED OR CARRIED BY CITY AND/OR ANY OF ITS AGENCIES OR INSTRUMENTALITIES; OR (V) UNLESS THE CLAIM OR DEMAND IS COVERED BY, OR CITY HAS ASSERTED A DEFENSE BASED ON GOVERNMENTAL OR SOVEREIGN IMMUNITY. CITY SHALL BE RESPONSIBLE FOR ASSERTING ANY DEFENSE OF GOVERNMENTAL IMMUNITY AS IT MAY EXIST FROM TIME TO TIME, AND IT SHALL DO SO UPON THE TIMELY WRITTEN REQUEST OF AIRLINE OR ITS INSURANCE CARRIER(S); PROVIDED, THAT, IF (A) A CLAIM OR DEMAND IS MADE AGAINST AIRLINE BY A THIRD PARTY FOR WHICH AIRLINE HAS INSURANCE COVERAGE PURSUANT TO SECTION 10.02 AND SECTION 10.03, AND (B) THERE IS A DEDUCTIBLE CARRIED BY AIRLINE APPLICABLE TO SUCH CLAIM OR DEMAND (OR AIRLINE, THROUGH SELF-INSURANCE OR OTHER SELF-FUNDED INSURANCE PROGRAM, BEARS THE FINANCIAL RISK OF ANY PORTION OF SUCH CLAIM OR DEMAND AS TO THE DEDUCTIBLE ONLY), THEN THE PROVISIONS OF SECTION 9.01(B) AND SECTION 9.01(C) SHALL APPLY TO SUCH PORTION OF THE CLAIM OR DEMAND THAT IS SUBJECT TO SUCH DEDUCTIBLE OR SELF-INSURANCE OF THE DEDUCTIBLE OR OTHER SELF-FUNDED INSURANCE PROGRAM AS TO THE DEDUCTIBLE (AND TO ANY OTHER PORTION OF THE CLAIM OR DEMAND AS TO CITY THAT IS NOT SATISFIED

WITH INSURANCE PROCEEDS). FOR PURPOSES OF THIS SECTION, AIRLINE COVENANTS AND AGREES THAT AS TO EACH CLAIM OR DEMAND THAT MAY BE SUBJECT TO THE PROVISIONS OF THIS AGREEMENT, THE DEDUCTIBLE AMOUNT SHALL NEVER BE DEEMED TO BE GREATER THAN \$1,000,000.

E. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, THE LIABILITY OF THE AIRLINE FOR CITY'S NEGLIGENCE, INCLUSIVE OF ALL DEFENSE COSTS EXPENDED SOLELY FOR CITY'S DEFENSE, UNDER SECTION 9.01(B) AND SECTION 9.01(C) SHALL NOT EXCEED \$2,000,000 PER OCCURRENCE.

Section 9.02 INDEMNIFICATION PROCEDURES

A. **Notice of Claims.** If City or Airline receives notice of any claim or circumstances which could give rise to a loss for which the Airline is required to indemnify the City hereunder, the receiving Party shall give written notice to the other Party within 45 days. The notice must include the following:

1. a description of the indemnification event in reasonable detail;
2. the basis on which indemnification may be due; and
3. the anticipated amount of the indemnified loss.

This notice does not estop or prevent City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If City does not provide this notice within the 45-day period, it does not waive any right to indemnification except to the extent that Airline is prejudiced, suffers loss, or incurs expense because of the delay.

B. **Defense of Claims**

1. **Assumption of Defense.** Airline may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Airline shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Airline must advise City as to whether or not it will defend the claim. If Airline does not assume the defense, City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

2. **Continued Participation.** If Airline elects to defend the claim, City may, at its own cost and expense, retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

C. **Subcontractor's Indemnity.** TO THE EXTENT PERMITTED BY LAW, AIRLINE SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO CITY UNDER THIS AGREEMENT.

ARTICLE X.
INSURANCE

Section 10.01 General

With no intent to limit or increase Airline’s liability or the indemnification provisions in this Agreement, Airline shall provide and maintain certain insurance (except as to Environmental/Impairment Pollution coverage as set forth below) in full force and effect at all times during the term of this Agreement and all extensions thereto, as set forth in Section 10.02 below. If any of the insurance is written as “claims made” coverage, then Airline agrees to keep such “claims made” insurance in full force and effect by purchasing policy period extensions for at least five years after the expiration or termination of this Agreement. Prior to beginning performance under the Agreement or each time coverage is renewed or updated, Airline shall furnish to the Director current certificates of insurance and endorsements evidencing adequate coverage, as necessary. In addition, if requested in writing by the Director, Airline shall make available copies of Airline’s insurance policies to be reviewed at Airline offices in Houston, Texas. Airline shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Airline waives any claim it may have for premiums or deductibles against City, its officers, agents, or employees. Airline shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

Section 10.02 Risks and Minimum Limits of Coverage

Workers Compensation:	Statutory
Employer’s Liability	Bodily injury by accident \$1,000,000 (each accident)
	Bodily injury by Disease \$1,000,000 (policy limit)
	Bodily injury by Disease \$1,000,000 (each employee)
Commercial General Liability:	Combined single limit of:
(Including broad form coverage, contractual liability, bodily and personal injury, and products and completed operations)	\$10,000,000 per occurrence/aggregate
	Products and Completed operations:
	\$10,000,000 aggregate
Aircraft Liability:	\$250,000,000 combined single limit
(covering owned, hired, and non-owned aircraft including passenger liability)	

Environmental Impairment/ Pollution: (including coverage for receiving, dispensing, transporting, removal and handling of aviation fuels or any other pollutants, as well as any other operations involving pollutants)	\$5,000,000 combined single limit per occurrence. Airline may, subject to City’s approval self-insure to meet this requirement.
All Risk: (Covering Airline improvements, trade fixtures and equipment, including fire, lighting, vandalism, and extended coverage perils)	Replacement value
Automobile Liability Insurance: (For automobiles used by Airline in the course of its performance under this Agreement, including Airline’s non-owned and hired autos)	\$5,000,000 combined single limit per occurrence for automobiles used outside of the Airfield; \$10,000,000 combined single limit per occurrence for automobiles used on the Airfield.

(Aggregate limits are per 12-month period unless otherwise indicated.)

Section 10.03 Other Provisions

A. **Form of Policies.** The insurance may be in one or more policies of insurance. Nothing the Director does or fails to do shall relieve Airline from its duties to provide the required coverage hereunder, and the Director’s actions or inactions shall not be construed as waiving City’s rights hereunder.

B. **Issuers of Policies.** The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best’s rating of at least B+, and a Best’s Financial Size Category of Class VI or better, according to the most current Best’s Key Rating Guide, or a comparable rating from a comparable rating service, provided that where a comparable rating services of used, each issuer of a policy must nonetheless be responsible and reputable, must have financial capability consistent with the risks covered, and shall be subject to approval by the Director.

C. **Insured Parties.** Each policy, except those for Workers Compensation, Professional Liability and Employer’s Liability, shall name City (and its officers, agents, and employees) as Additional Insured as its interest may appear on the issued certificate of insurance and all renewal certificates (such certificates to accurately reflect City’s Additional Insured status on Airline’s original policies and any renewals or replacements thereof during the term of this Agreement). City shall be named Loss Payee on All Risk and Builders Risk coverages (except to the extent coverage relates to Airline’s equipment and personal property).

D. **Deductibles.** Without increasing, decreasing or expanding its duties under Section 10.01, Airline shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against City, its officers, agents, or employees; provided, however, that nothing in this Agreement shall diminish Airline’s rights or increase Airline’s obligations in respect to its undertakings or hold harmless, defense and indemnification set forth in Article IX.

E. **Cancellation.** AIRLINE SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Airline shall provide other suitable policies in order to maintain the required coverage. If Airline does not comply with this requirement, the Director, at the Director's sole discretion, may immediately suspend Airline from any further performance under this Agreement and begin procedures to terminate for default.

F. **Aggregates.** Airline shall give written notice to the Director within twenty (20) days of the date upon which total claims by any party against Airline reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

G. **Subrogation.** Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against City, its officers, agents, or employees. Each policy of workers' compensation and employers liability shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against City, its officers, agents, or employees as allowed by law.

H. **Endorsement of Primary Insurance.** Each policy hereunder except Workers Compensation and Professional Liability shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.

I. **Liability for Premium.** Airline shall be solely responsible for payment of all insurance premiums required hereunder, and City shall not be obligated to pay any premiums.

J. **Contractors and Subcontractors**

1. Except as otherwise provided below, Airline shall contractually require all contractors and subcontractors involved in the provision of any labor, materials or services on, at or within the Premises, to carry insurance naming City as an additional insured and meeting all of the requirements in Section 10.01, Section 10.02 (excepting aircraft liability), and Section 10.03, except coverage amount. The coverage amount shall be commensurate with the amount of the particular contract and shall be subject to the approval of the Director. Airline shall provide in its contracts with its contractors and subcontractors that they submit to the Director copies of insurance certificates for the coverages required in this Agreement.

2. Airline shall be under no obligation to require its contractors or subcontractors to provide aircraft liability coverage.

3. In connection with the design and construction of any Airline improvements to the Premises, Airline shall require:

(a) The architect/engineer to secure Professional Liability coverage with a minimum of \$1,000,000 per occurrence/aggregate if the project construction cost is estimated to exceed \$10,000,000;

(b) The construction contractor and/or its subcontractors to secure Builder's Risk coverage equal to the replacement value of the improvements; and

(c) The construction contractor and/or its subcontractors to secure asbestos abatement liability coverage if the project includes work with asbestos. Such asbestos abatement liability insurance shall include coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials and shall be in a minimum amount of \$1,000,000 combined single limit per occurrence.

K. **Proof of Insurance.** Prior to the Effective Date of this Agreement and at any time during the term of this Agreement, Airline shall furnish the Director with certificates of insurance, along with an affidavit from Airline confirming that the certificates accurately reflect the insurance coverage that will be available during the term. If requested in writing by the Director, Airline shall furnish City with copies of Airline's insurance policies.

Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties that Airline, continuously and without interruption, maintain in force the required insurance coverages to be carried by Airline set forth above. Airline agrees that City shall never be argued to have waived or be estopped to assert its right to terminate this Agreement hereunder because of any acts or omissions by City regarding its review of insurance documents provided by Airline, its agents, employees, or assigns.

L. **City Right to Review and Adjust Coverage Limits.** City reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Article X to be reviewed by an independent insurance consultant experienced in insurance for public airports in Texas, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Airline, and, based on the written recommendations of such consultant, and in consultation with Airline, to reasonably adjust the insurance coverages and limits required in this Agreement but not more often than once every twelve (12) months.

ARTICLE XI.
DAMAGE OR DESTRUCTION OF PREMISES

Section 11.01 Premises Inhabitable

If any of the Premises in Terminal D, the ICP or the Central FIS shall be partially damaged by fire or other casualty, but such Premises remain inhabitable, same will be repaired with due diligence by City to the condition existing just prior to such casualty, but City's responsibility in this regard shall be limited to the extent of the proceeds of insurance received with respect to such Premises and to the extent funds are appropriated for such repair by City's governing body.

Section 11.02 Premises Uninhabitable

If any of the Premises in Terminal D or the Central FIS shall be completely destroyed or partially damaged by fire or other casualty rendering all or a substantial portion of the Premises uninhabitable and it is reasonably estimated by the Director that it will take more than one hundred eighty (180) days to repair, Director shall notify Airline in writing within ninety (90) days of such casualty whether the damaged or destroyed premises will be repaired. If any or all of the premises is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the damaged or destroyed premises shall be abated for the period from the occurrence of the damage to the substantial completion of the repairs. If the repair period is estimated to exceed one hundred eighty (180) days, City shall make good faith efforts to provide Airline with temporary substitute space, if available, during such period of repair, at a rental rate for comparable space based on the rates and charges principles set forth in this Agreement.

Section 11.03 Automatic Termination

If City shall fail to notify Airline of its decision as set forth in Section 11.02 above (or gives written notice of its intent not to repair), City shall be deemed to have elected to terminate this Agreement only as to the premises damaged or destroyed, and the Agreement shall automatically terminate as to such Premises as of the date of the damage or destruction, with no further liability by either City or Airline except those liabilities that accrued, including rent, prior to such damage or destruction.

Section 11.04 Airline Improvements

Airline shall reconstruct all its improvements in the damaged or destroyed Premises necessary for the conduct of Airline's business operations in the manner existing just prior to the casualty, consistent with City's obligations set forth in Section 11.01, Section 11.02 and Section 11.03.

Section 11.05 Insurance

Terminal D, the ICP and the Central FIS, exclusive of Airline's property, will be insured by City under a policy of fire and extended coverage insurance to the extent of not less than eighty percent (80%) of the insurable value of such property if such percentage of coverage is available. Insurance moneys and funds received on account of the damage to or destruction of such property will be applied by City to the repair, construction, or replacement of such damaged or destroyed

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property. Premiums paid by City for insurance provided in compliance herewith shall be included by City as a part of Airport operation and maintenance expenses.

ARTICLE XII.
TERMINATION

Section 12.01 Termination by City

Director, in addition to any other right of cancellation given to it or any other rights to which it may be entitled by law or equity or otherwise, may cancel this Agreement by giving Airline thirty (30) days' advance written notice: (1) at any time, without cause or impairment to City's other available remedies; or (2) for cause upon or after the happening of any one or more of the following events, except default in timely payment of any money due City, including PFCs, if applicable, for which fifteen (15) days written notice shall be given and except default in providing copies of insurance policies or maintaining required insurance coverages described in Section 10.03(K), for which ten (10) days written notice shall be given:

A. The filing by Airline of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of Airline's assets; or

B. Any institution of proceedings in bankruptcy against Airline and the adjudication of Airline as a bankrupt pursuant to such proceedings; or

C. The taking of jurisdiction by a court of competent jurisdiction of Airline or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or

D. The appointment of a receiver or trustee of Airline's assets by a court of competent jurisdiction or by a voluntary agreement with Airline's creditors; or

E. The abandonment by Airline of its conduct of its air transportation business at the Airport and in this connection, suspension of operations for a period of ninety (90) days will be considered abandonment in the absence of an explanation satisfactory to and accepted in writing by the Director; or

F. If Airline shall be prevented for a period of ninety (90) days, after exhausting or abandoning all appeals, by any action of any governmental authority, board, agency or officer having jurisdiction thereof from conducting its air transportation business at the Airport, or it is so prevented from conducting its Air Transportation Business, either by (a) reason of the United States or any agency thereof, acting directly or indirectly, taking possession of, in whole or substantial part, the Premises or premises required for the actual operation of Airline's aircraft to and from the Airport; or (b) if all or a substantial part of the Premises shall be acquired through the process of eminent domain; or

G. The default by Airline in the performance of any covenant, obligation or condition required to be performed by Airline and the failure of Airline to remedy such default for a period of thirty (30) days after receipt from Director of written notice to remedy the same, except default in timely payment of any money due City under this Agreement, for which a total of fifteen (15) days written notice will be given and except default in providing proof of insurance as required or maintaining required insurance coverages described in Section 10.03(K), for which ten (10) days written notice shall be given; provided, however, that no notice of cancellation as above provided

shall be of any force or effect if Airline shall have remedied the default prior to receipt of City's notice of cancellation or within the applicable period Airline commences the process of remedying the default and diligently prosecutes the same to completion. Failure by City to take any authorized action upon default by Airline of any of the terms, covenants or conditions required to be performed, kept and observed by Airline shall not be construed to be or act as a waiver of said default or of any subsequent default of any of the terms, covenants and conditions to be performed, kept and observed by Airline. The acceptance of rentals by City from Airline for any period or periods after a default by Airline of any of the terms, covenants and conditions required to be performed, kept and observed by Airline shall not be deemed a waiver or estoppel of any right on the part of City to cancel this Agreement for failure by Airline to so perform, keep or observe any of said terms, covenants or conditions.

Section 12.02 Termination by Airline

In addition to any other right of cancellation given to Airline or any other rights to which it may be entitled by law, equity, or otherwise, as long as Airline is not in default in payment to City of any amounts due City under this Agreement or otherwise, Airline may cancel this Agreement and thereby terminate all of its rights and unaccrued obligations under this Agreement by giving City thirty (30) days' advance written notice (1) at any time, without cause or impairment to City's other available remedies; or (2) for cause upon or after the happening of any of the following events:

A. Termination, suspension, revocation or cancellation, by any federal agency with competent jurisdiction of Airline's right or authority to operate as a scheduled air carrier serving the Airport;

B. Issuance by a court of competent jurisdiction of an injunction which in any way substantially prevents or restrains the use of the Airport or any part thereof necessary for Airline's scheduled flight operations and which injunction remains in force for a period of at least thirty (30) days after City has exhausted or abandoned all appeals, if such injunction is not necessitated by or issued as the result of an act or omission of Airline;

C. If, at any time during the term of this Agreement, because of City's failure to provide within a reasonable time safe aircraft operating facilities, the FAA or its successor fails or refuses to certify the Airport as adequate to accommodate aircraft which Airline is licensed to operate and is operating into and from all other airports of like size and character and with similar facilities and which aircraft are in general use on Airline's scheduled transportation route system; and which Airline may reasonably desire to operate into or from the Airport; provided such refusal or failure is not due to any fault of Airline;

D. The inability of Airline for a continuing period in excess of ninety (90) days to use the Airport or to exercise any rights or privileges granted to Airline hereunder and necessary to its scheduled flight operations because of any law or ordinance by any governmental authority having jurisdiction over the operations of the Airport or Airline, or because of any order, rule, regulation or other action or any nonaction of the FAA, its successor or any other authorized governmental agency; prohibiting such use, or because of earthquake or other casualty (excepting to the extent of Force Majeure).

E. The material default by City in the performance of any covenant or condition within the control of City and required to be performed by City and failure of City to use its best efforts to remedy such default for a period of thirty (30) days after receipt from Airline of written notice to remedy the same; provided, however, that no notice of cancellation as above provided shall be of any force or effect if City shall have remedied the default prior to receipt of Airline's notice of cancellation or within the aforesaid thirty (30) day period or during said period commences the process of remedying the same and diligently prosecutes the same to completion.

F. The assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part thereof, in such a manner as substantially to restrict Airline, for a continuous period of at least ninety (90) days, from operating its air transportation business.

G. Termination, suspension or discontinuation of Airline's services to the Airport by a governmental agency authorized to do so because of a war or national emergency declared by the government. Airline's performance of all or any part of this Agreement for or during any period or periods after a default of the terms, covenants and conditions to be performed, kept and observed by City shall not be deemed a waiver of any right on the part of Airline to cancel this Agreement for failure by City so to perform, keep or otherwise observe any if the terms, covenants or conditions to be performed, kept and observed by City, or be construed to be or act as a waiver by Airline of said default or of any subsequent default of any of said terms, covenants and conditions to be performed, kept and observed by City.

H. In any event where the usage of the Airport by Airline is materially affected as provided in this Section 12.02, and whether or not Airline is entitled to cancel this Agreement, while such event is continuing, an equitable adjustment to the rentals required to be paid by Airline shall be made by City, as are determined to be reasonable by Director in his sole judgment.

ARTICLE XIII.
ASSIGNMENT AND SUBLETTING

Section 13.01 Assignment and Subletting

A. Airline shall not at any time assign this Agreement in whole or in part or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent, provided, however, that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate or which may succeed to the business of Airline and provided further that, in connection with any such requested assignment, Airline may request Director to release the assigned portion of its Exclusive Use or Preferential Use areas from this Agreement and to relieve Airline of rental obligation therefor. In the event Director fails or refuses to approve such request and relief, Airline may then assign all or a portion of the Exclusive Use or Preferential Use areas to another air transportation company or companies that have executed an airport use and lease agreement with City.

B. Airline may, sublet all or any part of its Exclusive Use Area premises only after obtaining the prior written consent of the Director, but if an event of default shall occur and be continuing under this Agreement, City may collect rent from such sublessee or occupant and apply the amount collected to the extent possible to satisfy the obligations of Airline hereunder, but no such collection shall be deemed a waiver by City of the covenants contained in this Agreement or the acceptance by City of such sublessee or occupant as a successor to Airline or a release of Airline by City from its obligations hereunder.

C. All of the terms, provisions, covenants, stipulations, conditions and consideration in this Agreement shall extend to and bind the legal representatives, successors, sublessees, and assigns of the respective parties.

ARTICLE XIV.
MISCELLANEOUS PROVISIONS

Section 14.01 Rules and Regulations

From time to time the Director may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport, its services and facilities, by persons, vehicles, aircraft and equipment that in his opinion will reasonably ensure the safe, efficient, and economically practicable operation thereof and provide for the safety and convenience of those using the Airport, and to protect the Airport and its facilities and the public from damage or injury resulting from operations on, into and from the Airport. Airline agrees to observe and obey any and all such rules and regulations as are currently in place and as may be reasonably established or amended from time to time, and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. City reserves the right to deny access to the Airport or its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules and regulations.

Such rules and regulations of the Airport will not be inconsistent with the terms of this Agreement nor with valid rules, regulations, orders and procedures of the FAA, Transportation Security Administration or any other government agency duly authorized to make or enforce rules and regulations for the operation of the Airport and the operation of aircraft using the Airport. Airline upon written request to the Director shall be furnished (at the notice address provided in this Agreement and to Airline's on-Airport manager) a current copy of any such Airport rules or regulations and any amendments thereto.

Section 14.02 Compliance with Law

A. **General.** Airline shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all Applicable Laws.

B. **Compliance with Statutes, Ordinances and Regulations.** 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 Applicable Laws.

2. Subject to prior written approval of TIP, make, at its own expense, all non-structural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations (subject to Section 14.01).

C. **Compliance with Environmental Laws.**

1. Airline shall comply with all Environmental Laws.

2. Any fines, penalties, or remediation costs that may be levied against City by the Environmental Protection Agency or the Texas Natural Resource Conservation

Commission or any other governmental agency for Airline's failure to comply with Environmental Laws shall be reimbursed to City by Airline within thirty (30) days of receipt of an invoice from City for such fines or penalties.

3. Airline shall prevent the presence, use, generation, release, omission, discharge, storage, disposal or transportation of any Hazardous Materials by Airline on, under, in, above, to or from the Airport or any other areas or facilities subject to this Agreement, other than in strict compliance with all Environmental Laws.

4. Airline acknowledges that the Airport is subject to the National Pollutant Discharge Elimination System program ("NPDES") and its regulations relating to stormwater discharges, 40 CFR Part 122, for operations that occur at the Airport. Airline further acknowledges that it is familiar with these NPDES stormwater regulations, that it will conduct operations at the Airport in compliance with 40 CFR Part 122 or any applicable NPDES permit, as either may be amended from time to time.

5. City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit, as well as to ensure safety and to minimize costs. Airline acknowledges that it may be necessary to undertake to minimize the exposure of stormwater to materials generated, stored, handled or otherwise used by Airline as defined in the federal stormwater regulations, by implementing and maintaining "Best Management Practices" as defined in 40 CFR, Part 122.2 and as implemented in any applicable NPDES permit, as either may be amended from time to time.

6. Airline acknowledges that City's NPDES stormwater discharge permit and any subsequent amendments, extensions or renewals thereto, to the extent affecting Airline's operations at the Airport, is incorporated by reference into this Agreement. Airline agrees to be bound by all applicable portions of said permit. City shall promptly notify Airline of any changes to any portions of said permit applicable to, or that affect, Airline's operations.

7. City shall provide Airline with written notice of those NPDES stormwater discharge permit requirements (including any modifications thereto) that Airline shall be obligated to perform from time to time at the Airport, including, but not limited to: certification of non-stormwater discharges; collection of stormwater samples; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline, within fifteen (15) days of receipt of such written notice, shall notify City in writing if it disputes any of the NPDES stormwater discharge permit requirements it is being directed to undertake. If Airline does not provide such timely notice, it is deemed to assent to undertake such requirements. If Airline provides City with written notice, as required above, that it disputes such NPDES stormwater discharge permit requirements, City and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to City notices required pursuant to this paragraph unless Airline has a good faith basis to do so.

8. City and Airline agree to provide each other upon request, with any non-privileged information collected and submitted to any governmental entity(ies) pursuant to applicable NPDES stormwater regulations.

9. Airline agrees to participate in any reasonable manner requested by City in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

10. Upon reasonable notice based on the circumstances and without materially disrupting Airline's operations (except in case of emergencies when notice shall not be required), City shall have the right at any time and from time to time to enter upon Airline's premises for purposes of inspection to ensure that Airline is complying with this Section 14.02(C), without such inspection constituting a trespass.

11. All such remedies of City with regard to environmental requirements as set forth in this Agreement shall be deemed cumulative in nature and shall survive termination of this Agreement.

D. **INDEMNIFICATION.** WITH NO INTENT TO LIMIT AIRLINE'S GENERAL INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9.01, AIRLINE SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY LOSS, COST, CLAIM (INCLUDING CLAIMS FOR REMEDIATION COSTS OR IN KIND REMEDIATION), DEMAND, PENALTY, FINE, LIABILITY AND EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) AND HEREAFTER REFERRED TO AS "LIABILITY" FROM WHOMEVER RECEIVED, WHETHER A PRIVATE PERSON OR GOVERNMENTAL ENTITY RELATED TO:

1. AIRLINE'S USE OR THE PRESENCE CAUSED BY AIRLINE OF HAZARDOUS MATERIALS OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE ON THE AIRPORT, WHICH LIABILITY MAY ARISE OUT OF ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE OR RESTORATION WORK REQUIRED OR INCURRED HEREUNDER BY CITY OR ANY OTHER ENTITY OR PERSON IN A REASONABLE BELIEF THAT SUCH WORK IS REQUIRED BY ANY APPLICABLE ENVIRONMENTAL LAW;

2. ANY ACTUAL, THREATENED, OR ALLEGED CONTAMINATION BY HAZARDOUS MATERIALS ON THE AIRPORT PREMISES BY AIRLINE OR ITS AGENTS;

3. THE DISPOSAL, RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY AIRLINE OR ITS AGENTS AT THE AIRPORT THAT IS ON, FROM, OR AFFECTS SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

4. ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USED (INCLUDING STORAGE OR DISPOSAL) BY AIRLINE AT THE AIRPORT; OR

5. ANY VIOLATION BY AIRLINE OF ENVIRONMENTAL LAWS;

PROVIDED, HOWEVER, THAT THE FOREGOING INDEMNITY SHALL NOT BE APPLICABLE TO LOSSES, COSTS, EXPENSES, CLAIMS, DEMANDS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES AND EXPENSES RESULTING FROM CONDITIONS EXISTING AS OF THE EFFECTIVE DATE OF THIS AGREEMENT AND WHICH SUCH CONDITIONS ARE NOT THE RESULT OF ANY OPERATIONS, ACTIVITIES, ACTIONS OR INACTIONS OF AIRLINE OR ITS AGENTS, OR WHICH ARE CAUSED SOLELY BY CITY OR ITS AGENTS.

E. Airline shall not be responsible in any way for any Hazardous Materials that exist on the Airport, the presence of which was not caused by Airline. In the event that any such presence of Hazardous Materials not caused by Airline results in Airline being substantially deprived of the use or benefit of any material portion of the Premises, City agrees to use its best efforts to provide replacement space for Airline during the period of such deprivation or to abate the rent due hereunder in an equitable manner.

Section 14.03 Passenger Facility Charges

A. City expressly reserves the right to impose PFCs in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time (the “**PFC Regulations**”). Airline shall hold in trust for City the net principal amount of all PFCs that are collected by Airline or its agents on behalf of City pursuant to 49 U.S.C. § 40117 and the PFC Regulations. For purposes of this Section 14.03, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of City, reduced by any amount that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations.

B. If the FAA requires any modifications or changes in this Agreement as a condition precedent to the collection of PFCs or to comply with Applicable Law, Airline must consent to required amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Agreement reasonably required to collect PFCs or comply with Applicable Law.

Section 14.04 Payment of Taxes

Airline shall pay all taxes that may be levied, assessed or charged upon Airline or its property located on the Airport by the State of Texas or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law. However, Airline shall have the right to contest, in good faith, the validity or application of any such tax, license or permit and shall not be considered in default hereunder as long as such contest is in progress. Further, Airline agrees to diligently prosecute such contest.

Section 14.05 Right to Lease to United States Government

During time of war or national emergency City shall have the right to lease the Airport landing area or any part thereof to the United States Government for use by the Armed Forces and, if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended; however, such suspension shall

not extend the term of this Agreement. If, as a result of any such lease, the rights or duties of Airline hereunder are materially affected, then Airline shall receive an equitable rental adjustment.

Section 14.06 Notice or Consent

Any notice or consent required to be obtained from or given by City (or Director) may be given by Director unless otherwise provided. Consent of City, Director or Airline when required shall not be unreasonably withheld, delayed or conditioned and when this Agreement speaks to a Party's discretion, such discretion shall be exercised reasonably, except where reference is made to a Party's "sole" discretion or judgment.

Section 14.07 Rights Reserved to City

Nothing contained in this Agreement shall unlawfully impair the right of City to exercise its governmental or legislative functions. This Agreement is made subject to the Constitution and laws of the State of Texas and to the Charter of the City of Houston, Texas. This Agreement is subject and subordinate to the provisions of any agreement made between City and the United States Government relative to the financing, operation, or maintenance of the Airport or the Airport System, the execution of which has been required as a condition precedent to the transfer of rights, money or property to City for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport or the Airport System, and this Agreement shall be deemed amended to conform to any such agreements. To the best of City's knowledge, nothing contained in such laws or agreements conflicts with the express provisions of this Agreement.

Section 14.08 Governing Law and Venue

This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

Section 14.09 Favored Nations

Airline shall have the same rights and privileges and pay the same City-established fees and charges, not to exceed those established under the provisions of this Agreement as periodically revised under the terms of this Agreement, with respect to the use of the Airport as are granted to or charged any other airline executing a use and lease agreement with City for use of the Airport. It is understood that ground rentals and lease rentals are set by City Council, as provided by City Charter, and to the extent permitted under applicable Federal law therefore may vary between lessees on account of the different premises to be leased at the time thereof. It is further understood that lease rentals and charges in terminal buildings, flight stations, concourses and associated apron areas constructed in the future and not described in this Agreement may vary from the lease rentals and charges established in this Agreement for the facilities, depending upon the capital cost and financing arrangements involved and, therefore may be more or less than the lease rentals established in this Agreement for similar facilities.

Section 14.10 Notices

Except as otherwise set forth in this Agreement, where notice shall be acceptable if given either in writing or verbally to Airline's designated representative, or his/her designee, notices to City and/or Airline provided for in this Agreement shall be deemed sufficiently given when delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS, or any other national overnight express delivery service, or when given by telephone immediately confirmed in writing by email (or other communications device acceptable to the party) as follows or to such other address, telephone number as a party may from time to time designate in writing to the other party:

To City:

Director of Houston Airport System
16930 John F. Kennedy Boulevard
Houston Intercontinental Airport
Houston, Texas 77032
Telephone: (281) 233-1877
Fax: (281) 233-1864

To Airline:

[Airline]

Section 14.11 State and Local Required Contracting Provisions

A. **Anti-Boycott of Israel.** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2271.002 of the Texas Government Code, solely for the purposes of compliance with Chapter 2271, Texas Government Code, and subject to applicable law, Airline certifies that (i) it does not boycott Israel, and (ii) if and for the duration that Airline provides goods and services to the City under this Agreement, Airline will not boycott Israel. The phrase to engage in the boycott of Israel" as used in this paragraph shall have the meaning set forth in Section 808.001 of the Texas Government Code.

B. **Anti-Boycott of Energy Companies.** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2274.002 of the Texas Government Code, solely for purposes of compliance Chapter 2274, Texas Government Code, and subject to applicable law, Airline certifies that (1) it does not currently boycott energy companies, and (ii) if and for the duration that Airline provides goods and services to the City under this Agreement, Airline will not boycott energy companies as defined by Section 809.001 of the Texas Government Code.

C. **Anti-Boycott of Firearm Entities or Firearm Trade Associations.** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2274.002 of the Texas Government Code, solely for purposes of compliance Chapter 2274, Texas Government Code, and

subject to applicable law, Airline certifies that (i) it does not currently have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) if and for the duration that Airline provides goods and services to the City under this Agreement, it will not discriminate against a firearm entity or firearm trade association, in each case for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

D. **Certification of No Business with Foreign Terrorist Organizations** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2252.152 of the Texas Government Code, Airline certifies that, at the time of this Agreement neither the Airline is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

E. **Zero Tolerance for Human Trafficking and Related Activities**. To the extent this Agreement constitutes a service contract for the purchase of goods or services to which the requirements and terms of City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, applies, Airline shall comply with the terms and conditions of Sections 4.1 and 4.5 of Executive Order 1-56, as they are set out at the time of the Countersignature Date.

Section 14.12 City's Right to Audit Books and Records

Airline agrees to keep books and records on its operations at the Airport and the Director or any other authorized City representative upon reasonable advance written notice to Airline shall have the right to inspect and audit such books and records to ensure compliance with the prevailing municipal bond disclosure requirements and to determine that City has received from Airline all moneys due City under the terms of this Agreement including, but not limited to, the rentals and fees and passenger facility charges (if applicable) payable to Airport by Airline.

Section 14.13 Force Majeure.

Neither City nor Airline shall be deemed in violation of this Agreement to the extent it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, pandemics or epidemics in City, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these provisions shall not excuse Airline from paying the rentals and fees specified in Article V.

Section 14.14 Non-Waiver

The acceptance of fees by City for any period or periods after a default of any of the terms, covenants and conditions to be performed, kept and observed by Airline, shall not be deemed a waiver of any right on the part of City to terminate this Agreement pursuant to Article XII.

Section 14.15 Place of Payments

- a. All electronic payments by wire transfer to City shall be sent to:

BANK NAME: JP Morgan Chase

BANK ADDRESS: 707 Travis Street, 9 North
Mail Code: TX2-N026
Houston, TX 77002

ABA ROUTING NUMBER: 111000614 - ACH
021000021 - Wire

SWIFT CODE: CHASUS33
ACCOUNT NUMBER: 001-03333978

ACCOUNT NAME: City of Houston Aviation System Deposits
ADDRESS: 16930 JFK Blvd
Houston, TX 77032

REMITTANCE ADVICE DETAILS: HAS-WireTransfers@houstontx.gov

CONTACT NUMBERS: Office: 281-233-1387
Fax: 281-233-1574

- b. The lockbox address to receive paper checks is as follows:

Houston Airport System
AKS-COH
PO Box 204172
Houston, Texas 77216-4172

- c. Postage, delivery charges or wire/transfer fees for payments must be paid by Assignee.

Payment method or location may be modified upon written notification from the Director or the Director's designee. Airline agrees and acknowledges that any payments made which are not designated as to how to apply the payment, may be applied to the oldest balance owed by Airline first in the Director's sole discretion.

Section 14.16 Nonliability of Individuals

No director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution of this Agreement.

Section 14.17 Remedies to be Nonexclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to City or Airline at law or in equity (to the extent not inconsistent with the express provisions of this Agreement) and the exercise of any remedy or the existence of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 14.18 Exclusiveness of Airline's Rights

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

Section 14.19 Other Land and Buildings Excluded

It is agreed and understood that it is not intended by this Agreement or any exhibit to lease any building, space or area, or set any rental rates for any building, space or area, other than what is specifically described in this Agreement.

Section 14.20 Titles

The titles of the several articles of this Agreement are inserted for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions of this Agreement or its interpretation or construction.

Section 14.21 Invalid Provisions

In the event any covenant, condition or provision contained in this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition, or provision contained in this Agreement, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions and provisions of this agreement.

Section 14.22 Enforcement

The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Airline covenants to provide to the City Attorney all documents and records that the City Attorney reasonably requests to assist in determining Airline's compliance with this Agreement when a good faith basis exists for the belief that Airline is not in compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulations and provided that the provision of such documents and records by Airline shall be further limited in any respect that the provision of any documents or records of City pertaining to this Agreement would be limited pursuant to Chapter 552, Texas Gov't. Code, as amended or otherwise.

Section 14.23 Operation of Airport

City agrees to maintain and operate the Airport in accordance with all applicable standards, rules and regulations of the FAA or its successor. City shall exercise its rights hereunder and otherwise operate the Airport with due regard for the operational requirements and long-term interests of the airlines and the interests of traveling public, in a manner that is consistent with applicable law, federal aviation regulation, federal grant assurances, and the Bond Ordinances.

Section 14.24 Entire Agreement

This Agreement constitutes the entire Agreement of the Parties on the subject matter of this Agreement and may not be changed, modified, discharged or extended except by written instrument duly executed by City and Airline. Airline and City each agrees that no representations or grant of rights or privileges to the Airline or any obligations imposed upon the Airline shall be binding upon City or Airline, as applicable, unless expressed in writing in this Agreement.

Section 14.25 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties; provided, however, this provision shall in no way whatsoever alter the restriction in this Agreement regarding assignment and subletting by Airline.

Section 14.26 Subordination to Financing Agreements

City agrees that the Director, in his discretion, and subject to approval of the City Attorney, shall be permitted to, from time to time, execute any agreement providing for the subordination of any statutory or constitutional landlord's lien over any of Airline's property acquired in connection with any bona fide, third party purchase money equipment (or other personal property) financing (whether through a sale leaseback financing or other equipment lease financing transaction), it being further agreed that the financing of costs expended by Airline for the purchase of equipment or personal property within twelve (12) months prior to such financing transaction shall be considered purchase money financing hereunder; provided, however, that such subordination shall be limited to Airline's property that is financed or refinanced in such transaction.

Section 14.27 Living Wage Executive Order

To the extent this Agreement constitutes a City Contract under the requirements and terms of the City of Houston's Policy on Ensuring Payment of Living Wage by Air Carriers and Concessionaires and Their Subcontractors and Concessionaires, as set forth in Executive Order 1-64 (the "**Living Wage Executive Order**"), Airline agrees to comply with such Living Wage Executive Order and the requirement and terms of such Living Wage Executive Order are incorporated into this Agreement for all purposes, except as may be preempted by state or federal law. Airline shall use commercially reasonable efforts to notify City's Chief Procurement Officer, City Attorney, and the Director within seven (7) days after Airline actually becomes aware of any violation of Airline, contractor or its subcontractors providing labor, materials, software, services or goods (each as applicable) under this Agreement or purchase order, if any or that such violations may have occurred or are reasonably likely to occur; provided, however, that a failure by Airline

to so notify the City’s Chief Procurement Officer, City Attorney, or Director shall not, in and of itself, constitute a breach of this Agreement.

Section 14.28 Additional Federal Requirements

A. General Civil Rights Provision. In all its activities within the scope of its operation under this Agreement, Airline will comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefitting from Federal assistance. If the Airline transfers its obligation to another, the transferee is obligated in the same manner as the Airline. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. The above provision obligates the Airline for the period during which the property is owned, used to possessed by the Airline and City remains obligated to the Federal Aviation Administration.

B. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as “Airline”), agrees as follows:

1. Compliance with Regulations. Airline (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth in Section 14.28(F) (“Nondiscrimination Acts and Authorities”), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination. Airline, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Airline of the subcontractor’s or supplier’s obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. Information and Reports. Airline will provide all information and reports required by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Airline or its contractor is in the exclusive possession of another who fails or refuses

to furnish the information, Airline will so certify to the Director or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of Airline's or its contractor's noncompliance with the non-discrimination provisions of this Agreement, the Director will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

(a) Withholding payments to Airline or its contractor under this Agreement or Airline's contract with such contractor until Airline or its contractor complies; and/or

(b) Cancelling, terminating, or suspending this Agreement or Airline's contract with such contractor, in whole or in part.

6. Incorporation of Provisions. Airline will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Airline will take action with respect to any subcontract or procurement as the Director or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Airline may request City to enter into any litigation to protect the interests of City. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

C. Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which an Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

D. Airline, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, (i) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airport, Terminal D, and the new Central FIS; (ii) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) Airline will use the Airport, Terminal D, and the new Central FIS in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Authorities.

E. In the event of breach of any of the above nondiscrimination covenants, the Director shall have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. Further, Airline shall include the provisions of 49 C.F.R. Part 21 and 49 C.F.R. Part 21, Appendix C (a)(l) as amended from time to time, in subcontracts it enters into pursuant to this Agreement.

F. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); 49 CFR Part 27, and 28 CFR Parts 35 and 36;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation

systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Airline must take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits Airline from discrimination because of sex in education programs or activities (20 USC 1681 *et seq.*).

G. Nothing herein shall be deemed to grant Airline any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.

H. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States of America relative to the operation and maintenance of the Airport, including but not limited to the terms of the sponsor assurances that are incorporated into grants provided to City pursuant to the Airport Improvement Program (49 U.S.C. Section 47101 *et seq.*).

Section 14.29 Waiver of Visual Artists Rights

Airline shall not install any object in Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 unless and until Airline has (a) obtained the prior written approval of the Director and (b) provided City with a written waiver from the author of such work of visual art, in form and substance reasonably satisfactory to City, which waiver shall identify specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. § 106A(e)(1).

Section 14.30 Incorporation of Exhibits

All references to exhibits in this Agreement have the same effect as if the exhibits had been recited verbatim in this Agreement, and references are effective as to any lawful amendments to the exhibits automatically upon City's approval of an amendment. Director may revise the exhibits during the Term of this Agreement and the revised exhibits shall replace the then current exhibits without an amendment or supplement to this Agreement provided the exhibits are revised pursuant to the express terms of this Agreement. The Director must provide Airline with a copy of the revised exhibit(s) within ninety (90) days of a revision.

Section 14.31 Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

(Signature page follows)

ATTEST/WITNESSED:
(if required by Airline)

[AIRLINE NAME]

Name:
Title:

ATTEST:

CITY OF HOUSTON:

By: Pat Jefferson-Daniel
City Secretary

By: Sylvester Turner
Mayor

APPROVED:

COUNTERSIGNED:

Mario C. Diaz
Director, Houston Airport System

Chris Brown
City Controller

APPROVED AS TO FORM:

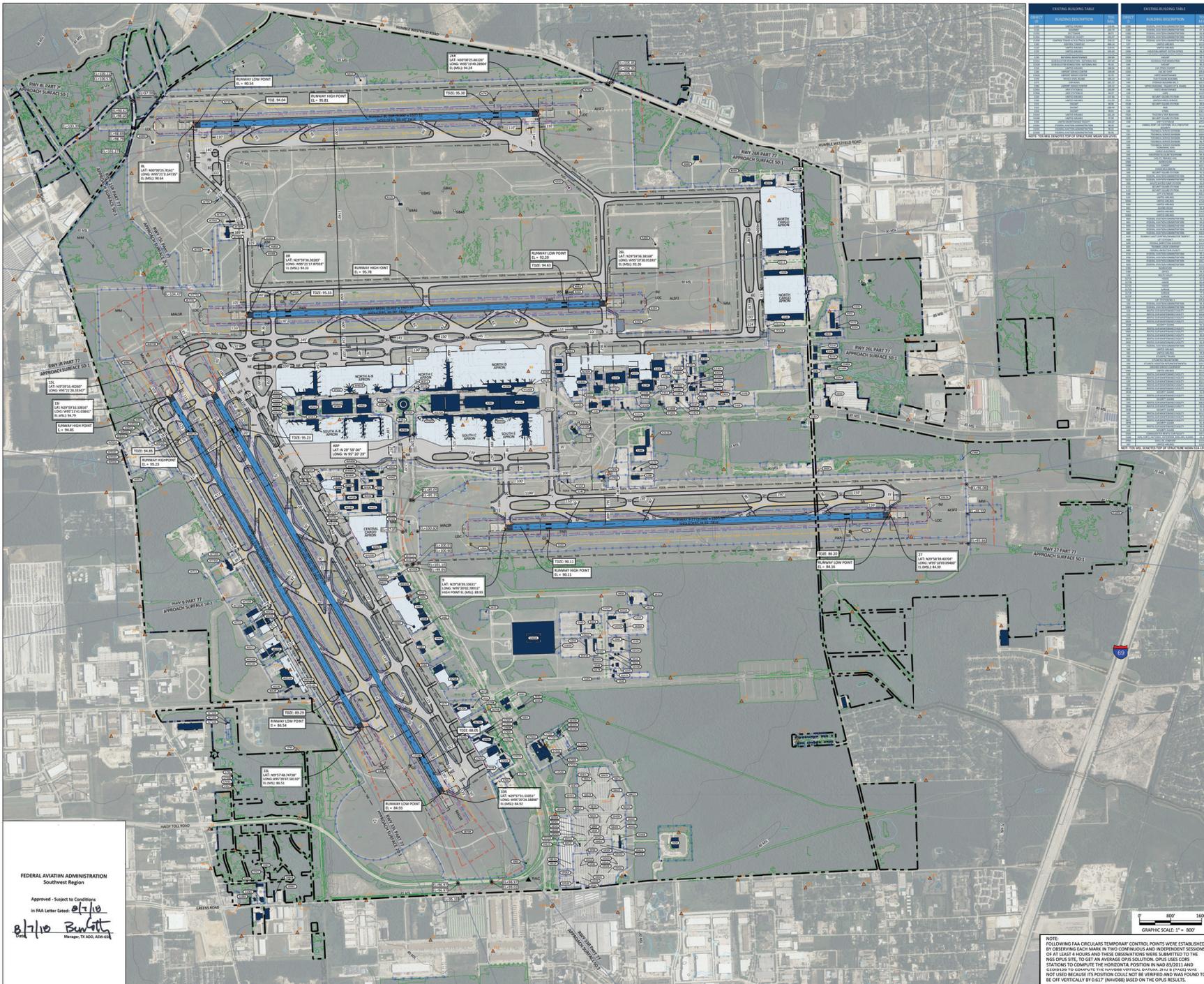
COUNTERSIGNATURE DATE:

Sr. Assistant City Attorney
LD File No.

EXHIBIT A

AIRPORT LAYOUT

1 Page



EXISTING BUILDING TABLE		EXISTING BUILDING TABLE		EXISTING BUILDING TABLE		SURVEY CONTROL POINTS	
ID#	DESCRIPTION	ID#	DESCRIPTION	ID#	DESCRIPTION	HEIGHT	MARKING
101	...	102	...	103
104	...	105	...	106
107	...	108	...	109
110	...	111	...	112
113	...	114	...	115
116	...	117	...	118
119	...	120	...	121
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629	...	630	...	631
632	...	633	...	634
635	...	636	...	637
638	...	639	...	639
640	...	640	...	640

FEDERAL AVIATION ADMINISTRATION
 Southwest Region
 Approved - Subject to Conditions
 In FAA Letter Case# 21710
 8/7/10 *Burkitt*
 Manager, TX ADO, ADO-64

LEGEND

AIRPORT BOUNDARY
 TAXIWAY OBJECT FREE AREA (TOFA)
 RUNWAY SAFETY AREA (RSA)
 RUNWAY CRITICAL AREA
 BUILDINGS RESTRICTION LINE (BRL)
 EXISTING RUNWAY OBJECT FREE AREA (ORFA)
 EXISTING RUNWAY OBSTACLE FREE ZONE (ORFZ)
 EXISTING RUNWAY PROTECTION ZONE (RPZ)
 EXISTING PRECISION OBSTACLE FREE ZONE (POFZ)
 EXISTING GRAVING CENTERLINE
 EXISTING EDGE OF WATER
 EXISTING TREE LINE
 EXISTING FENCE
 EXISTING PART 27 APPROACH
 BUILDING NUMBER
 EXISTING BUILDING
 EXISTING RUNWAY
 EXISTING TAXIWAY
 EXISTING ROAD/DRIVE
 SURVEY CONTROL POINT
 PRIMARY AIRPORT CONTROL
 DISTANCE MEASURING EQUIPMENT (DME)
 INNER MARKER (IM) & MIDDLE MARKER (MM)
 LOCALIZER
 GLOUSELOR (GS)
 WINDSOCK
 AIR BEACON
 AIRPORT BEACON
 TRANSVERSE WAY POINT

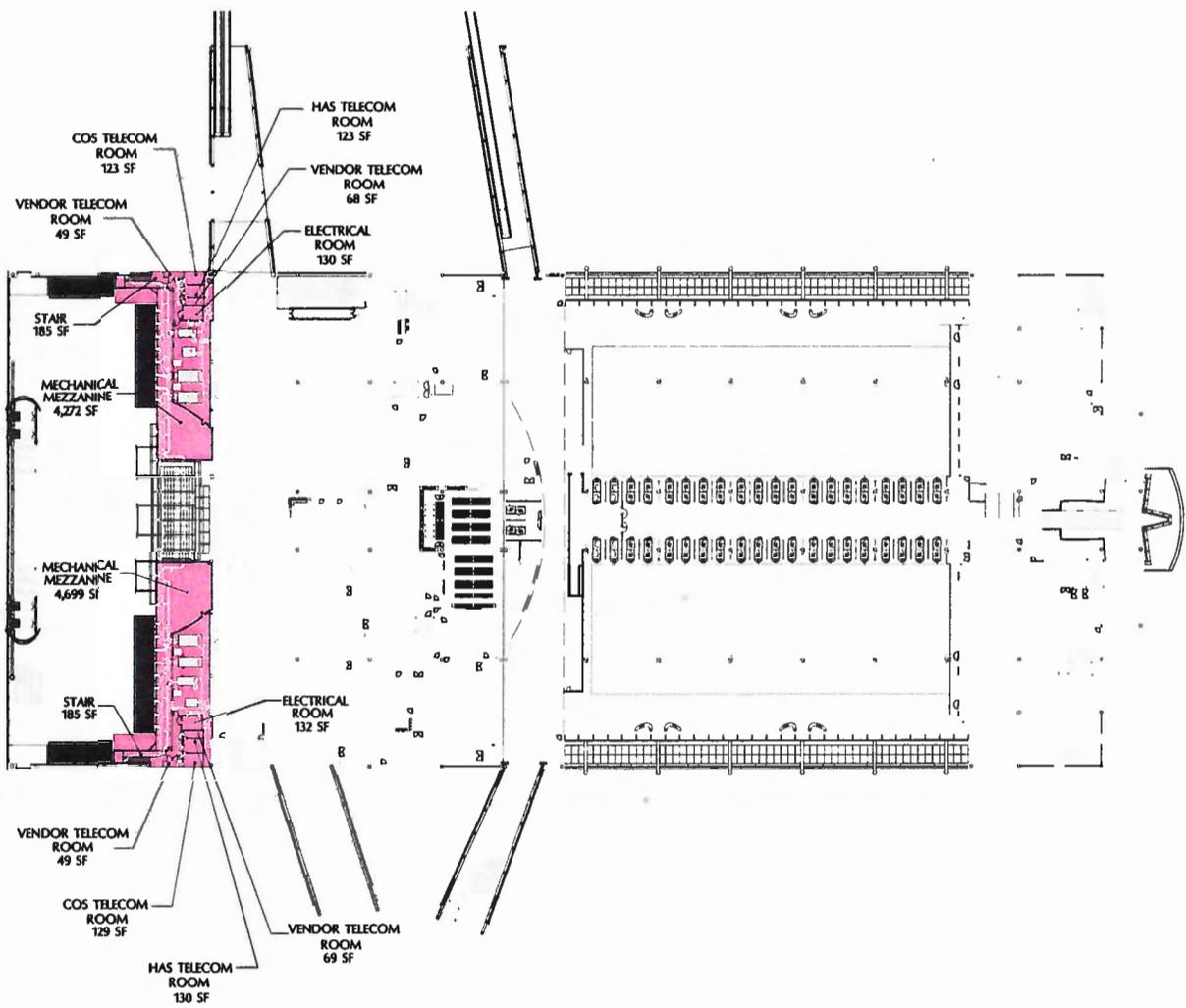
GRAPHIC SCALE 1" = 800'

NOTE:
 FOLLOWING FAA CIRCULARS TEMPORARY CONTROL POINTS WERE ESTABLISHED BY OBSERVING EACH MARK IN TWO CONTIGUOUS AND INDEPENDENT SESSIONS OF AT LEAST 10 MINUTES AND THESE OBSERVATIONS WERE SUBMITTED TO THE HQ OPS SITE TO GET AN AVERAGE OPS SOLUTION. OPS USES CORS STATIONS TO COMPUTE THE HORIZONTAL POSITION IN MARS B/COLL AND TO COMPUTE THE VERTICAL POSITION IN MARS B/COLL. THIS DATA WAS NOT USED BECAUSE ITS POSITION COULD NOT BE VERIFIED AND WAS FOUND TO BE OFF VERTICALLY BY 0.337' (IN MARS) BASED ON THE OPS RESULTS.

EXHIBIT B

Central FIS Map

5 Page

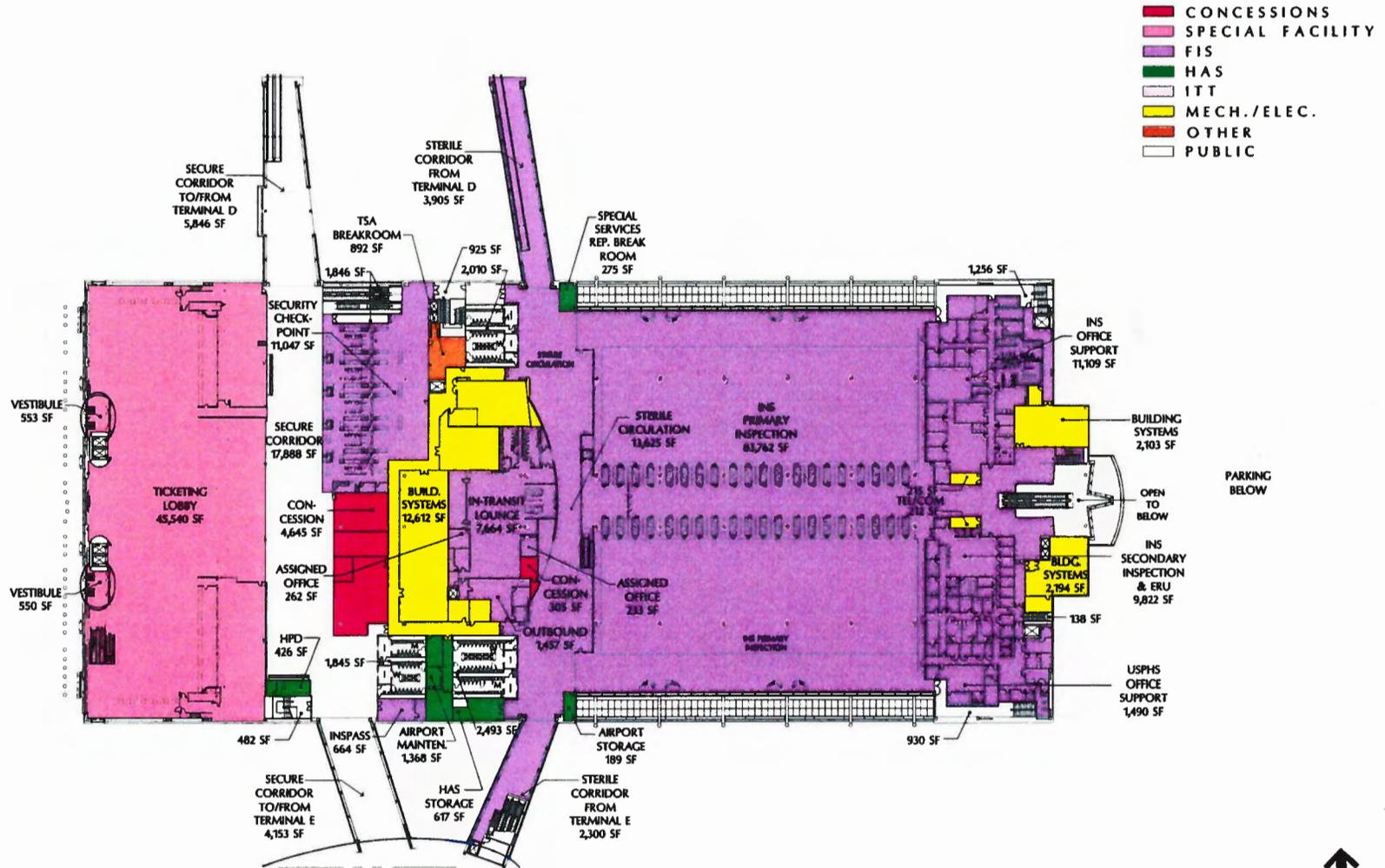


- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITT
- MECH./ELEC.
- OTHER
- PUBLIC

FIS SECOND MEZZANINE LEVEL

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS



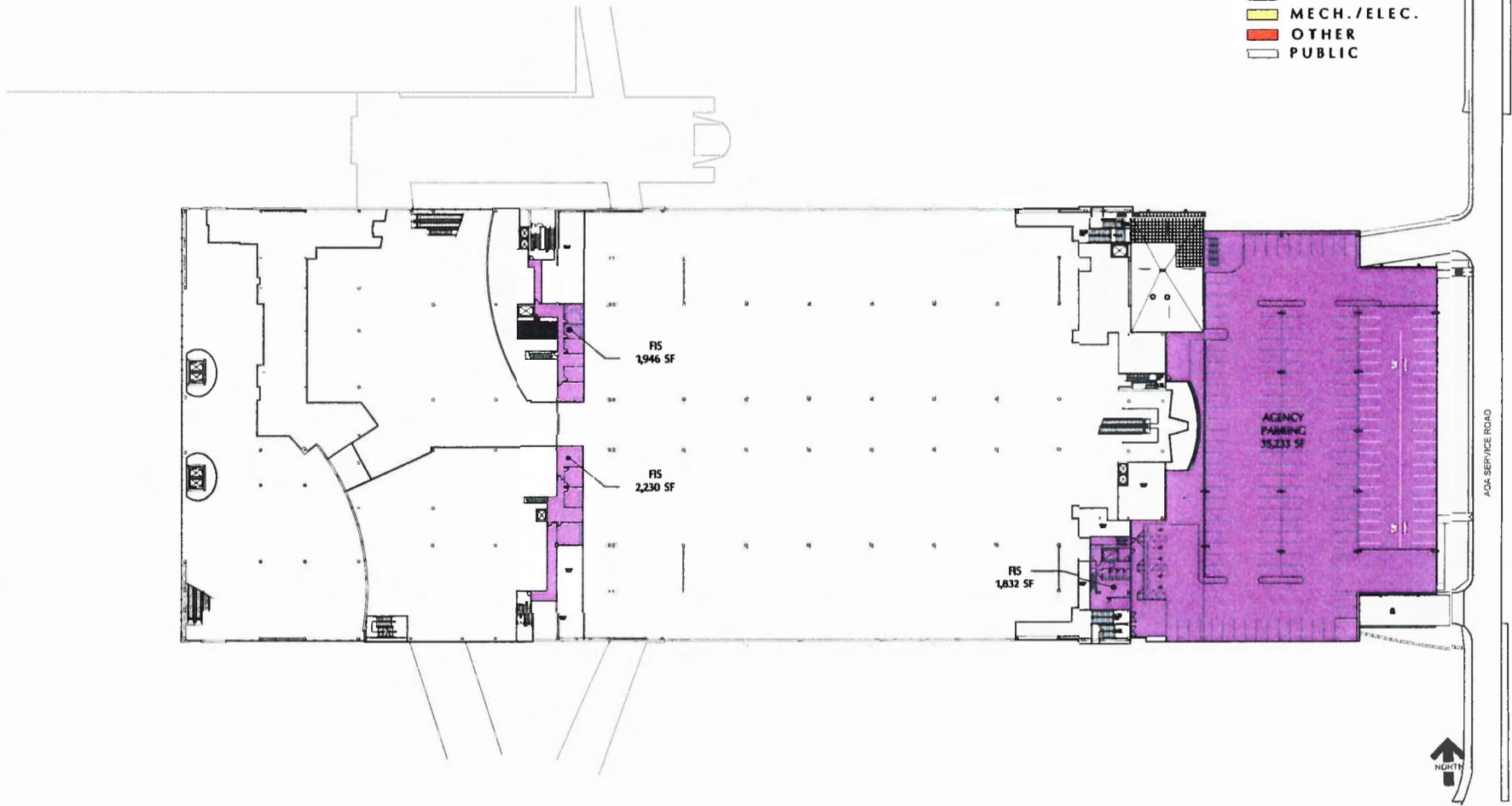


1" = 80'-0"

FIS SECOND LEVEL

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS

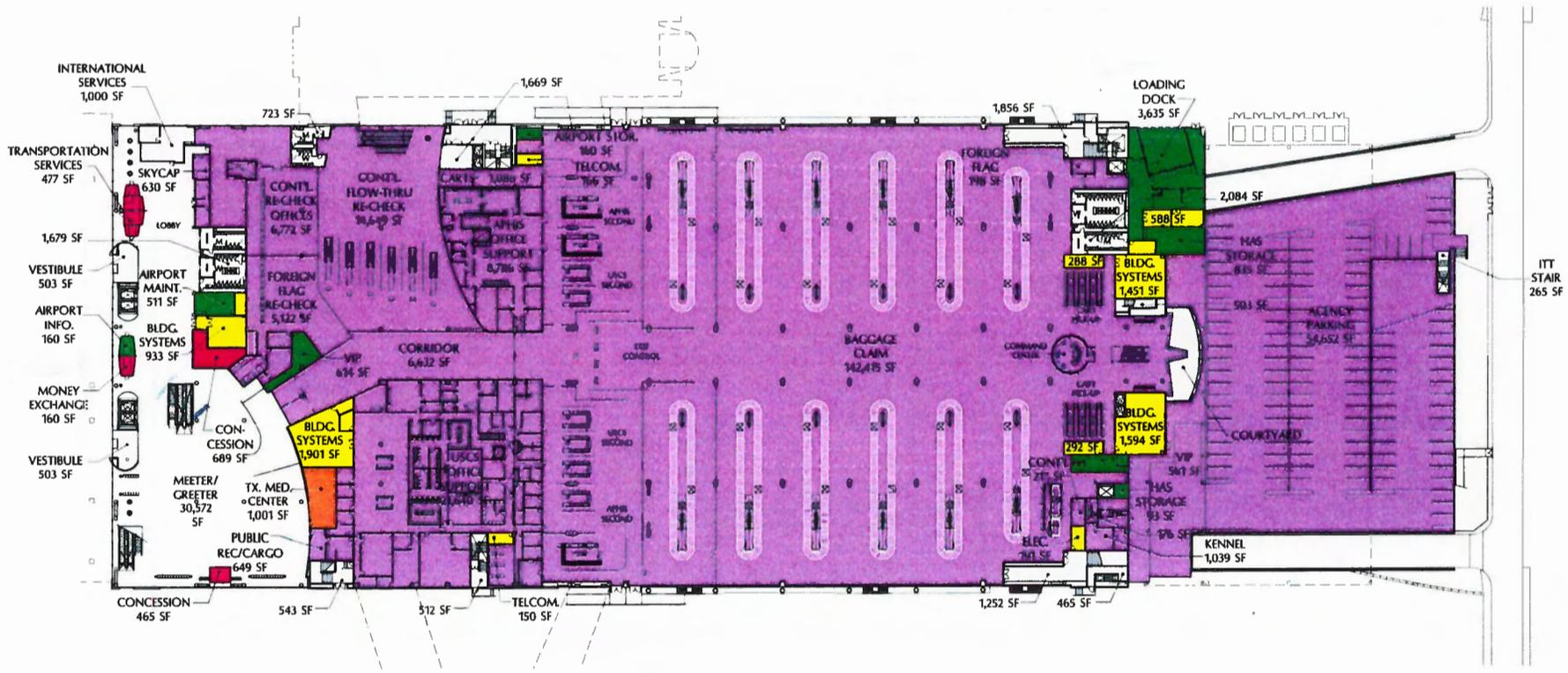
- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITT
- MECH. /ELEC.
- OTHER
- PUBLIC



FIS FIRST MEZZANINE LEVEL

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS

- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITT
- MECH./ELEC.
- OTHER
- PUBLIC



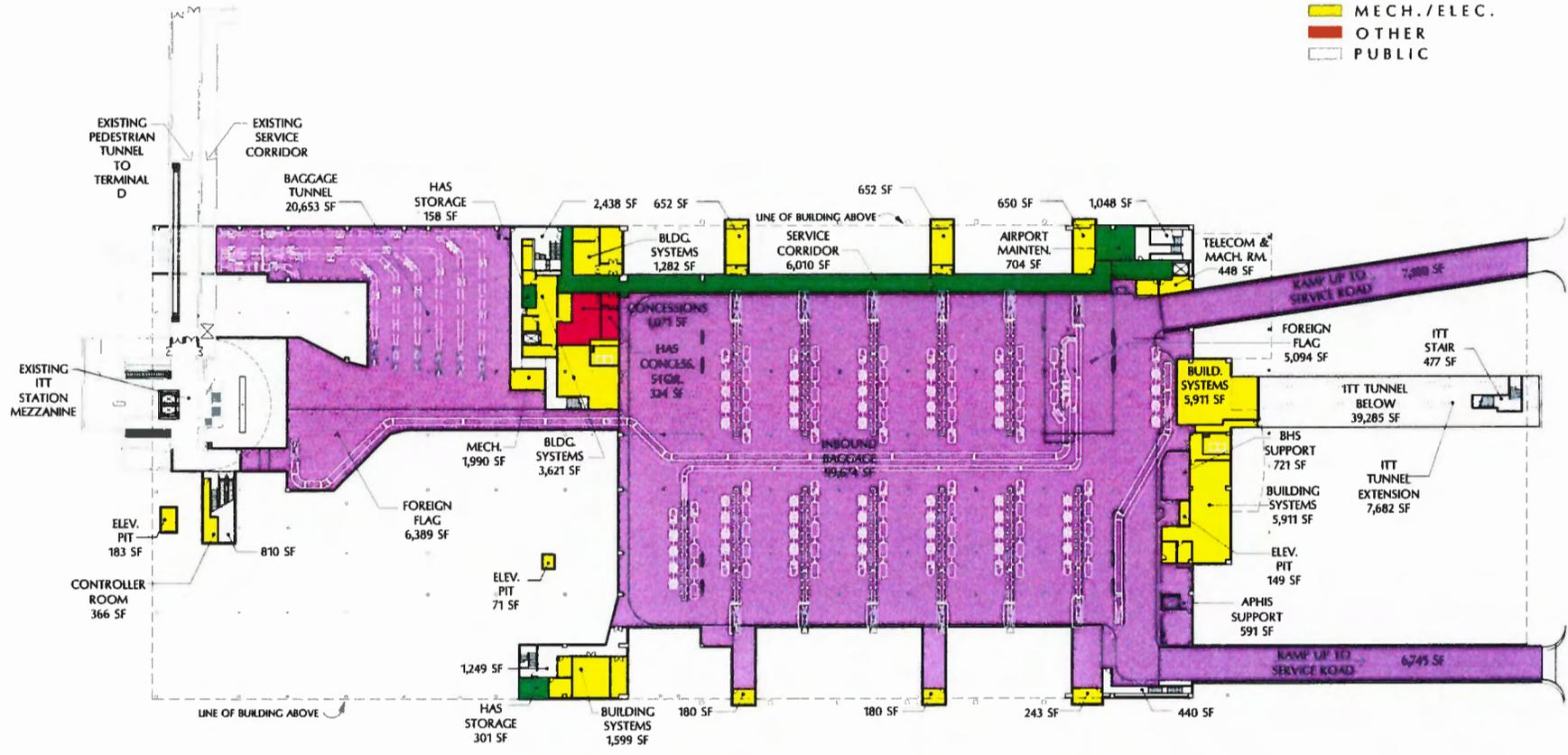
FIS FIRST LEVEL

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS



1" = 80'-0"

- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITT
- MECH./ELEC.
- OTHER
- PUBLIC



FIS BASEMENT LEVEL / ITT STATION MEZZANINE



1" = 80'-0"

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS

EXHIBIT C

Reserved

EXHIBIT D

Affiliate Agreement of Responsibility

1 Page

EXHIBIT "D"

FORM OF AGREEMENT OF RESPONSIBILITY

[to be retyped on Airline's letterhead]

Director
Houston Airport System
City of Houston
P.O. Box 60106 Houston,
Texas 77205

Re: [Name of Subsidiary] (the "Subsidiary")

Dear _____

Pursuant to the terms of that certain International Facilities Agreement by and between the City of Houston and _____ (the "Airline") dated as of _____, 2023, in particular, the definition of "Subsidiary", the undersigned Airline hereby agrees that with respect to all operations of the Subsidiary that are conducted under [Airline's name or (insert Airline's derivative name)] [Airline may designate which specific derivative names the Subsidiary may conduct operations under], the Airline hereby agrees to be responsible for all such operations of (including the payment of any activity fees and charges incurred by) such Subsidiary referenced above.

Very truly yours,

[Airline]

EXHIBIT E

Affiliate Acknowledgement and Reporting Agreement

1 Page

EXHIBIT "E"

FORM OF ACKNOWLEDGMENT
AND REPORTING AGREEMENT

[to be retyped on Subsidiary's letterhead]

Director
Houston Airport System
City of Houston
P. O. Box 60106
Houston, Texas 77205

Re: Acknowledgment and Reporting Agreement

Dear _____

The undersigned wishes to qualify for treatment as a "Subsidiary" of [Name of Airline that is signatory to the IFA] (the "Airline"), under that International Facilities Agreement dated as of _____, 2023 (the "Agreement"), between the City of Houston and Airline.

Accordingly, the undersigned hereby acknowledges and agrees as follows:

1. The undersigned may operate at George Bush Intercontinental Airport/Houston under the Agreement and enjoy all rights conferred thereunder without the payment of any additional fees or premiums with respect to those operations that it conducts under Airline's name or a derivative thereof if (i) Airline agrees to be responsible for such operations and (ii) the undersigned executes this letter and agrees to the reporting requirements set forth below.
2. So long as the undersigned continues to operate as a "Subsidiary" of Airline within the meaning of the Agreement, the undersigned agrees to report to the Director all of its operations at George Bush Intercontinental Airport/Houston, all of the statistical information required by Section 5.02 of the Agreement, which shall be reported separately based on its operations for (i) Airline, (ii) any other airline, and (iii) for itself.

Very truly yours,

[Subidiary]

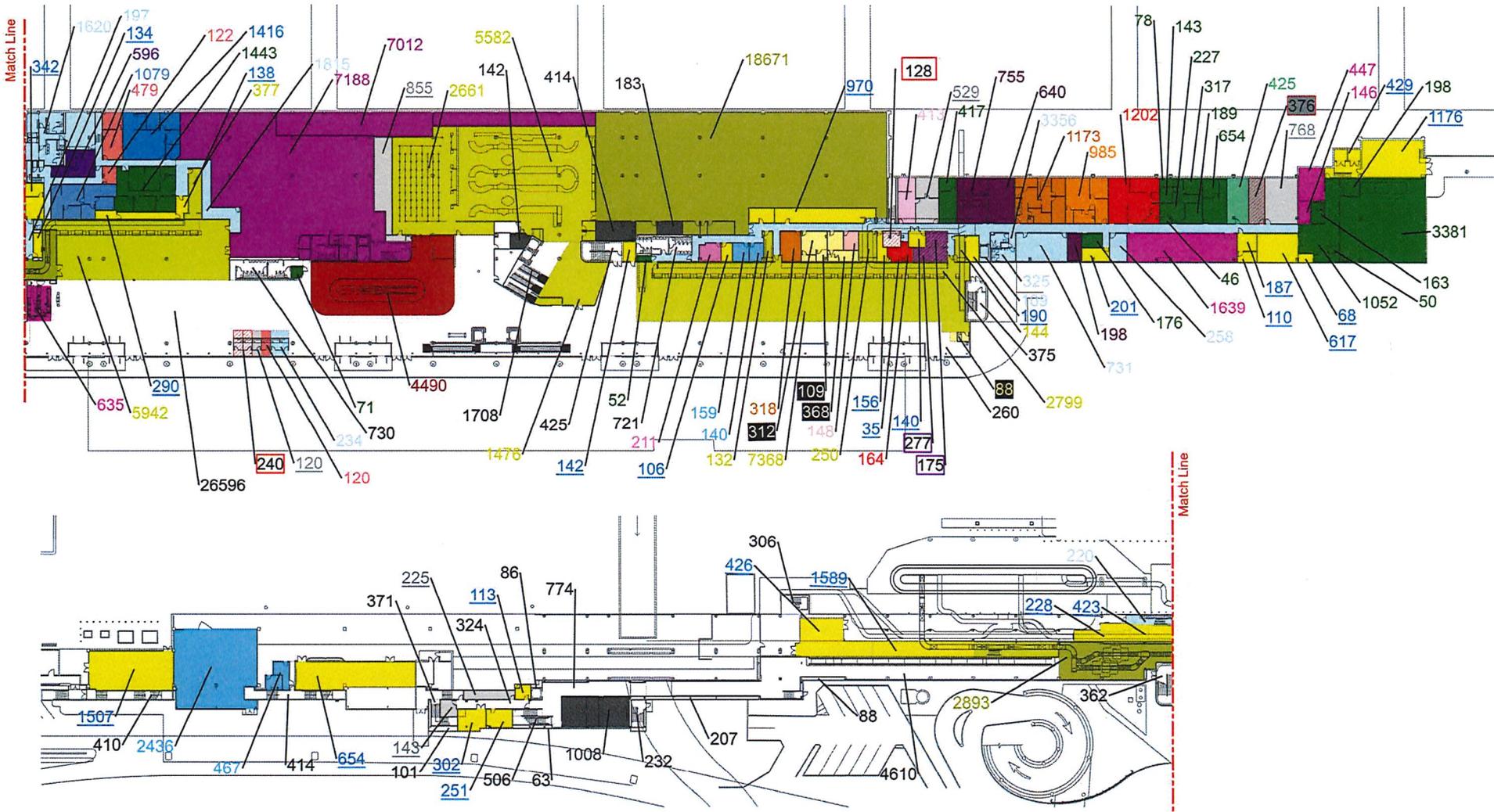
EXHIBIT F

Terminal D Cost Centers

(including current and conceptual Public Areas, concession areas,
common-use, exclusive-use and preferential-use leased areas
in Terminal D, FIS and ICP*)

*Drawings will be converted to GIS Measurement Format
and Replaced with Revised Square Footage as each set of as-builts are complete

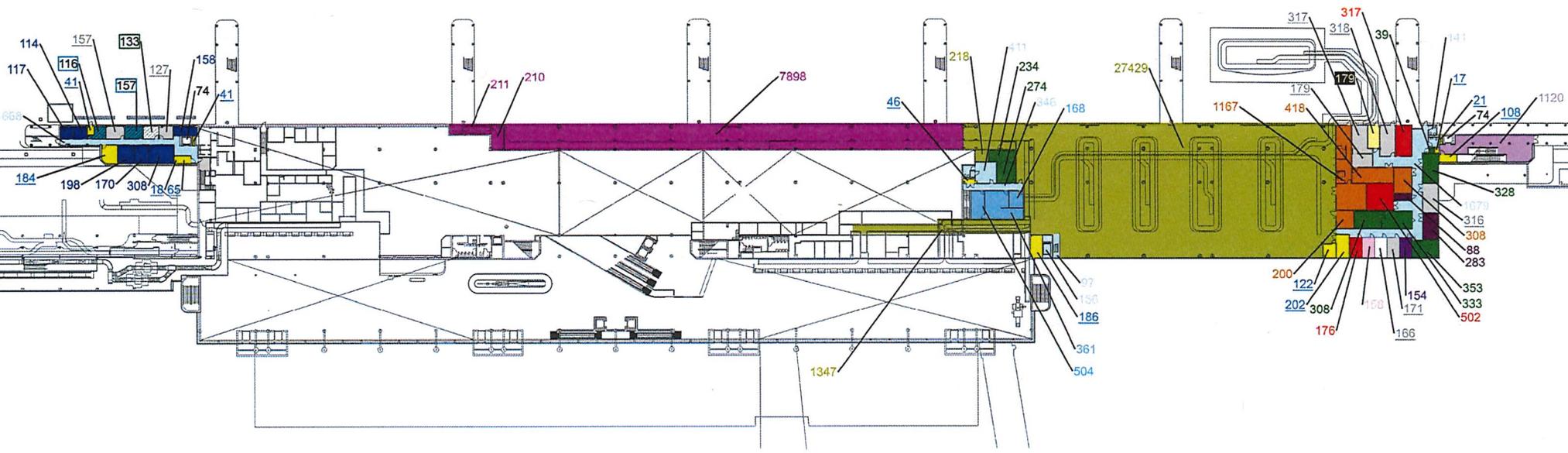
15 Pages



413	AEROMEXICO	1,416	EMIRATES	211	VOLARIS	8,657	HAS	368	3RD PARTY PROVIDER
1,593	ANA	596	LUFTHANSA	8,865	AIRLINE COMMON	10,924	MECH/ELEC	376	ARINC
985	AIR CHINA	721	QATAR	21,564	BAGGAGE MAKEUP	39,669	PUBLIC	452	HALLMARK
1,366	AIR FRANCE	1,079	SINGAPORE	2,867	CONCESSIONS	26,731	TICKETING AREA	3202	UNITED
425	AIR NEW ZEALAND	148	TACA	4,490	DOMESTIC NON-FIS BAGGAGE CLAIM	1,747	TSA		
1,491	BRITISH AIRWAYS	877	TURKISH AIRLINES	14,200	FORMER TERMINAL D FIS	2,640	UNASSIGNED		

Exhibit F - Page 1

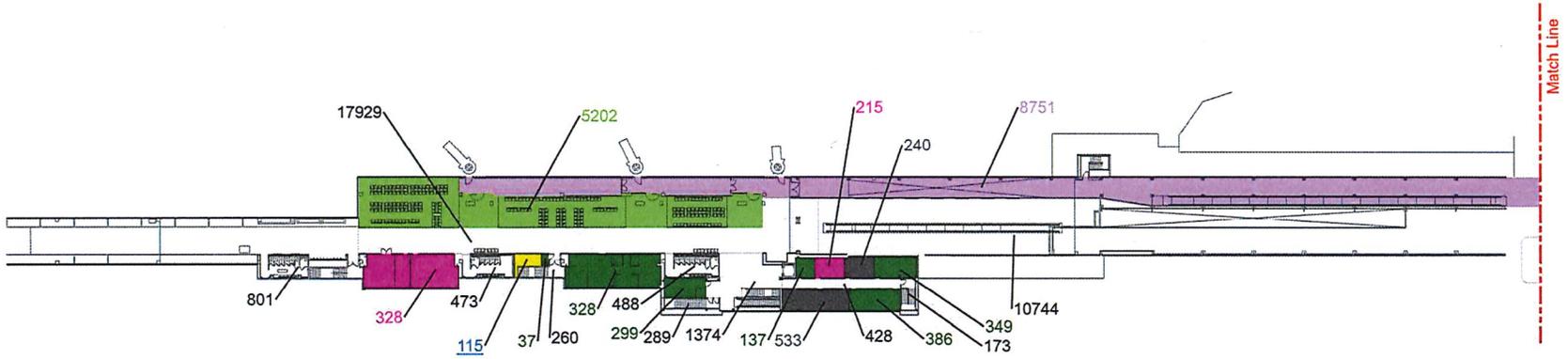
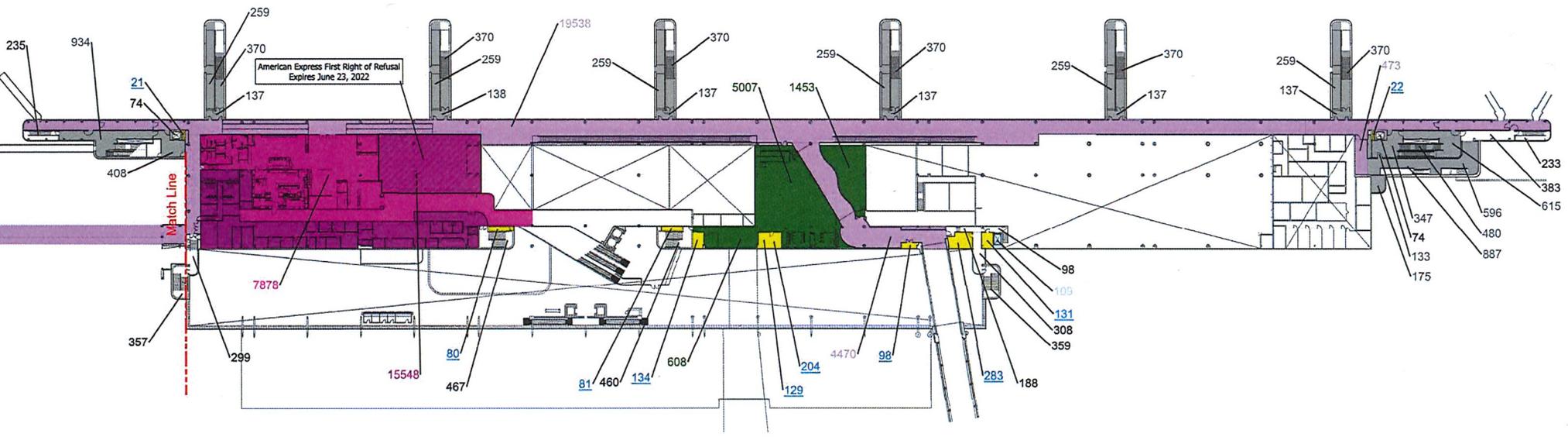
TOTAL FLOOR AREA: 158,073



158	AEROMEXICO	154	LUFTHANSA	28,994	BAGGAGE MAKEUP	1,751	UNASSIGNED
371	ANA	179	TURKISH AIRLINES	8,319	FORMER TERMINAL D FIS	133	GLOBAL SERVICES
995	AIR FRANCE	1,033	UNITED AIRLINES	1,869	HAS	273	FENIX LOGISTICS
2,093	BRITISH AIRWAYS	3,534	AIRLINE COMMON	1,051	MECH/ELEC		
1,065	EVA	1,120	ARRIVAL AREA	148	PUBLIC		

Exhibit F - Page 2

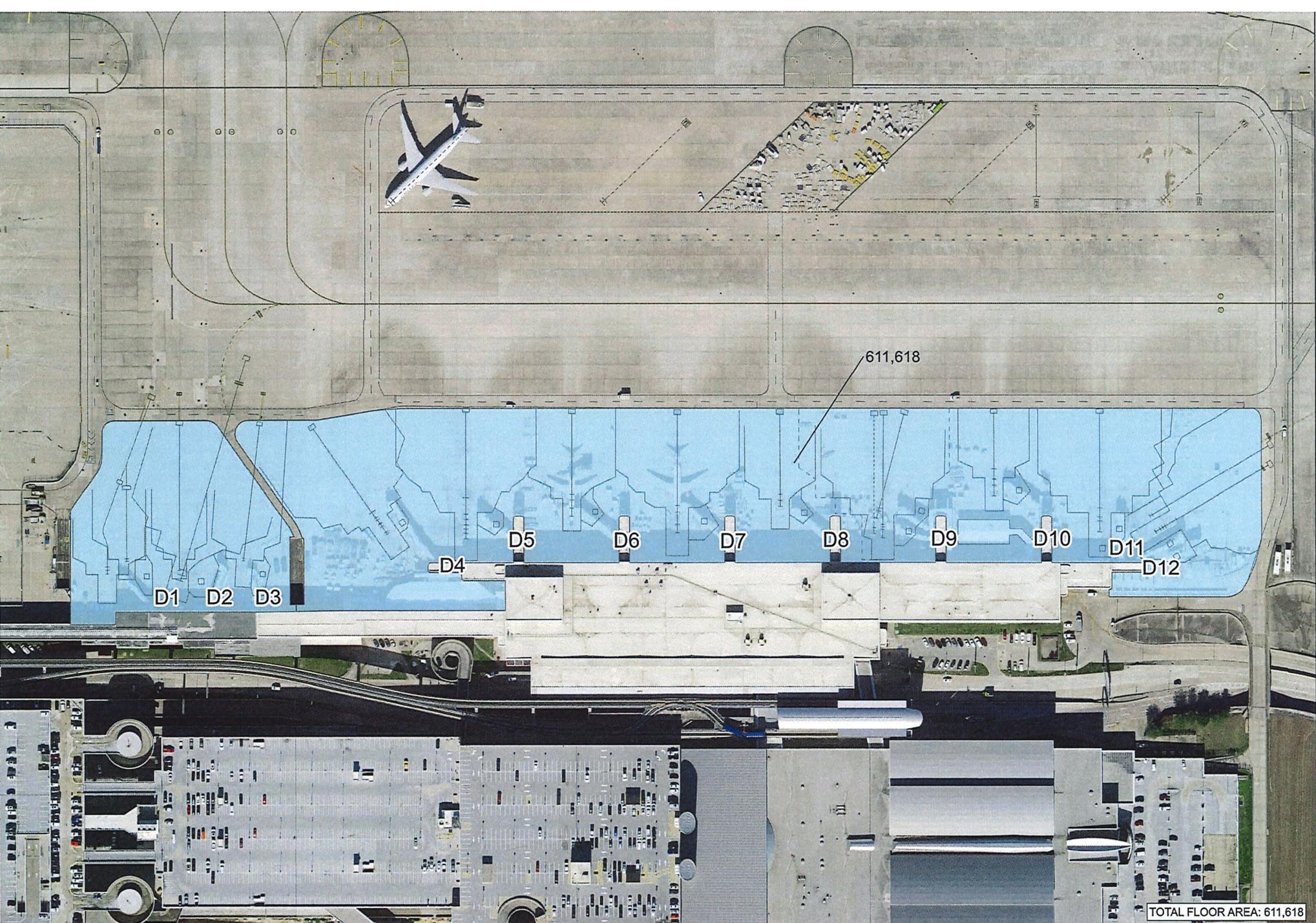
TOTAL FLOOR AREA: 53,240



109		AIRLINE COMMON	15,548		FORMER TERMINAL D FIS	1,298		MECH/ELEC
33,232		ARRIVAL AREA	8,604		HAS	36,494		PUBLIC
8,421		CONCESSIONS	9,172		LOADING BRIDGE	773		TSA
		UNASSIGNED	5,202		DEPARTURE AREA			

TOTAL FLOOR AREA: 118,853 SF

Exhibit F - Page 3



611,618

D1 D2 D3

D4

D5

D6

D7

D8

D9

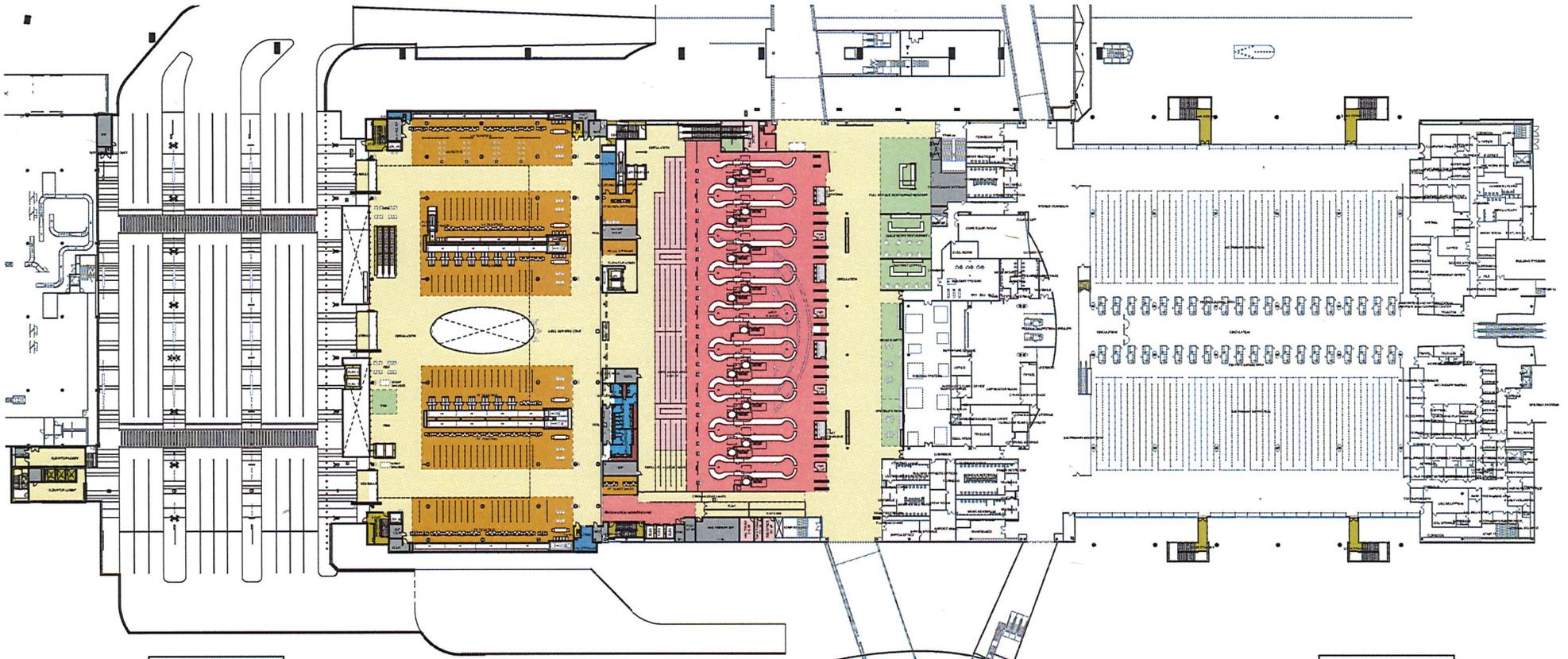
D10

D11

D12

TOTAL FLOOR AREA: 611,618

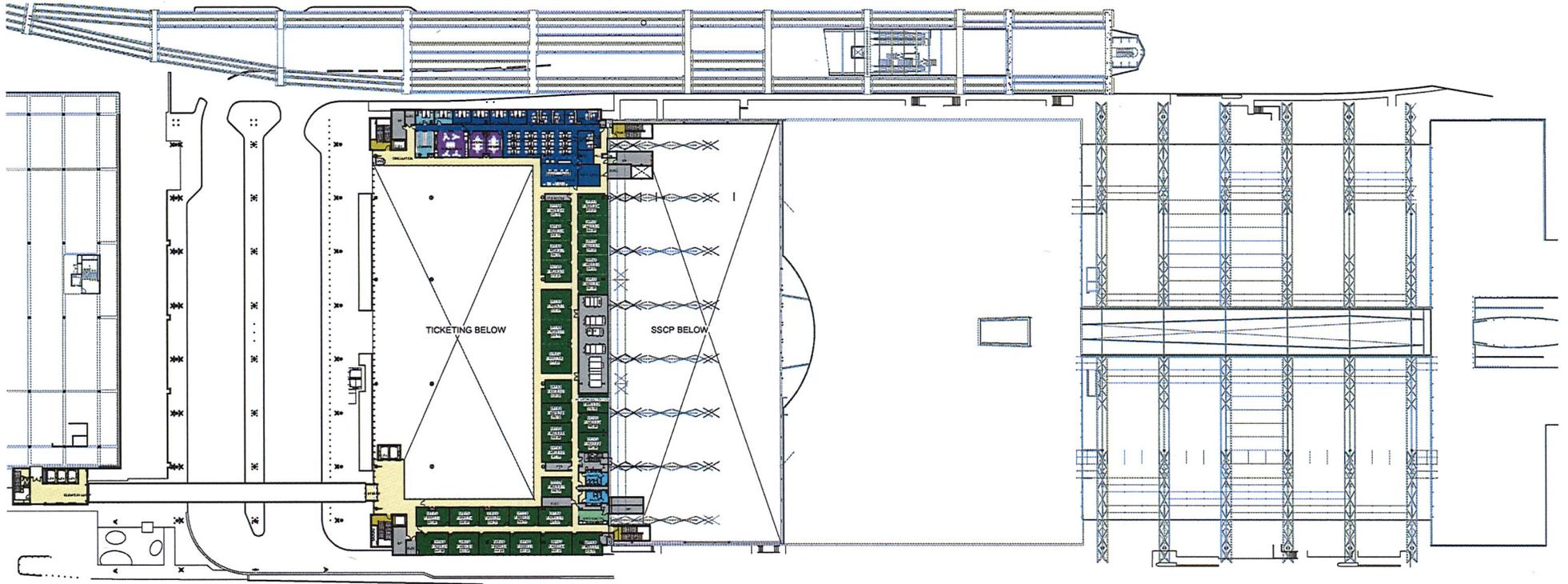
Exhibit F - Page 5



1 FIS_L2 DEPARTURES LEVEL - CD
 03.JUL.18 AR - 105 SCALE: 1" = 40'-0"

Exhibit F - Page 6
 Conceptual
 Departure Level

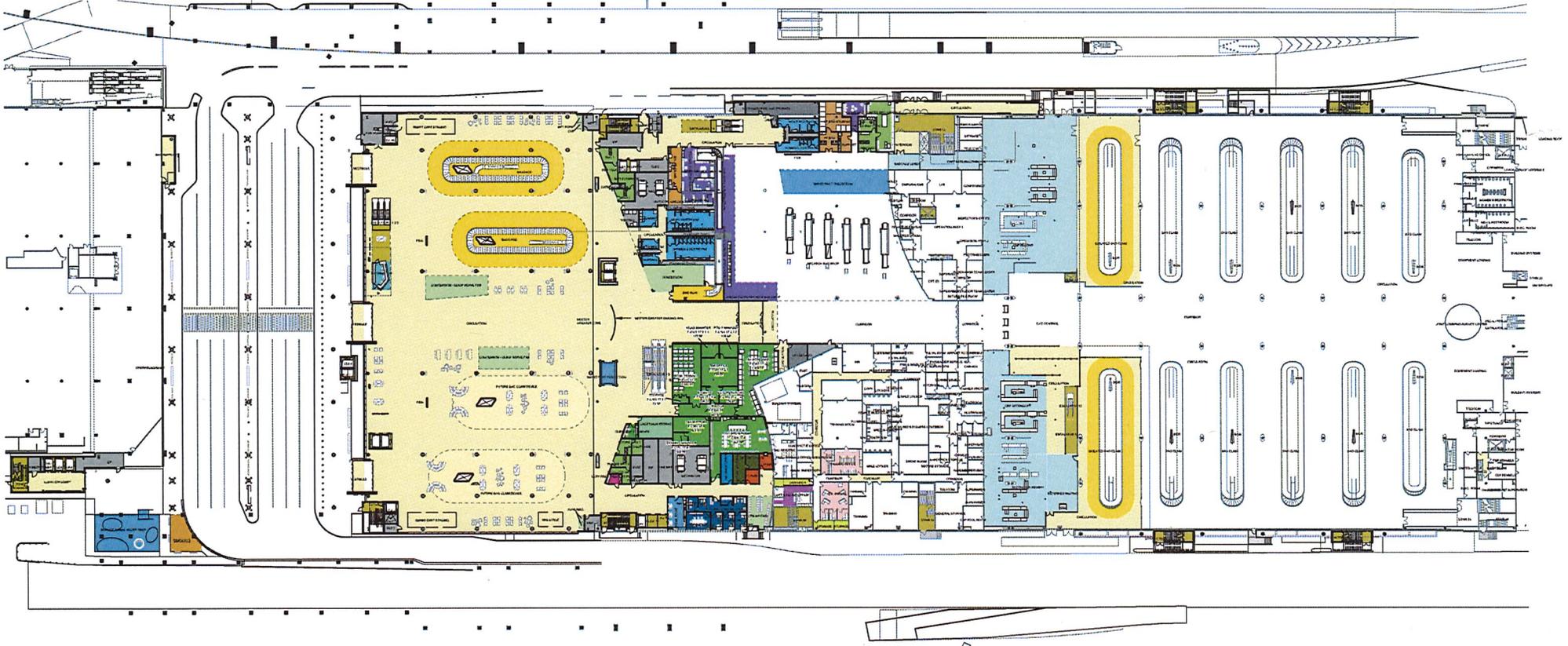
Preliminary draft, NOT FOR CONSTRUCTION



1 FIS_L2.5 ATO LEVEL - CD
 05 JUL 2018 SCALE: 1" = 40'-0"

Exhibit F - Page 7
 Conceptual
 ATO Level

Preliminary draft. NOT FOR CONSTRUCTION



1 FIS_L1 ARRIVALS LEVEL - CD - Phase 1
 00 JEA AR - 103.1 SCALE: 1" = 40'-0"

Exhibit F - Page 9
 Conceptual
 Arrivals Level

Preliminary draft. NOT FOR CONSTRUCTION

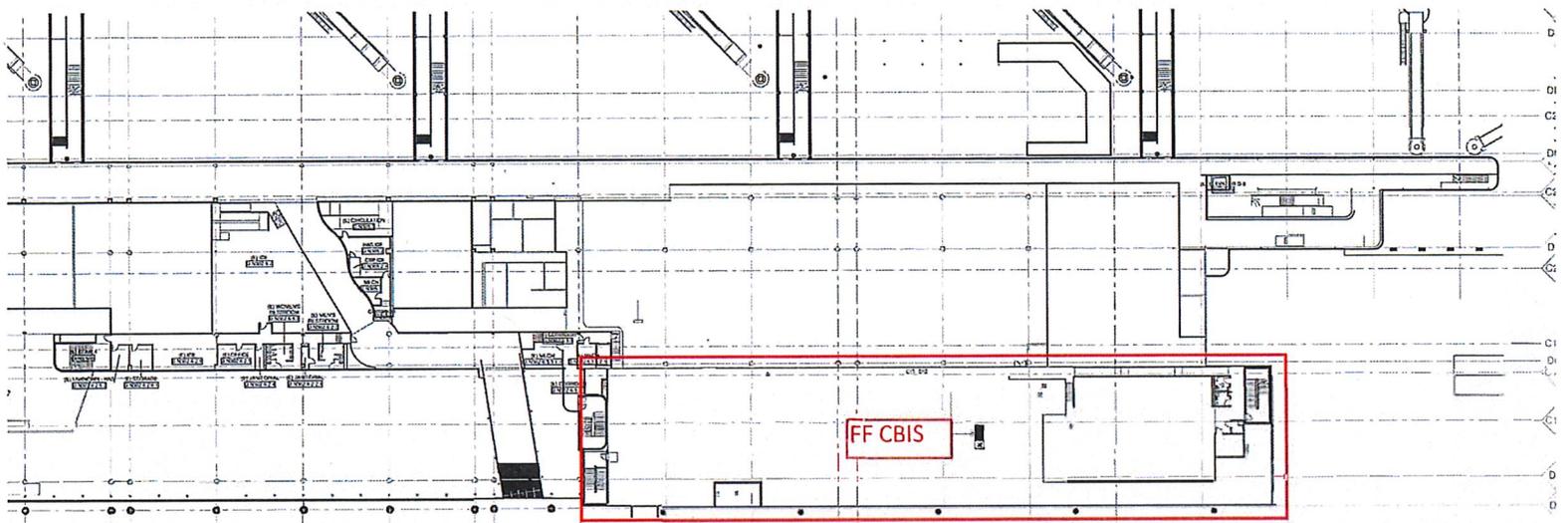


EXHIBIT F - Foreign Flag CBIS
Page 10
Conceptual
Terminal D Arrivals Level

INT'L ARRIVALS LEVEL
SCALE 1"= 20'



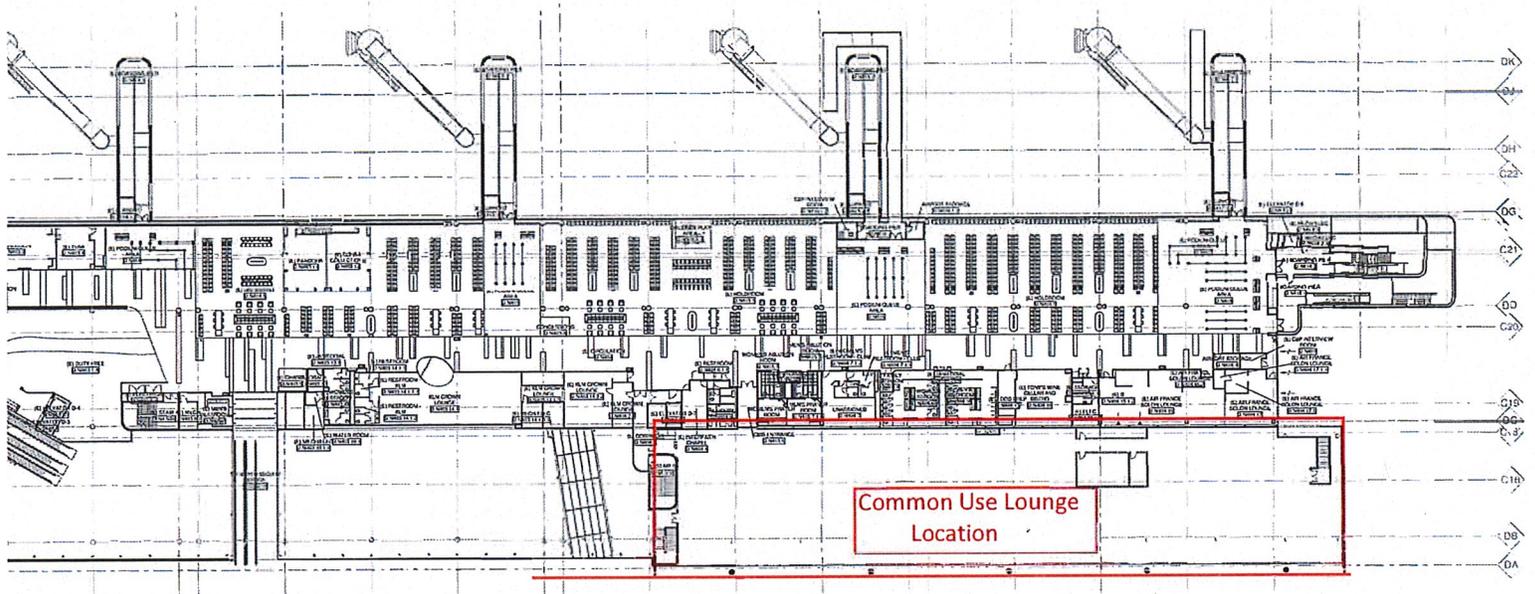


EXHIBIT F - Lounge
 (above the CBIS)
 Page 11
 Conceptual Terminal D Departure Level

DEPARTURES LEVEL
 SCALE 1"= 20'
 FENTRESS ARCHITECTS | STCA

Exhibit F - Page 12
 Conceptual D-West
 Pier Apron Level

DEPARTMENT

- AIRPORT FUNCTIONS
- CIRCULATION
- CONCRETE/SUPPORT
- CONCRETE/SUPPORT STORAGE/SUPPORT
- HANGAR
- RESTROOM
- SUPPORT
- SUPPORT ELEMENTS
- UNASSIGNED
- VERTICAL CIRCULATION

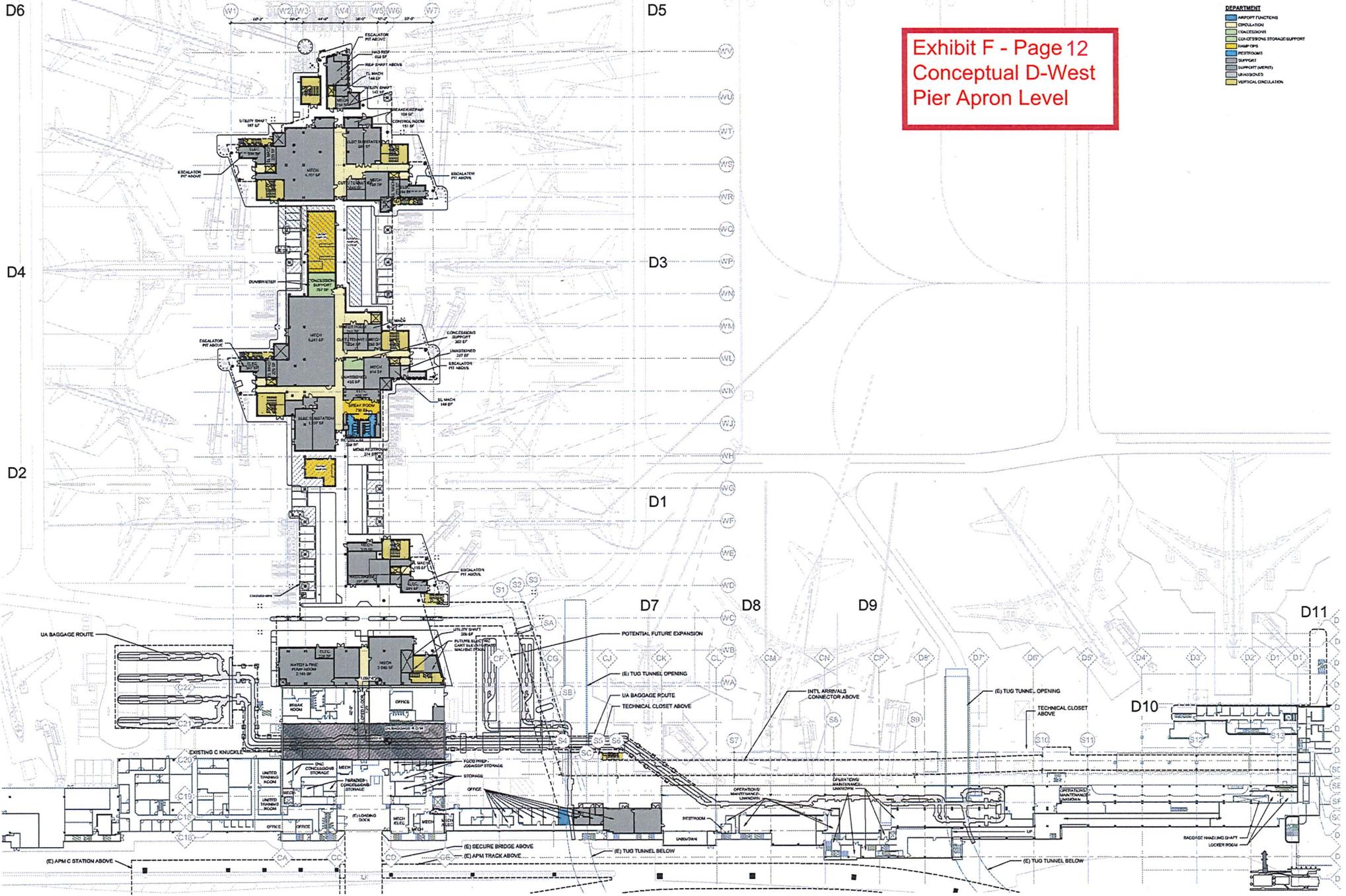


Exhibit F - Page 13
 Conceptual D-West Pier
 Departures Level

DEPARTMENT

- PUBLIC FUNCTIONS
- SUPPORT FUNCTIONS
- CONVEYATION
- CONCESSIONS
- DUTY FREE
- RESERVED FOR ART FEATURE
- RESTROOMS
- SUPPORT (MEETS)
- VERTICAL CONVEYATION

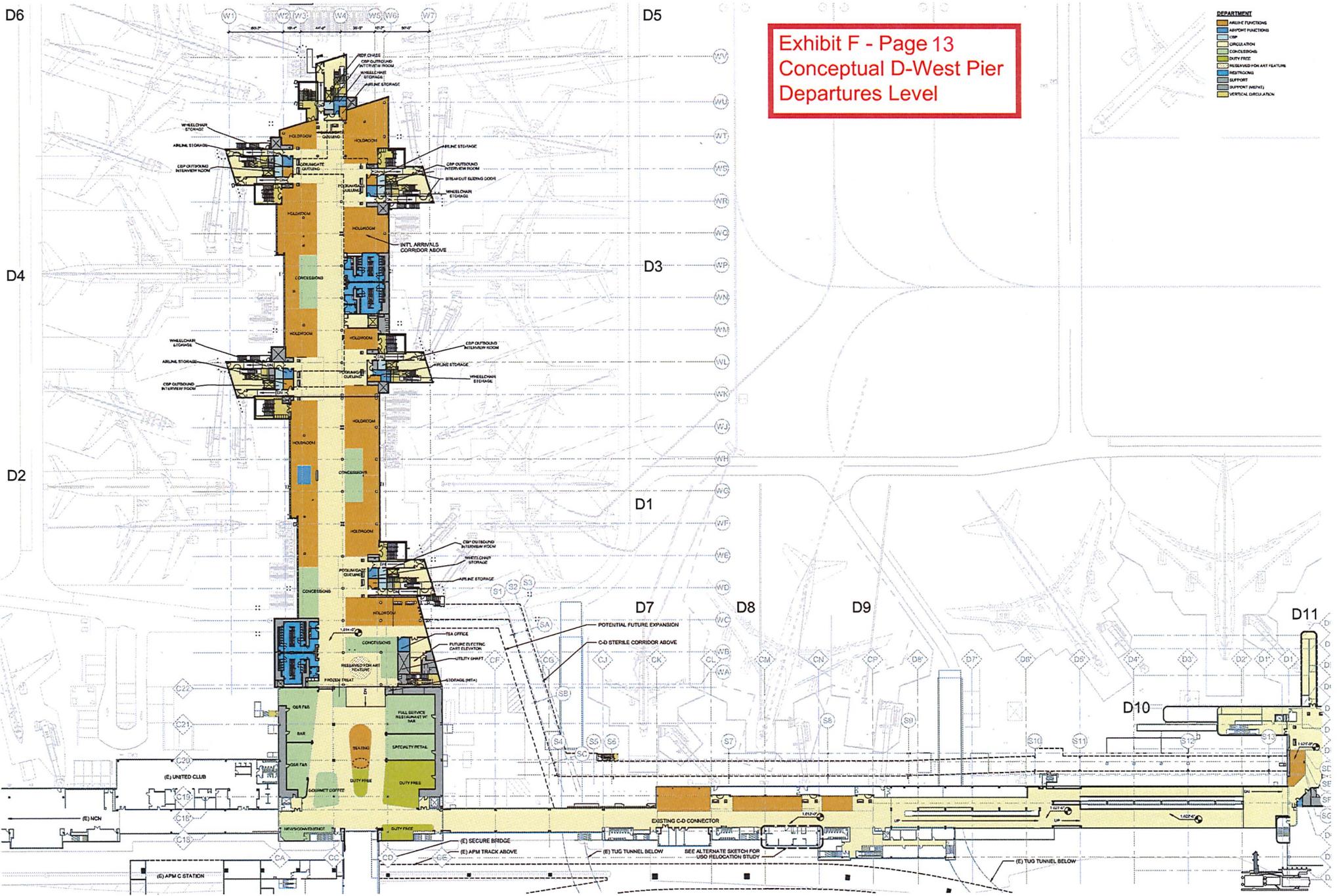
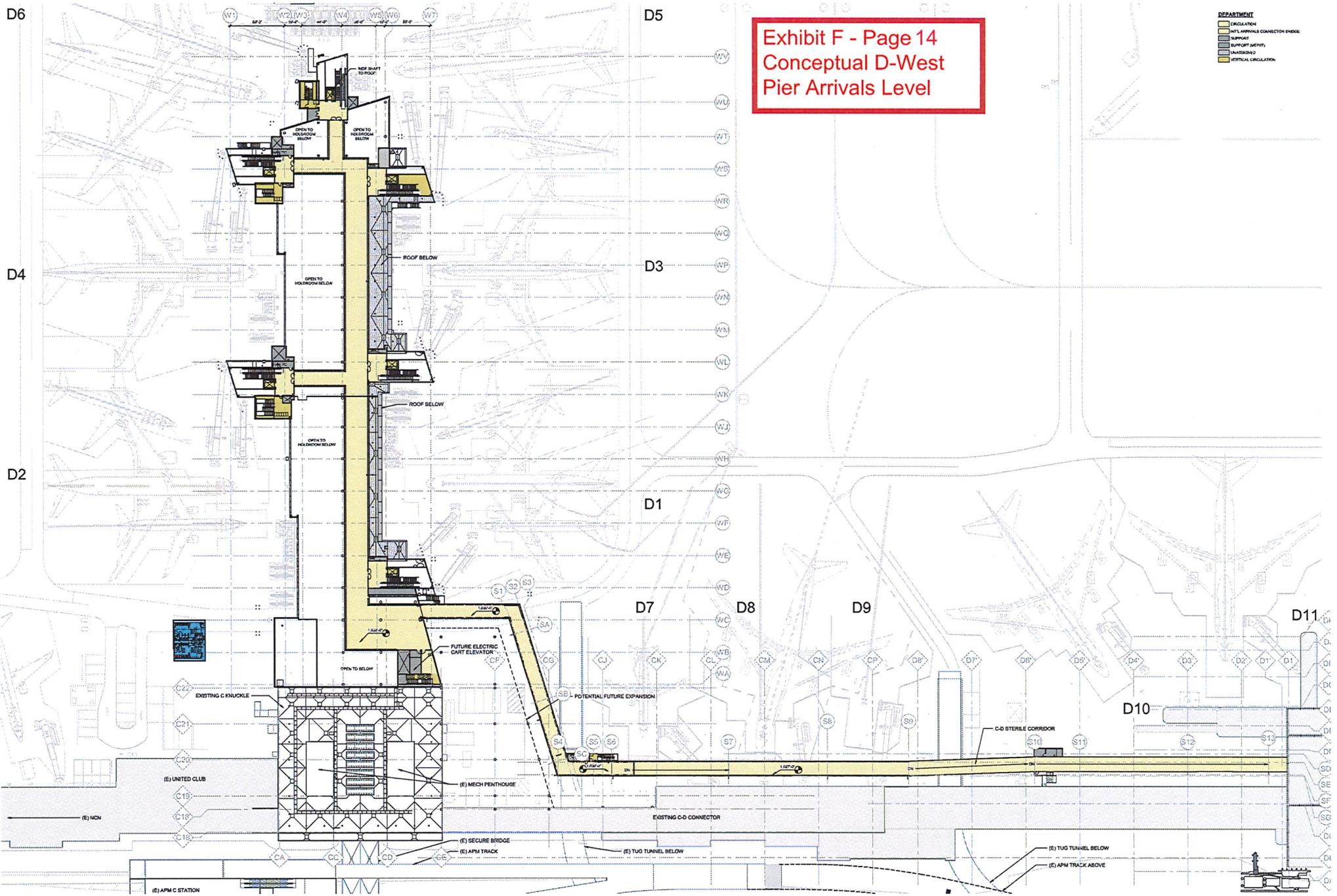


Exhibit F - Page 14
 Conceptual D-West
 Pier Arrivals Level

DEPARTMENT	
[Yellow Box]	CIRCULATION
[Light Blue Box]	INT'L ARRIVALS CONNECTION ENDS
[Light Green Box]	SUPPORT
[Light Purple Box]	SUPPORT MEANS
[Light Orange Box]	MECHANICAL
[Light Pink Box]	VERTICAL CIRCULATION



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Exhibit F - Page 15
 Conceptual D-West
 Pier Roof Level

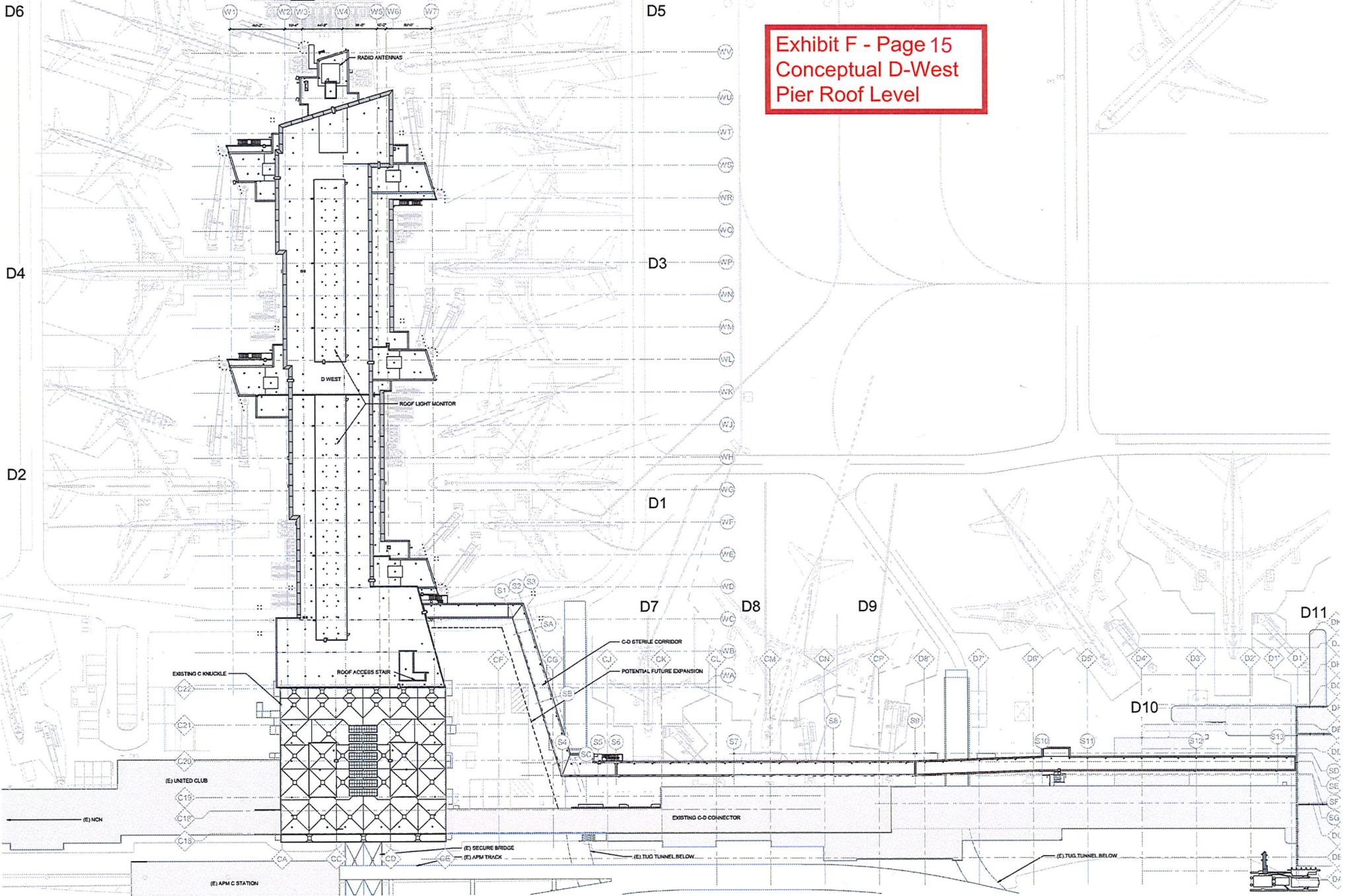


EXHIBIT G

Reserved

EXHIBIT H

Monthly Statistical Report Form

3 Pages

EXHIBIT "H"

Houston Airport System
 Finance Division
 P.O. Box 60106
 Houston, TX 77205

MONTHLY STATISTICAL REPORT for the month of _____, 20__
--

Ph: (281) 233-3000
 Fx: (281) 233-7669

AIRPORT: _____

PASSENGER TRAFFIC	ARRIVALS			DEPARTURES				Passengers Using In-Transit Lounge
	Local (A)	Non-rev (B)	TOTAL (A+B)	Local (C)	Transfer (D)	Non-Rev (E)	TOTAL (C+D+E)	
Domestic			0				0	
International								
Mexico			0				0	
Latin America			0				0	
Europe			0				0	
Canada			0				0	
Asia			0				0	
Africa			0				0	
Australia			0				0	

AIR FREIGHT (pounds)

ARRIVALS

DEPARTURES

Domestic

International

 Mexico

 Latin America

 Europe

 Canada

 Asia

 Africa

 Australia

AIR MAIL (pounds)

REPORTING AIRLINE

PREPARED BY

APPROVED BY

TELEPHONE NUMBER

FAX NUMBER

E-MAIL ADDRESS

LOCAL:

TRANSFER:

NON-REVENUE:

PASSENGER USING THE
IN-TRANSIT LOUNGE:

Passengers other than non-revenue and transfer.

Passengers that transfer from one flight to another within the same Airline or those passengers that use the in-transit lounge. Identified only on departing passengers.

Passengers that do not purchase their tickets.

Passengers using the in-transit lounge, which are ALSO included in the Transfer category and the Departures Total.

THIS REPORT IS DUE TO THE CITY ON OR BEFORE THE 10TH DAY OF EACH MONTH

EXHIBIT "H"

THIS FORM REQUIRED IF OPERATING OUT OF MORE THAN ONE TERMINAL BUILDING

**HOUSTON AIRPORT SYSTEM
George Bush Intercontinental Airport/Houston (IAH)**

Airline

Month/Year

Terminal A				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals	_____	_____	_____	0
Departures	_____	_____	_____	0
Total	0	0	0	0

Terminal B				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals	_____	_____	_____	0
Departures	_____	_____	_____	0
Total	0	0	0	0

Terminal C				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals	_____	_____	_____	0
Departures	_____	_____	_____	0
Total	0	0	0	0

Terminal D				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals	_____	_____	_____	0
Departures	_____	_____	_____	0
Total	0	0	0	0

Terminal E				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals	_____	_____	_____	0
Departures	_____	_____	_____	0
Total	0	0	0	0

Prepared By _____ Date _____

Telephone Number _____

Approved By _____ Date _____

Fax Number _____

THIS REPORT IS DUE TO HOUSTON AIRPORT SYSTEM BEFORE THE 10TH DAY OF EACH MONTH.

EXHIBIT I

Illustrative Self-Invoicing Form

EXHIBIT "I"

HOUSTON AIRPORT SYSTEM

Self Invoicing Form on Actual Usage at Terminal D/Mickey Leland International Building
George Bush Intercontinental Airport/Houston (IAH)
Effective _____, 2023

_____ Airline _____ Month/Year

ARRIVALS

Gate Arrival	
Total Arriving Passengers	
Rate	\$ -
Amount Due	\$ -

FIS/Bag Claim Area	
Total Arriving Passengers	
Less: Pre-cleared International Flight & Domestic Arriving Passengers	
Net Arriving Passengers	0
Rate	\$ -
Amount Due	\$ -

DEPARTURES

Gate Departure	
Total Departing Passengers	
Rate	\$ -
Amount Due	\$ -

Ticketing Area	
Total Departing Passengers	
Less: In-transit Departing Passengers	
Less: Continental Domestic/Mexico/Central and South America	
Net Departing Passengers	0
Rate	\$ -
Amount Due	\$ -

Total Terminal D use fees amount due City of Houston \$ -

This report and your check are to be submitted to the Houston Airport System by the 10th of each month.

Prepared By _____ Date _____

Telephone Number _____

Approved By _____ Date _____

Remit to: Houston Airport System
Finance Division
P.O. Box 60106
Houston, Tx 77205
(281) 233-3000

EXHIBIT J

Sample Letter of Credit

4 Pages

EXHIBIT J
FORM OF LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____ (the "Beneficiary"), for the account of [CONTRACT PARTY], a _____ corporation, (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., Texas time on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the "Expiration Date").

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Houston, Texas.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary of such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least sixty (60) days prior to any such Expiration Date, Bank has sent Beneficiary written notice, at the address provided below, that Bank elects not to permit this Letter of Credit to be so extended, and will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by valid presentation on or prior to 5:00 p.m. Texas time, on or prior to the Expiration Date, of the following:

1. A copy of this Letter of Credit and all amendments; and

2. A copy of the Drawing Certificate in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Bank by facsimile at [facsimile number for draws] [REDACTED] or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [REDACTED]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date. Except in the case of an increase in the Available Amount, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of Texas, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By: _____

Name: _____

Title: _____

DRAWING CERTIFICATE

TO:

[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

**AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF CITY OF HOUSTON
THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)**

**DRAWN UNDER *[INSERT NAME OF ISSUING BANK]* LETTER OF CREDIT
NO. XXXXXX.**

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____

NAME AND TITLE

EXHIBIT K

Rate-Calculation Methodology

3 Pages

CALCULATION OF FEES AND CHARGES APPLICABLE TO INTERNATIONAL CARRIERS¹

Applicable to International Carriers

George Bush Intercontinental Airport

Pro Forma FY 2025

DESCRIPTION	Exclusive Use Area	International Departure Cost Centers ²	International Arrivals Cost Centers ²	ICP Ticketing	ICP Security Checkpoint	Common VIP Club	Central FIS	Skyway	Airfield Area
Operation and Maintenance Expenses ³	\$2,427,000	\$5,422,000	\$5,466,000	\$1,958,000	\$1,837,000	\$1,094,000	\$37,392,000	\$20,369,000	\$35,930,000
Replenishment of Renewal and Replacement Fund Amortization ^{3,4}		-	-	-	-	-	-	-	-
Existing	244,000	1,933,000	3,037,000	297,000	278,000	110,000	7,105,000		32,303,000
Projected	2,456,000	4,847,000	5,280,000	2,039,000	1,912,000	1,106,000	4,820,000	130,000	1,501,000
Cost of Public Space	3,777,000	4,600,000	3,551,000	3,451,000	3,238,000	1,702,000	11,105,000		
Interest on Land	-	-	-	-	-	-	-	-	3,625,000
Reallocation of HAS Space	-	-	-	-	-	-	-	829,000	791,000
Base Capital Charge ⁵	129,000	117,000	152,000	-	-	56,000	-	2,195,000	-
Reduction for Amount over International CPE Cap	-	(1,563,000)	(1,613,000)	(720,000)	(676,000)	-	-	-	-
Domestic/Pre-Cleared Available to offset fees	-	(1,491,000)	(1,538,000)	(687,000)	(645,000)	-	-	-	-
Total Net Annual Cost	\$ 9,033,000	\$ 13,865,000	\$ 14,335,000	\$ 6,338,000	\$ 5,944,000	\$ 4,068,000	\$ 60,422,000	\$ 23,523,000	\$ 74,150,000

Unit Expense	Units								
Per Square Foot	51,444	\$175.59							
International Enplaned Passengers at Terminal D	1,484,000		\$9.34						
International Deplaned Passengers at Terminal D	1,484,000			\$9.66					
Enplaned Passengers Using ICP Ticketing	1,484,000				\$4.27				
Originating Passengers Using ICP Security Checkpoint	3,000,000					\$1.98			
Passengers Use Common VIP Club	200,000						\$20.34		
Deplaned Passengers from International Flights	5,406,000							\$11.18	
Total IAH Enplaned Passengers	23,157,000								\$1.02
Total Landed Weight	26,259,000								\$2.82

Notes:

- (1) Fees for Domestic/Pre-Cleared passengers will be based on same cost per enplaned or deplaned passengers as carriers operating in Terminal A.
- (2) Includes pro rata share of costs allocable to the Aircraft Apron Area and Loading Bridges.
- (3) Includes allocable System Costs.
- (4) Projected amounts equal 1.20 times amortization to include coverage, except for Airfield Area.
- (5) Base Capital equal to \$2.50 per square foot for all areas of Terminal D, the ICP, the Central FIS, or the Skyway that are fully amortized.

CALCULATION OF INTERNATIONAL CPE CAP¹

George Bush Intercontinental Airport

	Actual 2018	2019	2020	2021	Estimated 2022	2023	2024	2025	2026	2027	2028	2029
International Fees Subject to CPE Cap ²												
Arrival Fee	\$ 5.22											
Departure Fee	5.39											
Ticketing Fee	5.62											
	16.23											
150% of Actual FY 2018 Rate	\$ 24.35											
Inflation rate		0.85%	0.00%	4.58%	10.24%	<i>2.00%</i>	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
International CPE Cap ³		\$24.55	\$24.55	\$25.67	\$28.30	<i>\$28.87</i>	<i>\$29.45</i>	<i>\$30.04</i>	<i>\$30.64</i>	<i>\$31.25</i>	<i>\$31.87</i>	<i>\$32.51</i>

Notes:

(1) Assumed DBO of ITRP Phase 1 is FY 2025 for illustrative purposes.

(2) In accordance with Section 6.08 of the International Facilities Lease; total terminal fees to be paid in the first five years of operation for ITRP Phase 1 (including only the Arrival, the Departure and the Ticketing Charges as currently calculated, "International Charges") are subject to a cap.

(3) Italicized CPI rates are estimated for illustrative purposes, actual CPI rates will be applied.

Exhibit K (Page 3 of 3)

ILLUSTRATIVE CALCULATION OF REVENUE SHARING CREDITS

George Bush Intercontinental Airport
Pro Forma FY 2025

		2025	
Gross Revenues		\$608,877,000	
Less: Operation and Maintenance Expenses		(404,929,000)	
Net Revenues	[A]	\$203,948,000	
Total Debt Service Requirements	[B]	126,885,000	
Debt service coverage	[A÷B=C]	1.61 x	
HAS Revenue Sharing Cap	If C>1.50, then [Bx1.50=D]	\$13,621,000	
Concession Revenues			Percent to total
IAH			
Terminal Concessions		\$30,708,000	
Automobile Parking		61,810,000	
Car Rental		32,236,000	
		\$124,754,000	69.6%
HOU			
Terminal Concessions		\$23,564,000	
Automobile Parking		22,127,000	
Car Rental		8,788,000	
		\$54,479,000	30.4%
		\$179,233,000	100.0%
50% of HAS Concession Revenues	[E]	\$89,617,000	
Amount Available for HAS Revenue Credits	If D>E, then E otherwise D	\$ 13,621,000	
Allocation of HAS Revenue Credits to IAH			
IAH Share of Revenue Credits ¹		\$ 9,481,000	69.6%
	Percentage allocable		
Allocable based on Terminal A and D enplaned passengers ²	24.6%	\$ 2,334,000	
Allocable based on IAH enplaned passengers ³	75.4%	7,147,000	
		\$ 9,481,000	

Notes:

- (1) IAH share of Revenue Credits equal to their percentage of concession revenues to total HAS concession revenues.
- (2) Percentage based on terminal concessions to IAH concessions.
- (3) Percentage based on parking and rental concessions to IAH concessions.

EXHIBIT L

Maintenance Matrix

1 Page

Exhibit L

George Bush Intercontinental Airport/Houston International Facilities Agreement

Summary of Operation and Maintenance Responsibilities

	Exclusive Use Areas	Common Use Areas	Public Use Areas
Building Exteriors	C	C	C
Passenger Loading Bridges (1) & (3)	-	-	
Baggage Handling Systems (1)	C	C	C
People Movers (2)	A	C	C
Installed Central HVAC System	C	C	C
Decorating and Redecorating (includes: painting and flooring)	A	C	C
Plumbing	A	C	C
Electric Lighting and Relamping (includes: changing light bulbs)	A	C	C
Janitorial Cleaning (3)	A	C	C
Window Cleaning (airline responsible for inside only)	A	C	C
Restroom Maintenance	A	C	C
Signage	A	C	C
Aircraft Apron Structural (4)	-	C	
Aircraft Parking Striping (5)	-	C	

KEY: A= Airline
C = City

- (1) City shall provide maintenance (including routine and scheduled maintenance) for all City--owned passenger loading bridges and City-owned baggage systems. Airline shall clear all jams from the baggage handling system.
- (2) To include City-owned and City-installed elevators, escalators and moving walkways.
- (3) Airline to provide trash removal inside Passenger Loading Bridges. City shall provide general and extraordinary cleaning in Passenger Loading Bridges.
- (4) Airline shall keep area clean, neat and orderly.
- (5) City shall stripe aircraft parking positions on preferential-use gates, after receipt and approval of Airline drawings.

••• Airline shall repair and maintain all Airline-installed improvements and systems.



Attachment B
City-United Amended and Restated
Memorandum of Agreement 2018

UNITED
CONTRACT
184240-2

C77840
2018-1039

7 December 2018 - Execution Version

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT
FOR THE REDEVELOPMENT OF TERMINALS
AT GEORGE BUSH INTERCONTINENTAL AIRPORT/HOUSTON

THIS AMENDED AND RESTATED MEMORANDUM OF AGREEMENT (this "**Restated MOA**") is entered into on the Effective Date (as defined herein) by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city and municipal corporation principally situated in Harris County, Texas ("**City**") and **UNITED AIRLINES, INC.** ("**United**") (the City and United are each individually referred to as a "**Party**" and collectively, the "**Parties**") regarding the future redevelopment of certain international and domestic facilities at George Bush Intercontinental Airport/Houston ("**IAH**" or "**Airport**"), as more specifically described herein.

WITNESSETH:

WHEREAS, the City is the owner of the Airport which is managed and operated by the City's Houston Airport System ("**HAS**"), as an enterprise fund, whose functions are public and governmental functions, exercised for a public purpose, and matters of public necessity; and

WHEREAS, by authority of City Ordinance No. 2014-0631, passed and adopted by the City's governing body on June 18, 2014, the City and United entered into a Memorandum of Agreement No. 75846 ("**Original MOA**") related to the IAH Terminal Redevelopment Project ("**ITRP**") encompassing the expansion of the Mickey Leland International Terminal ("**MLIT**"); and

WHEREAS, following the passage of the Original MOA, the Parties entered into additional agreements related to Terminals B and C in support of ITRP, including Amendment No. 2 to the Second Amended and Restated Special Facilities Lease Agreement, effective as of April 10, 2015 (which amended the Second Amended and Restated Special Facilities Lease Agreement, effective as of November 17, 2011, as previously amended (the "**Terminal B SFLA**")), Amendment No. 2 to Airport Use and Lease Agreement (for Terminal C), effective as of April 10, 2015, and a new Terminal C South Net Lease and Use Agreement, effective as of April 10, 2015; and

WHEREAS, the Parties have completed certain components of the ITRP scope, pursuant to and as outlined in the Original MOA, including completion of Phase II (as defined in the Terminal B SFLA) of Terminal B redevelopment, with a new concourse known as "New C North" and a connector to Terminal D; and

WHEREAS, the Parties desire to amend and restate the Original MOA in its entirety to address certain issues discovered after the initial planning process, namely (a) the potential benefits of a consolidated international facility, and (b) increased roadway and domestic terminal capacity at IAH for the benefit of all airlines;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the City and United agree as follows:

1.0 Parties

1.1 **Addresses** – The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

City

Director, Houston Airport System
City of Houston
P.O. Box 60106
Houston, TX 77205-0106

United

United Airlines, Inc.
Vice President Corporate Real Estate &
Environmental Affairs
233 S. Wacker Drive, WHQOU
Chicago, IL 60606

1.2 **Controlling Parts -**

1.2.1 The terms of the Original MOA in their entirety remain in full force and effect until the Effective Date. The Parties agree that the Original MOA shall be deemed terminated in its entirety as of the Effective Date, and all rights, obligations, and responsibilities of the Parties in the Original MOA shall be void, in their entirety, and of no further force or effect as of such termination, except to the extent such rights, obligations and other provisions of the MOA were memorialized in agreements entered into by the Parties subsequent to the date of execution of the Original MOA.

1.2.2 In the event of any conflict or inconsistency between or among the provisions within the body of this Restated MOA and the attachments, appendices or other attachments to this Restated MOA, it is agreed that the provisions contained within the body of this Restated MOA shall control.

2.0 IAH Terminal Redevelopment Program (ITRP) Scope

2.1 **Overview** - The Parties agree that either or both the City or United (as more specifically set forth below) shall develop various facilities or systems to expand and enhance domestic and international operations, consisting of the components described below and depicted in **Attachment A**. The Parties agree that ITRP will include the following main elements: (i) a North Concourse (as defined below), (ii) a Central Processor (as defined below) with a ticketing hall, a consolidated security checkpoint, expanded meeter/greeter area, baggage system improvements, and curbside and roadway improvements, (iii) modifications to the Federal Inspection Services building ("**FIS**"), and (iv) various enabling projects. Taken together, these components described in subsections (i) – (iv) above, upon

completion, shall be collectively known for purposes of this Restated MOA as the "**International Terminal**." The City shall phase various elements of the ITRP as provided in Section 3.0 below.

2.2 **North Concourse** – The Parties agree that the City, at its cost and expense, will redevelop and integrate old Terminal C North concourse, consisting of gates C14 through C23, ("**Old C North**") and Terminal D into a single common-use concourse operated by the City (to be known as the "**North Concourse**"). The North Concourse shall be developed in phases, which shall be coordinated with all carriers operating in the North Concourse, including United, to provide for three gate piers (individually referred to as "**West Pier**", "**Central Pier**", and "**East Pier**") as depicted in **Attachment B**.

2.3 **Central Processor** – The City, at its cost and expense, shall construct a new building in place of the D/E Parking Garage, integrated with the Terminal E Ticketing Hall as described in **Attachment C** (the "**Terminal E Ticketing Hall**") and the international arrivals hall that is attached to the FIS to create a central processor building ("**Central Processor**"). The Central Processor will consolidate the following functions serving Terminal D and Terminal E: ticketing, Security Screening Checkpoint ("**SSCP**"), Checked Baggage Inspection and Screening ("**CBIS**"), domestic/pre-cleared baggage claim, and roadways and curbsides.

2.3.1 **New Ticketing Hall–**

2.3.1.1 The City and United agree that in order to cause the construction of the Central Processor, United's exclusive lease space in the Terminal E Ticketing Hall (which is currently leased to United by the City pursuant to the Terminal E Lease and Special Facilities Agreement dated August 1, 2001 (as amended, the "**Terminal E SFL**") and which space is more particularly defined in **Attachment C** attached hereto) will be subleased to the City as provided in Section 2.3.1.2 below and, in place thereof, City shall lease to United new permanent space ("**United's New Ticketing Hall Space**") in the consolidated and expanded ticketing hall and check-in facility (the "**New Ticketing Hall**") that will be part of the Central Processor. The Terminal E Ticketing Hall was part of the City Project Components, as defined in the Terminal E SFL. In accordance with Sections 2.3.1.2 and 9.1.1 below, United shall have exclusive lease rights in a permanent space in the New Ticketing Hall. United's rights to such space shall include access to and use of the type of and no less than the current amount of space United currently leases in the Terminal E Ticketing Hall pursuant to the Terminal E SFL and such space shall be in a location as approved by United. Subject to United's continuing compliance with its obligations under the Terminal E SFL, in particular, but not limited to, Sections 6.01 and 6.02,

and United's acknowledgement that by virtue of the sublease of the Terminal E Ticketing Hall to the City, as contemplated herein, United has not been released from its primary obligation under the Terminal E SFL, the City represents that United's sublease of the Terminal E Ticketing Hall to the City and the City's reconfiguration thereof (a) is permissible under the indenture for the special facility revenue bonds (the "**Terminal E Bonds**") secured by the Terminal E SFL, applicable law and the Terminal E SFL and (b) will not adversely affect the security for any outstanding Terminal E Bonds. Notwithstanding anything contained herein to the contrary, United's obligation to sublease the Terminal E Ticketing Hall to the City and to allow the City's reconfiguration thereof shall expressly be conditioned upon the City's representation above being and remaining true and correct in all respects.

The Parties further agree that such subleasing to and reconfiguration by the City will not have the effect of reducing, altering, or modifying the obligations and commitments of United contained in Sections 6.01 or 6.02 of the Terminal E SFL. Notwithstanding the foregoing, if United incurs any costs as a result of the sublease or reconfiguration with respect to the Terminal E Bonds, United shall be made whole by the City through rent credits.

Additionally, the parties agree that construction of the Central Processor may, prior to the time United has access to and use of United's New Ticketing Hall Space, require a temporary relocation of United's current Terminal E ticketing operation that, in all cases, shall be (i) suitable to United, in United's reasonable discretion, (ii) in a location, as approved by United, in the existing Terminal E Ticketing Hall or the New Ticketing Hall, and (iii) in all cases, in close proximity to the SSCP. If such relocation to a temporary space is necessary, United and the City shall mutually agree on the timing of such relocation and the City shall give United no less than one hundred eighty (180) days' prior written notice of the City's desire for such relocation. United will pay the applicable rates and charges for any temporary space it uses and will also pay operating and maintenance costs for any such temporary space exclusively used by United.

2.3.1.2 In order to allow the City to construct the Central Processor,

(1) United shall sublease to the City that portion of the Terminal E Project (as defined in the Terminal E SFL) defined herein as the Terminal E Ticketing Hall, in accordance with the terms set

forth in Section 9.1.3 and subject to the provisions of Section 2.3.1.1 above, and

(2) (X) pursuant to the New IFA (as defined in Section 9.1.1.2) the City shall lease to United, on an exclusive basis, United's New Ticketing Hall Space in the New Ticketing Hall, as contemplated in Section 2.3.1.1 above, for a term not less than the longer of (a) the term of the Terminal E SFL, as amended or extended, and (b) the term of United's use of any portion of the North Concourse pursuant to the New IFA, and (Y) if any portion of United's New Ticketing Hall Space remains in the space that is currently the Terminal E Ticketing Hall that is contemplated to be subleased to the City as provided herein, the sublease to the City of such portion of the Terminal E Ticketing Hall shall terminate effective on the date on which United's New Ticketing Hall Space is available to and ready for use by United.

2.3.1.3 The New Ticketing Hall will support all airlines operating flights from either or both Terminal E and the North Concourse, but in all cases subject to United's rights as provided in this Restated MOA, including this Section 2.3.1. The Parties agree to consult and develop a plan to build the New Ticketing Hall so it has sufficient space for the current and foreseeable future use of all airlines, including United, operating flights to and from either or both Terminal E and the North Concourse. The commencement date of United's lease of United's New Ticketing Hall Space in the New Ticketing Hall shall be subject to the mutual agreement of United and the City, recognizing that the redevelopment is occurring in an area with active airline operations; provided, however, the City shall use its best efforts to minimize the impact to United's operations, including ticketing, check-in, passenger and baggage processing and throughput, and coordinate with United on and obtain United's written approval for and prior to such construction phasing in accordance with Section 4.4. Notwithstanding anything contained herein to the contrary, United shall not be obligated to sublease the Terminal E Ticketing Hall to the City or allow City's reconfiguration of its space in the Terminal E Ticketing Hall from its exclusive leasehold until it has access to and use of temporary space satisfactory and sufficient, in United's reasonable discretion, for United's operations prior to completion of the New Ticketing Hall.

2.3.2 **SSCP** – The City, at its own expense, shall consolidate the three Transportation Security Administration ("**TSA**") SSCPs, currently located in Terminals D and E, and the international recheck area in the FIS, into a single SSCP to meet the required passenger demand incorporating

automated security lane technology which shall deliver throughput and other performance no less than those deployed in Terminal D as of the Effective Date of this Restated MOA or such newer technology as may be required by the TSA. The City, United, and other airlines, as appropriate, shall work with the TSA to align staffing with passenger throughput demand and the City and United shall coordinate to determine the appropriate parameters for any requests made to the TSA in this regard.

2.3.3 **Checked Baggage Inspection System (“CBIS”)** – City, at its cost and expense, shall (i) install new baggage transport conveyors (the “**New United Conveyor System**”) for United’s exclusive use in a location to be approved by United and in as close proximity to the existing system as possible in exchange for the existing United-owned transport conveyors (the “**Existing United Conveyor System**”) to be used by carriers in the North Concourse. The City will design the New United Conveyor System to match or exceed the current capabilities of the Existing United Conveyor System and will modify the Existing United Conveyor System, as necessary, both at the City’s cost and expense, to meet the needs of other airlines using the North Concourse, and (ii) install a new TSA inline screening pod (“**New United Use Screening Pod**”) for United’s exclusive use in exchange for the existing Terminal E inline screening pod (“**Existing Pod**”) to be used by airlines in the North Concourse as shown in **Attachment D**. The Existing Pod shall have a separate Checked Baggage Resolution Area (“**CBRA**”) for the airlines operating out of the North Concourse. The New United Screening Pod shall meet or exceed the screening capacity of the Existing Pod and shall utilize the existing CBRA. The Parties agree that United will not be required to relocate from its Existing Pod until the City certifies in writing that the new pod is operational and United, in its sole but reasonable discretion, agrees with the City’s certification and certification from any applicable governmental agency. On and after United’s relocation from the Existing Pod, United shall have no obligations or liabilities (and the City assumes all obligations and liabilities) in connection with or with respect to the Existing Pod, except for (and if and to the extent applicable) the obligations set forth in **Sections 6.01** and **6.02** of the Terminal E SFL.

2.3.4 **Domestic/Pre-cleared Baggage Claim** – The City, at its expense shall construct a domestic/pre-cleared bag claim (re-claim) area with capacity for at least four bag claim devices. One bag claim device will be installed by the City initially for use by any arriving flights in the North Concourse with preference given to irregular operations and international pre-cleared flights. The City shall consult with United regarding the City’s installation of additional bag claim devices to meet the needs of all airlines, including United, provided that international irregular operations and international pre-cleared flights shall have priority over domestic

operations. The installation of any additional bag claim devices intended to solely serve United shall be subject to United's prior approval.

2.3.5 Roadways and Curbsides – The City, at its cost and expense, shall reconfigure roadways providing access to the Central Processor and dedicated lanes for traffic to Terminal C and construct new arrival and departure curbs in the place of the current Terminal D/E garage as depicted in **Attachment E**. The City shall provide to United the schedule for and scope of such roadway and curbside reconfiguration, construction of the dedicated lanes, and new arrival and departure curbs as provided above as soon as reasonably practicable, but in all cases at least one hundred twenty (120) days prior to such reconfiguration and construction impacting any of United's operations or operations at IAH. Such reconfiguration and construction of dedicated lanes and new arrival and departure curbs shall be with the intent of providing better traffic flow to the terminals, including those terminals from which United operates and any such reconfiguration and construction that affects United's operations shall be done in coordination with United and with United's prior written consent, and which shall not result in an unreasonable increase to the ITRP budget.

2.3.6 Demolition of D/E Garage – The Parties acknowledge that construction of the Central Processor requires the demolition of the D/E garage, which will necessitate modifications to the Terminal C garage complex, including changes to ingress and egress and expansion of the west exit plaza. The scope, phasing and timing of such changes to be included in the ITRP project shall be subject to the mutual agreement of the Parties. Furthermore, the City agrees to coordinate with United on plans to replace, in whole or part, lost parking capacity of the D/E garage.

2.4 FIS Building – The City shall, at its cost and expense, make certain modifications, subject to mutual agreement of the Parties, to the existing FIS, including the installation of two additional international bag claim devices, installation of secondary belt feeds to six existing bag claim devices, consolidation of the security checkpoints, renovation of restrooms, improvements, relocation and reconfiguration of the primary and secondary Customs and Border Protection ("**CBP**") processing and administrative space to create a more efficient use of space that will align with the modified egress process, which modified egress process is more particularly set forth in **Attachment F**.

2.5 Enabling Projects – The Parties further agree that certain enabling projects for the ITRP may be necessary, which enabling projects shall be performed by the City or United, as the Parties may mutually agree. The Parties agree to work together on the scope of such other enabling projects that will address the infrastructure needs including, but not limited to, airfield, roadway capacity, terminal curbside space, utility requirements, parking capacity and changes to

garage ingress and egress. The Parties acknowledge that a Project Management Office building ("**PMO**") is an enabling project that the City is currently constructing and that Phase II under the Terminal B SFLA, consisting of a replacement concourse for Old C North, is an enabling project that has been completed.

2.6 Baggage Induction Area for United – The City agrees to preserve two rights-of-way and ramp level baggage induction points, currently adjacent to Gates D1 and D4, to be used by United for access to the Terminal E/C bag room from the north side of the Airport. To the extent United's use of the existing rights-of-way and/or baggage induction points are in conflict with ITRP, the City will provide United with rights-of-way and/or baggage induction points, as applicable, in another area reasonably acceptable to United, on the north side of the Airport.

3.0 Phasing of ITRP

3.1 The gate piers in the North Concourse and the Central Processor will be developed by the City in phases with the objectives to (i) maximize and leverage the use of existing assets, (ii) ensure that construction is demand-based with future phases triggered after consultation with all carriers operating in the North Concourse, including United, and (iii) minimize cost per enplanement impacts for domestic and international flights operating in the North Concourse. The HAS Director hereby certifies there are no airspace or airfield capacity constraints that would diminish the utility of future phases.

3.2 Phase 1 - The first phase of the ITRP, referred to as "**Phase 1**", is comprised of the project components listed below and as depicted in **Attachment G**.

3.2.1 North Concourse - Through the construction of the West Pier consisting of 6 new widebody gates and the renovation of Terminal D, Phase 1 will deliver a total of 16 gates: 13 widebody and 3 narrow-body.

3.2.2 Central Processor - Construction of the New Ticketing Hall and all other project components related to the Central Processor (consolidated SSCP, CBIS, domestic/pre-cleared baggage claim area, and roadway and curbside improvements).

3.2.3 FIS – Modifications to the FIS Building, as described in Section 2.4 herein.

3.3 Future Phases – Future phases of the ITRP are initially described and shown in **Attachment H** and will be constructed based on demand after coordination with United and all carriers operating in the North Concourse.

4.0 **ITRP Planning and Management**

4.1 **Planning -**

- 4.1.1 HAS, in consultation with United and the Terminal D Carriers, defined below, developed a Project Definition Manual ("**PDM**") for the redevelopment scope of the MLIT under the Original MOA. The PDM outlined the programmatic, architectural, spatial, performance, functional and technical specifications of the project, including a project schedule and budget. The Parties accept the changes in project scope defined in this Restated MOA. The Parties intend for the ITRP scope to reflect a single expression of design with a sense of place that is aesthetically pleasing yet cost-effective. For purposes of this Restated MOA, the term "**Terminal D Carriers**" means all international carriers, except United, using the existing Terminal D facility.

4.2 **Program Management -**

- 4.2.1 HAS will utilize a project manager for the ITRP to function as the day-to-day executive-in-charge with responsibility for maintaining such components on schedule, within scope and budget ("**HAS Project Manager**"). The HAS Project Manager will report to the HAS Director.
- 4.2.2 The HAS Project Manager will be the point(s) of contact for the flow of information and will be the coordinator(s) of all actions and events planned and unplanned as they may arise. HAS shall establish and maintain a master schedule for the ITRP.

4.3 **Design -**

- 4.3.1 HAS will manage the design of the ITRP in collaboration with United and the Terminal D Carriers. A "**Design Review Committee**" will be established for the ITRP and led by the HAS Project Manager. The Design Review Committee will include a representative from United, and one from the Terminal D Carriers. In an effort to ensure design evolves in concert with the budget, HAS shall retain the services of both architect(s) and construction manager(s) and contractually obligate these firms with "design to budget" responsibility for their respective project components. The Design Review Committee will provide input on the design of the ITRP, but whenever irreconcilable differences arise among the members of the Design Review Committee, the HAS Director will have final decision-making authority so long as there is no increase in the then-approved budget. Design changes that result in an increase to the budget for the ITRP scope may only be implemented upon mutual agreement of the HAS Director, United, and the Terminal D Carriers'

Design Review Committee representative.

4.4 Construction -

- 4.4.1 HAS shall manage the construction of the ITRP scope.
- 4.4.2 The Parties agree to coordinate on all aspects of construction management of the ITRP project components and establish a comprehensive phasing plan and construction schedule as part of the master schedule for ITRP which minimizes disruption to United's and other airlines' operations. In its construction and installation of the elements of the ITRP, the City shall coordinate with the affected airlines and United, and shall use its best efforts to minimize disruption to such airlines' operations, including coordinating with United the phasing of any construction that may affect United's operations in any manner, and if United's operations may be so affected, any such phasing, installation and construction shall be subject to United's written consent.
- 4.4.3 Without limiting the generality of Section 4.4.2 above, in the interest of minimizing the impact of the construction activities on the general public and Airport operations, a "**Construction Impact Review Committee**" will be established. The Construction Impact Review Committee will consist of the HAS Project Manager and a representative from United and one from the Terminal D Carriers. The Construction Impact Review Committee will be led by the HAS Project Manager. Whenever irreconcilable differences arise among the members, the HAS Director will have final decision-making authority so long as there is no increase in the then-approved budget. Construction changes that result in an increase to the budget for the ITRP scope may only be implemented by mutual agreement of the HAS Director, United, and the Terminal D Carriers' Construction Impact Review Committee representative.

5.0 **Budget and Financing**

- 5.1 The Parties agree that the average cost per enplanement for airlines at IAH must remain competitive in order to ensure future growth of domestic and international operations.
 - 5.1.1 The Parties acknowledge that the current financial plan, attached as **Attachment I**, reflecting known and assumed capital improvements and the use of Passenger Facility Charges ("**PFCs**") and other funding sources may need to be modified, updated, revised or changed to continue to meet the Parties' shared goal of maintaining a competitive cost per enplanement at IAH. The Parties further agree that PFCs and other sources of funds will be used in a manner so as to benefit all aeronautical users of the Airport without unfairly favoring any one

terminal or a particular carrier or group of carriers. It is acknowledged that this financial plan is subject to change, as may be required to satisfy Section 5.2.

- 5.1.2 In the event that the debt service coverage ratio, as defined by HAS bond ordinances, for IAH is greater than 1.5 at the end of any given fiscal year that occurs after the final date of beneficial occupancy ("**DBO**") of Phase 1 of ITRP, the non-airline revenue sharing formula for all signatory airlines (including United) shall be as provided in Section 5.02 of the Terminal C South Net Use and Lease Agreement between the City and United effective April 10, 2015.

5.2 Financing for ITRP -

- 5.2.1 The City will be responsible for funding and financing ITRP.
- 5.2.2 A final budget for Phase 1 of ITRP shall be established, not to exceed the City's current estimated cost of \$1.3 billion dollars (in escalated dollars) including the Old C North Termination Fee and Moving Fees, as both terms are defined below, and any costs related to the construction of temporary space, including construction and fit out of United's temporary space (as contemplated in Section 2.3.1.1 above). A summary of the budget is shown on **Attachment J**, attached hereto and made a part hereof for all purposes.
 - 5.2.2.1 The budget for the ITRP scope will be based on the then-most-current estimates developed by HAS' Program Management Team and will provide for contingencies to ensure sufficient funds are appropriately allocated. All budget costs will be escalated by the latest published U.S. Army Corps of Engineers escalation cost indices.
 - 5.2.2.2 The budget, as established, includes an allowance for the payment to United for the surrender of Old C North in the sum of \$36.5 million ("**Old C North Termination Fee**"). The Parties acknowledge an appropriation for this amount has already been made by City Council and that United may continue to operate its ramp control tower, inclusive of the radio room, in Old C North through the later of (i) June 30, 2019 and (ii) the date that is thirty (30) days prior to the date on which the demolition of the area in which the ramp control tower and radio room are located is to actually occur in connection with the ITRP; provided, however, and without limiting the generality of the foregoing, in all cases, the HAS Director shall provide no less than thirty (30) days' prior written notice to

United of the date on which United will be required to vacate the ramp control tower and radio room, which date shall be no earlier than the dates provided in (i) and (ii) above, unless otherwise agreed to in writing by United and the HAS Director. The City will pay the Old C North Termination Fee to United within 60 days of the date United completely vacates Old C North, including the ramp control tower and radio room.

5.2.2.3 Subject to an appropriation by City Council, the City agrees to capitalize as part of the ITRP costs and pay (i) United \$250,000 and (ii) each Terminal D Carrier and United up to \$75,000 each to offset moving costs ("**Moving Fees**"). This includes United's move out of Old C North and the temporary and final moves of United, as contemplated in this Restated MOA, and the Terminal D Carriers to accommodate the ITRP construction.

5.2.2.4 Any temporary relocation by United as contemplated in Section 2.3.1.1, including the build-out of the temporary space for United's use and the installation of equipment, technology infrastructure and branding, as requested by United, shall be at City's cost and expense and paid out of the ITRP budget.

5.2.3 The City will negotiate a rates and charges methodology for (i) international operations from the North Concourse, and (ii) the Central Processor (and the timing for implementing such methodology) with the Terminal D Carriers and United to achieve cost recovery while maintaining a reasonable airline cost per enplaned passenger.

The City will also negotiate a rates and charges methodology for domestic operations from the North Concourse that will allow for a separate rate for domestic operations. Rates and Charges for domestic or pre-cleared operations in the North Concourse are to be assessed at a rate per enplaned passenger that will be equal to the then-current airline cost per enplanement in Terminal A (excluding the Landing Fee and Automated People Mover component, both as defined in the Terminal A Airport Use and Lease Agreement).

5.2.4 The City will finance the ITRP through a combination and mix of funding sources such that:

5.2.4.1 During the first five (5) fiscal years following the date of beneficial occupancy for ITRP Phase 1, the total terminal fees (arrival fee, departure fee and ticketing fee, as currently calculated in Terminal D rates and charges) payable by airlines operating internationally in the North Concourse (excluding amounts payable for exclusive use space, such as offices,

airlines lounges or VIP clubs) divided by total enplaned international passengers at the North Concourse ("**International CPE**") shall not be more than 150% of that same International CPE in Fiscal Year 2018, adjusted annually thereafter for cumulative inflation (as measured by the Houston CPI); and

5.2.4.2 The annual debt service coverage ratio, as defined by HAS bond ordinances, for HAS is maximized with a target ratio of 1.5; and

5.2.4.3 PFC revenues in the International Terminal shall be used to offset eligible capital costs and achieve the objectives in Sections 5.2.4.1 and 5.2.4.2 above, and prioritized within the airline cost centers in the following order: (i) the apron; (ii) the loading bridges; (iii) the departure area; (iv) the arrival area; and (v) all other airline cost centers in a manner determined by the HAS Director. PFCs will be used in non-airline cost centers only to the extent necessary to generate the debt service coverage ratio as targeted above in Section 5.2.4.2.

5.3 Funding for Terminal A Redevelopment -

5.3.1 The City will be responsible for funding the Terminal A Redevelopment Project, as contemplated in Section 8 hereof, and shall establish a not-to-exceed budget in consultation with United and the other Terminal A carriers.

5.3.2 Available PFC revenues shall be applied to the Terminal A Redevelopment Project to offset eligible costs in accordance with Section 5.1.1.

6.0 United's Rights to ITRP Components

6.1 Ticketing Hall Rights –

United's rights with respect to the New Ticketing Hall shall be as provided in the New IFA (as defined below) and shall, at a minimum, include the following: (a) United shall have exclusive rights to use the same or greater amount of space and, unless United otherwise so requests or approves, in writing, in the same configuration for ticketing, check-in, passenger and baggage processing and throughput as exists in the Terminal E Ticketing Hall, and (b) the location of United's new space shall be as mutually agreed by United and the City and as close in proximity to the Terminal E concourse as feasible.

6.2 International Terminal North Concourse Scheduling Rights -

In addition to the exclusive rights to United's New Ticketing Hall Space as provided in Section 2.3.1.2 above, United shall be granted preferential scheduling and use rights for each of the three (3) widebody gates (which shall be collectively capable of simultaneously handling five (5) narrow-body aircraft departures or arrivals) on the west side of the West Pier in the North Concourse at all times of the day; provided that for each such gate in the North Concourse, United meets the Gate Use Requirement, as defined below, unless another carrier has a lesser requirement. United's preferential scheduling and use rights shall expire after ten (10) years from the date on which all such gates are made available to and are ready for use by United; provided, however, if all international widebody gates in the North Concourse are fully utilized during the peak period, as provided in the IFA, then during such 10-year period, United's preferential scheduling and use rights on the west side of the West Pier shall be subordinate, upon no less than one hundred fifty (150) days' prior written notice from the City to United, to the City's right to accommodate an international carrier, using the FIS, during the peak period for the time period necessary to accommodate an international operation on a gate on the west side of the West Pier. With the exception of United's preferential scheduling and use rights defined herein, use of the other gates in the North Concourse will be in accordance with the International Facilities Access and Assignment Policy ("IFP"), as referenced in the current Terminal D IFA, as may be amended from time to time.

6.3 Gate Use Requirement –

For purposes of this Restated MOA, "Gate Use Requirement", as to each gate in Terminal A and the North Concourse, shall be defined as operating an average, for the six (6) days of each week during which it operates the greatest number of departing flights in a rolling three (3) month period, of at least five (5) daily "narrow body-equivalent aircraft departures". If another carrier has a lesser requirement, then the Gate Use Requirement shall be such lesser requirement in the North Concourse, or Terminal A, as applicable. Narrow body-equivalent aircraft departures shall (i) include only those departures of aircraft with onboard passengers, and (ii) be based on "airplane design group" (ADG-III), as defined in FAA Advisory Circular 150/5300-13, and as provided in the table below:

<u>ADG</u>	<u>Narrow Body-Equivalent Aircraft Departure</u>
I	0.5
II	0.75
III	1.0
IV	1.4
V	1.8
VI	2.0

7.0 Early Bag Storage System – The Parties agree to evaluate alternative approaches in order to identify a solution to construct the shell of an early bag storage building ("**EBS Building**") to house an early bag storage system for United's exclusive use. The Parties will mutually agree on the type, size and location of the EBS Building and the role of United and the City in designing, constructing and financing the EBS Building, subject to the City's ability to finance the EBS Building including coverage on the debt service. The amount of rent United will be obligated to pay shall be mutually agreed by the Parties and shall be based upon whether the City or United bears the cost of such design, construction and financing.

8.0 Terminal A Redevelopment

8.1 Scope – To accommodate the future growth of all domestic airlines, the City will renovate and expand Terminal A (the "**Terminal A Redevelopment Project**"). The scope of the Terminal A Redevelopment shall be determined by the HAS Director, after consultation with the Terminal A carriers, and the City will work with United, taking into consideration the City's construction plan, timing, and cost estimate for redeveloping and expanding Terminal A, in determining the total actual number of additional future gates to be constructed at Terminal A. The Terminal A Redevelopment Project is initially contemplated to include the following: (i) construct additional new gates, in a number to be determined, and commensurate ticketing and other passenger processing facilities, (ii) construct additional aircraft overnight parking areas, (iii) improve the passenger throughput of the north and south TSA SSCPs or consolidate same into a single SSCP, (iv) refurbish existing public spaces, and (v) replace critical infrastructure including, but not limited to, electrical, plumbing, HVAC and mechanical systems.

8.2 United's Scheduling and Use Rights to Existing Gates – United will relinquish Gate A3, within 90 days after the Effective Date of this Restated MOA; provided however, until at least five (5) years after the effective date of a new Terminal A Use and Lease Agreement, United shall continue to have preferential scheduling and use rights, to four (4) existing gates (the "**Existing United Gates**") United currently leases in Terminal A, excluding Gate A3, or to four (4) gates in Terminal A, as determined upon mutual agreement of United and the HAS Director that, in all cases, are contiguous in physical location. United's preferential scheduling

and use rights in Terminal A shall be subject to meeting the Gate Use Requirement, as defined in Section 6.3, on and after the effective date of the new Terminal A Use and Lease Agreement.

8.3 United's Scheduling and Use Rights to Future Gates –

8.3.1 Within one hundred eighty (180) days after the City notifies United, in writing, that the scope of the Terminal A Redevelopment Project is finalized, United shall have the right to request up to fifty percent (50%) of the number of total additional future gates in Terminal A contemplated to be constructed in connection with the Terminal A Redevelopment Project. The City and United will cooperate so that the gates so requested by and leased to United are contiguous. Without affecting United's rights as provided in Section 8.2 above, the Parties acknowledge that in order to lease gates to United that are contiguous, the gates may be a combination of currently-existing Terminal A gates or future gates. The Parties acknowledge and agree that United's right to request such additional gates enables the City to more accurately forecast future demand and revenue, and aids in the planning and execution of the Terminal A Redevelopment Project.

8.3.2 City shall lease to United, on a preferential scheduling and use basis, the number of gates so requested by United for a period of five (5) years, unless otherwise agreed to by United and the HAS Director. The number of additional future gates United requests pursuant to Section 8.3.1 above will be made available to United at the time that new Terminal A gates are constructed and ready to use for airline operations, and memorialized by a "permission to occupy" letter from HAS Director to United, which letter shall certify that the gates are ready for airline operations. The date of commencement of the 5-year lease period shall be the first (1st) day of the month following thirty (30) days of the date of the aforementioned "permission to occupy" letter. United shall have preferential scheduling and use rights to such future gates as provided above, subject to meeting the Gate Use Requirement, as defined in Section 6.3.

8.3.3 Additionally, the City agrees to cooperate with United to meet United's gate needs beyond the initial Terminal A Redevelopment Project.

9.0 Use and Lease Changes

9.1 The Parties agree to negotiate new airline use and lease agreements or amendments that will incorporate the applicable terms of this Restated MOA as follows:

9.1.1 **New IFA -**

9.1.1.1 All space in the Old C North footprint, as illustrated on **Attachment B and G**, will become an integral addition to the International Terminal North Concourse.

9.1.1.2 The City will negotiate a new agreement (the "**New IFA**") (to replace the existing Terminal D IFA expiring in 2020) with all carriers seeking to operate at the North Concourse. Rates and charges under the New IFA will be established as outlined in Section 5.2.3.

9.1.1.3 Subject to United's rights as set forth in this Restated MOA, the City's common-use gate access rules for the use of the North Concourse will recognize at all times that IAH must be able to accommodate all incumbent and new international airlines. By way of example, international carriers who have access to international arrival gates outside of the North Concourse will not be given priority over scheduled international carriers who do not have any access to international arrival gates.

9.1.1.4 United shall (a) have exclusive lease rights to United's New Ticketing Hall Space as provided in Sections 2.3.1.1 and 6.2 above and (b) be granted preferential scheduling and use rights in the North Concourse as detailed in Section 6.0 above and, unless the Director and United agree otherwise, United's rights with respect to the North Concourse shall include at least such rights as are set forth in this Restated MOA.

9.1.2 **New Terminal A Use and Lease Agreement** - The City agrees to provide United preferential scheduling and use rights for four (4) existing Terminal A gates and additional future gates, as provided in Section 8.3 above. The term of United's use of such gates will be memorialized in the form of a new Use and Lease Agreement available to all airlines in Terminal A.

9.1.3 **Sublease Agreement for Terminal E Ticketing Hall** - Pursuant to Section 2.3.1 above, United shall sublease the Terminal E Ticketing Hall to the City for the remainder of the Initial Term of the Terminal E SFL, as such term is defined therein. The sublease will commence upon the HAS Director issuing the notice to proceed with construction of the New Ticketing Hall, a copy of which will be provided to United simultaneously with the HAS Director providing such notice to the City's contractor. In consideration for its sublease rights, the City shall provide United a rent credit for the (a) unamortized value of improvements made by United in those areas of the Terminal E Ticketing Hall that will be subleased to the City pursuant to Section 2.3.1 above, and (b) rent and all operation and maintenance

charges and City and other charges, including those covered in Sections 6.04 and 6.06 of the Terminal E SFL, payable by United with respect to the Terminal E Ticketing Hall under the Terminal E SFL (excluding any amounts payable by United pursuant to Sections 6.01 or 6.02 of the Terminal E SFL). The unamortized value shall be determined based on straight line amortization of United's cost for the improvements over the useful life of the improvements, in accordance with generally accepted accounting principles. The rent credit mentioned above shall be used, at United's option, either against the rates and charges United will pay for use of the Central Processor, or any other rates and charges payable by United at IAH. Any reconfiguration by the City of United's exclusive lease space as required hereunder shall be part of the ITRP budget.

Notwithstanding anything contained herein to the contrary, on and after the commencement date of the City's sublease of the Terminal E Ticketing Hall and so long as City is subleasing all or a portion of the Terminal E Ticketing Hall from United, then, as between United and the City, City shall assume all obligations and liabilities under the Terminal E SFL with respect to the portions of the Terminal E Ticketing Hall that remain subleased to the City and not used exclusively by United (including the operation and maintenance obligations with respect to the space so subleased to the City), except for United's obligations as set forth in Sections 6.01 and 6.02 of the Terminal E SFL. Except as otherwise set forth in this Restated MOA, United's rights and obligations under the Terminal E SFL shall remain unchanged.

9.1.4 Terminal E SFL –

- 9.1.4.1 Within one hundred eighty (180) days after the Effective Date, unless United and the HAS Director mutually agree to a longer time period, the Parties will amend, supplement or restate the Terminal E SFL to replace United's option period of 5 years for the extension term with an option period of 15 years for Terminal E other than the Terminal E Ticketing Hall (which if exercised would cause the Terminal E SFL to expire in 2045), subject to applicable state law regarding length of term and subject to applicable federal tax laws and state laws regarding the special facility bonds. Use of the gates during the final ten years of the option period, if exercised, shall comply with the FAA-mandated competition plan updates for IAH.
- 9.1.4.2 The Parties acknowledge and agree that the Terminal E SFL will be amended, supplemented or restated as provided herein for only the purposes set forth herein and for no other purpose whatsoever, it being the Parties' intent that, except as set forth in

this Restated MOA, the terms and provisions of the Terminal E SFL shall remain unchanged.

9.1.5 Special Facilities Lease Agreement (United Airlines, Inc. Technical Operations Center) ("UTOC SFL") -

The HAS Director hereby acknowledges the receipt and acceptance of an environmental report justifying the need for an increase to the maximum reimbursable amount for the UTOC Project Environmental Work, as defined in the UTOC SFL. Within sixty (60) days after the Effective Date, unless the Parties agree to a longer period of time, the Parties will amend the existing UTOC SFL to request City Council to make a supplemental allocation of funds to increase the allocated funds, as provided in Section 5.6 of the UTOC SFL, in order to increase the environmental reimbursement limit from Ten Million Dollars (\$10,000,000) (the "**Original Environmental Reimbursement**"), as noted in Section 3.4 therein, to Fifteen Million Dollars (\$15,000,000) (the "**Increased Environmental Reimbursement**") for additional costs of the UTOC Project Environmental Work, which work shall at all times be performed in accordance with Exhibit "D," Section B.5 and Section C of the UTOC SFL. The Parties acknowledge that the Ground Rental Rate provided in Section 6.05(c) of the UTOC SFL is \$0.35 per square foot per annum. In consideration of the foregoing, United agrees that, effective on first day of the month following the UTOC DBO as defined in the UTOC SFL, the Ground Rental Rate (as provided in Section 6.5(c) of the UTOC SFL) shall increase by \$0.011 per square foot per annum for every \$500,000 above the Original Environmental Reimbursement the City reimburses United, but in no event more than \$0.11 per square foot per annum. (By way of illustration and not limitation, if the City reimburses United the entire amount of the Increased Environmental Reimbursement, the Ground Rental Rate under the UTOC SFL shall increase to \$0.46 per square foot per annum, which is an increase of \$0.11 per square foot per annum. Similarly, if the City reimburses United \$2,000,000 above the Original Environmental Reimbursement, the Ground Rental Rate under the UTOC SFL shall increase to \$0.394 per square foot per annum, which is an increase of \$0.044 per square foot per annum.) The Ground Rental Rate shall otherwise escalate in accordance with Section 6.5(c) of the UTOC SFL.

10.0 Effective Date and Term

- 10.1 This Restated MOA will be effective on the date of countersignature to this Restated MOA by the City Controller ("**Effective Date**") after adoption by City Council and execution by United.

- 10.2 This Restated MOA shall expire upon the last date that all of the following have occurred:
- 10.2.1 The New IFA, with terms as provided in this Restated MOA, has been executed by the Parties and is effective as evidenced by the City Controller's countersignature to the New IFA;
 - 10.2.2 The new Terminal A Use and Lease Agreement, with terms as provided in this Restated MOA (including with respect to United's rights to future gates as provided in Section 8.3 hereof), has been executed by the Parties and is effective as evidenced by the City Controller's countersignature to the new Terminal A Use and Lease Agreement;
 - 10.2.3 The Parties have entered into an agreement for the City's sublease of the Terminal E Ticketing Hall as contemplated in Section 9.1.3 hereof and such agreement is effective;
 - 10.2.4 The Terminal E SFL has been amended, supplemented or restated by the Parties as contemplated by Section 9.1.4 of this Restated MOA and is effective as evidenced by the City Controller's countersignature; and
 - 10.2.5 The UTOC SFL has been amended by the Parties as contemplated by Section 9.1.5 of this Restated MOA and is effective as evidenced by the City Controller's countersignature.

11.0 Additional Terms

- 11.1 This Restated MOA is subject to (a) applicable City Council approval and (b) the approval of the Board of Directors of United and the Board of Directors of United Continental Holdings, Inc. ("**UCH**") to the extent such approval from the Board of Directors of United or UCH is required, desirable or applicable.
- 11.2 Subject to the terms of Section 11.1, this Restated MOA is binding upon the Parties. It is acknowledged that, if the Parties so agree, the terms of the amended, supplemented, restated, or new agreements referenced herein may be different from the terms and obligations under this Restated MOA, in which case, the terms and obligations of the amended, supplemented, restated or new agreements will prevail.
- 11.3 The Parties acknowledge that this Restated MOA is subject to all City, State and Federal laws and regulations, including regulations, grant assurances, and policies of the FAA.

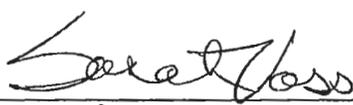
- 11.4 When a Party's agreement, approval or consent is required pursuant to the matters set forth in and as provided in this MOA, such agreement, approval or consent shall not be unreasonably withheld.
- 11.5 **Electronic Signature** - The Parties hereby agree that each Party may sign and deliver this Restated MOA electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

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IN WITNESS WHEREOF, this Restated MOA has been entered into and effective as of the Effective Date. The Parties have executed this Restated MOA in multiple copies and/or counterparts, each of which is an original. Each person signing this Restated MOA represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Restated MOA. Each Party represents and warrants to the other that the execution and delivery of this Restated MOA and the performance of such Party's obligations hereunder have been duly authorized and that this Restated MOA is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

Signatures:

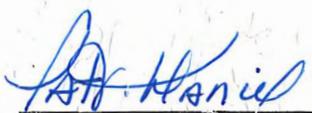
ATTEST/SEAL:

By: 
Name: Sarah Voss
Title: Lease Administration -
Corporate Real Estate

UNITED AIRLINES, INC. "United"

By: 
Name: Gavin Molloy
Title: Vice President Corporate Real Estate
TAX ID No.: 74-2099724

ATTEST/SEAL:

 **Assistant**
Anna Russell
City Secretary

CITY OF HOUSTON, TEXAS "City"

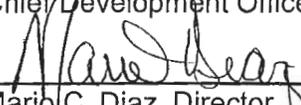

Brenda L. Murphy
Sylvester Turner 12/26/18
Mayor

APPROVED:

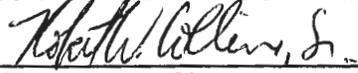

Andy Icken
Chief Development Officer

COUNTERSIGNED:


Chris Brown
City Controller


Mario C. Diaz, Director
Houston Airport System 

APPROVED AS TO FORM:


Sr. Assistant City Attorney
L. D. File No. 0041800056001

DATE COUNTERSIGNED:

12/31/18

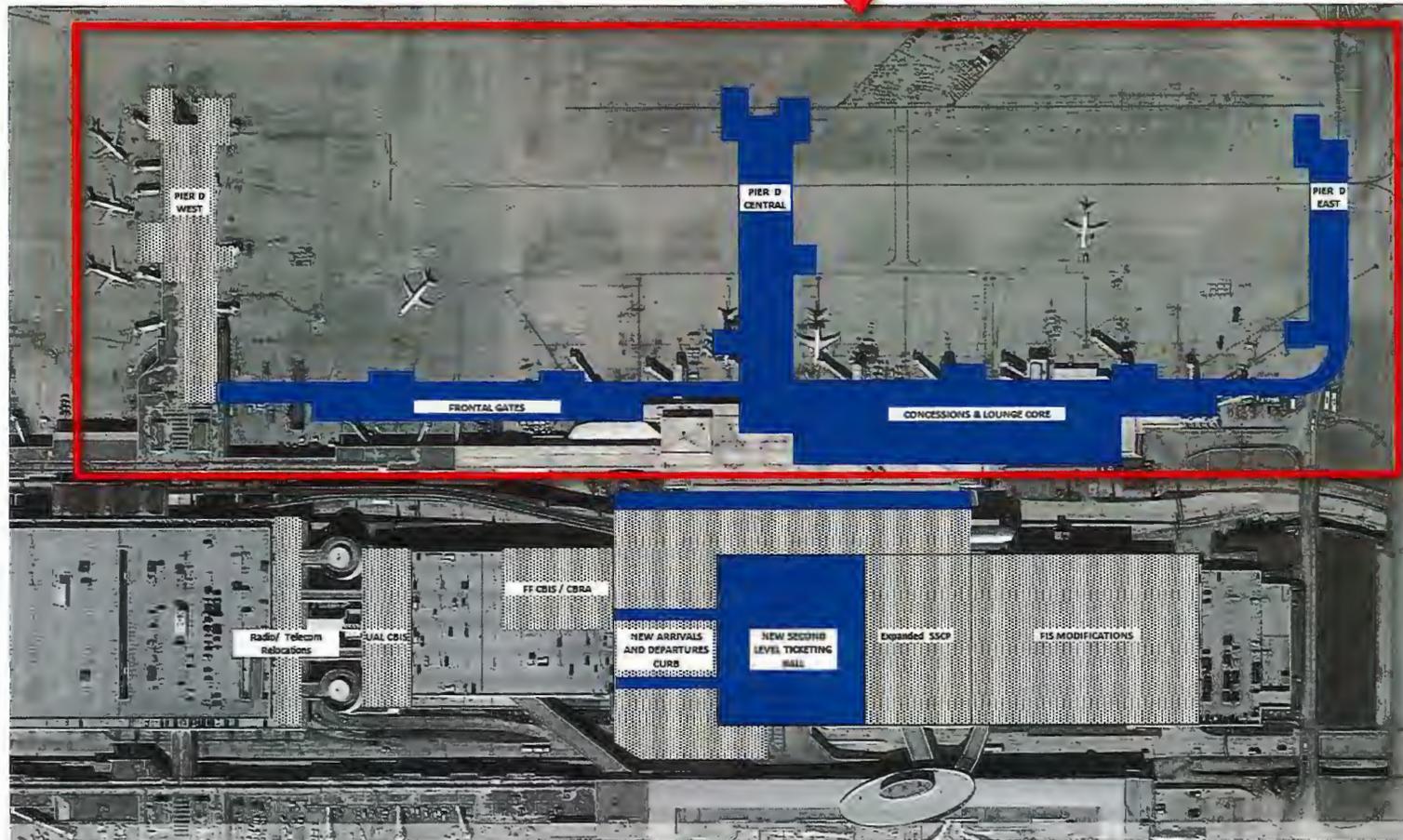
ATTACHMENT A
OVERVIEW OF ITRP COMPONENTS



Note: Indicative layouts and subject to further design, review and airfield planning.

ATTACHMENT B

MICKEY LELAND INTERNATIONAL TERMINAL (MLIT)
NORTH CONCOURSE



Phase 1 Completed Work



Full Build out of the North Concourse

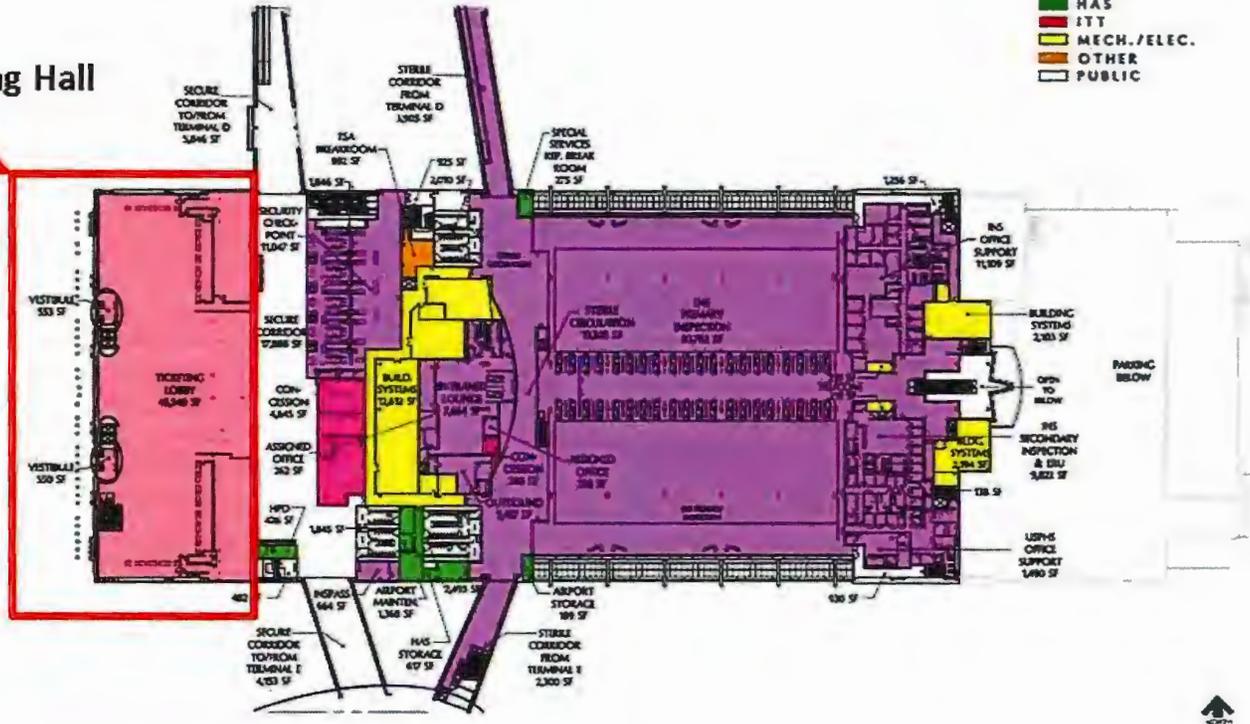
Note: Indicative layouts and subject to further design, review and airfield planning.

ATTACHMENT C

EXISTING TERMINAL E TICKETING HALL

Terminal E Ticketing Hall

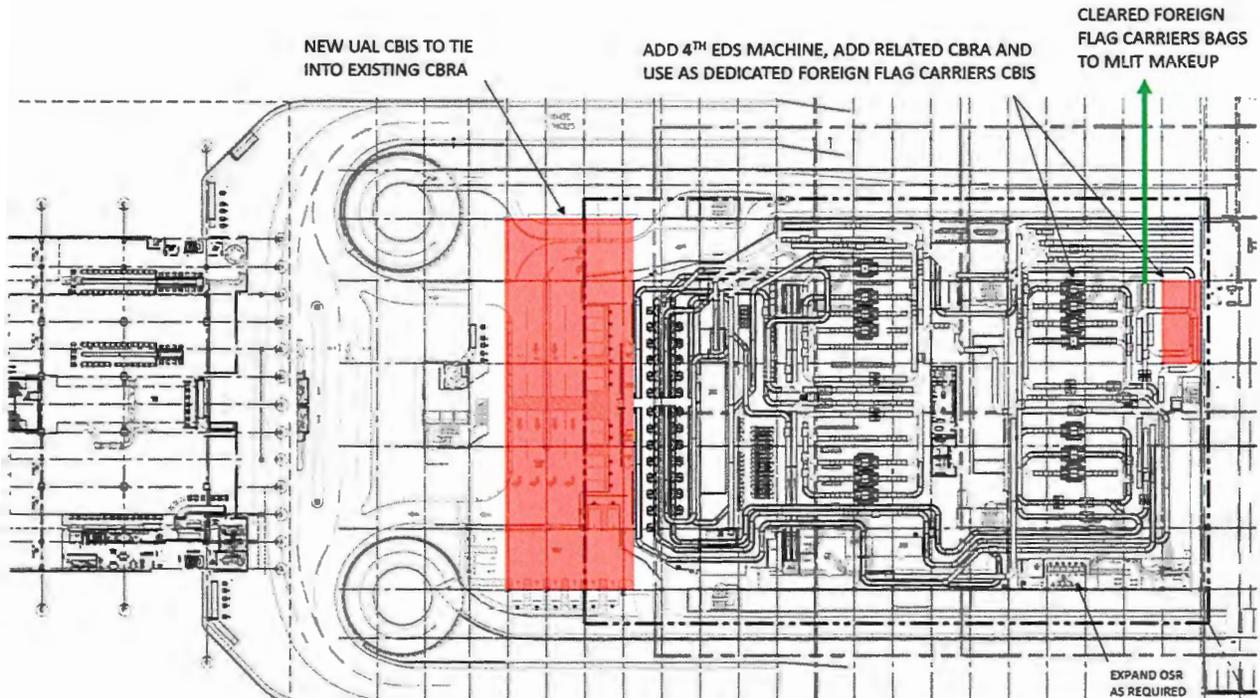
- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITTY
- MECH./ELEC.
- OTHER
- PUBLIC



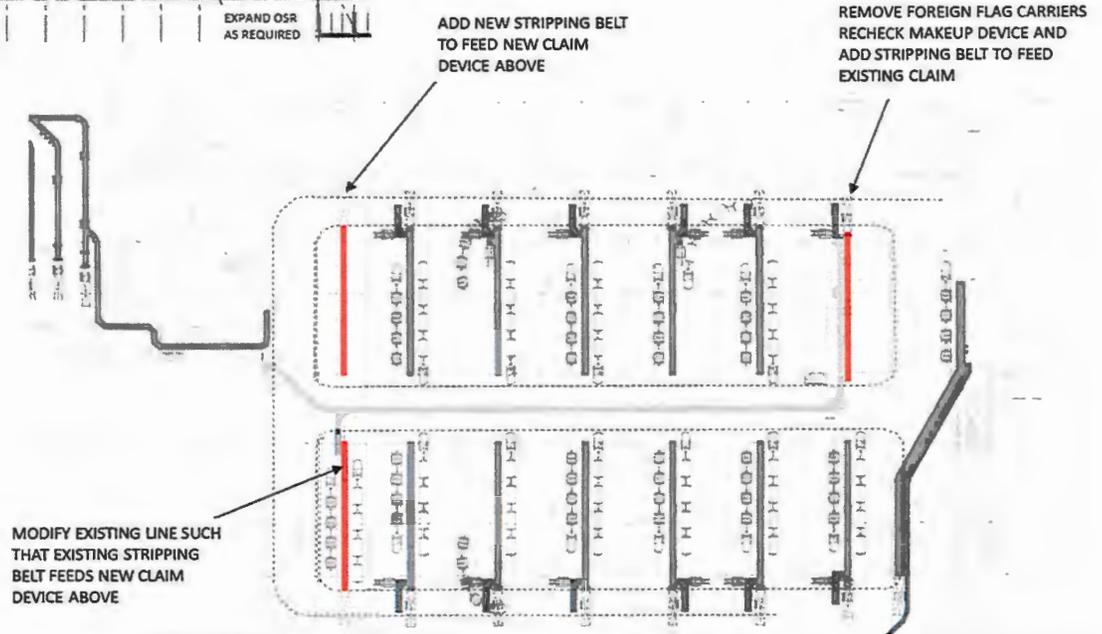
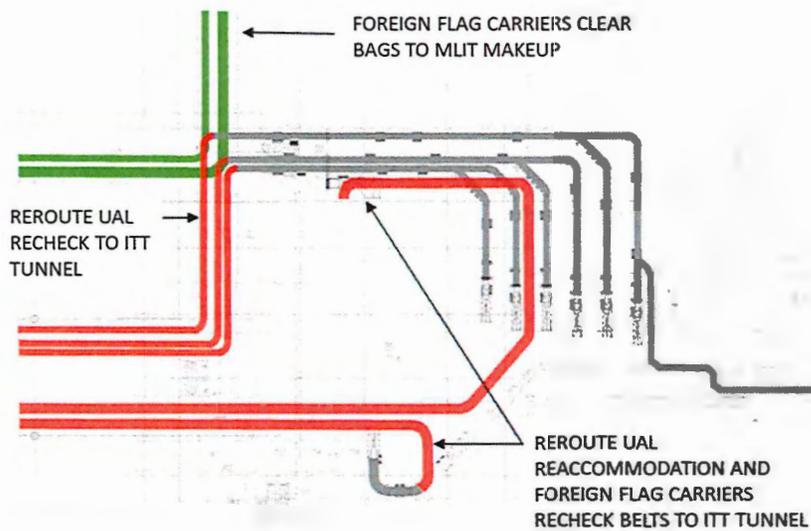
FIS SECOND LEVEL

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS

ATTACHMENT D



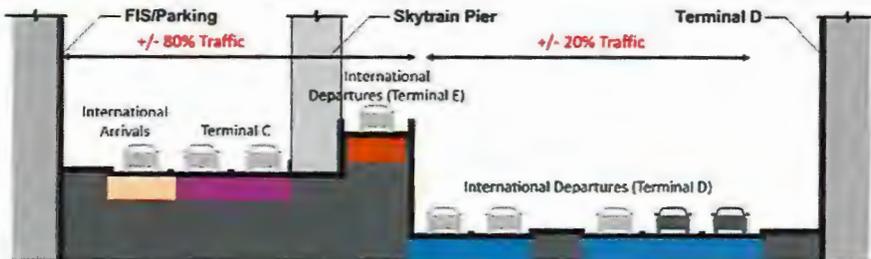
- Centralize the CBIS into one location for Terminals D and E for the Foreign Flag Carriers and United Airlines.
- Provide additional international re-claim devices.
- Provide a new domestic/pre-clear claim device in the new arrival's hall.



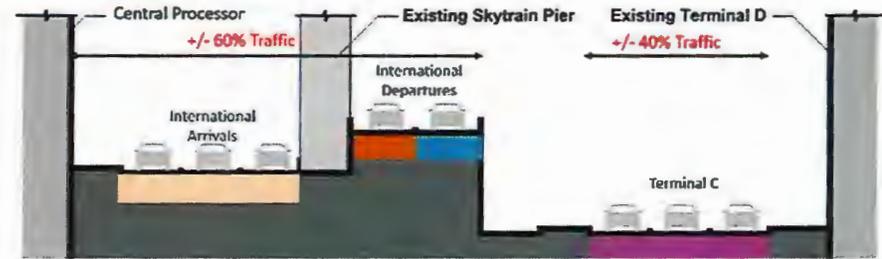
Note: Indicative layouts and subject to further design, planning and review.

ATTACHMENT E ROADWAYS AND CURBSIDES

EXISTING ROADWAY SECTION



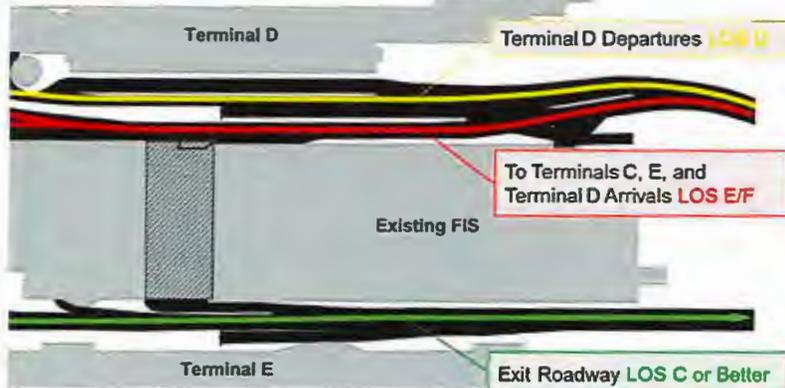
PROPOSED ROADWAY SECTION



Roadway Level of Service at 2028

Source: Leigh-Fisher Master Plan 2035

EXISTING INFRASTRUCTURE

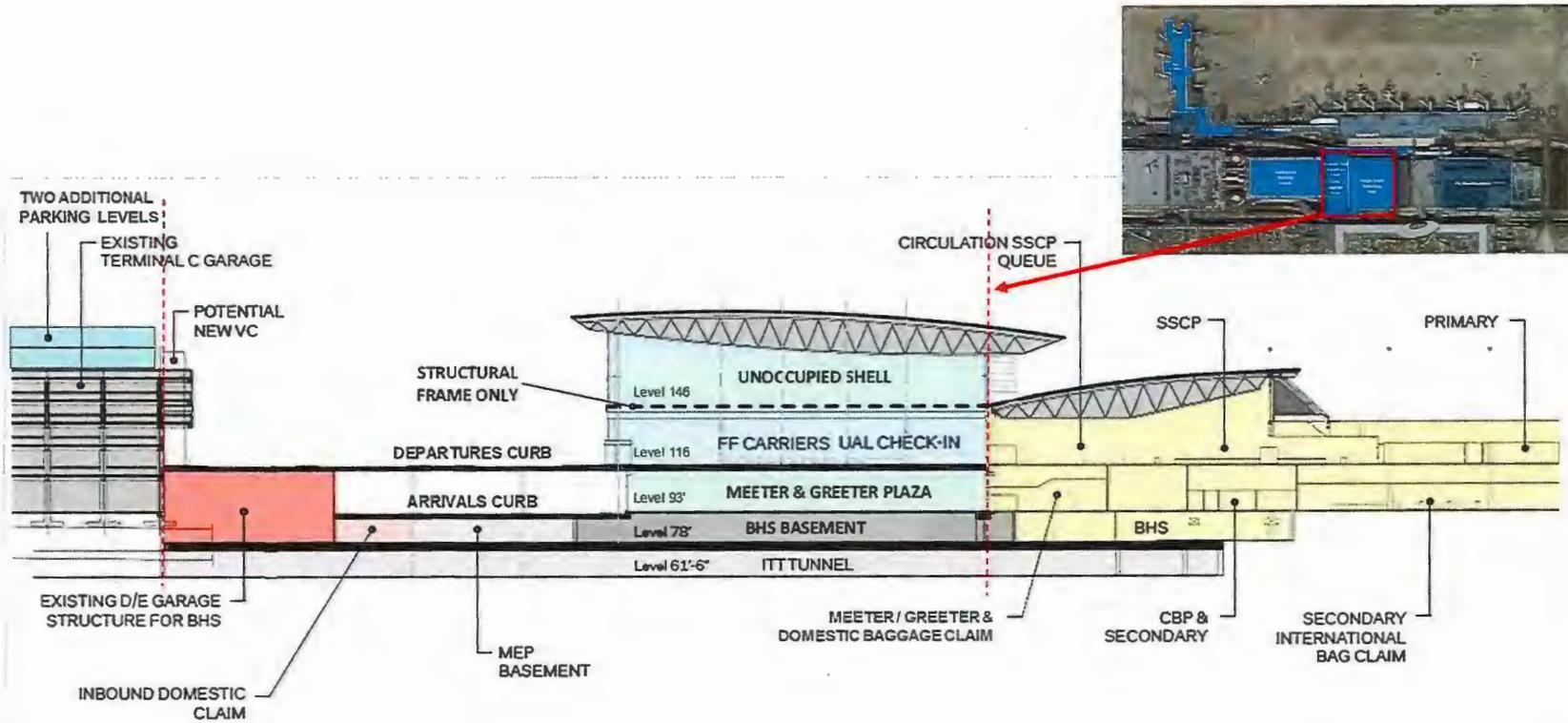


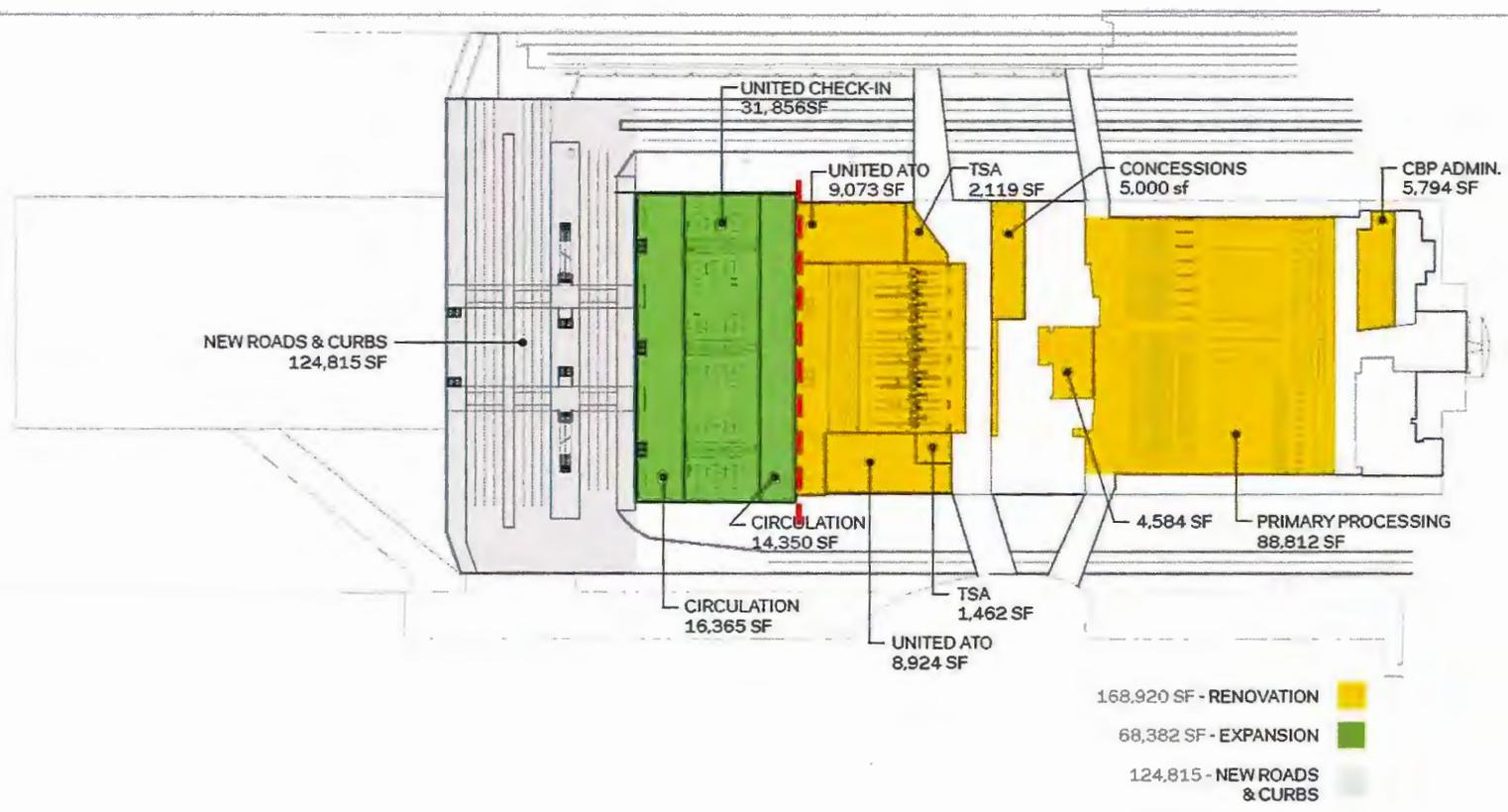
PROPOSED INFRASTRUCTURE

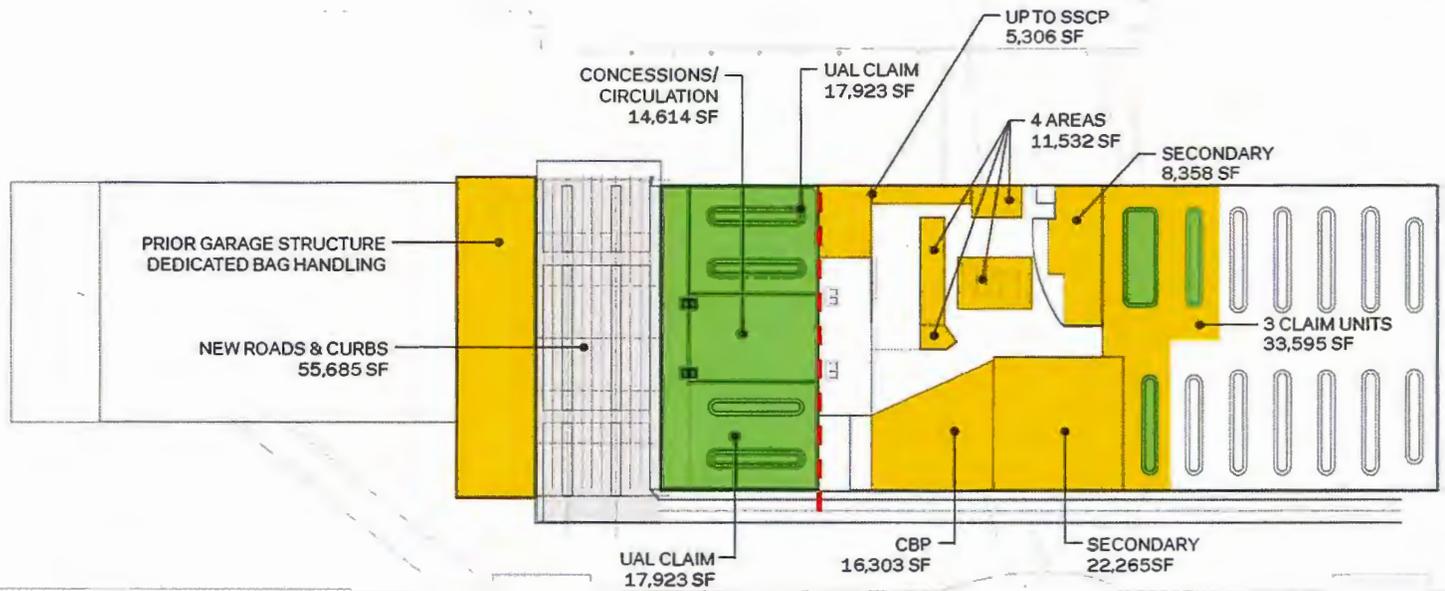


Note: Indicative layouts and subject to further design and review.

ATTACHMENT F
FIS BUILDING



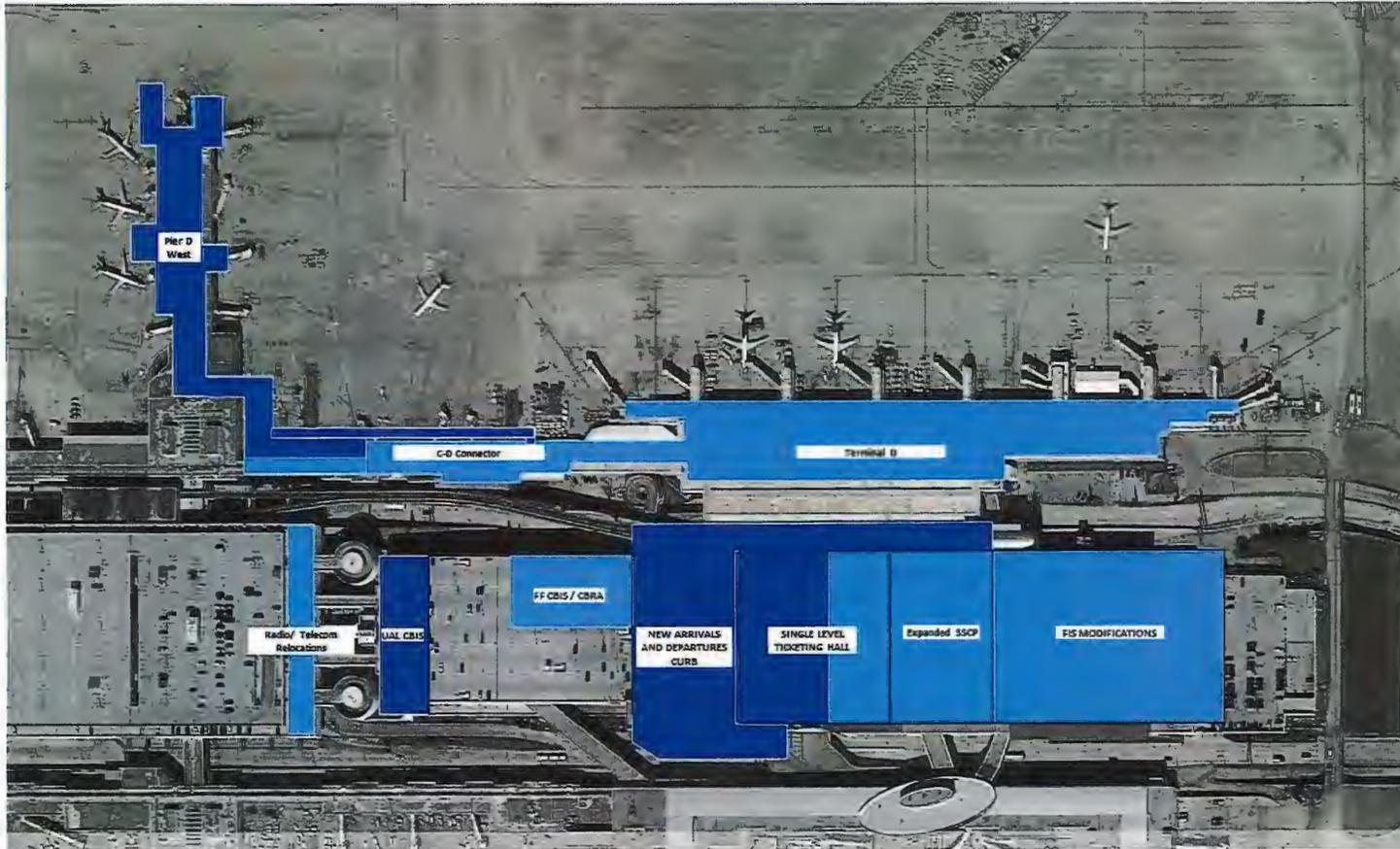




109,500 SF - RENOVATION
 64,015 SF - EXPANSION
 55,685 - NEW ROADS & CURBS

ATTACHMENT G

ITRP PHASE 1

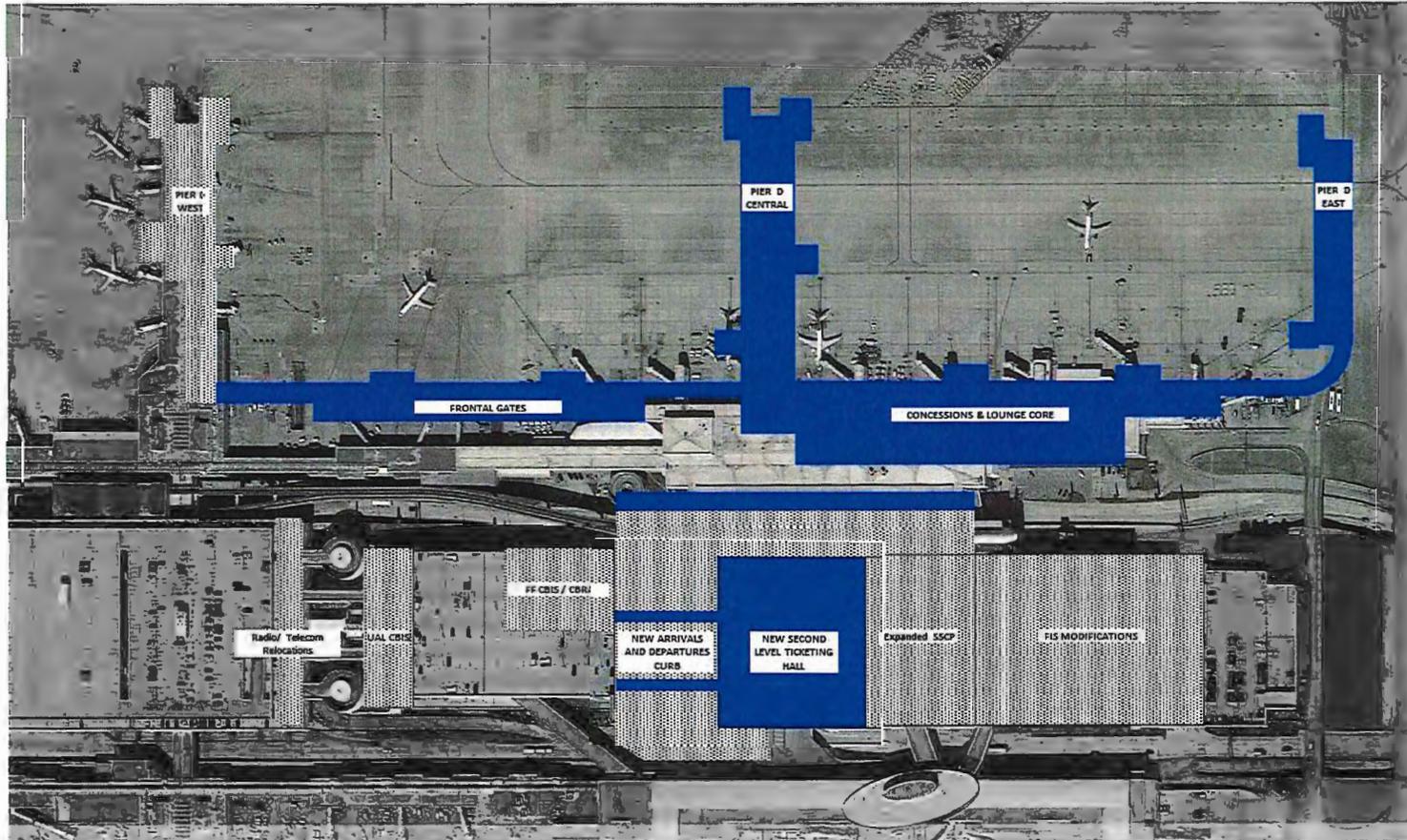


 Modified or Refurbished Facility  New Facility

Note:

- Indicative layouts and subject to further design, review and airfield planning
- Minimum international plane count requirements at all times (7 Wide-Body including 2-A380)

ATTACHMENT H
ITRP FUTURE PHASES



Phase 1 Completed Work



New Facility

Note:

- Indicative layouts and subject to further design, review and airfield planning

ATTACHMENT I

CITY'S FINANCIAL PLAN

CIP HAS FY18-25 (in thousands)	Project costs (HAS funded)		2018							
	Unescalated	Escalated (a)	and prior	2019	2020	2021	2022	2023	2024	2025
IAH Terminal Redevelopment Program (ITRP)										
Mickey Leland International Terminal (MLIT)										
Planning and design (1.1 New Pier D West)	\$ 25,269	\$ 26,412	\$ -	\$ -	\$ 13,206	\$ 13,206	\$ -	\$ -	\$ -	\$ -
Holdrooms (1.1)	25,325	27,418	-	-	2,807	2,807	21,804	-	-	-
Loading bridges and sterile corridors (1.1)	60,940	64,867	-	-	18,967	18,967	26,934	-	-	-
Check-in lobby (1.1)	811	848	-	-	424	424	-	-	-	-
Passenger security screening (1.1)	-	-	-	-	-	-	-	-	-	-
Baggage makeup and screening (1.1)	-	-	-	-	-	-	-	-	-	-
Airline clubs (1.1)	-	-	-	-	-	-	-	-	-	-
Airline operations and support (1.1)	17,650	19,229	-	-	636	636	17,957	-	-	-
Public circulation and restrooms (1.1)	43,202	46,717	-	-	5,402	5,402	35,913	-	-	-
Concessions (1.1)	13,445	14,499	-	-	2,119	2,119	10,261	-	-	-
Mechanical-electrical-plumbing-IT (1.1)	21,995	23,659	-	-	4,134	4,134	15,392	-	-	-
Aircraft parking apron and fueling system (1.1)	37,028	40,462	-	-	-	-	40,462	-	-	-
Planning and design (1.2 Refurbish C-D Connector)	4,898	5,120	-	-	2,560	2,560	-	-	-	-
Holdrooms (1.2)	5,142	5,375	-	-	2,688	2,688	-	-	-	-
Loading bridges and sterile corridors (1.2)	4,470	4,672	-	-	2,336	2,336	-	-	-	-
Check-in lobby (1.2)	-	-	-	-	-	-	-	-	-	-
Passenger security screening (1.2)	-	-	-	-	-	-	-	-	-	-
Baggage makeup and screening (1.2)	-	-	-	-	-	-	-	-	-	-
Airline clubs (1.2)	-	-	-	-	-	-	-	-	-	-
Airline operations and support (1.2)	3,800	3,972	-	-	1,986	1,986	-	-	-	-
Public circulation and restrooms (1.2)	9,144	9,558	-	-	4,779	4,779	-	-	-	-
Concessions (1.2)	2,761	2,886	-	-	1,443	1,443	-	-	-	-
Mechanical-electrical-plumbing-IT (1.2)	3,622	3,786	-	-	1,893	1,893	-	-	-	-
Aircraft parking apron and fueling system (1.2)	15,149	15,834	-	-	7,917	7,917	-	-	-	-
Planning and design (1.3 Refurbish Terminal D)	15,116	15,800	-	-	7,900	7,900	-	-	-	-
Holdrooms (1.3)	12,629	13,800	-	-	-	-	13,800	-	-	-
Loading bridges and sterile corridors (1.3)	16,473	18,000	-	-	-	-	18,000	-	-	-
Check-in lobby (1.3)	8,877	9,700	-	-	-	-	9,700	-	-	-
Passenger security screening (1.3)	2,562	2,800	-	-	-	-	2,800	-	-	-
Baggage makeup and screening (1.3)	18,943	20,700	-	-	-	-	20,700	-	-	-
Airline clubs (1.3)	12,629	13,800	-	-	-	-	13,800	-	-	-
Airline operations and support (1.3)	7,596	8,300	-	-	-	-	8,300	-	-	-
Public circulation and restrooms (1.3)	34,135	37,300	-	-	-	-	37,300	-	-	-
Concessions (1.3)	5,033	5,500	-	-	-	-	5,500	-	-	-
Mechanical-electrical-plumbing-IT (1.3)	7,596	8,300	-	-	-	-	8,300	-	-	-
Aircraft parking apron and fueling system (1.3)	3,569	3,900	-	-	-	-	3,900	-	-	-
Enabling utilities MLIT	18,020	19,400	-	-	-	9,700	9,700	-	-	-
Program management office building	20,596	20,900	-	10,450	10,450	-	-	-	-	-
Total MLIT	\$ 478,428	\$ 513,514	\$ -	\$ 10,450	\$ 91,646	\$ 90,896	\$ 320,523	\$ -	\$ -	\$ -
Subtotal "MLIT Project" net of PMO	457,832	492,614	-	-	81,196	90,896	320,523	-	-	-
Central FIS Expansion										
FIS project planning and design	\$ 32,944	\$ 34,500	\$ -	\$ -	\$ 15,000	\$ 19,500	\$ -	\$ -	\$ -	\$ -
Demolition and enabling	21,633	22,950	-	-	-	22,950	-	-	-	-
Passenger check-in (United)	75,499	82,500	-	-	-	-	82,500	-	-	-
Passenger check-in (foreign flags)	75,499	82,500	-	-	-	-	82,500	-	-	-
Security screening and recheck	14,642	16,000	-	-	-	-	16,000	-	-	-
Baggage handling	71,381	78,000	-	-	-	-	78,000	-	-	-
CBP passenger processing	11,877	12,600	-	-	-	12,600	-	-	-	-
Public circulation and restrooms	29,742	32,500	-	-	-	-	32,500	-	-	-
Concessions	10,982	12,000	-	-	-	-	12,000	-	-	-
Mechanical-electrical-plumbing-IT	30,474	33,300	-	-	-	-	33,300	-	-	-
Roadway ramps and curbs	38,939	42,550	-	-	-	-	42,550	-	-	-
Terminal C parking garage expansion	19,230	24,000	-	-	-	24,000	-	-	-	-
Total Central FIS Expansion	\$ 432,842	\$ 473,400	\$ -	\$ -	\$ 15,000	\$ 79,050	\$ 379,350	\$ -	\$ -	\$ -
New C-North Concourse										
Apron and utilities	\$ 85,050	\$ 85,050	\$ 85,050	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ramp control facilities	12,500	12,500	12,500	-	-	-	-	-	-	-
Baggage transfer belt	7,500	7,500	7,500	-	-	-	-	-	-	-
Lease termination costs	36,500	36,500	36,500	-	-	-	-	-	-	-
Airline moving costs	1,750	1,750	1,750	-	-	-	-	-	-	-

CIP HAS FY18-25 (in thousands)	Project costs (HAS funded)		2018							
	Unescalated	Escalated (a)	and prior	2019	2020	2021	2022	2023	2024	2025
Central FIS (non-ITRP)										
TBD	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Central FIS (non-ITRP)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Skyway APM										
Upgrade APM facilities	\$ 29,000	\$ 29,000	\$ 11,456	\$ 17,544	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
APM system rehab	3,120	3,588	-	-	-	-	-	2,251	-	1,337
Total Skyway APM	\$ 32,120	\$ 32,588	\$ 11,456	\$ 17,544	\$ -	\$ -	\$ -	\$ 2,251	\$ -	\$ 1,337
Subway ITT										
ITT tunnel drainage improvements	\$ 8,770	\$ 8,770	\$ -	\$ 8,770	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ITT system replacement	24,322	26,440	-	-	-	4,585	21,855	-	-	-
Total Subway ITT	\$ 33,092	\$ 35,210	\$ -	\$ 8,770	\$ -	\$ 4,585	\$ 21,855	\$ -	\$ -	\$ -
Rental Car Center										
TBD	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Rental Car Center	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Parking and Ground Transportation										
A-B and C-D-E garage space locators	\$ 14,371	\$ 14,371	\$ 14,371	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
A-B parking garage rehab	5,099	5,739	-	-	-	-	-	5,739	-	-
C-D-E parking garage rehab	1,391	1,566	-	-	-	-	-	1,566	-	-
B garage upgrades	6,300	6,655	-	-	-	-	3,278	3,377	-	-
Staging lot improvements	3,800	3,800	3,800	-	-	-	-	-	-	-
Revenue control system	7,630	8,095	-	-	-	8,095	-	-	-	-
Garage wayfinding facilities	5,000	5,045	-	3,500	1,545	-	-	-	-	-
Garage wayfinding facilities	15,000	16,883	-	-	-	-	-	16,883	-	-
Total Parking and Ground Transportation	\$ 58,591	\$ 62,153	\$ 18,171	\$ 3,500	\$ 1,545	\$ 8,095	\$ 3,278	\$ 27,564	\$ -	\$ -
Roadways										
Terminal A and B U-ramp asphalt overlays	\$ 1,663	\$ 1,663	\$ 1,663	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Rehabilitate roadways - mid-term	472	531	-	-	-	-	-	531	-	-
Roadways allowance 2024-2026	2,400	2,824	-	-	-	-	-	-	1,391	1,433
Total Roadways	\$ 4,535	\$ 5,018	\$ 1,663	\$ -	\$ -	\$ -	\$ -	\$ 531	\$ 1,391	\$ 1,433
Buildings and Grounds										
TBD	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Buildings and Grounds	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Airport Support										
Fleet maintenance building	\$ 4,441	\$ 4,441	\$ 4,441	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Airport Support	\$ 4,441	\$ 4,441	\$ 4,441	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Infrastructure										
Sanitary sewers main line	\$ 18,887	\$ 18,887	\$ 772	\$ 18,115	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Near-term rehab projects	5,704	5,704	3,704	2,000	-	-	-	-	-	-
Long-term rehab projects	552	603	-	-	-	-	603	-	-	-
Total Infrastructure	\$ 25,143	\$ 25,194	\$ 4,476	\$ 20,115	\$ -	\$ -	\$ 603	\$ -	\$ -	\$ -
Subtotal Intercontinental (non-ITRP)	\$ 955,716	\$ 1,014,822	\$ 104,558	\$ 245,295	\$ 93,338	\$ 184,871	\$ 151,893	\$ 54,207	\$ 88,337	\$ 92,324
William P. Hobby Airport										
Hobby Airfield										
Taxiways Y-Z SMGCS	\$ 1,200	\$ 1,200	\$ 120	\$ 1,080	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ARFF rehab	1,925	2,042	-	-	-	2,042	-	-	-	-
North electrical vault	5,000	5,448	-	-	-	530	4,917	-	-	-
Runway 12L/30R EIS	3,810	4,549	-	-	-	-	-	-	-	4,549
Taxiway M rehab	16,058	18,073	-	-	-	-	-	18,073	-	-
Non-standard taxiway upgrades	15,000	15,000	1,500	13,500	-	-	-	-	-	-
Relocation of RTR	948	948	948	-	-	-	-	-	-	-
Near-term rehab projects	6,000	6,000	-	6,000	-	-	-	-	-	-
Mid-term rehab projects	6,822	8,146	-	-	-	-	-	-	-	8,146
Total Hobby Airfield	\$ 56,763	\$ 61,407	\$ 2,568	\$ 20,580	\$ -	\$ 2,573	\$ 4,917	\$ 18,073	\$ -	\$ 12,695

CIP HAS FY18-25 (in thousands)	Project costs (HAS funded)		2018							
	Unescalated	Escalated (a)	and prior	2019	2020	2021	2022	2023	2024	2025
Hobby International Terminal										
TBD West Concourse	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TBD FIS	-	-	-	-	-	-	-	-	-	-
Total Hobby International Terminal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Hobby Central Terminal										
480-volt distribution system	\$ 798	\$ 982	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 982
Central Terminal curbside canopy	5,000	5,000	5,000	-	-	-	-	-	-	-
Mid-term rehab projects	5,638	6,732	-	-	-	-	-	-	-	6,732
Total Hobby Central Terminal	\$ 11,436	\$ 12,714	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,714
Hobby Rental Car Center										
TBD	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Hobby Rental Car Center	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Hobby Other										
Parking operations office	\$ 1,832	\$ 1,832	\$ 1,832	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Roadway drainage improvements	3,245	3,245	3,245	-	-	-	-	-	-	-
Parking revenue control system	3,720	4,187	-	-	-	-	-	4,187	-	-
Total Hobby Other	\$ 8,797	\$ 9,264	\$ 5,077	\$ -	\$ -	\$ -	\$ -	\$ 4,187	\$ -	\$ -
Subtotal Hobby	\$ 76,996	\$ 83,385	\$ 12,645	\$ 20,580	\$ -	\$ 2,573	\$ 4,917	\$ 22,260	\$ -	\$ 20,409
Ellington Airport										
T-hangar apron and Taxiway D pavement rehabilitation	\$ 1,300	\$ 1,463	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,463	\$ -	\$ -
New control tower	13,984	13,984	13,984	-	-	-	-	-	-	-
Total Ellington Airport	\$ 15,284	\$ 15,448	\$ 13,984	\$ -	\$ -	\$ -	\$ -	\$ 1,463	\$ -	\$ -
Houston Spaceport										
Aerospace Design & Solutions Lab	\$ 18,504	\$ 18,504	\$ -	\$ 18,504	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Land acquisition	1,100	1,100	-	1,100	-	-	-	-	-	-
Total Houston Spaceport	\$ 19,604	\$ 19,604	\$ -	\$ 19,604	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Ellington	\$ 34,888	\$ 35,052	\$ 13,984	\$ 19,604	\$ -	\$ -	\$ -	\$ 1,463	\$ -	\$ -
HAS System Support										
Public WiFi services and equipment	\$ 6,540	\$ 7,582	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,582	\$ -
Public WiFi expansion into concessions areas	4,222	4,222	926	3,296	-	-	-	-	-	-
On-call program management services	54,292	56,718	32,782	-	3,461	3,660	3,868	4,086	4,312	4,549
Job order contracting	11,965	12,311	8,195	545	577	610	645	563	580	597
On-call technology services	26,714	28,332	8,074	4,300	2,307	2,440	2,579	2,724	2,875	3,033
Other consulting services	3,009	3,173	1,239	-	-	-	1,934	-	-	-
Total HAS System Support	\$ 106,741	\$ 112,337	\$ 51,216	\$ 8,141	\$ 6,345	\$ 6,710	\$ 9,026	\$ 7,372	\$ 15,349	\$ 8,179
Grand total all projects	\$ 2,351,783	\$ 2,506,926	\$ 325,703	\$ 311,545	\$ 216,198	\$ 425,920	\$ 917,660	\$ 85,302	\$ 103,685	\$ 120,912
(a) Project costs are escalated from 2016 estimates per the ITRP Program Manager's calculations or at 3.0% per year.										

CAPITAL IMPROVEMENT PROGRAM PROJECTED FUNDING 2018-2025

Houston Airport System
(dollars in thousands)

	Project costs (a)	Federal grants	HAS Airports Impr'mt Fund	PFC revenues pay-as-you-go	Subordinate Lien Bonds			
					2018AB	2019	2021	2023
IAH Terminal Redevelopment Program (ITRP)								
MLIT planning and design	\$ 47,332	\$ -	\$ 23,666	\$ 23,666	\$ -	\$ -	\$ -	\$ -
New Pier D West	257,099	-	-	95,134	-	55,799	106,167	-
Refurbish C-D connector (1.2)	46,083	-	-	30,416	-	15,668	-	-
Refurbish Terminal D (1.3)	142,100	-	-	57,100	-	-	85,000	-
Subtotal Mickey Leland International Terminal	\$ 492,614	\$ -	\$ 23,666	\$ 206,316	\$ -	\$ 71,466	\$ 191,167	\$ -
Central FIS-IH planning and design	34,500	-	17,250	17,250	-	-	-	-
Demolition and enabling projects	22,950	-	11,475	-	-	11,475	-	-
Passenger check-in and screening	181,000	-	-	-	-	-	181,000	-
Baggage handling	78,000	7,800	-	-	-	70,200	-	-
FIS passenger processing	90,400	-	-	32,500	-	57,900	-	-
Roadway ramps and curbs	42,550	-	-	42,550	-	-	-	-
Terminal C parking garage expansion	24,000	-	24,000	-	-	-	-	-
Subtotal Central FIS-International Hall	\$ 473,400	\$ 7,800	\$ 52,725	\$ 92,300	\$ -	\$ 139,575	\$ 181,000	\$ -
New C-North concourse	143,300	-	26,400	80,400	-	36,500	-	-
Roadways and landside	50,000	-	-	-	-	-	50,000	-
Infrastructure and utilities	53,900	-	9,700	-	-	44,200	-	-
Program management office building	20,900	-	10,450	-	-	10,450	-	-
Other ITRP-wide	27,216	-	17,346	-	-	9,870	-	-
Subtotal ITRP projects	\$ 1,261,330	\$ 7,800	\$ 140,287	\$ 379,016	\$ -	\$ 312,061	\$ 422,167	\$ -
George Bush Intercontinental Airport (non-ITRP)								
Airfield	\$ 263,915	\$ 88,242	\$ 110,474	\$ -	\$ -	\$ 65,199	\$ -	\$ -
Terminal A	384,293	46,200	127,754	53,199	-	-	157,140	-
Terminals B and C	202,010	-	89,900	-	-	-	23,861	88,250
Terminal D	-	-	-	-	-	-	-	-
Terminal E and Central FIS	-	-	-	-	-	-	-	-
Skyway APM	32,588	-	32,588	-	-	-	-	-
Subway ITT	35,210	-	8,770	-	-	-	26,440	-
Rental Car Center	-	-	-	-	-	-	-	-
Parking and Ground Transportation	62,153	-	62,153	-	-	-	-	-
Roadways	5,018	-	5,018	-	-	-	-	-
Buildings and Grounds	-	-	-	-	-	-	-	-
Airport Support	4,441	-	4,441	-	-	-	-	-
Infrastructure	25,194	-	25,194	-	-	-	-	-
Subtotal Intercontinental (non-ITRP)	\$ 1,014,822	\$ 134,442	\$ 466,293	\$ 53,199	\$ -	\$ 65,199	\$ 207,441	\$ 88,250
William P. Hobby Airport								
Hobby Airfield	\$ 61,407	\$ 26,337	\$ 35,070	\$ -	\$ -	\$ -	\$ -	\$ -
Hobby Central Terminal	12,714	-	12,714	-	-	-	-	-
Hobby Rental Car Center	-	-	-	-	-	-	-	-
Hobby other	9,264	-	9,264	-	-	-	-	-
Subtotal Hobby	\$ 83,385	\$ 26,337	\$ 57,048	\$ -	\$ -	\$ -	\$ -	\$ -
Ellington Airport								
Houston Spaceport	\$ 15,448	\$ 6,992	\$ 8,455	\$ -	\$ -	\$ -	\$ -	\$ -
Subtotal Ellington	\$ 15,448	\$ 6,992	\$ 8,455	\$ -	\$ -	\$ -	\$ -	\$ -
HAS System Support								
HAS System Support	\$ 112,337	\$ 15,836	\$ 96,500	\$ -	\$ -	\$ -	\$ -	\$ -
Grand total all projects	\$ 2,506,926	\$ 191,407	\$ 788,188	\$ 432,215	\$ -	\$ 377,260	\$ 629,607	\$ 88,250

(a) Source: Houston Airport System records.

ATTACHMENT J

ITRP BUDGET SUMMARY – PHASE 1

MLIT (incl Utility Connections)	\$ 492.7m
FIS/ICP	\$ 449.5m
PMO Project	\$ 20.4m
New C North	\$ 143.4m
Enabling Utilities	\$ 59.2m
ITRP PMSS BSG	\$ 11.9m
Roadway Rehab.	\$ 50.6m
Unallocated	\$ 65.3m
Total	\$ 1,300m



Attachment C
IAH Terminal D IFA with
British Airways

HAS 5/1/23

INTERNATIONAL FACILITIES AGREEMENT

by and between CITY OF HOUSTON and

BRITISH AIRWAYS PLC

HAS 5/1/23

TABLE OF CONTENTS

Article I. DEFINITIONS.....8

Section 1.01 Definitions.....8

Article II. RIGHTS AND PRIVILEGES.....17

Section 2.01 Use of Airport.....17

Section 2.02 Ground Handling.....18

Section 2.03 Rights Reserved by City19

Section 2.04 Limitations of Use of Airport.....19

Section 2.05 Confidentiality.....21

Section 2.06 Parking.....21

Section 2.07 Ingress and Egress22

Section 2.08 Sales or Distribution of Food/Beverages.....22

Section 2.09 Use of FIS Facilities23

Section 2.10 Use of Terminal D by Foreign Flag Airlines23

Article III. TERM.....25

Section 3.01 Term.....25

Section 3.02 Airline’s Rights Upon Expiration or Early Termination of Agreement.....25

Article IV. PREMISES.....26

Section 4.01 Terminal D Premises Pre-DBO of the ICP.....26

Section 4.02 Terminal D, ICP Premises After DBO of the ICP26

Section 4.03 Terminal D Premises During and After Construction of Improvements.....28

Section 4.04 Surrender of Premises28

Section 4.05 Covenant Against Liens.....29

Section 4.06 City Right of Entry29

HAS 5/1/23

Section 4.07	Quiet Enjoyment	29
Article V.	RENTALS, FEES, AND OTHER CHARGES	30
Section 5.01	General.....	30
Section 5.02	Statistical Report.....	30
Section 5.03	Terminal D and ICP Rentals and Charges.....	31
Section 5.04	Landing Fees.....	32
Section 5.05	Fines or Penalties	32
Section 5.06	Other Fees and Charges	32
Section 5.07	Security Deposit	33
Section 5.08	Payment Provisions.....	33
Section 5.09	No Other Fees and Charges	34
Article VI.	CALCULATION OF RENTALS, FEES, AND OTHER CHARGES	35
Section 6.01	General.....	35
Section 6.02	Terminal D and ICP Rentals and Other Charges.....	35
Section 6.03	Central FIS Fees.....	37
Section 6.04	Skyway Charges	38
Section 6.05	Landing Fee Rate	39
Section 6.06	Mid-Year Rate Adjustments.....	40
Section 6.07	Year-End Adjustment to Actual and Settlement	40
Section 6.08	International CPE Cap.....	41
Section 6.09	Domestic and Pre-Cleared Charges	41
Section 6.10	Concession Areas and Revenue Sharing.....	41
Article VII.	CONSTRUCTION OF IMPROVEMENTS	43
Section 7.01	Construction by Airline--General	43
Section 7.02	Future Capital Improvements	43

HAS 5/1/23

Article VIII. OPERATION AND MAINTENANCE.....45

Section 8.01 Obligations of City45

Section 8.02 Obligations of Airline46

Article IX. INDEMNIFICATION48

Section 9.01 RELEASE AND INDEMNIFICATION OF CITY48

Section 9.02 INDEMNIFICATION PROCEDURES.....50

Article X. INSURANCE51

Section 10.01 General.....51

Section 10.02 Risks and Minimum Limits of Coverage51

Section 10.03 Other Provisions.....52

Article XI. DAMAGE OR DESTRUCTION OF PREMISES.....55

Section 11.01 Premises Inhabitable55

Section 11.02 Premises Uninhabitable.....55

Section 11.03 Automatic Termination55

Section 11.04 Airline Improvements.....55

Section 11.05 Insurance55

Article XII. TERMINATION57

Section 12.01 Termination by City57

Section 12.02 Termination by Airline.....58

Article XIII. ASSIGNMENT AND SUBLETTING.....60

Section 13.01 Assignment and Subletting.....60

Article XIV. MISCELLANEOUS PROVISIONS61

Section 14.01 Rules and Regulations61

Section 14.02 Compliance with Law61

Section 14.03 Passenger Facility Charges64

HAS 5/1/23

Section 14.04 Payment of Taxes	64
Section 14.05 Right to Lease to United States Government	64
Section 14.06 Notice or Consent.....	65
Section 14.07 Rights Reserved to City	65
Section 14.08 Governing Law and Venue	65
Section 14.09 Favored Nations	65
Section 14.10 Notices	66
Section 14.11 State and Local Required Contracting Provisions	66
Section 14.12 City’s Right to Audit Books and Records.....	67
Section 14.13 Force Majeure.	67
Section 14.14 Non-Waiver	68
Section 14.15 Place of Payments	68
Section 14.16 Nonliability of Individuals.....	69
Section 14.17 Remedies to be Nonexclusive	69
Section 14.18 Exclusiveness of Airline’s Rights.....	69
Section 14.19 Other Land and Buildings Excluded	69
Section 14.20 Titles.....	69
Section 14.21 Invalid Provisions.....	69
Section 14.22 Enforcement	69
Section 14.23 Operation of Airport.....	70
Section 14.24 Entire Agreement.....	70
Section 14.25 Successors and Assigns.....	70
Section 14.26 Subordination to Financing Agreements	70
Section 14.27 Living Wage Executive Order	70
Section 14.28 Additional Federal Requirements	71

HAS 5/1/23

Section 14.29 Waiver of Visual Artists Rights75
Section 14.30 Incorporation of Exhibits75
Section 14.31 Signatures75

TABLE OF EXHIBITS

EXHIBIT A	Airport Layout Plan
EXHIBIT B	Central FIS Map
EXHIBIT C	Reserved
EXHIBIT D	Affiliate Agreement of Responsibility
EXHIBIT E	Affiliate Acknowledgment and Reporting Agreement
EXHIBIT F	Terminal D Cost Centers
EXHIBIT G	Reserved
EXHIBIT H	Monthly Statistical Report Form
EXHIBIT I	Illustrative Self-Invoicing Form
EXHIBIT J	Sample Letter of Credit
EXHIBIT K	Rates and Charges Methodology
EXHIBIT L	Maintenance Matrix

HAS 5/1/23

INTERNATIONAL FACILITIES AGREEMENT

This International Facilities Agreement (“**Agreement**”) is made and entered into on the date of countersignature by the City Controller (“**Effective Date**”) by and between the City of Houston, Texas, a municipal corporation and home-rule city principally situated in Harris County (“**City**”) and British Airways PLC, a foreign flag carrier airline of England and Wales doing business in the State of Texas (“**Airline**”).

WHEREAS, City is the owner of the George Bush Intercontinental Airport/Houston (“**Airport**” as identified on **Exhibit A**, attached hereto and made a part hereof for all purposes), located in City; and

WHEREAS, Airline is engaged in the business of commercial air transportation of persons, property, cargo, and mail as a scheduled air carrier and is certificated or otherwise authorized by the United States Government to engage in such business; and

WHEREAS, City owns and operates the Mickey Leland International Airlines Building (“**Terminal D**”), which is used primarily for International Flights; and

WHEREAS, Airline has requested City grant it certain rights, privileges and services in connection with the use of the Airport, Terminal D, International Central Processor (“**ICP**”), and the Central FIS in the conduct of Airline’s business as a scheduled air carrier; and

WHEREAS, City is willing to grant Airline such rights, privileges and services upon the terms and conditions and for the consideration stated in this Agreement; and

WHEREAS, City and Airline deem it desirable to enter into a written agreement setting forth the respective rights, privileges, obligations and duties of the parties hereto and defining the rights, services and privileges granted and the terms, conditions and consideration on which they are granted;

NOW, THEREFORE, for and in consideration of the use of the Premises and the mutual covenants contained in this Agreement and the rentals, charges and fees to be paid by Airline, it is agreed and understood by and between City and Airline as follows:

HAS 5/1/23

ARTICLE I.
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:

“**2018 MOA**” means that certain Amended and Restated Memorandum of Agreement for the Redevelopment of Terminals at IAH, dated December 7, 2018 by and between City and United.

“**50% of HAS Concession Revenues**” is defined in Section 6.10A).

“**Affiliate**” means any subsidiary air carrier that either (a) is wholly owned by the Airline, or any parent airline which wholly owns the Airline, or any sister airline which is wholly owned by the same company which wholly owns the Airline (a “**Subsidiary**”) provided that Airline shall be responsible for the operations at the Airport of such Subsidiary (including payment of all related fees and charges incurred by such subsidiary) until such time as Airline notifies City at least ninety (90) days in advance that Airline will no longer be responsible for such payments (and at the end of such period of responsibility, the subsidiary shall cease to be a “Subsidiary” under this clause (a)), or (b) conducts all or a portion of its air carrier operations at the Airport during the term of this Agreement under the same or substantially same trade name or livery as Airline, pursuant to a capacity purchase or similar agreement with Airline, but such air carrier shall be considered an “Affiliate” under this clause (b) only with respect to such operations conducted by or behalf of the Airline and using the same or substantially the same trade name or livery as Airline and only if Airline shall have agreed to be responsible for such operations, including payment of all related fees and charges. Such agreement shall be evidenced by the (i) Airline’s execution and delivery to the Director of an Agreement of Responsibility in substantially the form attached as **Exhibit D**, attached hereto and made a part hereof for all purposes and (ii) the air carrier shall have executed and delivered to the Director an Acknowledgment and Reporting Agreement in substantially the form attached as **Exhibit E**, attached hereto and made a part hereof for all purposes.

“**Air Transportation Business**” is defined in Section 2.01.

“**Airfield**” means the runways, taxiways, taxi lanes, and apron areas (other than apron areas associated with a specific terminal, other leased apron areas and common use cargo aprons), navigational aids, hazard designation and warning devices, airfield security roads and fencing, blast fencing, lighting, clear zones and safety areas for landing, taking off and taxiing of aircraft, aviation easements, and land utilized in connection therewith or acquired for such purpose at the Airport.

“**Airline**” is defined in the first paragraph of this Agreement and any Subsidiary of Airline.

“**Airport**” means George Bush Intercontinental Airport/Houston, as generally depicted in **Exhibit A**, as it now exists or may be modified or expanded from time to time in the future.

HAS 5/1/23

“**Airport Cost Centers**” means the facilities and areas to be used in accounting for Airport costs for the purposes of calculating rates and charges hereunder, as such areas now exist or may hereafter be modified or expanded.

“**Airport System**” means all airport, heliport, vertiport and aviation facilities, or any interest therein, now or from time to time hereafter owned, operated or controlled in whole or in part by City, together with all properties, facilities and services thereof, and all additions, extensions, replacements and improvements thereto, and all services provided or to be provided by City in connection therewith, but expressly excluding Special Facilities. The Airport System currently includes George Bush Intercontinental Airport/Houston, William P. Hobby Airport, and Ellington Airport.

“**Amortization**” means the level annual charge required to recover the net cost of a Capital Improvement over the Useful Life of such Capital Improvement at City’s Cost of Capital.

“**Amount Available for HAS Revenue Credits**” is defined in Section 6.10A).

“**Applicable Laws**” means, collectively, all applicable laws, statutes, codes, (including City’s Building Code, Fire Code, HAS electrical standards, and any current HAS TIP (as defined below)), judicial decisions, ordinances, regulations (including federal grant assurances governing the Airport), rulings, zoning ordinances, restrictive covenants, directives, HAS airport rules and regulations, certificates, permits, requirements or orders enforceable by all federal, state and local government authorities having jurisdiction over the Airport, including, but not limited to, the FAA, the Transportation Security Administration (TSA), and Texas Commission on Environmental Quality (TCEQ).

“**Base Capital Charge**” means the fixed annual charge per square foot to be charged for certain Premises as herein provided which have been not demolished or replaced, the original cost of which has been fully amortized.

“**Best Efforts**” means in connection with a party’s taking of an action or attempting to cause a specific result to occur, means that the party obligated to use its Best Efforts in such regard shall use all commercially reasonable efforts under the then applicable circumstances, as considered in good faith by the party so obligated, to take action or cause such result to occur; it being agreed, however, that without limiting the generality of the foregoing, when describing an obligation of City, “Best Efforts” shall not include the obligation to invoke City’s police powers or any other power or authority solely from City’s status as a municipal corporation.

“**Bond Ordinances**” means any and all ordinances adopted by City which authorize debt secured by Net Revenue of HAS, whether senior lien, subordinate lien, or inferior lien.

“**Capital Improvement**” means any improvement or asset, or series of related improvements or assets, acquired or constructed by City at the Airport, including without limitation any security facilities or equipment, which has a net cost of \$150,000 or more (adjusted annually for changes in the Consumer Price Index from July 1, 1998 to a maximum of \$300,000) and a Useful Life of more than one year (but excluding facilities acquired or constructed with the proceeds of special facility revenue bonds which are secured solely by the net rent payable under the special facility lease for such facility and which debt service is in fact retired in such manner,

HAS 5/1/23

unless such facilities are subsequently acquired by City). For the purposes of this Agreement, the net cost of each Capital Improvement shall be the total cost (including actual construction costs; architectural and engineering fees, program management fees, testing and inspection fees, construction management fees, permit fees, and other direct or allocable fees; interest during construction; and allocable out-of-pocket financing costs) less any grants-in-aid, PFCs or similar amounts used in financing the Capital Improvement.

“**Central FIS**” means that area shown on **Exhibit B**, attached hereto and made a part hereof for all purposes, situated immediately south of Terminal D together with the sterile and secure corridors connecting the Central FIS to Terminals D and E, lounge areas in that Central FIS, and the Public Areas thereof, and the fixtures and equipment located therein used by various agencies of the United States for the inspection and processing of passengers arriving on International Flights, together with the baggage claim, luggage storage, and baggage recheck areas and those areas appurtenant thereto.

“**Central FIS Charge**” is defined in Section 5.03H).

“**Central FIS Cost Centers**” means the direct cost centers for the areas to be used in accounting for costs of the Central FIS for the purposes of calculating rates and charges hereunder, as depicted in **Exhibit B**, as such areas now exist or may hereafter be modified or expanded and as more particularly described below:

“**City**” means the City of Houston, Texas, or such other agency, board, authority, or private entity that may succeed to the jurisdiction of City over the Airport.

“**Common Use Terminal Equipment**” or “**CUTE**” means Airport-provided equipment used for passenger processing.

“**Common Use VIP Club**” means the common use lounge space in Terminal D as shown on **Exhibit B**.

“**Common Use VIP Club Charge**” is defined in Section 5.03G).

“**Cost of Capital**” means (a) for Capital Improvements financed with Airport System Revenue Bonds, the effective interest rate on the Bonds used to finance the particular Capital Improvement and (b) for Capital Improvements financed with other Airport funds, the current Revenue Bond Index (of 22- year+, “A” rated bonds) published daily in the Wall Street Journal (or successor publication thereto), for the end of the latest month preceding the calculation of the rates and charges, but no later than June 30, of the fiscal year the Capital Improvement is placed in service.

“**Date of Beneficial Occupancy**” or “**DBO**” means the date(s) on which the Director certifies that a particular facility is sufficiently completed to enable use and occupancy for its intended purpose, as evidenced by a certificate executed by the Director and a Certificate of Occupancy issued by City.

“**Deplaned Passengers**” means passengers (not including flight crew, but including other non-revenue passengers) disembarking at the Airport.

HAS 5/1/23

“**Director**” means the Director of City’s Houston Airport System, or their designee, or such other officer to whom the duties and authority of the Director may be assigned by the City Council of City or by any agency, board or authority which may subsequently succeed to the jurisdiction of City over the Airport. The Director may designate an individual to perform all or a part of the duties of the Director hereunder from time to time.

“**Domestic and Pre-Cleared Charge**” is defined in Section 5.03D).

“**Domestic Flights**” means those flights originating and terminating in the continental United States, Alaska or Hawaii or any of the possessions or territories of the United States.

“**Effective Date**” means the date identified on the first page of this Agreement.

“**Enplaned Passenger**” means a person departing at the Airport using an airline as a paying or non-paying passenger including connecting passengers, but not including a through passenger who does not change aircraft.

“**Environmental Laws**” means any Applicable Laws which governs Hazardous Materials or relate to the protection of human health, safety or the environment, applicability of which are invoked by the conduct of Airline’s business operations at the Airport and shall include but not be limited to: the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq.; and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Clean Air Act, 42 U.S.C. 7401 et seq.; the Clean Water Act, 33 U.S.C., Section 1251, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; or their State counterparts.

“**FAA**” means the Federal Aviation Administration as presently constituted as a division of the United States Department of Transportation or its successor agency or agencies.

“**FIS**” means those areas of the Airport, together with the fixtures and equipment located therein, used by various agencies of the United States for inspection and processing of arriving international passengers.

“**Fiscal Year**” means City’s fiscal year and means the twelve-month period commencing July 1 and extending through June 30 of the following calendar year, or such other fiscal year as City Council may establish by ordinance.

“**Gate**” means an aircraft parking position from which passengers may be enplaned or deplaned, together with an associated loading bridge (if applicable), and the associated portion of the Departure Area (including seating area and gate podium), or Arrival Area. The aircraft parking position may either be contiguous to Terminal D or a designated remote or “hardstand” aircraft parking position now or in the future.

HAS 5/1/23

“**Ground Handling Agreement**” means an agreement between Airline and a third party (including another airline) governing the provision of Ground Handling Services by Airline to another airline or to Airline by a third party.

“**Ground Handling Services**” means any of the following: on and off loading of passengers (including ticketing), baggage, mail or cargo; into-plane fueling; in-flight catering; servicing aircraft lavatories; providing ground power, potable water and preconditioned air; cleaning the interior of aircraft; and any other similar ground services.

“**HAS Amount Available for Revenue Sharing**” is defined in Section 6.10AB).

“**HAS Concession Revenues**” means revenue derived by City from all inside terminal concessions, parking revenues net of any parking management contract, rental car revenues, and hotel fees, at any airport operated by City.

“**HAS Debt Service Coverage**” means, over any given fiscal year, Net Revenues divided by total HAS-wide debt service payments exclusive of any extraordinary reductions for federal relief grants.

“**HAS Revenue Sharing Cap**” is defined in Section 6.10A).

“**Hazardous Materials**” means any and all substances, materials, wastes, pollutants, oils, or governmentally-regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to, asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, PFAS, PFOA, or other per- and polyfluoroalkyl substances or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment or which may impair the beneficial use of property for Airport purposes. Hazardous Materials shall also mean any and all hazardous materials, hazardous wastes, toxic or hazardous substances, or substances regulated under any Environmental Laws.

“**Houston Airport System**” or “**HAS**” means City’s organizational entity which has responsibility for the operation and administration of City’s airports.

“**International Arrival Charge**” is defined in Section 5.03C).

“**International CPE**” means the cost per Enplaned Passenger for total terminal fees payable for International Arrival Fees, International Departure Fees, and Ticketing Fees payable by airlines operating in Terminal D and the ICP.

“**International CPE Cap**” is defined in Section 6.08.

“**International Central Processor**” or “**ICP**” means the consolidated international central processor (including a ticketing hall, security checkpoint, checked baggage inspection system (“**CBIS**”), baggage claim and roadway and curbside improvements, and all Public Areas thereof),

HAS 5/1/23

to be completed as of the Date of Beneficial Occupancy, serve both Terminals D and E at the Airport, and which may include future expansions or additional overflow ticketing facilities.

“**International Departure Charge**” is defined in Section 5.03B).

“**International Facilities Access and Assignment Policy**” or “**IFP**” means the Airport Operating Instruction document as it now exists or may be modified from time to time by the Director, addressing access to and assignment of Gates in Terminal D and ticket counter positions in the ICP, and baggage claim and baggage re-check facilities in the Central FIS; provided, that no modification thereof shall adversely affect any rights of Airline that are specifically provided for in this Agreement. The IFP in effect as of the effective date of this Agreement is incorporated by reference and will be distributed to Airline.

“**International Flights**” means those flights originating in a foreign country and arriving at the Airport or those flights originating at the Airport and terminating in a foreign country.

“**International Terminal Complex**” or “**ITC**” means Terminal D, Terminal E lobby and ticketing hall, the ICP (upon DBO), and the Central FIS together with related parking and roadway facilities and infrastructure.

“**ITRP Phase 1**” is defined in the 2018 MOA and includes (1) D West Pier and Terminal D Renovations; (2) ICP, including consolidated screening, CBIS, baggage claim improvements and (3) Modifications to the FIS building as detailed in the 2018 MOA.

“**Living Wage Executive Order**” is defined in Section 14.27.

“**Maximum Gross Certified Landing Weight**” means the maximum gross landing weight in 1,000 pound units as certified by the FAA for landing of an aircraft.

“**Net Revenues**” is defined in the Bond Ordinances, currently deemed to be that portion of the Gross Revenues remaining after the deduction of the Operation and Maintenance Expenses, also defined in the Bond Ordinances.

“**Non-Terminal Concession Areas**” is defined in Section 6.10A).

“**Operation and Maintenance Expenses**” or “**O&M Expenses**” means all reasonable and necessary current expenses of City, paid or accrued, of operating, maintaining, repairing, and administering the Airport; including, without necessarily limiting thereto, salaries and wages, fringe benefits, contractual services, utilities, professional services, police protection services, fire protection services, administrative expenses, the cost of materials and supplies used for current operations, equipment, insurance premiums, the reasonable charges of any paying agents and any other depository bank pertaining to the Airport, as well as overhead expenses of (a) HAS (which shall be fairly and equitably allocated among City’s airport facilities in accordance with generally accepted accounting practices) and (b) other City departments whose services are directly related or reasonably allocable to the administration of the Airport (which shall be determined in accordance with a City-wide administrative cost allocation plan then in effect); provided, however, Operation and Maintenance Expenses shall not include any allowance for depreciation, payments in lieu of taxes, Capital Improvements or any charges for the accumulation of reserves for capital

HAS 5/1/23

replacements, or charges resulting from the negligence or breach of existing agreements by City, its employees or contractors.

“**Passenger Facility Charge**” or “**PFC**” means the fees authorized by 49 U.S.C. Section 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended during the term of this Agreement.

“**Pre-cleared International Flight**” means an International Flight whose passengers have been processed through a federal inspectional services area or other facility approved by the United States government prior to arrival to the Airport or any of the possessions or territories of the United States and therefore is not required to process through the Airport’s FIS.

“**Preferential Use**” means the right to use a Gate or a ticket counter position on a priority or preferential use (but not exclusive use) basis for Airline’s scheduled flights.

“**Preferential Use Area**” means the area described in **Exhibit F**, attached hereto and made a part hereof for all purposes, that is for Airline’s Preferential Use.

“**Premises**” means the Exclusive Use and Preferential Use Areas designated for Airline’s use, as set forth in **Exhibit F**, and common use areas of Terminal D, ICP, and the Central FIS set forth in Section 4.01 and Section 4.03.

“**Public Area**” means the Terminal D Public Area and that area of ICP and the Central FIS, together with the furniture, fixtures, and equipment located therein, designated for public circulation including the secure bridges connecting to Terminal D and Terminal E, public waiting area (“meeter/greeter” area), restrooms, and other public use functions and activities, but not including areas leasable by concessions or used for concession services as shown on **Exhibit B**, which shall be modified as newly constructed areas are completed.

“**Renewal and Replacement Fund**” means the Airport System Renewal and Replacement Fund established by City’s Bond Ordinances.

“**Security Checkpoint Charge**” is defined in Section 5.03B).

“**Skyway**” means the automated people mover system which connects all the existing terminals at the Airport and the Maintenance Facility Link.

“**Skyway Charge**” is defined in Section 5.03I).

“**Subway**” means the underground portion of the inter-terminal passenger transportation system that connects all the existing terminals at the Airport and the Maintenance Facility Link.

“**Systems**” means the systems, facilities and improvements located on and serving the Airport, including but not limited to: (a) the access roads and other roadways serving the terminal complex; (b) the Subway; (c) the heating, ventilation, and air conditioning (HVAC) plant and related distribution systems; (d) elevators/escalators and mechanical areas and systems; and (e) the incinerators/compactors.

HAS 5/1/23

“**Systems Costs**” means the total of annual Operation and Maintenance Expenses and annual Amortization charges associated with each of the Systems.

“**Term**” is defined in Section 3.01.

“**Terminal A**” means Terminal A of the Airport, as it as it may be modified or expanded and all appurtenances thereto.

“**Terminal Concession Areas**” is defined in Section 6.10A).

“**Terminal D**” means the Mickey Leland International Airlines Building and associated apron areas primarily used for International Flights, as it may be modified or expanded and all appurtenances thereto, including Public Areas thereof.

“**Terminal D Cost Centers**” means the direct cost areas to be used in accounting for Airport costs for the purposes of calculating compensatory rates and charges hereunder, as depicted in **Exhibit F**, attached hereto and made a part hereof for all purposes, as such areas now exist or may hereafter be modified or expanded and as more particularly described below:

- a. “**Aircraft Apron Area**” means the areas where aircraft are parked during the loading and unloading of passengers, baggage, cargo and mail and the fueling and other servicing of the aircraft, including (1) the aircraft parking apron immediately adjacent to Terminal D and (2) the north remote apron, together with (3) the cost of City’s busing operations to and from Terminal D and the north remote apron.
- b. “**Arrival Area**” means the terminal corridors used by deplaning passengers for access to the FIS excluding the sterile corridor bridge.
- c. “**Baggage Make-up Area**” means that area, together with all fixtures and equipment located therein, designated for the sorting of outbound baggage.
- d. “**Departure Area**” means the area, together with the furniture, fixtures and equipment located therein, designated for the check-in and seating of passengers waiting to board an aircraft for a departing flight.
- e. “**Exclusive Use Area**” means the areas leased exclusively to Airline or other airlines for maintenance and operations, VIP club rooms, and administrative offices.
- f. “**International Central Processor**” means the ICP.
- g. “**Loading Bridges**” means the passenger loading bridges at each of the gates in Terminal D providing passenger access to and egress from aircraft parked at the aircraft parking apron contiguous to the terminal.

HAS 5/1/23

h. “**Non-FIS Baggage Claim Area**” means the pre-cleared and domestic baggage claim area for passengers that are not required to process through the Central FIS.

i. “**Security Checkpoint Area**” means the area, together with the fixtures and equipment located therein devoted to the security screening of departing passengers.

j. “**Terminal D Public Area**” means that area of Terminal D, together with the furniture, fixtures, and equipment located therein, designated for public circulation including the restrooms, and other public use functions and activities, but not including areas leasable by concessions or used for concession services as shown on **Exhibit F**.

“**Terminal E**” means a concourse building and associated aircraft apron and fuel distribution system situated immediately south of the Central FIS.

“**Ticketing Charge**” is defined in Section 5.03BE).

“**TIP**” means the HAS Tenant Improvement Program, as referenced at www.fly2houston.com/TIP and www.fly2houston.com/biz/resources/building-standards-and-permits, or at such other public website address designated for the Houston Airport System.

“**Total Landed Weight**” means the sum of the Maximum Gross Certified Landing Weight for all of Airline’s arrivals over a stated period of time as rounded up to the nearest thousand-pound unit for all Landing Fee computations.

“**United**” means United Airlines, Inc., a Delaware corporation.

“**United Terminal E Lease**” means the Terminal E Lease and Special Facilities Lease Agreement dated August 1, 2001, by and between City and Continental Airlines, Inc. (now known as United Airlines, Inc.), as the same may have been or may be amended from time to time.

“**Usable Space**” means, with respect to any terminal building or portion thereof, gross square footage less the square footage of mechanical and utility space.

“**Useful Life**” means the estimated period of time that a Capital Investment is to be recovered through the Amortization process. In general, Useful Lives will be assigned to Capital Improvements by the Director based on generally accepted airport accounting practices. For purposes of calculating rates and fees under this Agreement, terminal improvements financed by City will be assigned the following Useful Lives: (a) new facilities-25 years, (b) renovations to existing facilities-20 years, (c) new passenger loading bridges and baggage conveyor equipment-15 years.

HAS 5/1/23

ARTICLE II.
RIGHTS AND PRIVILEGES

Section 2.01 Use of Airport

Nothing contained in this Agreement shall affect City's or Airline's rights or obligations contained in any other agreement between City and Airline with respect to any area of the Airport other than Terminal D or the ICP at the Airport or any other area of the Airport. As long as it does so in accordance with the terms and provisions of this Agreement, Airline may utilize Terminal D, the ICP and other facilities located at the Airport (other than the Exclusive Use Areas of others, and subject to other airlines' Preferential Use rights) for the purpose of conducting Airline's business of a scheduled air carrier certificated or otherwise authorized by the United States Government to engage in the business of commercial air transportation of persons, property, cargo, and mail ("**Air Transportation Business**") in common with all other scheduled airlines using the Airport. The privileges granted hereby include the following:

A. The use of the Airfield, including landing field areas, aprons, roadways, runways, taxiways, runway and taxiway lights, beacons, facilities, equipment, improvements, services and other conveniences for flying, landing, taxiing and takeoffs of aircraft.

B. The landing, taking-off, flying, taxiing, towing, loading and unloading of aircraft and other equipment used by Airline in its operation of its Air Transportation Business.

C. The repairing, maintaining, conditioning, servicing (to include exterior aircraft cleaning), testing, including engine "run-ups" and emergency maintenance of aircraft engines and systems, loading, unloading, parking and storing of aircraft or other equipment of Airline in areas on the Airport designated by the Director for such purposes.

D. The use, in common with the other airlines, of (a) the Aircraft Apron Area, the Loading Bridges, the Arrival Area, the Departure Area the Baggage Make-up Area, the Non-FIS Baggage Claim Area, in each case, serving Terminal D and (b) the FIS, the International Central Processor, and the Security Checkpoint Area.

E. The training of personnel employed by or to be employed by Airline including employees of Airline's contract service providers.

F. The installation, maintenance and operation, at Airline's expense, by Airline alone, or in conjunction with any other airline or airlines who are lessees at the Airport or through a nominee, of radio, telephone/cellular, and data communications equipment and meteorological and aerial navigation equipment and facilities in or on the Premises leased exclusively to Airline for use by Airline in the conduct of its Air Transportation Business; provided, however, that any exterior installations shall be subject to the prior written approval of the Director and, whether interior or exterior, shall not interfere with the Airport navigation aids or with similar rights granted to other tenants or governmental agencies. In the event of such interference, the Director may require removal, relocation, or modification to eliminate such interference.

HAS 5/1/23

G. The selling, exchanging or disposing of gasoline, oil, grease, lubricants, fuels, or propellants for use by Airline in connection with the conduct of its Air Transportation Business (in compliance with Applicable Laws and any applicable agreement therefor).

H. The purchasing or otherwise obtaining of services or personal property of any nature including aircraft, engines, accessories, gasoline, oil, greases, lubricants, fuels, propellants, food, beverages, and other equipment, parts or supplies necessary to Airline in the conduct of its Air Transportation Business and in the exercise of its rights and privileges granted and in the discharge of the obligations imposed upon Airline in this Agreement.

I. The installing, maintaining, and operation, without cost to City, by Airline alone or in conjunction with any other airline lessee or lessees on the Airport, of communication systems between suitable locations in the terminal area, subject to the approval of the Director as to location of the installation of said system.

J. The transporting, directly or through a nominee of Airline's choice, of Airline's employees, passengers, cargo, property (including baggage) and mail to, from and at the Airport.

K. Subject to the prior written approval of the Director (which approval may be withheld at Director's sole discretion), the installation and maintenance at Airline's expense, on Premises leased exclusively to it or under its control, of advertising or identifying signs representing its business. Such signs shall be uniform in size, type and location as approved by the Director and shall be consistent with published HAS signage criteria.

L. The conduct of any other operation or activity that is necessary for or related to Airline's Air Transportation Business, subject to the provisions of Section 2.03.

Section 2.02 Ground Handling

A. To the extent permitted by the Airport's rules and regulations, Airline may contract with, or receive from other airlines serving the Airport or other companies, Ground Handling Services for Airline's aircraft, provided that Airline provides advance written notice to the Director of such arrangements and uses reasonable efforts to ensure that such other airline or other company shall have entered into an operating permit or agreement or other similar contract with City prior to commencing Ground Handling Services with Airline; and provided further that City may issue a request for proposals for Ground Handling Services to be performed by third parties if City, in its discretion, determines that such program is necessary for the safe and efficient operation of the Airport.

B. Airline may provide Ground Handling Services to aircraft of other airlines using the Airport provided that Airline provides advance written notice to the Director of such arrangements and uses its Best Efforts to ensure that such other airline has entered into an operating permit or agreement or similar contract with City prior to conducting its operations at the Airport. If Airlines provides Ground Handling Services, Airline's insurance, as required in this Agreement, shall provide insurance coverage for such Ground Handling Services.

HAS 5/1/23

Section 2.03 Rights Reserved by City

A. Except as otherwise provided in this Agreement, City reserves the exclusive right to itself, its agents and its franchisees, to operate all concession services (including, but not limited to, food/beverage and news/gift concessions, common use lounges, specialty retail shops and carts, sleep pods, vending machines, pay telephones, fax machines and other voice and data telecommunications systems, advertising displays, baggage lockers and baggage carts) in the Public Areas and concession areas of Terminal D (including Public Areas such as Arrival Area, Departure Area, and FIS), the ICP, and the Central FIS and to retain the revenue therefrom; provided however, that City agrees that no concession services shall be located or operated by City or its nominees in any Exclusive Use Area without Airline's prior consent and providing that City shall not exercise such right in a manner that will materially impede passenger ingress or egress or Airline's business operations.

B. City shall operate all concessions and provide such other services, with reasonable due consideration to requests made by Airline, for scheduled airline passenger operations at the Airport as it deems necessary or appropriate. Nothing in this Agreement shall limit or preclude City from operating whatever concessions or providing whatever services it may desire at any and all airports and other facilities owned by City; provided, however, nothing contained herein shall affect rights of any airline pursuant to any agreement between such airline and City.

C. City, in its discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, and to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Airline from erecting or permitting to be erected, any structures on the Airport which, in the reasonable opinion of Airport, would limit the usefulness of the Airport or constitute a hazard to aircraft; provided, however, City's exercise of its rights set forth herein with respect to development of other portions of the Airport, shall be subject to rights of Airline under other agreement(s), if any, with City.

D. Any rights and privileges not specifically granted to Airline for its use of and operations at the Airport pursuant to this Agreement or pursuant to another agreement between Airline and City are reserved for City.

Section 2.04 Limitations of Use of Airport

A. **Use of Facilities.** Airline shall not knowingly permit any act or omission at or about the Airport that:

1. may interfere with the effectiveness or accessibility of the drainage and sewage system, electrical system, heating and air conditioning system, utility fire protection system, sprinkler system, alarm system, fire hydrants and hoses, firefighting foam collection and treatment systems, glycol collection and treatment systems, security systems, and other Systems if any, installed or located on or within the Premises or the Airport; or

2. be unlawful or conflict with or violate Applicable Laws; or

HAS 5/1/23

3. be in conflict with Federal Aviation Regulations Part 139 or jeopardize the Airport's operating certificate; or
4. create an unreasonable nuisance; or
5. obstruct or interfere with the rights of other users of the Airport; or;
6. commit or suffer to be committed any waste; or
7. place any loads upon the floor, walls, or ceiling which endanger the structure; or
8. obstruct the sidewalk or passageways or stairways or escalators.

B. **Insurance Requirements Compliance.** Airline shall not knowingly permit any act upon the Airport that will invalidate or conflict with any fire or other casualty insurance policies (copies of which, together with premium schedules, shall be furnished to Airline on request) covering the Airport or any part thereof.

C. **Waste Disposal.** Airline shall not dispose of or knowingly permit disposal of any waste material taken from or products used (whether liquid or solid) with respect to its aircraft into the sanitary or storm sewers at the Airport unless such waste material or products shall first be properly treated by equipment installed for that purpose or otherwise disposed of pursuant to law. In addition to obtaining approval from the governmental agencies regulating equipment and disposal described in this paragraph, Airline shall also obtain the approval of the Director. All such disposal shall comply with all Applicable Laws and shall be in compliance with Section 14.02 of this Agreement.

D. **Flammable Liquids.** Airline shall not keep or store, during any 24-hour period, flammable liquids within the enclosed portion of the Premises in excess of Airline's working requirements during said 24-hour period, except in storage facilities especially constructed for such purposes in accordance with standards established by the National Board of Fire Underwriters and approve by a governmental agency with authority to inspect such facilities for safety compliance. Any such liquids having a flash point of less than 100°F shall be kept and stored in safety containers of a type approved by the Underwriters Laboratories.

E. **Engine Run-ups.** Airline shall perform aircraft engine run-ups only at locations and during time periods approved in writing in advance by the Director.

F. **Removal of Disabled Aircraft.** As soon as reasonably possible after release from proper authorities, Airline shall remove any of its disabled aircraft from the airfield or aprons, shall place any such disabled aircraft only in such storage areas as may be reasonably designated by the Director, and shall store such disabled aircraft only upon such terms and conditions as may be reasonably established by City. In the event Airline shall fail to remove any of its disabled aircraft as soon as reasonably possible, Director may, after at least two (2) days written notice, but shall not be obligated to, cause the removal of such disabled aircraft. Airline shall pay to City, upon receipt of an invoice, the costs incurred for such removal plus fifteen percent (15%).

HAS 5/1/23

G. Security.

1. Airline shall comply with all HAS, TSA, FAA and any other governmental agency security directives, rules and regulations. The FAA and/or the TSA may assess fines and/or penalties for the Airline's non-compliance with the provisions of Title 49 Code of Federal Regulations, Parts 1540 and 1542, as amended from time to time, or by other agencies for non-compliance with laws or regulations applicable to the Airline's operations. Within ten (10) days of notification in writing, Airline shall reimburse City for any fine or penalty assessed against City because of Airline's non-compliance with 49 CFR 1540 and 1542 or other applicable laws or regulations. Airline shall be responsible for any requirements (and costs associated therewith) of the Federal Aviation Administration, Department of Homeland Security (DHS), and the Houston Airport System (as applicable) regarding employee background checks and badging.

2. Airline shall use Best Efforts to prevent unauthorized persons from gaining access to restricted flight and aircraft operational areas through portions of the Airport under Airline's control. In the event that security guards or other similar personnel are required under any federal regulation or otherwise in order to prevent trespass and unauthorized access to flight and aircraft operational areas through portions of the Airport under Airline's control, the costs of such personnel and all expenses related thereto shall be paid by Airline.

3. Airline, its officers, employees, agents, and those under its control, shall comply with security measures (a) required of Airline by the FAA, the TSA, Customs and Border Protection ("CBP") or City in accordance with applicable requirements of the FAA, the TSA, CBP or their authorized successor(s) or (b) contained in any Airport master security plan approved by the FAA, the TSA, CBP or their authorized successor(s) and applicable to Airline or its operations.

H. **Other.** Airline's use of the Airport shall be limited to activities directly connected to its Air Transportation Business, and Airline shall not enter into activities that compete with City in City's development of any revenue from Airport passengers, tenants, and other users.

Section 2.05 Confidentiality

Airline shall take all appropriate measures in accordance with 49 C.F.R. 1520 and other applicable laws to protect Sensitive Security Information that may come into Airline's possession as a result of this Agreement.

Section 2.06 Parking

A. In the event City develops or causes to be developed an area or areas at the Airport as common parking facilities for the employees of Airline and other Airport tenants, the Director, in consultation with the Airline, will determine a reasonable charge for the use of such facilities to cover return on capital investment and costs associated with their development, operation, supervision and maintenance. Public vehicular parking facilities will be provided by City at reasonable charges to be determined by City.

B. Only Airline and other airport employees may park in designated Airport employee parking facilities.

HAS 5/1/23

Section 2.07 Ingress and Egress

Subject to the other provisions of this Agreement and to the rules and regulations adopted by City under the provisions of Article XIV, the following privileges of ingress and egress are granted with respect to the Airport:

A. **For Airline, its agents, employees, contractors, subcontractors and permitted sublessees and assigns:** To the Public Areas of the Airport and to those areas and facilities designated in this Agreement for Exclusive Use by Airline or by Airline in common with other airlines. This right shall extend to Airline's aircraft, vehicles, machinery and equipment used in its air transportation business.

B. **For Airline's passengers, guests and invitees:** To areas leased exclusively to Airline and to areas provided for use of Airline's passengers, guests and invitees in common with those of other airlines and to Public Areas and public facilities. This privilege shall extend to vehicles of such passengers, guests and invitees.

C. **For Airline's suppliers of materials and furnishers of service:** To the Public Areas of the Airport and to the Airline's Exclusive Use Areas and Preferential Use Areas and facilities leased exclusively or preferentially to Airline and to areas and facilities provided for the common use by Airline or its suppliers of materials and furnishers of services. This privilege shall extend to vehicles, machinery or equipment of such suppliers and furnishers used in their business of furnishing such supplies and services to Airline.

D. The ingress and egress provided for above shall not be used, enjoyed or extended to any person, airline or vehicle 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 unless expressly authorized by the Director.

E. City may, at any time, temporarily or permanently close, consent to or request the closing of any roadway or other right of way for such access, ingress, or egress, whether inside or outside Terminal D, so long as a means of access, ingress or egress reasonably equivalent to that formerly provided, and not adverse to Airline's continued use and enjoyment of Terminal D is substituted therefor and is concurrently made available therefor. Airline understands and agrees that there will be inconveniences caused by construction of improvements to the Airport from time to time and Airline hereby releases and discharges City from any and all claims, demands or causes of action which Airline now or at any time hereafter may have against City arising or alleged to arise out of the closing of any right of way or other area used as such whether within or outside of the Airport so long as City makes available a means of free access, ingress or egress reasonably equivalent to the existing prior to each such modification, if any.

Section 2.08 Sales or Distribution of Food/Beverages

A. **Distribution of In-Flight Food/Beverages.** The distribution, serving or sale of food or beverages (including alcoholic beverages) meant to be consumed aboard Airline's aircraft by Airline or its in-flight catering provider shall be limited to Airline's passengers who are in the passenger loading bridge or entrance to the passenger loading bridge and in the process of

HAS 5/1/23

boarding Airline's aircraft. The provisions of this section notwithstanding, all distribution of alcoholic beverages shall comply with Applicable Laws.

B. **Club Rooms.** Airline shall have the right to utilize space in Terminal D for the purpose of maintaining and operating club rooms or lounges for its passengers, and those of its Affiliates and of its code-share alliance partners only. Airline shall have the right to serve beverages, including alcoholic beverages, and appetizers therein with or without charge and subject to all Applicable Laws, regulations and ordinances; provided, however, that City reserves the right to charge Airline applicable percentages of its gross revenues from (1) entrance fees or charges for Airline's clubs or lounges, if any, in Terminal D; and (2) the sale of food and beverages consistent with the percentages charged to its food and beverage concessionaires at the Airport, not to exceed 15% on the sale of food and nonalcoholic beverages and 20% on the sale of alcoholic beverages, provided that no such payment shall be required with respect to items obtained from concessionaires already obligated to make such payments to City with respect to such obtained items. Recognizing that the new Airport common-use lounge may not be open upon the countersignature date of this Agreement, Airline shall be allowed on a temporary basis only to continue to allow access to its club room or lounges to airlines that are not current code-share alliance partners or Affiliates only, and all other contracts, memberships or partnerships shall remain prohibited. Nothing contained herein shall preclude Airline from having membership programs or other Airline carrier-specific lounge access benefits associated with a credit card or charge card, such as those included with or obtained through Airline's co-branded credit cards and the City shall not have a right to charge a percentage on gross receipts for such membership programs and benefits. Upon the opening of the Airport common-use lounge, no sharing other than that to Affiliates or code-share alliance partners, as stated above, may occur.

C. **Vending Machines.** Airline or its nominee may install, maintain, and operate vending machines in Airline's Exclusive Use Area not accessible to the public for the purpose of providing and making available foods, beverages and sundry food items to Airline's employees only.

D. **Other Distribution of Food/Beverages Prohibited.** Except as allowed in this Agreement, all other serving, distribution or sale of food or beverages by Airline at the Airport is prohibited. Notwithstanding the foregoing, for the avoidance of doubt, except in connection with emergency situations or irregular operations, or for employees in Exclusive Use Areas, or except as permitted in the reasonable determination of Director, Airline shall not be permitted to provide food or beverage service in any other areas of the Airport unless permitted to do so pursuant to another agreement with City.

Section 2.09 Use of FIS Facilities

During the term of this Agreement, all arriving international passengers, except those arriving on Pre-cleared International Flights, shall be processed through the FIS.

Section 2.10 Use of Terminal D by Foreign Flag Airlines

During the term of this Agreement, all foreign flag airlines serving the Airport as of July 1, 2004 (other than Pre-Cleared International Flights) shall operate out of Terminal D and the ICP;

HAS 5/1/23

provided that this section or anything contained in this Agreement is not intended (and shall not be construed) to limit United's rights under the United Terminal E Lease or United's ability to provide Ground Handling Services at, or to lease or sublease any of Terminal E at the Airport (or the ability of any foreign flag carrier to be ground handled at, or use such areas of Terminal E) when use thereof by any such foreign flag carrier is permitted under the United Terminal E Lease.

HAS 5/1/23

ARTICLE III.
TERM

Section 3.01 Term

The term (the “**Term**”) of this Agreement shall begin on the Effective Date and shall expire on June 30, 2034; provided the Director or Airline may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other party.

Section 3.02 Airline’s Rights Upon Expiration or Early Termination of Agreement

Upon expiration or early termination of this Agreement, all of Airline’s rights, authority, and privileges to use the Premises, services and facilities of the Airport granted pursuant to this Agreement shall cease (except as specifically provided in Section 4.04A).

HAS 5/1/23

ARTICLE IV.
PREMISES

Section 4.01 Terminal D Premises Pre-DBO of the ICP

A. **Exclusive Use Areas.** Airline hereby leases from City and City hereby leases to Airline for its exclusive use the areas in Terminal D, as shown in **Exhibit F** for all purposes, as summarized below:

<u>Type of Space</u>	<u>Effective Date Area (Sq. Ft.)</u>
Administrative Offices	1,491
Sales Counter	0
VIP Club Rooms	0
Maintenance	1,785
Storage	308

Section 4.02 Terminal D, ICP Premises After DBO of the ICP

A. **Exclusive Use Areas.** After DBO of the ICP, Airline hereby leases from City and City hereby leases to Airline for its exclusive use the areas in the International Central Processor, and Terminal D, if applicable, as shown in **Exhibit F**, as summarized below:

<u>Type of Space</u>	<u>Area (Sq. Ft.)</u>
Administrative offices (ATO)	TBD
VIP club rooms	TBD
Operations	TBD
Maintenance	TBD
Storage	TBD

The square footages of these areas are subject to final verification based on as-built drawings which will be reflected in a substitute **Exhibit F**. Upon written request by Airline, the Director shall have the right to increase or decrease the area leased by Airline, by issuing a letter indicating the changed square footage, as of the date stated in the notice, with a replacement exhibit showing the changed leased area, without having to send an amendment to this Agreement to City Council.

B. **Gates.** After DBO of the West Pier, the use of Terminal D gates shall be as follows:

1. **Gates on west side of West Pier.** United shall be granted Preferential Use and scheduling rights at all times of the day for each of the three (3) widebody gates (which shall be collectively capable of simultaneously handling five (5) narrow-body aircraft departures or arrivals) on the west side of the West Pier as shown on **Exhibit F** in Terminal D anticipated to be known as Gates 2, 4 and 6 (which may be renumbered at the discretion of the Director); provided that for each such gate, United meets the Gate Use Requirement for Terminal D carriers as provided below. United's Preferential Use and scheduling rights shall expire after ten

HAS 5/1/23

(10) years from the date (which date shall be memorialized in a notice signed by United and City) on which the last of such gates are made available to and are ready for use by United; provided, however, if all international widebody gates in the North Concourse of Terminal D are fully utilized during the peak period, as provided in this Agreement, then during such 10-year period, United's preferential scheduling and use rights on the west side of the West Pier shall be subordinate, upon no less than one hundred fifty (150) days' prior written notice from City to United, to City's right to accommodate an international carrier, using the FIS, during the peak period for the time period necessary to accommodate an International Flight on a gate on the west side of the West Pier. With the exception of United's Preferential Use and scheduling rights defined herein, use of the other gates in Terminal D will be common use in accordance with the IFP, as may be amended from time to time.

2. **“Gate Use Requirement”**, as to each Preferential Use gate in Terminal D, shall be defined as operating on each gate, for the six (6) days of each week during which an airline operates the greatest number of departing flights in a rolling three (3) month period of at least five (5) daily “narrow body-equivalent aircraft departures”. Narrow body-equivalent aircraft departures shall (i) include only those departures of aircraft with onboard passengers, and (ii) be based on “airplane design group” (ADG-III), as defined in FAA Advisory Circular 150/5300-13, and as provided in the table below:

<u>ADG</u>	<u>Narrow Body Equivalent Aircraft Departure</u>
I	.50
II	.75
III	1.0
IV	1.4
V	1.8
VI	2.0

3. **All Other Gates in Terminal D.** Except as provided above with respect to United’s rights to Preferential Use and scheduling rights, (a) gates shall be made available to all airlines using Terminal D on a common use basis, and (b) Airline shall have the right to use such gates, in common with all other airline users of Terminal D, subject to the access and assignment procedures set forth in the IFP.

4. **Hardstand Gates.** Aircraft parking positions at the north remote apron shall be available and may be used for regularly scheduled Terminal D operations, as well as for irregular operations of primary Gate users and other aircraft operations or parking as may be directed by the Director. The remote aircraft parking positions associated with Terminal D will be allocated and used in accordance with the IFP.

5. **Common Use Areas.** Airline and others permitted such use as in this Agreement provided shall have the right to use, in common with all other airline users, the

HAS 5/1/23

Arrival Area, the Departure Area, the ICP, the Baggage Make-up Area, the Security Checkpoint Area, the Common Use VIP Club and the Non-FIS Baggage Claim Area in Terminal D and the FIS subject to the access and assignment procedures of the IFP. Upon completion of any improvements to Terminal D that do not affect Airline's Exclusive Use Areas, Director will prepare and distribute updated exhibits.

Section 4.03 Terminal D Premises During and After Construction of Improvements

A. Additional modifications may be made to Airline's Exclusive Use Areas in Terminal D and to the Terminal D common use areas as a result of improvements to Terminal D and the ICP. Airline may be required to relocate to and operate out of space different from that shown in **Exhibit F** and stated in Section 4.01 or 4.02 above, and in such case City shall, at Airline's request, cover the actual and reasonable cost of such move (whether in connection with a temporary relocation, a permanent relocation or relocation following the temporary relocation) and provide Airline comparable space to which City has agreed to provide Airline under this Agreement to the extent practicable. If Airline is required to temporarily or permanently relocate to and operate out of different space, Airline's **Exhibit F** will be modified to reflect such interim change in square footage and space location by letter agreement. Upon completion of such Terminal D improvements, or ICP completion, as may affect Airline and the Date of Beneficial Occupancy of Airline's new space has been established in writing by the Director, a final **Exhibit F** dated as of the Date of Beneficial Occupancy will be prepared by Director and such **Exhibit F** shall become a part of this Agreement and shall supersede all other versions of **Exhibit F**.

B. The parties acknowledge that there may be future construction that may result in the elimination or reconfiguration of one or more Terminal D Gates. During and after any such construction, and to the extent affected thereby, priorities for the use of Terminal D gates shall be determined by Director in accordance with the IFP, as may be amended from time to time.

Section 4.04 Surrender of Premises

A. Upon expiration or early termination of this Agreement, Airline shall surrender the Premises to City in a good, clean condition excepting, however, (1) reasonable wear and tear that could not be prevented through routine maintenance required to be done by Airline, (2) damage by fire and other casualty, and (3) acts of God or the public enemy.

B. Except as otherwise provided in this Section, all equipment, trade fixtures, and other personal property installed or placed by Airline in the Premises or on or about the Airport pursuant to this Agreement and which can be removed without structural damage to the Premises or any other City-owned property, shall remain the property of Airline unless otherwise provided in agreements between Airline and City, and Airline shall have the right at any time during the term of this Agreement and prior to its expiration or early termination to remove any and all of said property from the Airport provided Airline is not in default in its payments hereunder (beyond all applicable notice and opportunity to cure periods). Airline agrees to repair or pay for all damages, if any, resulting from such removal. All City property damaged by or as a result of the removal of Airline's property shall be restored at Airline's expense to substantially the same condition as, or better condition than it was prior to such damage. While Airline may paint its Exclusive Use Areas

HAS 5/1/23

with branded coloring or logos during its occupancy, upon surrender of its Premises, Airline may be required to restore wall finishes to a neutral color included in Airport design standards. Any and all property not removed by Airline within thirty (30) days after the expiration of this Agreement, or, in case of earlier termination of this Agreement, within sixty (60) days after receipt by Airline of a written notice from the Director to remove such property, shall thereupon become a part of the land upon which it is located and title thereto shall thereupon vest in City; and City reserves the right to remove such property not so removed by Airline, and if such removal is accomplished within the 30-day period after the expiration of this Agreement or the 60-day period referred to above (after the early termination of the Agreement), such removal by City shall be at Airline's expense.

Section 4.05 Covenant Against Liens

Airline shall not cause nor permit any lien against the Premises or any improvements thereto to arise out of or accrue from any action or use thereof by Airline; provided, however, that Airline may in good faith contest the validity of any alleged lien.

Section 4.06 City Right of Entry

City may enter upon Airline's Premises (1) at any time for any purpose necessary, incidental to or connected with the performance of Airline's obligations hereunder, or in the exercise of City's governmental functions, and (2) upon the termination or cancellation of this Agreement, and such entry or reentry shall not constitute a trespass nor give Airline a cause of action for damages against City. For Exclusive Use Areas, Director will provide reasonable notice based on the circumstances (except in the case of emergencies when notice shall not be required) and shall enter the Premises without materially disrupting Airline's operations.

Section 4.07 Quiet Enjoyment

Upon payment by Airline of the rentals, fees and charges as in this Agreement required and subject to performance and compliance by Airline of the covenants, conditions, and agreements on the part of Airline to be performed and complied with hereunder, Airline shall peaceably have and enjoy the rights, uses and privileges of the Airport, its appurtenances and facilities as granted in this Agreement.

HAS 5/1/23

ARTICLE V.
RENTALS, FEES, AND OTHER CHARGES

Section 5.01 General

In consideration for the use of the Premises, facilities, rights, 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, except as provided in this Agreement, certain rentals and other charges as set forth in this Article V and as recalculated according to the procedures of Article VI.

Section 5.02 Statistical Report

A. **Contents of Report.** Airline shall submit in writing to the Director on or before the fifteenth (15th) day of each month the following statistical information relative to its scheduled, nonscheduled and charter operations at the Airport for the immediately preceding calendar month, in a format consistent with that provided in **Exhibit H**, attached hereto and made a part hereof for all purposes, as it may be changed from time to time:

1. Total number of Enplaned and Deplaned Passengers, by terminal and by type of operation (Domestic Flights, International Flights, and Pre-Cleared International Flights);
2. Total number of originating, in-transit, and connecting passengers, by terminal;
3. Total number of landings by type of aircraft and Maximum Gross Certified Landing Weight by type of aircraft;
4. Total pounds of air cargo enplaned and deplaned; and
5. Total pounds of air mail enplaned and deplaned.

B. **Right to Request Additional Information.** The above statistical information shall be in addition to any other information required by the IFP or by this Agreement to be submitted by Airline each month for City's use in calculating landing fees, Terminal D and ICP rentals and charges, Skyway Charges, Central FIS fees, and other charges pertinent to Airline's operations in Terminal D and the ICP.

C. **Failure to Provide Statistical Report.** If Airline fails to timely furnish City with any of the information required under this Section 5.02, the rentals, fees, and charges due under this Agreement may be determined by assuming that Airline's activity (and its Affiliates) in any month for which Airline fails to report its activity is equal to Airline activity during any of the previous twelve (12) months for which Airline submitted the monthly report. Any necessary adjustments in Airline's charges will be calculated after an accurate report is delivered to City by Airline for the month in question, but shall not relieve Airline of the obligation to pay interest or penalties due on such payments.

HAS 5/1/23

D. **PFCs.** If Airline is required to collect PFCs, Airline must submit a written report to City identifying the PFCs collected for the benefit of City on a date no later than the last day of the calendar month following the month of collection.

Section 5.03 Terminal D and ICP Rentals and Charges

A. **Exclusive Use Rentals.** Airline shall pay City monthly rentals for its use of Exclusive Use Areas, calculated by multiplying the number of square feet Airline rents as Exclusive Use Areas in Terminal D by the annual rental rate for Terminal D calculated each Fiscal Year in accordance with Section 6.02C).

B. **International Departure Charge.** Airline shall pay City an International Departure Charge for its use of the Departure Area, Aircraft Apron Area, and Loading Bridges for International Flights calculated by multiplying Airline's total Enplaned Passengers from International Flights in Terminal D for each month by the annual International Departure Charge calculated each Fiscal Year in accordance with Section 6.02C).

C. **International Arrival Charge.** Airline shall pay City an International Arrival Charge for its use of the Arrival Area, Aircraft Apron Area, and Loading Bridges for International Flights, other than Pre-Cleared International Flights, calculated by multiplying Airline's total Deplaned Passengers from such flights in Terminal D for each month by the annual International Arrival Charge calculated each Fiscal Year in accordance with Section 6.02C).

D. **Domestic and Pre-Cleared Charge.** Airline shall pay City a Domestic and Pre-Cleared Charge for its use of the Arrival Area, Departure Area, Aircraft Apron Area, Non-FIS Baggage Claim Area, and Loading Bridges for Domestic Flights and Pre-Cleared International Flights calculated by multiplying Airline's total Deplaned Passengers arriving on such flights for each month by the Domestic and Pre-Cleared Charge calculated each Fiscal Year in Section 6.02C) and Section 6.09.

E. **Ticketing Charge.** Airline shall pay City a Ticketing Charge for its use of the ICP and Baggage Make-up Area calculated by multiplying Airline's total Enplaned Passengers in Terminal D for each month by the annual Ticketing Charge calculated each Fiscal Year in accordance with Section 6.02C). For the purposes of calculating ticketing charges, Airline's monthly Enplaned Passengers shall exclude: (i) in-transit passengers, (ii) passengers enplaned on flights for which ticketing and baggage check-in services are not provided in Terminal D or the ICP, and (iii) passengers for whom Airline is required to pay a ticketing charge pursuant to another agreement between City and Airline.

F. **Security Checkpoint Charge.** Airline shall pay City a Security Checkpoint Charge for its use of the Security Checkpoint Area calculated by multiplying Airline's Enplaned Passengers using the Security Checkpoint Area for each month by the annual Security Checkpoint Charge calculated each Fiscal Year in accordance with Section 6.02C).

G. **Common Use VIP Club Charge.** Airline shall pay City a Common Use VIP Club Charge for its use of the Common Use VIP Club calculated by multiplying Airline's passengers using the club for each month by the Common VIP Club Charge calculated each Fiscal Year in Section 6.02C).

HAS 5/1/23

H. **Central FIS Charge.** Airline shall pay City a Central FIS Charge for the processing of Deplaned Passengers from International Flights (other than Pre-Cleared International Flights) in the Central FIS calculated by multiplying Airline's total Deplaned Passengers for such International Flights for each month by the Central FIS Charge calculated each Fiscal Year in accordance with Section 6.03.

I. **Skyway** Airline shall pay City a Skyway Charge calculated by multiplying Airline's total Enplaned Passengers for the applicable month by the Skyway Charge calculated each Fiscal Year in accordance with Section 6.04.

Section 5.04 Landing Fees

Airline shall pay City for its use of the Airfield monthly landing fees calculated by multiplying Airline's Total Landed Weight for the applicable month by the Landing Fee rate calculated each Fiscal Year in accordance with Section 6.05. City will use its best efforts to charge and collect landing fees from all commercial air transportation users of the Airfield as Director may reasonably determine. As determined by City, the fees payable by noncommercial air transportation users for the use of the Airfield may be based on some method other than aircraft landed weight.

Section 5.05 Fines or Penalties

Any fines or penalties assessed against City because of noncompliance of Airline or its agents with any Applicable Laws shall promptly be reimbursed to City by Airline within thirty (30) days of Airline's receipt of written notice from the Director setting forth the amount of such fine or penalty; provided, however, that such payment shall not be construed as waiving Airline's right to contest such fine or penalty.

Section 5.06 Other Fees and Charges

A. **Utilities.** With respect to its Premises and Airline-installed equipment, machinery and facilities, Airline agrees to pay all water, sewage, electricity, gas, telephone and other utility charges which may be charged to Airline for the use thereof, if such charges are separately assessed or metered as appropriate to Airline. Utility bills for metered utilities furnished by City will be paid monthly or less frequently depending on billing schedule established by City. For those areas not separately metered, including Exclusive, Preferential Use and common space, charges for utility services (other than illumination which is to be provided by City and included in the base rental rate) will be assessed by City on a proportionate basis related to area leased or number of utility connections or fixtures served. Meters will be installed where it is economically and mechanically feasible.

B. **Airport Symbols.** Airline shall have no right to use the trademarks or symbols, either directly or indirectly, in connection with any production, promotion service or publication without the prior written discretionary consent of the Director.

C. **Other.** City reserves the right to assess, and Airline agrees to pay, reasonable charges for the use of City-provided facilities and equipment including but not limited to: telecommunications trunk equipment charges, employee parking facilities, security identification

HAS 5/1/23

badges, CUTE (including paper stock and bag tags), and any Additional Fees (as defined in the IFP) assessed under the IFP.

Section 5.07 Security Deposit

A. **Power to Assess.** Prior to Airline commencing service at the Airport, City shall have the right to charge Airline a security deposit in an amount equal to three (3) times Airline's estimated rentals and fees during its first three months of operation under this Agreement. In the event Airline, at any time during the Term of this Agreement, fails to make any of the payments required under this Article V when due, City reserves the continuing right to require a security deposit in an amount equal to three (3) times Airline's average monthly amount of rentals and fees payable under this Agreement (provided, however, if Airline has more than one lease or agreement requiring a security deposit for Landing Fees the security deposit shall be calculated in total, rather than by individual agreement), during the immediately preceding three-month period.

B. **Form of Security Deposit.** Airline's initial security deposit, if any, shall be provided to City by Airline, as a letter of credit or in such other form specified by the Director, a sample of which is attached as **Exhibit J**, attached hereto and made a part hereof for all purposes, within thirty (30) days of commencing service under this Agreement. At the termination of this Agreement, and if Airline and its Affiliates have performed all their duties under this Agreement, including payment of all rentals, fees and other charges, City will return the security deposit to Airline within thirty (30) days of expiration or earlier termination of this Agreement.

Section 5.08 Payment Provisions

A. **ITC Rentals and Charges.**

1. Exclusive Use Area rentals shall be due and payable on the first (1st) day of each month without invoice from City.

2. International Arrival Charges, International Departure Charges, Domestic and Pre-Cleared Charges, Ticketing Charges, Security Checkpoint Charges, Common Use VIP Club Charges, Central FIS Charges, and Skyway Charges shall be due and payable, without invoice, on the fifteenth (15th) day following the last day of the applicable month. Such rentals and charges shall be calculated on the illustrative self-invoicing form set forth in **Exhibit I**, as may be changed from time to time, and transmitted to City together with Airline's monthly statistical report for the month on or before the fifteenth (15th) day following the last day of the applicable month as required by Section 5.02.

B. **Landing Fees.** Landing fees for each month shall be due and payable without invoice from City on or before the fifteenth (15th) day following the last day of such month.

C. **Other Fees.** All other rentals, fees, and charges required hereunder shall be due and payable within thirty (30) days of the date of Airline's receipt of the invoice therefor.

D. **Right of City to Verify Airline's Payment.** The acceptance of any payment made by Airline shall not preclude City from verifying the accuracy of Airline's report and computations or from recovering any additional payment actually due from Airline or preclude

HAS 5/1/23

Airline from later demonstrating that Airline's report was inaccurate and that a lesser amount was properly owed (and to recover any such overpayment).

E. **Interest on Overdue Amounts.** Any payment not received within five (5) days of the due date may accrue interest at the rate of one and a half percent (1.5%) per month from the due date until the date when full payment is made.

F. **Form of Payment.** Payments shall be made to the City of Houston – Houston Airport System and shall be sent in accordance with Section 14.15.

Section 5.09 No Other Fees and Charges

City agrees that it will not impose any rental, fee or charge, direct or indirect, on Airline for the exercise and enjoyment of the rights and privileges granted in this Agreement except those rentals, fees and charges provided for in this Agreement, and such other rentals, fees and charges as are mutually agreed upon by City and Airline; provided, however, there is excepted from this provision any and all fees and charges imposed, authorized or required by any law of any governmental authority other than HAS. This provision is not intended to prevent City from making agreements concerning rentals, fees and charges with individuals or firms providing goods or services to City.

HAS 5/1/23

ARTICLE VI.
CALCULATION OF RENTALS, FEES, AND OTHER CHARGES

Section 6.01 General

For each Fiscal Year thereafter through the term of this Agreement, rentals and other charges will be reviewed and calculated based on the principles and procedures set forth in this Article VI. The methodology for the calculation of airline rentals and other charges described in this Article VI is illustrated in **Exhibit K**, attached hereto and made a part hereof for all purposes. For rate setting purposes, the calculations will be made on the basis of HAS estimates of costs and expenses and estimates of enplaned and deplaned passengers, flight arrivals and departures, and total landed weight and shall be provided to Airline at least thirty (30) days prior to the beginning of the Fiscal Year. For final settlement purposes all calculations will be made on the basis of actual costs and expenses incurred and actual passenger and flight activity and will be provided to Airline as soon as possible following the completion of the annual audit of the HAS's financial statements.

Section 6.02 Terminal D and ICP Rentals and Other Charges

A. **General.** City will apply existing cost allocation and compensatory rate-making concepts and procedures, as described immediately below, in calculating Terminal D rentals and other charges except where otherwise expressly provided in this Agreement.

B. **Cost Elements.** The total costs of the Terminal D Cost Centers will be calculated by adding together the following amounts, excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to Terminal D and the ICP.

2. Amortization of the unamortized net cost of each Capital improvement in or allocable to Terminal D and the ICP.

3. A charge equal to 0.20 times the Amortization of the net cost of each Capital Improvement in or allocable to Terminal D or the ICP placed in service on or after the date of beneficial occupancy of any component of ITRP Phase 1 between such date of beneficial occupancy and the end of Fiscal Year 2033 (June 30, 2033).

4. Interest on the cost of land allocable to Terminal D or the ICP computed at City's historical average Cost of Capital.

5. Systems Costs allocable to Terminal D or the ICP.

6. A Base Capital Charge of \$2.50 per square foot for all areas of Terminal D or the ICP which have not been demolished or replaced, the original cost of which has been fully amortized.

HAS 5/1/23

7. Replenishment of the Renewal and Replacement Fund allocable to Terminal D or the ICP, if necessary, as required by the Bond Ordinances.

C. **Rate Calculations.** Cost elements will be directly assigned to Terminal D Cost Centers where traceable or, where not directly traceable, allocated among Terminal D Cost Centers based on the square footage of Usable Space in those Cost Centers or such other reasonable method as the Director deems most appropriate under the circumstances based on the benefits received by the particular cost centers. The total annual costs allocable to each of the Terminal D Cost Centers will then be divided by the following units to determine the rate to be charged for the use of each such cost center, provided that the available amounts of Domestic and Pre-Cleared Charges available pursuant to Section 6.09D (if any) shall be subtracted from the total costs of allocable to the Departure Area, Arrival Area, Aircraft Apron Area, Loading Bridges, ICP and Baggage Makeup Areas:

<u>Rate/Fee</u>	<u>Cost Centers</u>	<u>Units (Divisor)</u>	<u>Basis of Charge</u>
Space Rentals	Exclusive Use Area	Square feet of exclusive use space	Per square foot
International Departure Charge	Departure Area; Aircraft Apron Area (pro rata) ¹ ; Loading Bridges (pro rata) ¹	Enplaned Passengers from International Flights in Terminal D	Per Enplaned Passenger on an applicable flight
International Arrival Charge	Arrival Area; Aircraft Apron Area (pro rata) ¹ ; Loading Bridges (pro rata) ¹	Deplaned Passengers from International Flights (other than Pre-Cleared Flights) in Terminal D	Per Deplaned Passenger on applicable flight
Domestic and Pre-cleared Charge	Non-FIS Baggage Claim Area, and, where available, the Arrival Area; Departure Area; and ICP, in accordance with Section 6.09; Aircraft Apron Area; Loading Bridges	Enplaned or Deplaned Passengers from Domestic Flights or Pre-Cleared International Flights using such areas	Per Enplaned or Deplaned Passenger on applicable flights

¹ Costs associated with the Aircraft Apron Area and the Loading Bridges for Enplaned Passengers and Deplaned Passengers of International Flights will be allocated proportionally between the International Departure Charge and the International Arrival Charge for Terminal D.

HAS 5/1/23

<u>Rate/Fee</u>	<u>Cost Centers</u>	<u>Units (Divisor)</u>	<u>Basis of Charge</u>
Ticketing Charge	Ticketing areas in Terminal D or the ICP; Baggage Make-up Area and the costs of providing uniformed security officers required under Federal Aviation Regulations Part 107.4 which costs shall be allocated to the ICP.	Enplaned Passengers (excluding in-transit passengers and Enplaned Passengers on flights for which ticketing and baggage check-in is not provided in Terminal D or the ICP)	Per enplaned passenger on applicable flights
Security Checkpoint Charge	Security Checkpoint Area	Enplaned Passengers using the Security Checkpoint Area	Per enplaned passenger using Security Checkpoint Area
Common VIP Club Charge	Common VIP Club	Per Passenger using Common VIP Club	Per Passenger Using Common VIP Club

Airline shall then pay (i) monthly space rentals calculated by multiplying the required space rental rate, as computed above, by the total square footage of Airline's Exclusive Use Area and dividing by 12; and (ii) all other charges calculated by multiplying the applicable rates by Airline's applicable activity for such month in accordance with Section 5.03B) through Section 5.03G).

Section 6.03 Central FIS Fees

A. **Cost Elements.** The total costs of the Central FIS will be calculated by adding together the following amounts, excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed to City by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to the Central FIS.
2. Amortization of the unamortized net cost of each Capital improvement in or allocable to the Central FIS.
3. A charge equal to 0.20 times the Amortization of the net cost of each Capital Improvement in or allocable to the Central FIS placed in service on or after the date of beneficial occupancy of any component of ITRP Phase 1 between such date of beneficial occupancy and the end of Fiscal Year 2033 (June 30, 2033).

HAS 5/1/23

4. Interest on the cost of land allocable to the Central FIS computed at City's historical average Cost of Capital.

5. Systems Costs allocable to the Central FIS.

6. A Base Capital Charge of \$2.50 per square foot for all areas of the Central FIS which have not been demolished or replaced, the original cost of which has been fully amortized.

7. Replenishment of the Renewal and Replacement Fund allocable to Central FIS, if necessary, as required by the Bond Ordinances.

B. **Rate Calculations.** The total annual costs allocable to the Central FIS will be divided by the number Deplaned Passengers from International Flights (excluding Pre-cleared International Flights) using the Central FIS to determine the Central FIS Charge. Airline will pay Central FIS charges in accordance with Section 5.03H).

Section 6.04 Skyway Charges

A. **Cost Elements.** Airline shall pay City monthly amounts sufficient to reimburse City for the total annual costs of the Skyway allocable to Terminal D, which will be calculated by adding together the following amounts, excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed to City by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to the Skyway.

2. Amortization of the net cost of each Capital Improvement associated with the Skyway; provided, however, that only costs associated with the Skyway incurred subsequent to this Agreement, if any, shall be recoverable from future Skyway Charges.

3. Interest on the cost of land allocable to the Skyway computed at City's historical average Cost of Capital.

4. A charge equal to 0.20 times the Amortization of the net cost of each Capital Improvement in or allocable to Skyway placed in service on or after the date of beneficial occupancy of any component of ITRP Phase 1 between such date and the end of Fiscal Year 2033 (June 30, 2033).

5. Systems Costs allocable to the Skyway.

6. A Base Capital Charge of \$2.50 per square foot for all areas of the Skyway which have not been demolished or replaced, the original cost of which has been fully amortized.

HAS 5/1/23

7. Replenishment of the Renewal and Replacement Fund allocable to the Skyway, if necessary, as required by the Bond Ordinances.

8. The reallocation of the direct and indirect cost of the space utilized within the terminal complex by HAS and designated as "HAS Space" on all applicable space exhibits, which exhibits may be modified from time to time to reflect the actual use of such space. Said reallocation shall be based upon each individual cost center's direct expenses as a percentage of the Airport's total direct expenses.

B. **Rate Calculations.** The total annual costs of the Skyway will be divided by the total number of annual Enplaned Passengers using terminals served by the Skyway to derive the annual Skyway Charge Rate per Enplaned Passenger. Airline will pay Skyway Charges in accordance with Section 5.03I.

Section 6.05 Landing Fee Rate

A. The total costs of the Airfield will be calculated by adding together the following amounts excluding any cost (net of the cost of collection) that (a) has been reimbursed or covered by government grants-in-aid or PFCs, (b) has been reimbursed or covered by any insurance recovery, condemnation proceeds or other third-party payment, or (c) has been reimbursed to City by an individual Airline in connection with projects undertaken by City at the request and for the benefit of an individual Airline:

1. Direct and indirect Operation and Maintenance Expenses allocable to the Airfield.

2. Amortization of the unamortized net cost of each Capital improvement in or allocable to the Airfield.

3. Interest on the cost of and allocable to the Airfield computed at City's historical average Cost of Capital.

4. Systems Costs allocable to the Airfield.

5. Replenishment of the Renewal and Replacement Fund allocable to the Airfield, if necessary, as required by the Bond Ordinances.

B. The net costs of the Airfield will then be calculated by subtracting revenues from general aviation fuel flowage fees from the total costs of the Airfield, but only if and to the extent City's bond counsel is of the opinion such subtraction will not affect the tax-exempt status of City's Airport System Revenue Bonds. The Landing Fee rate will then be calculated by dividing the net costs of the Airfield by the Total Landed Weight of all airlines using the Airport.

C. Airline shall pay monthly landing fees calculated by multiplying the Landing Fee rate, as computed above, by the Total Landed weight of all Airline's arriving aircraft for each month in accordance with Section 5.04.

HAS 5/1/23

Section 6.06 Mid-Year Rate Adjustments

A. In the event that, at any time during a Fiscal Year, the Total Costs of Terminal D and the ICP, the Central FIS, the Skyway, or Airfield that is allocable to the airlines, or the Total Landed Weight of all airlines serving the Airport, is projected by City to vary ten percent (10%) or more from the estimates used in setting the Terminal D rentals and fees, the Central FIS rentals and fees, or the Landing Fee rate, such rates may be adjusted either up or down for the balance of such Fiscal Year, provided that such adjustment is deemed necessary by City.

B. An upward adjustment shall only be used to ensure that adequate revenues will be available from such fees to recover 120% of the total estimated total costs of the particular airline supported cost center.

C. For each such adjustment, Director shall provide Airline with a written explanation of the basis for the rate adjustment(s) and will provide sixty (60) days' advance written notice before putting such adjustment(s) into effect. Unless extraordinary circumstances warrant additional adjustments, City will seek to limit such rate adjustments to no more than once each Fiscal Year.

Section 6.07 Year-End Adjustment to Actual and Settlement

A. As soon as possible following the close of each Fiscal Year, City shall furnish Airline with an accounting of the costs and expenses actually incurred, revenues and other credits actually realized (reconciled to the audited financial statements of the Airport System), and actual Enplaned and Deplaned passengers, flight arrival and departures at Terminal D, and Total Landed Weights during such Fiscal Year with respect to each of the components of the calculation of Terminal D and ICP rentals and fees, Central FIS charges, Skyway charges, and the Landing Fee Rate in this Article VI and shall recalculate the rates, fees, and charges required for the Fiscal Year based on those actual costs and revenues. If requested by an airline, Director shall convene a meeting of the airlines to discuss the calculation of the year-end settlement.

B. In the event that Airline's rentals, fees, and charges billed and paid during the Fiscal Year were more than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), or exceed the International CPE Cap, such excess amount shall be credited to Airline's next payment within sixty (60) days of the calculation of such final settlement.

C. In the event that Airline's rentals, fees, and charges billed and paid during the Fiscal Year were less than the amount of Airline's rentals, fees, and charges required (as recalculated based on actual costs and revenues), such deficiency shall be billed to Airline and payable by Airline within sixty (60) days of the date of Airline's receipt of the invoice therefor. However, in the event that the amount of the Airline deficiency is more than (10%) of total rentals, fees, and charges billed and paid by Airline during the Fiscal Year (which deficiency must be at least \$350,000 for United and \$25,000 for other airlines), Airline may pay the deficiency to City in equal monthly installments without interest over the remaining months of the current Fiscal Year or three (3) months whichever is longer.

HAS 5/1/23

Section 6.08 International CPE Cap

Notwithstanding any other provision of this Article VI to the contrary, City will not levy fees or charges pursuant to this Agreement which would result in Airline's International CPE to exceed 150% of that same International CPE for Fiscal Year 2018, adjusted annually thereafter for cumulative inflation as shown and depicted in **Exhibit K** (the "**International CPE Cap**").

Section 6.09 Domestic and Pre-Cleared Charges

A. Domestic and Pre-Cleared Charges will be assessed at a rate per Enplaned Passenger equal to the then-current total average cost per Enplaned Passenger for use of facilities in Terminal A, including the use of ticket counters, outbound baggage, inbound baggage, baggage claim, holdrooms and ramps in Terminal A.

B. Domestic and Pre-Cleared Charges will first be used to cover the cost of the Non-FIS Baggage Claim Area.

C. If (1) the Domestic and Pre-Cleared Charges collected by City exceed the amounts required to cover the costs of the Non-FIS Baggage Claim Area; and (2) the International CPE exceeds the International CPE Cap either on an annual or cumulative basis during the first five years following DBO of ITRP Phase 1, City agrees to apply the amount of Domestic and Pre-Cleared Fees that exceeds the amounts necessary to cover the costs of the Non-FIS Baggage Claim Area to pay for costs of International Arrival Charges, International Departure Charges and Ticketing Charges that would have been payable by all airlines but for the International CPE Cap.

D. If the Domestic and Pre-Cleared Charges collected by City exceed the costs described in Sections 6.09(B) and 6.09(C), City agrees to apply the amount of Domestic and Pre-Cleared Fees that exceeds such amounts to reduce the amounts of International Arrival Charges, International Departure Charges, and Ticketing Charges as described in Section 6.02C.

Section 6.10 Concession Areas and Revenue Sharing

A. **Cost.** City will be responsible for all costs associated with concession areas of Terminal A, Terminal D, the Central FIS, and the ITC (the "**Terminal Concession Areas**"), and public parking, the ICP parking structure, rental car and ground transportation facilities and the concession areas of all Public Areas other than those included in Terminal Concession Areas ("**Non-Terminal Concession Areas**").

B. **Concession Revenue Credits.** In the event that the HAS Debt Service Coverage ratio exceeds 1.50 at the end of any fiscal year following the date of beneficial occupancy of ITRP Phase 1 between such date of beneficial occupancy and through and the end of Fiscal Year 2033 (June 30, 2033), City shall issue revenue sharing credits for the Terminal Concession Areas and the Non-Terminal Concession Areas to signatory airlines having this revenue-sharing provision in its use and lease agreement as follows:

1. City shall calculate the excess of Net Revenues over the HAS Debt Service Coverage ratio of 1.50 (the "**HAS Revenue Sharing Cap**").

HAS 5/1/23

2. City shall calculate fifty percent (50%) of HAS Concession Revenues (“**50% of HAS Concession Revenues**”).

3. City shall calculate the total amount available for revenue sharing in the HAS (the “**HAS Amount Available for Revenue Sharing**”) as follows:

(a) If 50% of HAS Concession Revenues is less than or equal to the HAS Revenue Sharing Cap, the HAS Amount Available for Revenue Sharing shall be 50% of HAS Concession Revenues; or

(b) If 50% of HAS Concession Revenues is greater than the HAS Revenue Sharing Cap, the HAS Amount Available for Revenue Sharing shall be the HAS Revenue Sharing Cap.

4. City shall calculate the “**Amount Available for HAS Revenue Credits**” by multiplying the IAH share of HAS Concession Revenues by the HAS Amount Available for Revenue Sharing.

5. City shall then:

(a) determine the proportion of the Amount Available for HAS Revenue Credits allocable to Terminal Concession Areas and Non-Terminal Concession Areas; and

(b) calculate Airline’s Concession Revenue Credits associated with the amount allocable to Terminal Concession Areas based on Airline’s share of total Enplaned Passengers in Terminals A and D for the prior fiscal year.

(c) calculate Airline’s Concession Revenue Credits associated with the Amount Available for HAS Revenue Credits allocable to Non-Terminal Concession Areas based on Airline’s share of total Enplaned Passengers excluding connecting passengers at the Airport for the prior fiscal year.

6. At the end of the fiscal year, City shall calculate, based upon timely-filed statistical reports, and notify Airline of any Concession Revenue credits within thirty (30) calendar days of receiving (a) such statistical reports; and (b) all relevant concession vendor reports for the prior fiscal year. Concession Revenue credits will then be issued within thirty (30) calendar days of such notification. Concession Revenue credits will be issued as a credit against Airline’s future rentals and fees at the Airport. Airline must provide its statistical reports by the due date required under this Agreement, for such Enplaned Passengers numbers to be utilized for purpose of the calculation under this Section 6.10(B).

7. For illustrative purposes only, **Exhibit K** provides an example of the calculation of Revenue Sharing credits under this Section 6.10(B).

HAS 5/1/23

ARTICLE VII.
CONSTRUCTION OF IMPROVEMENTS

Section 7.01 Construction by Airline--General

A. **General Approval of Plans.** Airline may construct or install at its own expense any improvements, facilities or equipment, and any additions thereto, in the Premises; provided, however plans and specifications of any such proposed construction or installation, including any alteration or addition thereto, shall be submitted to and receive the written approval through the TIP process prior to the commencement of construction, alteration or installation. All such construction, alteration, or installation may be made only after obtaining requisite building or construction licenses and permits, construction bonds, if applicable, and, in addition to usual City inspection, shall be subject to inspection and approval by HAS TIP group to see that said approved plans and specifications are being followed. All such construction, alteration, and installation shall be designed and carried out in accordance with the HAS' TIP standards as may be amended in any reasonable manner from time to time which is incorporated herewith by reference. Upon completion of construction, Airline shall provide Director with as-built drawings of the improvements on auto-CADD, BIM or as otherwise required by TIP standards.

B. **Airline Right to Select Architects and Contractors.** No restrictions shall be placed on Airline as to architects, builders or contractors that it may employ in connection with any construction, installation, alteration, repair or maintenance by Airline in Exclusive Use Areas.

C. **Title to Airline-Constructed Improvements.** Title to all Airline-constructed improvements in the Premises, other than the equipment, trade fixtures and personal property that Airline is permitted to remove under the provisions of Section 4.04, shall vest in City immediately upon completion thereof.

D. **Contractor Indemnity and Warranty.** Airline will use its Best Efforts to provide an indemnity from its construction contractors to City to the same extent as Airline obtains an indemnity from such contractor. Additionally, Airline will use its Best Efforts to cause all construction contractor warranties to inure to the benefit of City if and to the same extent they inure to the benefit of Airline.

Section 7.02 Future Capital Improvements

City may expand, repair, alter, and improve the Airport, including, without limitation adding or removing Public Areas, concession space or Gates in Terminal D, the ICP and the Central FIS as Director, in his sole judgment, may deem necessary to provide required facilities in the interest of the public and City, to include and not limited to all roadways, parking areas, terminal facilities, apron areas, landing areas and taxiways as it may reasonably see fit, free from any liability to Airline for loss of business or damages of any nature whatsoever to Airline occasioned during the making of such improvements, repairs, alterations and additions. Director will confer and coordinate with Airline and the other airlines serving the Airport regarding planned Capital Improvements at the Airport, and, at least annually, provide the airlines with a detailed schedule of such planned Capital Improvements. However, City will retain the discretion to make capital investment decisions and issue bonds, as needed, to ensure that adequate facilities are provided on

HAS 5/1/23

a timely basis to meet public and airline needs. The provisions of this Section shall, in all cases, be subject to Airline's rights and obligations under other agreements between City and the Airline with respect any portion of the Airport.

HAS 5/1/23

ARTICLE VIII.
OPERATION AND MAINTENANCE

Section 8.01 Obligations of City

A. **Common Use Airport Facilities.** City agrees to operate, maintain and keep in good repair the areas and facilities provided by City for the common use of the airlines and the public in accordance with the practices of a reasonably prudent airport operator. City agrees to use its best efforts to keep the Airport free from obstructions and to do all things reasonably necessary for the safe, convenient and proper use of the Airport by those who are authorized to use the same.

B. **Exclusive Use Areas.** In Exclusive Use Areas of Terminal D, City will (1) furnish only structural maintenance of City-constructed facilities, (2) provide maintenance and operation of City-installed equipment and systems and outside window and building cleaning, (3) use reasonable efforts to furnish sufficient heat and air conditioning through its installed systems in those areas so equipped for such services and (4) install and furnish electrical power for interior area lighting (as shown in **Exhibit L**, attached hereto and made a part hereof for all purposes).

C. **Aircraft Apron Area.** City shall provide structural maintenance for the Aircraft Apron Area at Terminal D, maintain apron area lighting, and shall perform all aircraft parking position painting. Airline may request that City modify aircraft parking position paintings by submitting a stamped drawing showing requested changes to the Director. The Director may approve or deny such requests in the Director's sole discretion.

D. **Passenger Loading Bridges and Baggage Handling Systems.** City shall provide maintenance (including routine and scheduled maintenance) and cleaning for all City-owned passenger loading bridges and baggage handling systems in Terminal D (as shown in **Exhibit L**).

E. **Public Areas of the ITC**

1. Except as may otherwise be provided in this Agreement, City will operate, maintain and keep in good, sanitary and neat condition and repair the public use areas of Terminal D, the ICP, the Skyway and the Central FIS (except for those areas leased to others for their exclusive use) and all additions, improvements and facilities now or hereafter provided by City at or in connection with the terminal buildings and for common use by all airlines and the public, excepting any improvements or facilities constructed or installed by Airline, either individually or jointly with others, and those that Airline has agreed under the provisions of this Agreement to operate or maintain as aforesaid.

2. Except as may otherwise be provided in this Agreement, City will keep the roof, structure and utility systems of the terminal buildings in good repair. City will keep the Public Areas adequately supplied, equipped and furnished to accommodate the public using same and will operate and maintain directional signs in said Public Areas, including by way of example, but not by way of limitation, signs indicating the location in the terminal buildings of public facilities provided by City on the Airport.

HAS 5/1/23

3. City will use reasonable efforts to provide (1) sufficient heat and air conditioning to those areas on the Airport equipped for such service; (2) illumination and drinking water in the Public Areas; and (3) such janitorial and cleaning services as necessary to keep the public use areas of the terminal buildings and areas adjacent thereto in a reasonably presentable and usable condition at all times (as shown in **Exhibit L**).

Section 8.02 Obligations of Airline

A. **Exclusive Use Areas.** Airline shall provide all maintenance in the Exclusive Use Areas of Terminal D not otherwise provided by City under Section 8.01. Airline shall furnish all janitorial services including the removal of trash, all maintenance and operation of Airline-installed improvements and systems in its Exclusive Use Areas. Airline shall provide electrical relamping, all decorating and redecorating when required in the Exclusive Use Area. Airline shall maintain plumbing lines, including clogged drains, installed by Airline in the Exclusive Use Areas or elsewhere in the ITC. At all times the Exclusive Use Areas shall be maintained in accordance with all applicable ordinances, rules, statutes, and regulations (as amended from time to time) of any governmental entity having jurisdiction. Airline shall maintain the Exclusive Use Areas in a neat, clean, sanitary, and operable condition (as shown in **Exhibit L**).

B. **Nonexclusive Use Areas.** Airline shall furnish all maintenance and operation of Airline-installed improvements and systems in any areas that are not Airline's Exclusive Use Areas of the ITC. Airline will conduct its operations in areas that are not Airline's Exclusive Use Areas of the ITC in a neat, clean, and sanitary way and shall dispose of all trash or Hazardous Materials generated by its use of such areas in receptacles designated by Director. In addition, Airline shall repair any damages caused by airline in such areas, including, without limitation, damage caused by Airline's use of an Exclusive Use Area.

C. **Passenger Loading Bridges.** Airline shall not modify or attach personal property or signage to City-owned passenger loading bridges, or store Airline's personal property or equipment in City-owned passenger loading bridges, without the advanced written approval of the Director which approval may be withheld at Director's sole discretion. City shall maintain City-owned passenger loading bridges in accordance with **Exhibit L** and Airport policies and procedures. Airline shall dispose of all trash or Hazardous Materials generated by its use of passenger loading bridges in receptacles designated by Director, and shall not damage any passenger loading bridges with Airline's equipment. Airline shall be responsible for trash removal in all Gate areas and all passenger loading bridges used by Airline at the end of each of its flights.

D. **Airline-Constructed Improvements.** Airline shall cause all improvements and facilities, and additions thereto, constructed or installed by Airline (and which are not operated or managed by City), either alone or in conjunction with other airline tenants, and all vehicles and equipment operated by Airline on the Airport to be kept and maintained in a safe condition and in good repair (except those repairs and maintenance undertaken by City in Section 8.01) in accordance with uniform standards applicable to all Airport tenants as established from time to time by the Director. Airline shall keep the Exclusive Use Areas and improvements thereon in a sanitary and neat condition and, during construction, shall cause compliance with all health, safety and other Applicable Laws and requirements; provided, however, that notwithstanding anything in this

HAS 5/1/23

Agreement to the contrary, Airline shall not be obligated to make any capital repairs or structural alterations to so comply, unless necessitated as a result of Airline's construction activities.

E. **Performance by City upon Failure of Airline to Maintain.** In the event Airline fails within thirty (30) days after receipt of written notice from City to perform any obligation required under this Section 8.02 to be performed by Airline, City may enter the premises involved, without such entering causing or constituting a termination of this Agreement or an interference with the possession of said premises by Airline, and do all things reasonably necessary to perform such obligation. Director may charge Airline the reasonable cost and expense of performing such obligation and Airline agrees to pay to City upon demand such charge in addition to any other amounts payable by Airline hereunder; provided, however, that if Airline's failure to perform any such obligation endangers the safety of the public, the employees or property of City, or other tenants of the Airport and Director so states in its written notice to Airline, City may perform such obligation of Airline at any time after the giving of such notice and charge to Airline the reasonable cost and expense of such performance which Airline shall pay as aforesaid.

HAS 5/1/23

ARTICLE IX.
INDEMNIFICATION

Section 9.01 RELEASE AND INDEMNIFICATION OF CITY

A. AIRLINE, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS HEREBY RELEASES AND DISCHARGES CITY, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES AND ITS AGENTS, EMPLOYEES AND OFFICERS (COLLECTIVELY IN THIS SECTION "CITY") FROM ANY LIABILITY OF CITY FOR (I) ANY DAMAGE TO PROPERTY OF AIRLINE OR (II) FOR CONSEQUENTIAL DAMAGES SUFFERED BY AIRLINE, WHERE ANY SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, EXCEPT WHERE SUCH DAMAGE IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY. NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE THAT THE ABOVE-REFERENCED RELEASE IN FAVOR OF CITY SHALL NOT BE APPLICABLE TO AND DOES NOT RELEASE CITY'S VENDORS, AGENTS, AND ASSIGNS FOR DAMAGES CAUSED TO THE PROPERTY OF AIRLINE, INCLUDING BUT NOT LIMITED TO AIRCRAFT, AIRCRAFT ENGINES AND RELATED PROPERTY OF AIRLINE USED IN CONNECTION WITH AIRLINE'S OPERATIONS UNDER THE TERMS OF THIS AGREEMENT, AS A RESULT OF THE NEGLIGENCE AND/OR OTHER FAULT OF CITY'S VENDORS, AGENTS, AND ASSIGNS.

B. WITH NO INTENT TO LIMIT AIRLINE'S ENVIRONMENTAL INDEMNIFICATION SET FORTH IN SECTION 14.02D), AIRLINE EXPRESSLY AGREES TO PROTECT, DEFEND, INDEMNIFY AND HOLD CITY COMPLETELY HARMLESS FROM AND AGAINST (BUT SUBJECT TO SECTION 9.01D) AND SECTION 9.01E): (I) ANY AND ALL LIABILITIES, LAWSUITS, CAUSES OF ACTION, LOSSES, CLAIMS, JUDGMENTS, DAMAGES, FINES OR DEMANDS ARISING BY REASON OF OR IN CONNECTION WITH THE ACTUAL OR ALLEGED ERRORS, OMISSIONS, OR NEGLIGENT ACTS OF AIRLINE OR OF CITY IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, BODILY INJURY, ILLNESS, PHYSICAL OR MENTAL IMPAIRMENT, DEATH OF ANY PERSON, OR THE DAMAGE TO OR DESTRUCTION OF ANY REAL OR PERSONAL PROPERTY; AND (II) ALL REASONABLE, OUT-OF-POCKET COSTS INCURRED TO ESTABLISH CITY'S RIGHT TO INDEMNIFICATION HEREUNDER; AND (III) ALL COSTS FOR THE INVESTIGATION AND DEFENSE OF ANY AND ALL LIABILITIES, LAWSUITS, CAUSES OF ACTION, LOSSES, CLAIMS, JUDGMENTS, DAMAGES, FINES OR DEMANDS INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY FEES, COURT COSTS, DISCOVERY COSTS AND EXPERT FEES. SUBJECT TO SUBSECTIONS SECTION 9.01D) AND SECTION 9.01E), AIRLINE'S AGREEMENT TO PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY EXPRESSLY EXTENDS TO THE ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE OF CITY AND AIRLINE.

C. UPON THE FILING BY ANYONE OF ANY TYPE OF CLAIM, CAUSE OF ACTION OR LAWSUIT AGAINST CITY FOR ANY TYPE OF DAMAGES ARISING OUT OF INCIDENTS FOR WHICH CITY IS TO BE INDEMNIFIED BY AIRLINE PURSUANT TO THIS SECTION 9.01, CITY SHALL, AS SOON AS PRACTICAL, AND, IN ANY EVENT,

HAS 5/1/23

WITHIN (45) DAYS OF CITY BECOMING AWARE THEREOF, NOTIFY AIRLINE OF SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT. IN THE EVENT THAT AIRLINE DOES NOT SETTLE OR COMPROMISE SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AT ITS OWN COST, TO THE EXTENT AIRLINE IS REQUIRED TO INDEMNIFY CITY PURSUANT TO THIS SECTION 9.01, THEN AIRLINE SHALL UNDERTAKE THE LEGAL DEFENSE OF SUCH CLAIM, CAUSE OF ACTION, OR LAWSUIT AT ITS OWN COST (SUBJECT TO SECTION 9.01E) THROUGH COUNSEL OF RECOGNIZED CAPACITY OR OTHERWISE NOT REASONABLY DISAPPROVED BY CITY BOTH ON BEHALF OF ITSELF AND ON BEHALF OF CITY (ASSUMING NO CONFLICTS OF INTEREST EXIST) UNTIL FINAL DISPOSITION, INCLUDING ALL APPEALS. CITY MAY, AT ITS SOLE RISK, COST AND EXPENSE, PARTICIPATE IN THE LEGAL DEFENSE OF ANY SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT BY AIRLINE TO DEFEND AGAINST SUCH CLAIM, CAUSE OF ACTION OR LAWSUIT WITHOUT SUCH PARTICIPATION AFFECTING AIRLINE'S OBLIGATION UNDER THIS AGREEMENT. ANY FINAL JUDGMENT RENDERED AGAINST CITY FOR ANY CAUSE FOR WHICH CITY IS TO BE INDEMNIFIED AGAINST PURSUANT TO THIS SECTION 9.01 SHALL BE CONCLUSIVE AGAINST AIRLINE AS TO LIABILITY AND AMOUNT UPON THE EXPIRATION OF THE TIME FOR ALL APPEALS.

D. THE PROVISIONS OF SECTION 9.01B) AND SECTION 9.01C) SHALL NOT APPLY TO ANY CLAIM OR DEMAND (I) TO THE EXTENT ARISING FROM THE NEGLIGENCE OF CITY WHEN CITY IS MORE THAN 50% LIABLE, UNDER THIS AGREEMENT, OR FROM THE BREACH OF CITY'S EXPRESS OBLIGATIONS HEREUNDER; OR (II) IF SUCH CLAIM OR DEMAND RELATES TO ANY ACT OR OMISSION OCCURRING OUTSIDE THE PREMISES LEASED EXCLUSIVELY, COMMONLY, OR PREFERENTIALLY TO AIRLINE UNDER THIS AGREEMENT, UNLESS AIRLINE IS MORE LIABLE FOR (I.E., IS MORE AT FAULT FOR) SUCH CLAIM OR DEMAND THAN EACH OTHER PARTY TO SUCH CLAIM OR DEMAND; (III) TO THE EXTENT THE CLAIM OR DEMAND IS COVERED UNDER THE INSURANCE AVAILABLE TO CITY AS AN ADDITIONAL INSURED UNDER ARTICLE X; (IV) TO THE EXTENT THE CLAIM OR DEMAND IS COVERED UNDER A THIRD PARTY INSURANCE POLICY OWNED OR CARRIED BY CITY AND/OR ANY OF ITS AGENCIES OR INSTRUMENTALITIES; OR (V) UNLESS THE CLAIM OR DEMAND IS COVERED BY, OR CITY HAS ASSERTED A DEFENSE BASED ON GOVERNMENTAL OR SOVEREIGN IMMUNITY. CITY SHALL BE RESPONSIBLE FOR ASSERTING ANY DEFENSE OF GOVERNMENTAL IMMUNITY AS IT MAY EXIST FROM TIME TO TIME, AND IT SHALL DO SO UPON THE TIMELY WRITTEN REQUEST OF AIRLINE OR ITS INSURANCE CARRIER(S); PROVIDED, THAT, IF (A) A CLAIM OR DEMAND IS MADE AGAINST AIRLINE BY A THIRD PARTY FOR WHICH AIRLINE HAS INSURANCE COVERAGE PURSUANT TO SECTION 10.02 AND SECTION 10.03, AND (B) THERE IS A DEDUCTIBLE CARRIED BY AIRLINE APPLICABLE TO SUCH CLAIM OR DEMAND (OR AIRLINE, THROUGH SELF-INSURANCE OR OTHER SELF-FUNDED INSURANCE PROGRAM, BEARS THE FINANCIAL RISK OF ANY PORTION OF SUCH CLAIM OR DEMAND AS TO THE DEDUCTIBLE ONLY), THEN THE PROVISIONS OF SECTION 9.01B) AND SECTION 9.01C) SHALL APPLY TO SUCH PORTION OF THE CLAIM OR DEMAND THAT IS SUBJECT TO SUCH DEDUCTIBLE OR SELF-INSURANCE OF THE DEDUCTIBLE OR OTHER SELF-FUNDED INSURANCE PROGRAM AS TO THE DEDUCTIBLE (AND TO ANY OTHER PORTION OF THE CLAIM OR DEMAND AS TO CITY THAT IS NOT SATISFIED

HAS 5/1/23

WITH INSURANCE PROCEEDS). FOR PURPOSES OF THIS SECTION, AIRLINE COVENANTS AND AGREES THAT AS TO EACH CLAIM OR DEMAND THAT MAY BE SUBJECT TO THE PROVISIONS OF THIS AGREEMENT, THE DEDUCTIBLE AMOUNT SHALL NEVER BE DEEMED TO BE GREATER THAN \$1,000,000.

E. NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, THE LIABILITY OF THE AIRLINE FOR CITY'S NEGLIGENCE, INCLUSIVE OF ALL DEFENSE COSTS EXPENDED SOLELY FOR CITY'S DEFENSE, UNDER SECTION 9.01B) AND SECTION 9.01C) SHALL NOT EXCEED \$2,000,000 PER OCCURRENCE.

Section 9.02 INDEMNIFICATION PROCEDURES

A. **Notice of Claims.** If City or Airline receives notice of any claim or circumstances which could give rise to a loss for which the Airline is required to indemnify the City hereunder, the receiving Party shall give written notice to the other Party within 45 days. The notice must include the following:

1. a description of the indemnification event in reasonable detail;
2. the basis on which indemnification may be due; and
3. the anticipated amount of the indemnified loss.

This notice does not estop or prevent City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If City does not provide this notice within the 45-day period, it does not waive any right to indemnification except to the extent that Airline is prejudiced, suffers loss, or incurs expense because of the delay.

B. Defense of Claims

1. **Assumption of Defense.** Airline may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Airline shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Airline must advise City as to whether or not it will defend the claim. If Airline does not assume the defense, City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

2. **Continued Participation.** If Airline elects to defend the claim, City may, at its own cost and expense, retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

C. **Subcontractor's Indemnity.** TO THE EXTENT PERMITTED BY LAW, AIRLINE SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO CITY UNDER THIS AGREEMENT.

HAS 5/1/23

ARTICLE X.
INSURANCE

Section 10.01 General

With no intent to limit or increase Airline's liability or the indemnification provisions in this Agreement, Airline shall provide and maintain certain insurance (except as to Environmental/Impairment Pollution coverage as set forth below) in full force and effect at all times during the term of this Agreement and all extensions thereto, as set forth in Section 10.02 below. If any of the insurance is written as "claims made" coverage, then Airline agrees to keep such "claims made" insurance in full force and effect by purchasing policy period extensions for at least five years after the expiration or termination of this Agreement. Prior to beginning performance under the Agreement or each time coverage is renewed or updated, Airline shall furnish to the Director current certificates of insurance and endorsements evidencing adequate coverage, as necessary. In addition, if requested in writing by the Director, Airline shall make available copies of Airline's insurance policies to be reviewed at Airline offices in Houston, Texas. Airline shall be responsible for and pay: (i) all premiums; and (ii) any claims or losses to the extent of any deductible amounts. Airline waives any claim it may have for premiums or deductibles against City, its officers, agents, or employees. Airline shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

Section 10.02 Risks and Minimum Limits of Coverage

Workers Compensation:	Statutory
Employer's Liability	Bodily injury by accident \$1,000,000 (each accident)
	Bodily injury by Disease \$1,000,000 (policy limit)
	Bodily injury by Disease \$1,000,000 (each employee)
Commercial General Liability:	Combined single limit of:
(Including broad form coverage, contractual liability, bodily and personal injury, and products and completed operations)	\$10,000,000 per occurrence/aggregate
	Products and Completed operations:
	\$10,000,000 aggregate
Aircraft Liability:	\$250,000,000 combined single limit
(covering owned, hired, and non-owned aircraft including passenger liability)	

HAS 5/1/23

Environmental Impairment/ Pollution:

(including coverage for receiving, dispensing, transporting, removal and handling of aviation fuels or any other pollutants, as well as any other operations involving pollutants)

\$5,000,000 combined single limit per occurrence. Airline may, subject to City’s approval self-insure to meet this requirement.

All Risk:

(Covering Airline improvements, trade fixtures and equipment, including fire, lighting, vandalism, and extended coverage perils)

Replacement value

Automobile Liability Insurance:

(For automobiles used by Airline in the course of its performance under this Agreement, including Airline’s non-owned and hired autos)

\$5,000,000 combined single limit per occurrence for automobiles used outside of the Airfield; \$10,000,000 combined single limit per occurrence for automobiles used on the Airfield.

(Aggregate limits are per 12-month period unless otherwise indicated.)

Section 10.03 Other Provisions

A. **Form of Policies.** The insurance may be in one or more policies of insurance. Nothing the Director does or fails to do shall relieve Airline from its duties to provide the required coverage hereunder, and the Director’s actions or inactions shall not be construed as waiving City’s rights hereunder.

B. **Issuers of Policies.** The policy issuer shall: (i) have a Certificate of Authority to transact insurance business in Texas; or (ii) be an eligible non-admitted insurer in the State of Texas and have a Best’s rating of at least B+, and a Best’s Financial Size Category of Class VI or better, according to the most current Best’s Key Rating Guide, or a comparable rating from a comparable rating service, provided that where a comparable rating services of used, each issuer of a policy must nonetheless be responsible and reputable, must have financial capability consistent with the risks covered, and shall be subject to approval by the Director.

C. **Insured Parties.** Each policy, except those for Workers Compensation, Professional Liability and Employer’s Liability, shall name City (and its officers, agents, and employees) as Additional Insured as its interest may appear on the issued certificate of insurance and all renewal certificates (such certificates to accurately reflect City’s Additional Insured status on Airline’s original policies and any renewals or replacements thereof during the term of this Agreement). City shall be named Loss Payee on All Risk and Builders Risk coverages (except to the extent coverage relates to Airline’s equipment and personal property).

D. **Deductibles.** Without increasing, decreasing or expanding its duties under Section 10.01, Airline shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against City, its officers, agents, or employees; provided, however, that nothing in this Agreement shall diminish Airline’s rights or increase Airline’s obligations in respect to its undertakings or hold harmless, defense and indemnification set forth in Article IX.

HAS 5/1/23

E. **Cancellation.** AIRLINE SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED. Within the 30-day period, Airline shall provide other suitable policies in order to maintain the required coverage. If Airline does not comply with this requirement, the Director, at the Director's sole discretion, may immediately suspend Airline from any further performance under this Agreement and begin procedures to terminate for default.

F. **Aggregates.** Airline shall give written notice to the Director within twenty (20) days of the date upon which total claims by any party against Airline reduce the aggregate amount of coverage below the amounts required by this Agreement. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Agreement.

G. **Subrogation.** Each policy shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against City, its officers, agents, or employees. Each policy of workers' compensation and employers liability shall contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against City, its officers, agents, or employees as allowed by law.

H. **Endorsement of Primary Insurance.** Each policy hereunder except Workers Compensation and Professional Liability shall be primary insurance to any other insurance available to the Additional Insured and Loss Payee with respect to claims arising hereunder.

I. **Liability for Premium.** Airline shall be solely responsible for payment of all insurance premiums required hereunder, and City shall not be obligated to pay any premiums.

J. **Contractors and Subcontractors**

1. Except as otherwise provided below, Airline shall contractually require all contractors and subcontractors involved in the provision of any labor, materials or services on, at or within the Premises, to carry insurance naming City as an additional insured and meeting all of the requirements in Section 10.01, Section 10.02 (excepting aircraft liability), and Section 10.03, except coverage amount. The coverage amount shall be commensurate with the amount of the particular contract and shall be subject to the approval of the Director. Airline shall provide in its contracts with its contractors and subcontractors that they submit to the Director copies of insurance certificates for the coverages required in this Agreement.

2. Airline shall be under no obligation to require its contractors or subcontractors to provide aircraft liability coverage.

3. In connection with the design and construction of any Airline improvements to the Premises, Airline shall require:

(a) The architect/engineer to secure Professional Liability coverage with a minimum of \$1,000,000 per occurrence/aggregate if the project construction cost is estimated to exceed \$10,000,000;

HAS 5/1/23

(b) The construction contractor and/or its subcontractors to secure Builder's Risk coverage equal to the replacement value of the improvements; and

(c) The construction contractor and/or its subcontractors to secure asbestos abatement liability coverage if the project includes work with asbestos. Such asbestos abatement liability insurance shall include coverage for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials and shall be in a minimum amount of \$1,000,000 combined single limit per occurrence.

K. **Proof of Insurance.** Prior to the Effective Date of this Agreement and at any time during the term of this Agreement, Airline shall furnish the Director with certificates of insurance, along with an affidavit from Airline confirming that the certificates accurately reflect the insurance coverage that will be available during the term. If requested in writing by the Director, Airline shall furnish City with copies of Airline's insurance policies.

Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties that Airline, continuously and without interruption, maintain in force the required insurance coverages to be carried by Airline set forth above. Airline agrees that City shall never be argued to have waived or be estopped to assert its right to terminate this Agreement hereunder because of any acts or omissions by City regarding its review of insurance documents provided by Airline, its agents, employees, or assigns.

L. **City Right to Review and Adjust Coverage Limits.** City reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Article X to be reviewed by an independent insurance consultant experienced in insurance for public airports in Texas, taking into consideration changes in statutory law, court decisions, or the claims history of the airline industry as well as that of Airline, and, based on the written recommendations of such consultant, and in consultation with Airline, to reasonably adjust the insurance coverages and limits required in this Agreement but not more often than once every twelve (12) months.

HAS 5/1/23

ARTICLE XI.
DAMAGE OR DESTRUCTION OF PREMISES

Section 11.01 Premises Inhabitable

If any of the Premises in Terminal D, the ICP or the Central FIS shall be partially damaged by fire or other casualty, but such Premises remain inhabitable, same will be repaired with due diligence by City to the condition existing just prior to such casualty, but City's responsibility in this regard shall be limited to the extent of the proceeds of insurance received with respect to such Premises and to the extent funds are appropriated for such repair by City's governing body.

Section 11.02 Premises Uninhabitable

If any of the Premises in Terminal D or the Central FIS shall be completely destroyed or partially damaged by fire or other casualty rendering all or a substantial portion of the Premises uninhabitable and it is reasonably estimated by the Director that it will take more than one hundred eighty (180) days to repair, Director shall notify Airline in writing within ninety (90) days of such casualty whether the damaged or destroyed premises will be repaired. If any or all of the premises is to be repaired, it shall be repaired with due diligence by City, and the rental allocable to the damaged or destroyed premises shall be abated for the period from the occurrence of the damage to the substantial completion of the repairs. If the repair period is estimated to exceed one hundred eighty (180) days, City shall make good faith efforts to provide Airline with temporary substitute space, if available, during such period of repair, at a rental rate for comparable space based on the rates and charges principles set forth in this Agreement.

Section 11.03 Automatic Termination

If City shall fail to notify Airline of its decision as set forth in Section 11.02 above (or gives written notice of its intent not to repair), City shall be deemed to have elected to terminate this Agreement only as to the premises damaged or destroyed, and the Agreement shall automatically terminate as to such Premises as of the date of the damage or destruction, with no further liability by either City or Airline except those liabilities that accrued, including rent, prior to such damage or destruction.

Section 11.04 Airline Improvements

Airline shall reconstruct all its improvements in the damaged or destroyed Premises necessary for the conduct of Airline's business operations in the manner existing just prior to the casualty, consistent with City's obligations set forth in Section 11.01, Section 11.02 and Section 11.03.

Section 11.05 Insurance

Terminal D, the ICP and the Central FIS, exclusive of Airline's property, will be insured by City under a policy of fire and extended coverage insurance to the extent of not less than eighty percent (80%) of the insurable value of such property if such percentage of coverage is available. Insurance moneys and funds received on account of the damage to or destruction of such property will be applied by City to the repair, construction, or replacement of such damaged or destroyed

HAS 5/1/23

property. Premiums paid by City for insurance provided in compliance herewith shall be included by City as a part of Airport operation and maintenance expenses.

HAS 5/1/23

ARTICLE XII.
TERMINATION

Section 12.01 Termination by City

Director, in addition to any other right of cancellation given to it or any other rights to which it may be entitled by law or equity or otherwise, may cancel this Agreement by giving Airline thirty (30) days' advance written notice: (1) at any time, without cause or impairment to City's other available remedies; or (2) for cause upon or after the happening of any one or more of the following events, except default in timely payment of any money due City, including PFCs, if applicable, for which fifteen (15) days written notice shall be given and except default in providing copies of insurance policies or maintaining required insurance coverages described in Section 10.03K), for which ten (10) days written notice shall be given:

A. The filing by Airline of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of Airline's assets; or

B. Any institution of proceedings in bankruptcy against Airline and the adjudication of Airline as a bankrupt pursuant to such proceedings; or

C. The taking of jurisdiction by a court of competent jurisdiction of Airline or its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or

D. The appointment of a receiver or trustee of Airline's assets by a court of competent jurisdiction or by a voluntary agreement with Airline's creditors; or

E. The abandonment by Airline of its conduct of its air transportation business at the Airport and in this connection, suspension of operations for a period of ninety (90) days will be considered abandonment in the absence of an explanation satisfactory to and accepted in writing by the Director; or

F. If Airline shall be prevented for a period of ninety (90) days, after exhausting or abandoning all appeals, by any action of any governmental authority, board, agency or officer having jurisdiction thereof from conducting its air transportation business at the Airport, or it is so prevented from conducting its Air Transportation Business, either by (a) reason of the United States or any agency thereof, acting directly or indirectly, taking possession of, in whole or substantial part, the Premises or premises required for the actual operation of Airline's aircraft to and from the Airport; or (b) if all or a substantial part of the Premises shall be acquired through the process of eminent domain; or

G. The default by Airline in the performance of any covenant, obligation or condition required to be performed by Airline and the failure of Airline to remedy such default for a period of thirty (30) days after receipt from Director of written notice to remedy the same, except default in timely payment of any money due City under this Agreement, for which a total of fifteen (15) days written notice will be given and except default in providing proof of insurance as required or maintaining required insurance coverages described in Section 10.03K), for which ten (10) days written notice shall be given; provided, however, that no notice of cancellation as above provided

HAS 5/1/23

shall be of any force or effect if Airline shall have remedied the default prior to receipt of City's notice of cancellation or within the applicable period Airline commences the process of remedying the default and diligently prosecutes the same to completion. Failure by City to take any authorized action upon default by Airline of any of the terms, covenants or conditions required to be performed, kept and observed by Airline shall not be construed to be or act as a waiver of said default or of any subsequent default of any of the terms, covenants and conditions to be performed, kept and observed by Airline. The acceptance of rentals by City from Airline for any period or periods after a default by Airline of any of the terms, covenants and conditions required to be performed, kept and observed by Airline shall not be deemed a waiver or estoppel of any right on the part of City to cancel this Agreement for failure by Airline to so perform, keep or observe any of said terms, covenants or conditions.

Section 12.02 Termination by Airline

In addition to any other right of cancellation given to Airline or any other rights to which it may be entitled by law, equity, or otherwise, as long as Airline is not in default in payment to City of any amounts due City under this Agreement or otherwise, Airline may cancel this Agreement and thereby terminate all of its rights and unaccrued obligations under this Agreement by giving City thirty (30) days' advance written notice (1) at any time, without cause or impairment to City's other available remedies; or (2) for cause upon or after the happening of any of the following events:

A. Termination, suspension, revocation or cancellation, by any federal agency with competent jurisdiction of Airline's right or authority to operate as a scheduled air carrier serving the Airport;

B. Issuance by a court of competent jurisdiction of an injunction which in any way substantially prevents or restrains the use of the Airport or any part thereof necessary for Airline's scheduled flight operations and which injunction remains in force for a period of at least thirty (30) days after City has exhausted or abandoned all appeals, if such injunction is not necessitated by or issued as the result of an act or omission of Airline;

C. If, at any time during the term of this Agreement, because of City's failure to provide within a reasonable time safe aircraft operating facilities, the FAA or its successor fails or refuses to certify the Airport as adequate to accommodate aircraft which Airline is licensed to operate and is operating into and from all other airports of like size and character and with similar facilities and which aircraft are in general use on Airline's scheduled transportation route system; and which Airline may reasonably desire to operate into or from the Airport; provided such refusal or failure is not due to any fault of Airline;

D. The inability of Airline for a continuing period in excess of ninety (90) days to use the Airport or to exercise any rights or privileges granted to Airline hereunder and necessary to its scheduled flight operations because of any law or ordinance by any governmental authority having jurisdiction over the operations of the Airport or Airline, or because of any order, rule, regulation or other action or any nonaction of the FAA, its successor or any other authorized governmental agency; prohibiting such use, or because of earthquake or other casualty (excepting to the extent of Force Majeure).

HAS 5/1/23

E. The material default by City in the performance of any covenant or condition within the control of City and required to be performed by City and failure of City to use its best efforts to remedy such default for a period of thirty (30) days after receipt from Airline of written notice to remedy the same; provided, however, that no notice of cancellation as above provided shall be of any force or effect if City shall have remedied the default prior to receipt of Airline's notice of cancellation or within the aforesaid thirty (30) day period or during said period commences the process of remedying the same and diligently prosecutes the same to completion.

F. The assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities, or any substantial part thereof, in such a manner as substantially to restrict Airline, for a continuous period of at least ninety (90) days, from operating its air transportation business.

G. Termination, suspension or discontinuation of Airline's services to the Airport by a governmental agency authorized to do so because of a war or national emergency declared by the government. Airline's performance of all or any part of this Agreement for or during any period or periods after a default of the terms, covenants and conditions to be performed, kept and observed by City shall not be deemed a waiver of any right on the part of Airline to cancel this Agreement for failure by City so to perform, keep or otherwise observe any if the terms, covenants or conditions to be performed, kept and observed by City, or be construed to be or act as a waiver by Airline of said default or of any subsequent default of any of said terms, covenants and conditions d to be performed, kept and observed by City.

H. In any event where the usage of the Airport by Airline is materially affected as provided in this Section 12.02, and whether or not Airline is entitled to cancel this Agreement, while such event is continuing, an equitable adjustment to the rentals required to be paid by Airline shall be made by City, as are determined to be reasonable by Director in his sole judgment.

HAS 5/1/23

ARTICLE XIII.
ASSIGNMENT AND SUBLETTING

Section 13.01 Assignment and Subletting

A. Airline shall not at any time assign this Agreement in whole or in part or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent, provided, however, that the foregoing shall not prevent the assignment of this Agreement to any corporation with which Airline may merge or consolidate or which may succeed to the business of Airline and provided further that, in connection with any such requested assignment, Airline may request Director to release the assigned portion of its Exclusive Use or Preferential Use areas from this Agreement and to relieve Airline of rental obligation therefor. In the event Director fails or refuses to approve such request and relief, Airline may then assign all or a portion of the Exclusive Use or Preferential Use areas to another air transportation company or companies that have executed an airport use and lease agreement with City.

B. Airline may, sublet all or any part of its Exclusive Use Area premises only after obtaining the prior written consent of the Director, but if an event of default shall occur and be continuing under this Agreement, City may collect rent from such sublessee or occupant and apply the amount collected to the extent possible to satisfy the obligations of Airline hereunder, but no such collection shall be deemed a waiver by City of the covenants contained in this Agreement or the acceptance by City of such sublessee or occupant as a successor to Airline or a release of Airline by City from its obligations hereunder.

C. All of the terms, provisions, covenants, stipulations, conditions and consideration in this Agreement shall extend to and bind the legal representatives, successors, sublessees, and assigns of the respective parties.

HAS 5/1/23

ARTICLE XIV.
MISCELLANEOUS PROVISIONS

Section 14.01 Rules and Regulations

From time to time the Director may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport, its services and facilities, by persons, vehicles, aircraft and equipment that in his opinion will reasonably ensure the safe, efficient, and economically practicable operation thereof and provide for the safety and convenience of those using the Airport, and to protect the Airport and its facilities and the public from damage or injury resulting from operations on, into and from the Airport. Airline agrees to observe and obey any and all such rules and regulations as are currently in place and as may be reasonably established or amended from time to time, and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. City reserves the right to deny access to the Airport or its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules and regulations.

Such rules and regulations of the Airport will not be inconsistent with the terms of this Agreement nor with valid rules, regulations, orders and procedures of the FAA, Transportation Security Administration or any other government agency duly authorized to make or enforce rules and regulations for the operation of the Airport and the operation of aircraft using the Airport. Airline upon written request to the Director shall be furnished (at the notice address provided in this Agreement and to Airline's on-Airport manager) a current copy of any such Airport rules or regulations and any amendments thereto.

Section 14.02 Compliance with Law

A. **General.** Airline shall not use the Airport or any part thereof, or knowingly permit the same to be used by any of its employees, officers, agents, subtenants, contractors, invitees, or licensees for any illegal purposes and shall, at all times during the Term of this Agreement, comply with all Applicable Laws.

B. **Compliance with Statutes, Ordinances and Regulations.** 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 Applicable Laws.

2. Subject to prior written approval of TIP, make, at its own expense, all non-structural improvements, repairs, and alterations to its Exclusive Use Space, equipment, and personal property that are required to comply with or conform to any of such statutes, ordinances, or regulations (subject to Section 14.01).

C. **Compliance with Environmental Laws.**

1. Airline shall comply with all Environmental Laws.

2. Any fines, penalties, or remediation costs that may be levied against City by the Environmental Protection Agency or the Texas Natural Resource Conservation

HAS 5/1/23

Commission or any other governmental agency for Airline's failure to comply with Environmental Laws shall be reimbursed to City by Airline within thirty (30) days of receipt of an invoice from City for such fines or penalties.

3. Airline shall prevent the presence, use, generation, release, omission, discharge, storage, disposal or transportation of any Hazardous Materials by Airline on, under, in, above, to or from the Airport or any other areas or facilities subject to this Agreement, other than in strict compliance with all Environmental Laws.

4. Airline acknowledges that the Airport is subject to the National Pollutant Discharge Elimination System program ("NPDES") and its regulations relating to stormwater discharges, 40 CFR Part 122, for operations that occur at the Airport. Airline further acknowledges that it is familiar with these NPDES stormwater regulations, that it will conduct operations at the Airport in compliance with 40 CFR Part 122 or any applicable NPDES permit, as either may be amended from time to time.

5. City and Airline both acknowledge that close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit, as well as to ensure safety and to minimize costs. Airline acknowledges that it may be necessary to undertake to minimize the exposure of stormwater to materials generated, stored, handled or otherwise used by Airline as defined in the federal stormwater regulations, by implementing and maintaining "Best Management Practices" as defined in 40 CFR, Part 122.2 and as implemented in any applicable NPDES permit, as either may be amended from time to time.

6. Airline acknowledges that City's NPDES stormwater discharge permit and any subsequent amendments, extensions or renewals thereto, to the extent affecting Airline's operations at the Airport, is incorporated by reference into this Agreement. Airline agrees to be bound by all applicable portions of said permit. City shall promptly notify Airline of any changes to any portions of said permit applicable to, or that affect, Airline's operations.

7. City shall provide Airline with written notice of those NPDES stormwater discharge permit requirements (including any modifications thereto) that Airline shall be obligated to perform from time to time at the Airport, including, but not limited to: certification of non-stormwater discharges; collection of stormwater samples; preparation of stormwater pollution prevention or similar plans; implementation of "good housekeeping" measures or Best Management Practices; and maintenance of necessary records. Such written notice shall include applicable deadlines. Airline, within fifteen (15) days of receipt of such written notice, shall notify City in writing if it disputes any of the NPDES stormwater discharge permit requirements it is being directed to undertake. If Airline does not provide such timely notice, it is deemed to assent to undertake such requirements. If Airline provides City with written notice, as required above, that it disputes such NPDES stormwater discharge permit requirements, City and Airline agree to negotiate a prompt resolution of their differences. Airline warrants that it will not object to City notices required pursuant to this paragraph unless Airline has a good faith basis to do so.

8. City and Airline agree to provide each other upon request, with any non-privileged information collected and submitted to any governmental entity(ies) pursuant to applicable NPDES stormwater regulations.

HAS 5/1/23

9. Airline agrees to participate in any reasonable manner requested by City in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

10. Upon reasonable notice based on the circumstances and without materially disrupting Airline's operations (except in case of emergencies when notice shall not be required), City shall have the right at any time and from time to time to enter upon Airline's premises for purposes of inspection to ensure that Airline is complying with this Section 14.02C, without such inspection constituting a trespass.

11. All such remedies of City with regard to environmental requirements as set forth in this Agreement shall be deemed cumulative in nature and shall survive termination of this Agreement.

D. INDEMNIFICATION. WITH NO INTENT TO LIMIT AIRLINE'S GENERAL INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9.01, AIRLINE SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY LOSS, COST, CLAIM (INCLUDING CLAIMS FOR REMEDIATION COSTS OR IN KIND REMEDIATION), DEMAND, PENALTY, FINE, LIABILITY AND EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS AND LITIGATION EXPENSES) AND HEREAFTER REFERRED TO AS "LIABILITY" FROM WHOMEVER RECEIVED, WHETHER A PRIVATE PERSON OR GOVERNMENTAL ENTITY RELATED TO:

1. AIRLINE'S USE OR THE PRESENCE CAUSED BY AIRLINE OF HAZARDOUS MATERIALS OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE ON THE AIRPORT, WHICH LIABILITY MAY ARISE OUT OF ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE OR RESTORATION WORK REQUIRED OR INCURRED HEREUNDER BY CITY OR ANY OTHER ENTITY OR PERSON IN A REASONABLE BELIEF THAT SUCH WORK IS REQUIRED BY ANY APPLICABLE ENVIRONMENTAL LAW;

2. ANY ACTUAL, THREATENED, OR ALLEGED CONTAMINATION BY HAZARDOUS MATERIALS ON THE AIRPORT PREMISES BY AIRLINE OR ITS AGENTS;

3. THE DISPOSAL, RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY AIRLINE OR ITS AGENTS AT THE AIRPORT THAT IS ON, FROM, OR AFFECTS SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

4. ANY PERSONAL INJURY, DEATH OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USED (INCLUDING STORAGE OR DISPOSAL) BY AIRLINE AT THE AIRPORT; OR

5. ANY VIOLATION BY AIRLINE OF ENVIRONMENTAL LAWS;

HAS 5/1/23

PROVIDED, HOWEVER, THAT THE FOREGOING INDEMNITY SHALL NOT BE APPLICABLE TO LOSSES, COSTS, EXPENSES, CLAIMS, DEMANDS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES AND EXPENSES RESULTING FROM CONDITIONS EXISTING AS OF THE EFFECTIVE DATE OF THIS AGREEMENT AND WHICH SUCH CONDITIONS ARE NOT THE RESULT OF ANY OPERATIONS, ACTIVITIES, ACTIONS OR INACTIONS OF AIRLINE OR ITS AGENTS, OR WHICH ARE CAUSED SOLELY BY CITY OR ITS AGENTS.

E. Airline shall not be responsible in any way for any Hazardous Materials that exist on the Airport, the presence of which was not caused by Airline. In the event that any such presence of Hazardous Materials not caused by Airline results in Airline being substantially deprived of the use or benefit of any material portion of the Premises, City agrees to use its best efforts to provide replacement space for Airline during the period of such deprivation or to abate the rent due hereunder in an equitable manner.

Section 14.03 Passenger Facility Charges

A. City expressly reserves the right to impose PFCs in accordance with 49 U.S.C. § 40117 and applicable implementing regulations adopted by the FAA, 14 CFR Part 158, as they may be amended from time to time (the “**PFC Regulations**”). Airline shall hold in trust for City the net principal amount of all PFCs that are collected by Airline or its agents on behalf of City pursuant to 49 U.S.C. § 40117 and the PFC Regulations. For purposes of this Section 14.03, net principal amount shall mean the total principal amount of all PFCs that are collected by Airline or its agents on behalf of City, reduced by any amount that Airline is permitted to retain pursuant to § 158.53(a) of the PFC Regulations.

B. If the FAA requires any modifications or changes in this Agreement as a condition precedent to the collection of PFCs or to comply with Applicable Law, Airline must consent to required amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Agreement reasonably required to collect PFCs or comply with Applicable Law.

Section 14.04 Payment of Taxes

Airline shall pay all taxes that may be levied, assessed or charged upon Airline or its property located on the Airport by the State of Texas or any of its political subdivisions or municipal corporations, and shall obtain and pay for all licenses and permits required by law. However, Airline shall have the right to contest, in good faith, the validity or application of any such tax, license or permit and shall not be considered in default hereunder as long as such contest is in progress. Further, Airline agrees to diligently prosecute such contest.

Section 14.05 Right to Lease to United States Government

During time of war or national emergency City shall have the right to lease the Airport landing area or any part thereof to the United States Government for use by the Armed Forces and, if any such lease is executed, the provisions of this Agreement insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended; however, such suspension shall

HAS 5/1/23

not extend the term of this Agreement. If, as a result of any such lease, the rights or duties of Airline hereunder are materially affected, then Airline shall receive an equitable rental adjustment.

Section 14.06 Notice or Consent

Any notice or consent required to be obtained from or given by City (or Director) may be given by Director unless otherwise provided. Consent of City, Director or Airline when required shall not be unreasonably withheld, delayed or conditioned and when this Agreement speaks to a Party's discretion, such discretion shall be exercised reasonably, except where reference is made to a Party's "sole" discretion or judgment.

Section 14.07 Rights Reserved to City

Nothing contained in this Agreement shall unlawfully impair the right of City to exercise its governmental or legislative functions. This Agreement is made subject to the Constitution and laws of the State of Texas and to the Charter of the City of Houston, Texas. This Agreement is subject and subordinate to the provisions of any agreement made between City and the United States Government relative to the financing, operation, or maintenance of the Airport or the Airport System, the execution of which has been required as a condition precedent to the transfer of rights, money or property to City for Airport purposes, or the acquisition or expenditure of funds for the improvement or development of the Airport or the Airport System, and this Agreement shall be deemed amended to conform to any such agreements. To the best of City's knowledge, nothing contained in such laws or agreements conflicts with the express provisions of this Agreement.

Section 14.08 Governing Law and Venue

This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

Section 14.09 Favored Nations

Airline shall have the same rights and privileges and pay the same City-established fees and charges, not to exceed those established under the provisions of this Agreement as periodically revised under the terms of this Agreement, with respect to the use of the Airport as are granted to or charged any other airline executing a use and lease agreement with City for use of the Airport. It is understood that ground rentals and lease rentals are set by City Council, as provided by City Charter, and to the extent permitted under applicable Federal law therefore may vary between lessees on account of the different premises to be leased at the time thereof. It is further understood that lease rentals and charges in terminal buildings, flight stations, concourses and associated apron areas constructed in the future and not described in this Agreement may vary from the lease rentals and charges established in this Agreement for the facilities, depending upon the capital cost and financing arrangements involved and, therefore may be more or less than the lease rentals established in this Agreement for similar facilities.

HAS 5/1/23

Section 14.10 Notices

Except as otherwise set forth in this Agreement, where notice shall be acceptable if given either in writing or verbally to Airline's designated representative, or his/her designee, notices to City and/or Airline provided for in this Agreement shall be deemed sufficiently given when delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS, or any other national overnight express delivery service, or when given by telephone immediately confirmed in writing by email (or other communications device acceptable to the party) as follows or to such other address, telephone number as a party may from time to time designate in writing to the other party:

To City:

Director of Houston Airport System
16930 John F. Kennedy Boulevard
Houston Intercontinental Airport
Houston, Texas 77032
Telephone: (281) 233-1877
Fax: (281) 233-1864

To Airline:

Airport Affairs Manager
World Wide Airports, Americas
British Airways PLC
11 West 42nd Street, 24th Floor
New York, New York 10036
Email: Andrew.Stringer@ba.com

Section 14.11 State and Local Required Contracting Provisions

A. **Anti-Boycott of Israel.** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2271.002 of the Texas Government Code, solely for the purposes of compliance with Chapter 2271, Texas Government Code, and subject to applicable law, Airline certifies that (i) it does not boycott Israel, and (ii) if and for the duration that Airline provides goods and services to the City under this Agreement, Airline will not boycott Israel. The phrase to engage in the boycott of Israel" as used in this paragraph shall have the meaning set forth in Section 808.001 of the Texas Government Code.

B. **Anti-Boycott of Energy Companies.** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2274.002 of the Texas Government Code, solely for purposes of compliance Chapter 2274, Texas Government Code, and subject to applicable law, Airline certifies that (1) it does not currently boycott energy companies, and (ii) if and for the

HAS 5/1/23

duration that Airline provides goods and services to the City under this Agreement, Airline will not boycott energy companies as defined by Section 809.001 of the Texas Government Code.

C. **Anti-Boycott of Firearm Entities or Firearm Trade Associations.** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2274.002 of the Texas Government Code, solely for purposes of compliance Chapter 2274, Texas Government Code, and subject to applicable law, Airline certifies that (i) it does not currently have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (ii) if and for the duration that Airline provides goods and services to the City under this Agreement, it will not discriminate against a firearm entity or firearm trade association, in each case for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

D. **Certification of No Business with Foreign Terrorist Organizations** To the extent this Agreement constitutes a contract for goods or services within the meaning of (and to the extent Airline is required to make this representation under), Section 2252.152 of the Texas Government Code, Airline certifies that, at the time of this Agreement neither the Airline is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

E. **Zero Tolerance for Human Trafficking and Related Activities.** To the extent this Agreement constitutes a service contract for the purchase of goods or services to which the requirements and terms of City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, applies, Airline shall comply with the terms and conditions of Sections 4.1 and 4.5 of Executive Order 1-56, as they are set out at the time of the Countersignature Date.

Section 14.12 City's Right to Audit Books and Records

Airline agrees to keep books and records on its operations at the Airport and the Director or any other authorized City representative upon reasonable advance written notice to Airline shall have the right to inspect and audit such books and records to ensure compliance with the prevailing municipal bond disclosure requirements and to determine that City has received from Airline all moneys due City under the terms of this Agreement including, but not limited to, the rentals and fees and passenger facility charges (if applicable) payable to Airport by Airline.

Section 14.13 Force Majeure.

Neither City nor Airline shall be deemed in violation of this Agreement to the extent it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, pandemics or epidemics in City, acts of the public enemy, acts of superior governmental authority, weather conditions, tides, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not in its control; provided, however, that these provisions shall not excuse Airline from paying the rentals and fees specified in Article V.

HAS 5/1/23

Section 14.14 Non-Waiver

The acceptance of fees by City for any period or periods after a default of any of the terms, covenants and conditions to be performed, kept and observed by Airline, shall not be deemed a waiver of any right on the part of City to terminate this Agreement pursuant to Article XII.

Section 14.15 Place of Payments

- a. All electronic payments by wire transfer to City shall be sent to:

BANK NAME:	JP Morgan Chase
BANK ADDRESS:	707 Travis Street, 9 North Mail Code: TX2-N026 Houston, TX 77002
ABA ROUTING NUMBER:	111000614 - ACH 021000021 - Wire
SWIFT CODE:	CHASUS33
ACCOUNT NUMBER:	001-03333978
ACCOUNT NAME: ADDRESS:	City of Houston Aviation System Deposits 16930 JFK Blvd Houston, TX 77032
REMITTANCE ADVICE DETAILS:	HAS-WireTransfers@houstontx.gov
CONTACT NUMBERS:	Office: 281-233-1387 Fax: 281-233-1574

- b. The lockbox address to receive paper checks is as follows:

Houston Airport System
AKS-COH
PO Box 204172
Houston, Texas 77216-4172

- c. Postage, delivery charges or wire/transfer fees for payments must be paid by Assignee.

Payment method or location may be modified upon written notification from the Director or the Director's designee. Airline agrees and acknowledges that any payments made which are not designated as to how to apply the payment, may be applied to the oldest balance owed by Airline first in the Director's sole discretion.

HAS 5/1/23

Section 14.16 Nonliability of Individuals

No director, officer, agent or employee of either Party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or because of any breach thereof or because of its or their execution or attempted execution of this Agreement.

Section 14.17 Remedies to be Nonexclusive

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to City or Airline at law or in equity (to the extent not inconsistent with the express provisions of this Agreement) and the exercise of any remedy or the existence of other remedies or indemnities shall not prevent the exercise of any other remedy.

Section 14.18 Exclusiveness of Airline's Rights

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

Section 14.19 Other Land and Buildings Excluded

It is agreed and understood that it is not intended by this Agreement or any exhibit to lease any building, space or area, or set any rental rates for any building, space or area, other than what is specifically described in this Agreement.

Section 14.20 Titles

The titles of the several articles of this Agreement are inserted for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions of this Agreement or its interpretation or construction.

Section 14.21 Invalid Provisions

In the event any covenant, condition or provision contained in this Agreement is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition, or provision contained in this Agreement, provided the invalidity of any such covenant, condition or provision does not materially prejudice either City or Airline in its respective rights and obligations contained in the valid covenants, conditions and provisions of this agreement.

Section 14.22 Enforcement

The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization. Airline covenants to provide to

HAS 5/1/23

the City Attorney all documents and records that the City Attorney reasonably requests to assist in determining Airline's compliance with this Agreement when a good faith basis exists for the belief that Airline is not in compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulations and provided that the provision of such documents and records by Airline shall be further limited in any respect that the provision of any documents or records of City pertaining to this Agreement would be limited pursuant to Chapter 552, Texas Gov't. Code, as amended or otherwise.

Section 14.23 Operation of Airport

City agrees to maintain and operate the Airport in accordance with all applicable standards, rules and regulations of the FAA or its successor. City shall exercise its rights hereunder and otherwise operate the Airport with due regard for the operational requirements and long-term interests of the airlines and the interests of traveling public, in a manner that is consistent with applicable law, federal aviation regulation, federal grant assurances, and the Bond Ordinances.

Section 14.24 Entire Agreement

This Agreement constitutes the entire Agreement of the Parties on the subject matter of this Agreement and may not be changed, modified, discharged or extended except by written instrument duly executed by City and Airline. Airline and City each agrees that no representations or grant of rights or privileges to the Airline or any obligations imposed upon the Airline shall be binding upon City or Airline, as applicable, unless expressed in writing in this Agreement.

Section 14.25 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties; provided, however, this provision shall in no way whatsoever alter the restriction in this Agreement regarding assignment and subletting by Airline.

Section 14.26 Subordination to Financing Agreements

City agrees that the Director, in his discretion, and subject to approval of the City Attorney, shall be permitted to, from time to time, execute any agreement providing for the subordination of any statutory or constitutional landlord's lien over any of Airline's property acquired in connection with any bona fide, third party purchase money equipment (or other personal property) financing (whether through a sale leaseback financing or other equipment lease financing transaction), it being further agreed that the financing of costs expended by Airline for the purchase of equipment or personal property within twelve (12) months prior to such financing transaction shall be considered purchase money financing hereunder; provided, however, that such subordination shall be limited to Airline's property that is financed or refinanced in such transaction.

Section 14.27 Living Wage Executive Order

To the extent this Agreement constitutes a City Contract under the requirements and terms of the City of Houston's Policy on Ensuring Payment of Living Wage by Air Carriers and Concessionaires and Their Subcontractors and Concessionaires, as set forth in Executive Order 1-64 (the "**Living Wage Executive Order**"), Airline agrees to comply with such Living Wage

HAS 5/1/23

Executive Order and the requirement and terms of such Living Wage Executive Order are incorporated into this Agreement for all purposes, except as may be preempted by state or federal law. Airline shall use commercially reasonable efforts to notify City's Chief Procurement Officer, City Attorney, and the Director within seven (7) days after Airline actually becomes aware of any violation of Airline, contractor or its subcontractors providing labor, materials, software, services or goods (each as applicable) under this Agreement or purchase order, if any or that such violations may have occurred or are reasonably likely to occur; provided, however, that a failure by Airline to so notify the City's Chief Procurement Officer, City Attorney, or Director shall not, in and of itself, constitute a breach of this Agreement.

Section 14.28 Additional Federal Requirements

A. General Civil Rights Provision. In all its activities within the scope of its operation under this Agreement, Airline will comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefitting from Federal assistance. If the Airline transfers its obligation to another, the transferee is obligated in the same manner as the Airline. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. The above provision obligates the Airline for the period during which the property is owned, used to possessed by the Airline and City remains obligated to the Federal Aviation Administration.

B. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest (hereinafter referred to as "Airline"), agrees as follows:

1. Compliance with Regulations. Airline (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth in Section 14.28F ("Nondiscrimination Acts and Authorities"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination. Airline, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Airline will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this Agreement covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

3. Solicitations for Subcontracts, including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by Airline for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Airline of the subcontractor's or supplier's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

HAS 5/1/23

4. Information and Reports. Airline will provide all information and reports required by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Airline or its contractor is in the exclusive possession of another who fails or refuses to furnish the information, Airline will so certify to the Director or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance. In the event of Airline's or its contractor's noncompliance with the non-discrimination provisions of this Agreement, the Director will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

(a) Withholding payments to Airline or its contractor under this Agreement or Airline's contract with such contractor until Airline or its contractor complies; and/or

(b) Cancelling, terminating, or suspending this Agreement or Airline's contract with such contractor, in whole or in part.

6. Incorporation of Provisions. Airline will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Airline will take action with respect to any subcontract or procurement as the Director or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Airline becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Airline may request City to enter into any litigation to protect the interests of City. In addition, Airline may request the United States to enter into the litigation to protect the interests of the United States.

C. Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which an Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Airline will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

D. Airline, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, (i) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airport, Terminal D, and the new Central FIS; (ii) in the construction of any improvements

HAS 5/1/23

on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) Airline will use the Airport, Terminal D, and the new Central FIS in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Authorities.

E. In the event of breach of any of the above nondiscrimination covenants, the Director shall have the right to terminate this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. Further, Airline shall include the provisions of 49 C.F.R. Part 21 and 49 C.F.R. Part 21, Appendix C (a)(l) as amended from time to time, in subcontracts it enters into pursuant to this Agreement.

F. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Airline, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); 49 CFR Part 27, and 28 CFR Parts 35 and 36;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and

HAS 5/1/23

contractors, whether such programs or activities are Federally funded or not);

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

G. Nothing herein shall be deemed to grant Airline any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.

H. This Agreement shall be subordinate to the provisions of any existing or future agreements between City and the United States of America relative to the operation and maintenance of the Airport, including but not limited to the terms of the sponsor assurances that are incorporated into grants provided to City pursuant to the Airport Improvement Program (49 U.S.C. Section 47101 *et seq.*).

HAS 5/1/23

Section 14.29 Waiver of Visual Artists Rights

Airline shall not install any object in Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 unless and until Airline has (a) obtained the prior written approval of the Director and (b) provided City with a written waiver from the author of such work of visual art, in form and substance reasonably satisfactory to City, which waiver shall identify specifically the work of visual art and the uses of that work to which the waiver applies in accordance with 17 U.S.C. § 106A(e)(1).

Section 14.30 Incorporation of Exhibits

All references to exhibits in this Agreement have the same effect as if the exhibits had been recited verbatim in this Agreement, and references are effective as to any lawful amendments to the exhibits automatically upon City's approval of an amendment. Director may revise the exhibits during the Term of this Agreement and the revised exhibits shall replace the then current exhibits without an amendment or supplement to this Agreement provided the exhibits are revised pursuant to the express terms of this Agreement. The Director must provide Airline with a copy of the revised exhibit(s) within ninety (90) days of a revision.

Section 14.31 Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

(Signature page follows)

HAS 5/1/23

ATTEST/WITNESSED:
(if required by Airline)

BRITISH AIRWAYS PLC

DocuSigned by:
Richard Mendles
6B2774D457FE41F...
Name: Richard Mendles
Title: General Counsel Americas
Email: Richard.Mendles@ba.com

DS



ATTEST:

DocuSigned by:
City Secretary - Pat Jefferson-Daniel
2F30A5306C084B1...
By: Pat Jefferson-Daniel
City Secretary

CITY OF HOUSTON:

DS

By: Sylvester Turner
Mayor

DocuSigned by:
Amanda Washington
D4243AF78FFF4D6...

APPROVED:

DocuSigned by:
Mario Diaz
F8C107BBB8A045F...
Mario C. Diaz
Director, Houston Airport System

COUNTERSIGNED:

DS

Chris Brown
City Controller

DocuSigned by:
Chanelle Clark
B172D19707AD4E...

APPROVED AS TO FORM:

DocuSigned by:
Sameera Kapasi Mahendru
AA8F1B70926F423...
Sr. Assistant City Attorney
LD File No. CON-0000001762

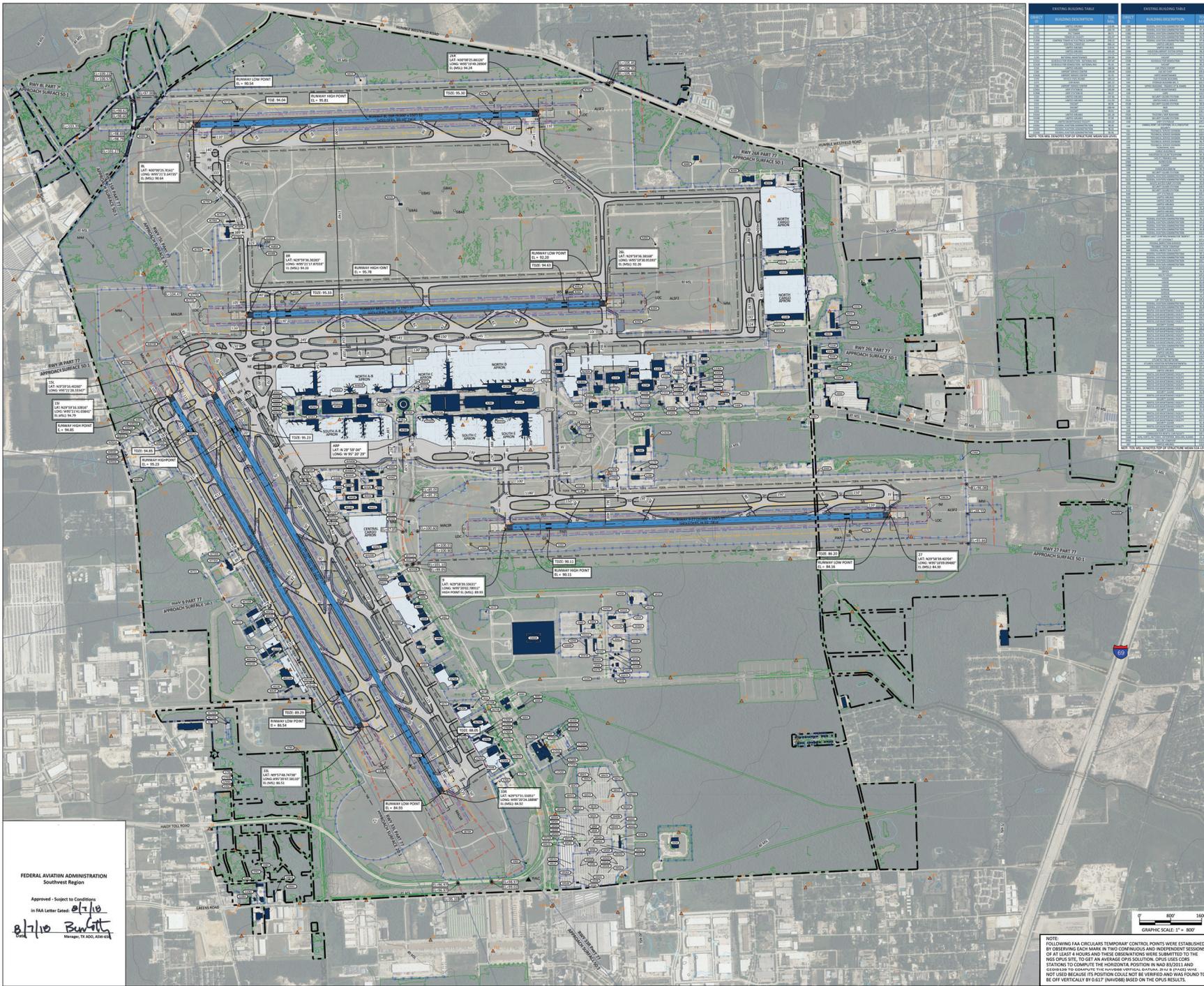
COUNTERSIGNATURE DATE:

10/24/2023

EXHIBIT A

AIRPORT LAYOUT

1 Page



EXISTING BUILDING TABLE		EXISTING BUILDING TABLE		EXISTING BUILDING TABLE		SURVEY CONTROL POINTS	
ID#	DESCRIPTION	ID#	DESCRIPTION	ID#	DESCRIPTION	TYPE	STATUS
101	...	102	...	103	...	...	...
104	...	105	...	106	...	...	...
107	...	108	...	109	...	...	...
110	...	111	...	112	...	...	...
113	...	114	...	115	...	...	...
116	...	117	...	118	...	...	...
119	...	120	...	121	...	...	...
122	...	123	...	124	...	...	...
125	...	126	...	127	...	...	...
128	...	129	...	130	...	...	...
131	...	132	...	133	...	...	...
134	...	135	...	136	...	...	...
137	...	138	...	139	...	...	...
140	...	141	...	142	...	...	...
143	...	144	...	145	...	...	...
146	...	147	...	148	...	...	...
149	...	150	...	151	...	...	...
152	...	153	...	154	...	...	...
155	...	156	...	157	...	...	...
158	...	159	...	160	...	...	...
161	...	162	...	163	...	...	...
164	...	165	...	166	...	...	...
167	...	168	...	169	...	...	...
170	...	171	...	172	...	...	...
173	...	174	...	175	...	...	...
176	...	177	...	178	...	...	...
179	...	180	...	181	...	...	...
182	...	183	...	184	...	...	...
185	...	186	...	187	...	...	...
188	...	189	...	190	...	...	...
191	...	192	...	193	...	...	...
194	...	195	...	196	...	...	...
197	...	198	...	199	...	...	...
200	...	201	...	202	...	...	...

FEDERAL AVIATION ADMINISTRATION
 Southwest Region
 Approved - Subject to Conditions
 In FAA Letter Case# 21710
 8/7/10 *Burkitt*
 Manager, TX ADO, ADO-614

LEGEND

AIRPORT BOUNDARY
 TAXIWAY OBJECT FREE AREA (TOFA)
 RUNWAY SAFETY AREA (RSA)
 RUNWAY CRITICAL AREA
 BUILDING RESTRICTION LINE (BRL)
 EXISTING RUNWAY OBJECT FREE AREA (ORFA)
 EXISTING RUNWAY OBSTACLE FREE ZONE (ORFZ)
 EXISTING RUNWAY PROTECTION ZONE (RPZ)
 EXISTING PRECISION OBSTACLE FREE ZONE (POFZ)
 EXISTING OBSTACLE CONTROL
 EXISTING EDGE OF WATER
 EXISTING TREE LINE
 EXISTING FENCE
 EXISTING PART 27 APPROACH
 BUILDING NUMBER
 EXISTING BUILDING
 EXISTING RUNWAY
 EXISTING TAXIWAY
 EXISTING OBSTACLE
 SURVEY CONTROL POINT
 PRIMARY AIRPORT CONTROL
 DISTANCE MEASURING EQUIPMENT (DME)
 INNER MARKER (IM) & MIDDLE MARKER (MM)
 LOCALIZER
 GROUND PROXIMITY WARNING SYSTEM (GPWS)
 WINDSOCK
 AIR BEACON
 AIRPORT BEACON
 TRANSVERSE WAY POINT

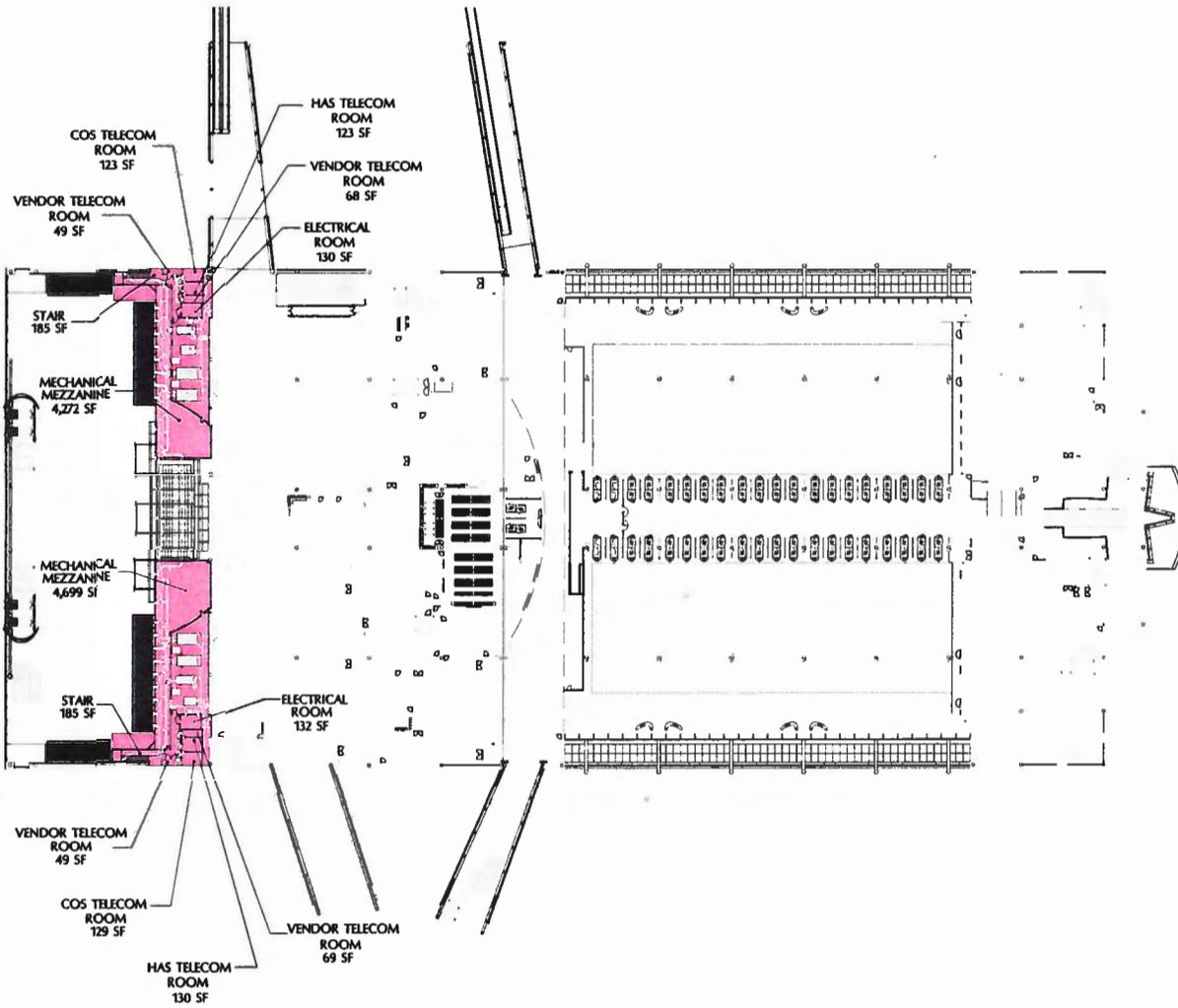
GRAPHIC SCALE 1" = 800'

NOTE:
 FOLLOWING FAA CIRCULARS TEMPORARY CONTROL POINTS WERE ESTABLISHED BY OBSERVING EACH MARK IN TWO CONTIGUOUS AND INDEPENDENT SESSIONS OF AT LEAST 10 MINUTES AND THESE OBSERVATIONS WERE SUBMITTED TO THE INDUS SITE. TO GET AN AVERAGE OPUS SOLUTION, OPUS USES CODE STATIONS TO COMPUTE THE HORIZONTAL POSITION IN MARS BY COLL AND CODE STATIONS TO COMPUTE THE VERTICAL POSITION IN MARS BY COLL AND NOT USED BECAUSE ITS POSITION COULD NOT BE VERIFIED AND WAS FOUND TO BE OFF VERTICALLY BY 0.337' (IN MARS) BASED ON THE OPUS RESULTS.

EXHIBIT B

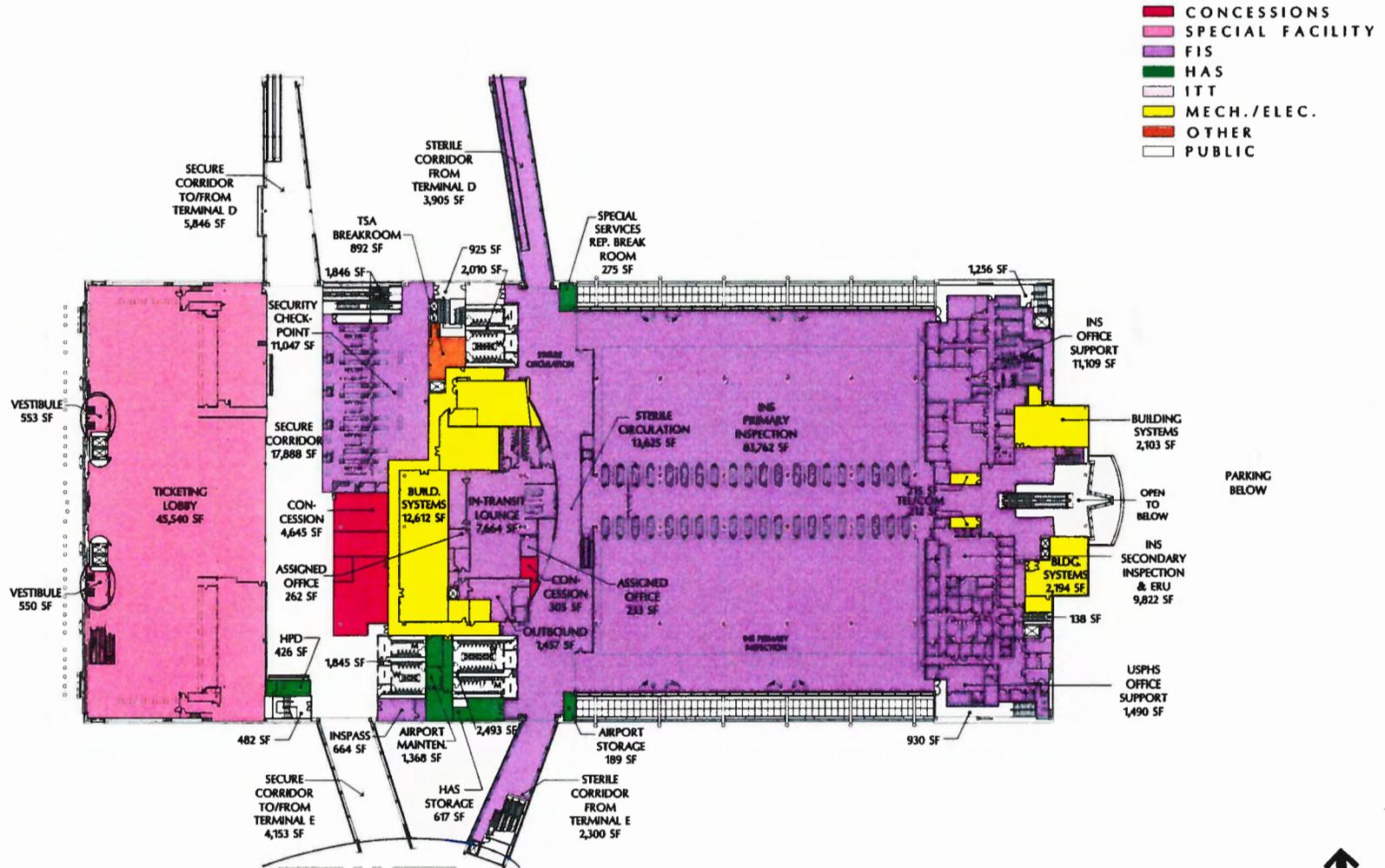
Central FIS Map

5 Page



FIS SECOND MEZZANINE LEVEL
FEDERAL INSPECTION SERVICES
GEORGE BUSH INTERCONTINENTAL AIRPORT
HOUSTON, TEXAS





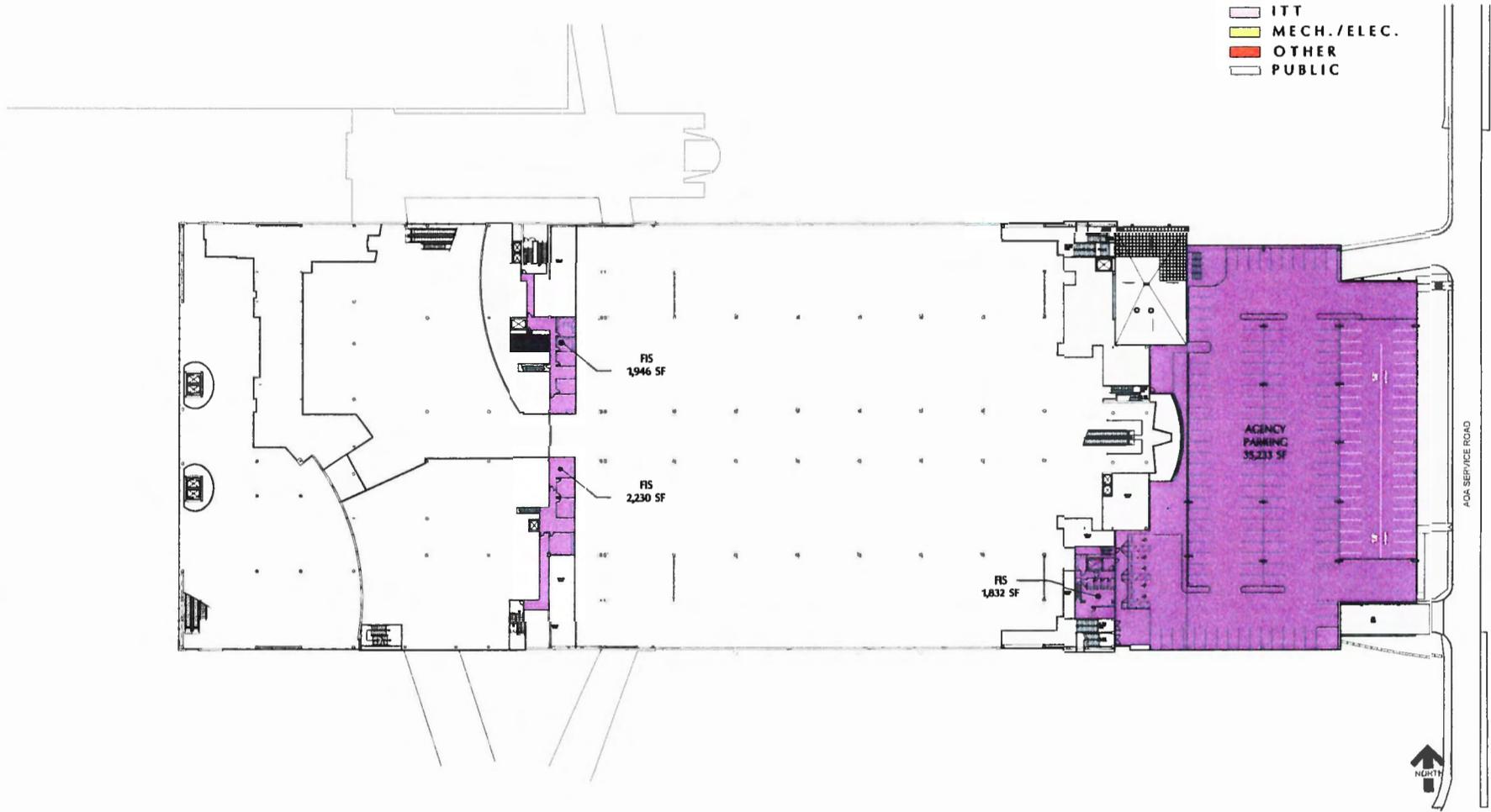
FIS SECOND LEVEL

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS



1" = 80'-0"

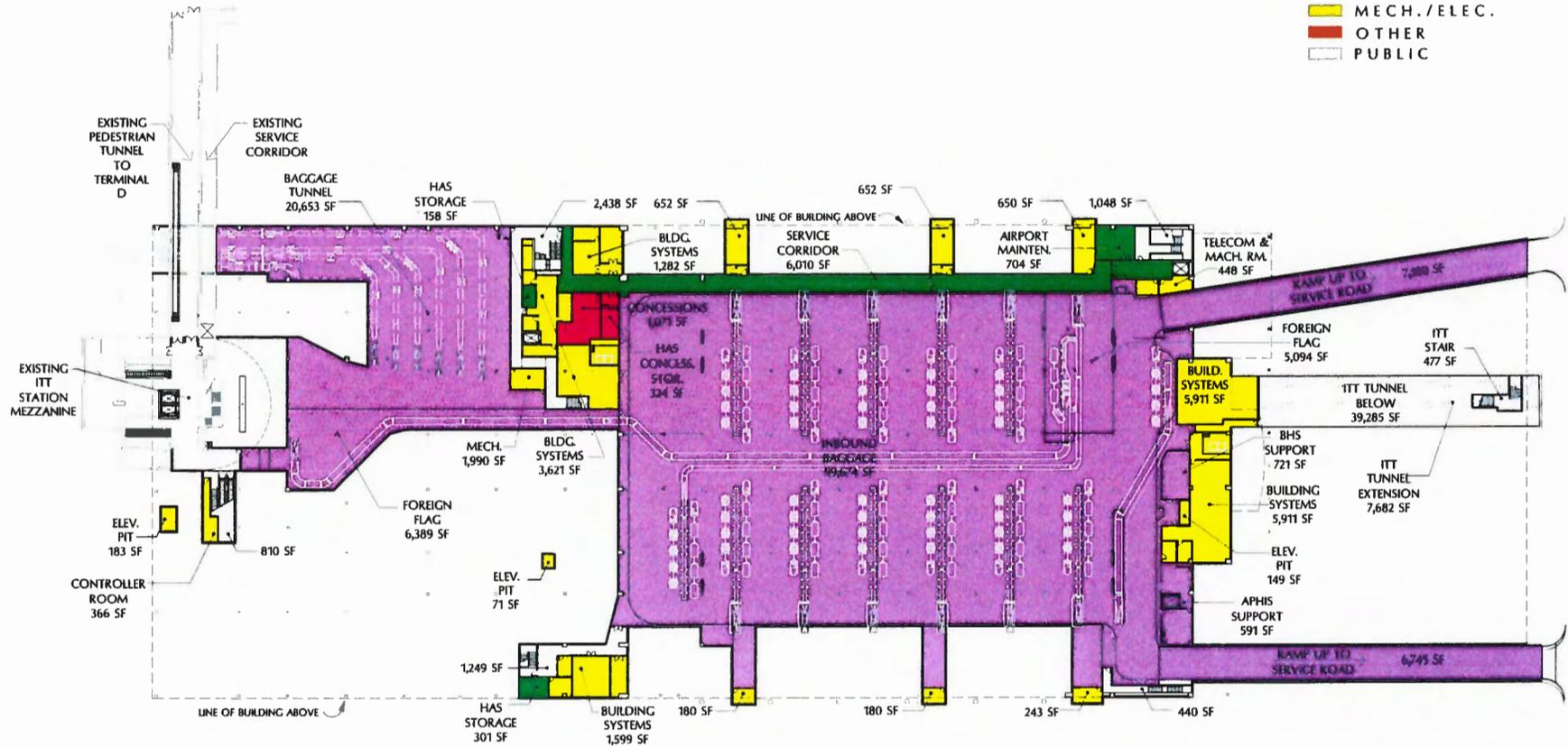
- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITT
- MECH. /ELEC.
- OTHER
- PUBLIC



FIS FIRST MEZZANINE LEVEL

FEDERAL INSPECTION SERVICES
GEORGE BUSH INTERCONTINENTAL AIRPORT
HOUSTON, TEXAS

- CONCESSIONS
- SPECIAL FACILITY
- FIS
- HAS
- ITT
- MECH./ELEC.
- OTHER
- PUBLIC



1" = 80'-0"

FIS BASEMENT LEVEL / ITT STATION MEZZANINE

FEDERAL INSPECTION SERVICES
 GEORGE BUSH INTERCONTINENTAL AIRPORT
 HOUSTON, TEXAS

EXHIBIT C

Reserved

EXHIBIT D

Affiliate Agreement of Responsibility

1 Page

EXHIBIT "D"

FORM OF AGREEMENT OF RESPONSIBILITY

[to be retyped on Airline's letterhead]

Director
Houston Airport System
City of Houston
P.O. Box 60106 Houston,
Texas 77205

Re: [Name of Subsidiary] (the "Subsidiary")

Dear _____

Pursuant to the terms of that certain International Facilities Agreement by and between the City of Houston and _____ (the "Airline") dated as of _____, 2023, in particular, the definition of "Subsidiary", the undersigned Airline hereby agrees that with respect to all operations of the Subsidiary that are conducted under [Airline's name or (insert Airline's derivative name)] [Airline may designate which specific derivative names the Subsidiary may conduct operations under], the Airline hereby agrees to be responsible for all such operations of (including the payment of any activity fees and charges incurred by) such Subsidiary referenced above.

Very truly yours,

[Airline]

EXHIBIT E

Affiliate Acknowledgement and Reporting Agreement

1 Page

EXHIBIT "E"

FORM OF ACKNOWLEDGMENT
AND REPORTING AGREEMENT

[to be retyped on Subsidiary's letterhead]

Director
Houston Airport System
City of Houston
P. O. Box 60106
Houston, Texas 77205

Re: Acknowledgment and Reporting Agreement

Dear _____

The undersigned wishes to qualify for treatment as a "Subsidiary" of [Name of Airline that is signatory to the IFA] (the "Airline"), under that International Facilities Agreement dated as of _____, 2023 (the "Agreement"), between the City of Houston and Airline.

Accordingly, the undersigned hereby acknowledges and agrees as follows:

1. The undersigned may operate at George Bush Intercontinental Airport/Houston under the Agreement and enjoy all rights conferred thereunder without the payment of any additional fees or premiums with respect to those operations that it conducts under Airline's name or a derivative thereof if (i) Airline agrees to be responsible for such operations and (ii) the undersigned executes this letter and agrees to the reporting requirements set forth below.
2. So long as the undersigned continues to operate as a "Subsidiary" of Airline within the meaning of the Agreement, the undersigned agrees to report to the Director all of its operations at George Bush Intercontinental Airport/Houston, all of the statistical information required by Section 5.02 of the Agreement, which shall be reported separately based on its operations for (i) Airline, (ii) any other airline, and (iii) for itself.

Very truly yours,

[Subidiary]

EXHIBIT F

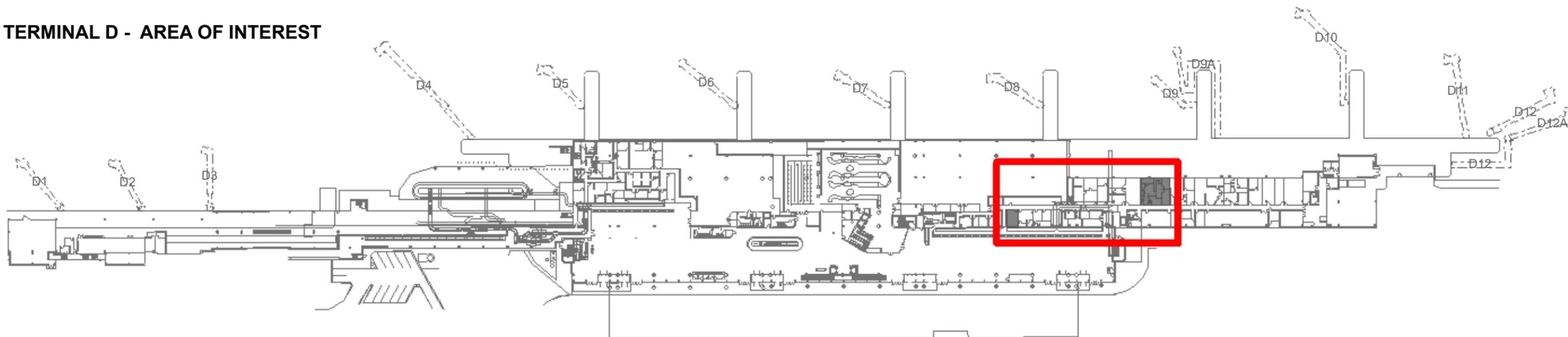
Terminal D Cost Centers

(including current and conceptual Public Areas, concession areas,
common-use, exclusive-use and preferential-use leased areas
in Terminal D, FIS and ICP*)

*Drawings will be converted to GIS Measurement Format
and Replaced with Revised Square Footage as each set of as-builts are complete

17 Pages

TERMINAL D - AREA OF INTEREST

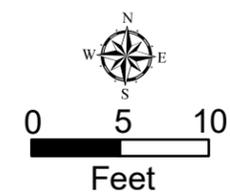
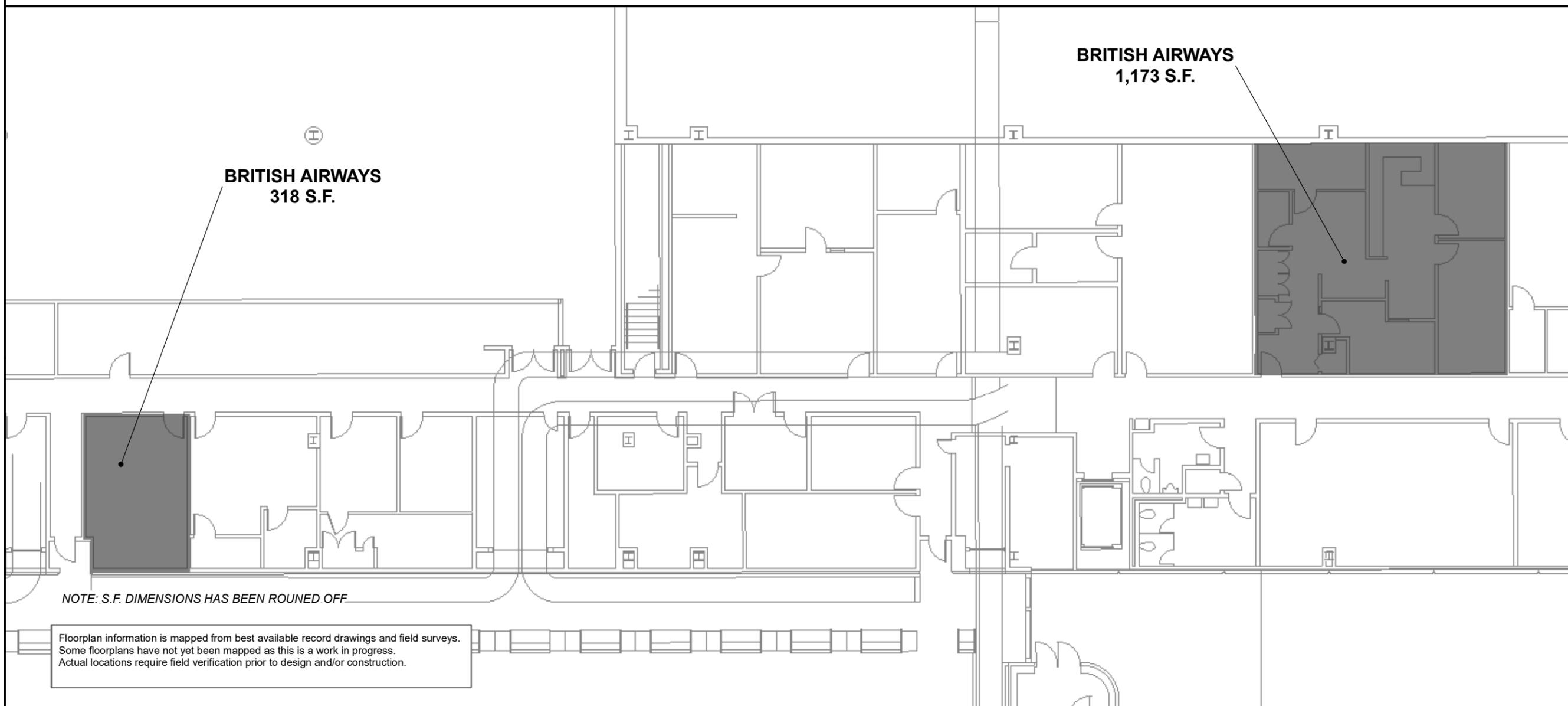


GEORGE BUSH
INTERCONTINENTAL
AIRPORT HOUSTON

TERMINAL D - LEVEL 1
BRITISH AIRWAYS
AIRLINES
LEASE AREA
TOTAL: 1,491 S.F.

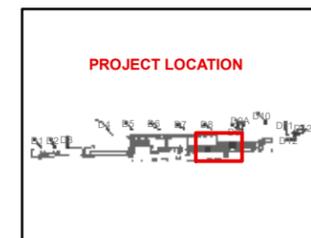
EXHIBIT F

PAGE 1



REQUESTED BY: CONNIE FRENCH
ASIS PROJ MGR: BILL ZRIOKA
AUTHOR: JOCELYN LE
CHECKED BY: BRETT REDMAN
PRINT DATE: 5/17/2023
PATH:

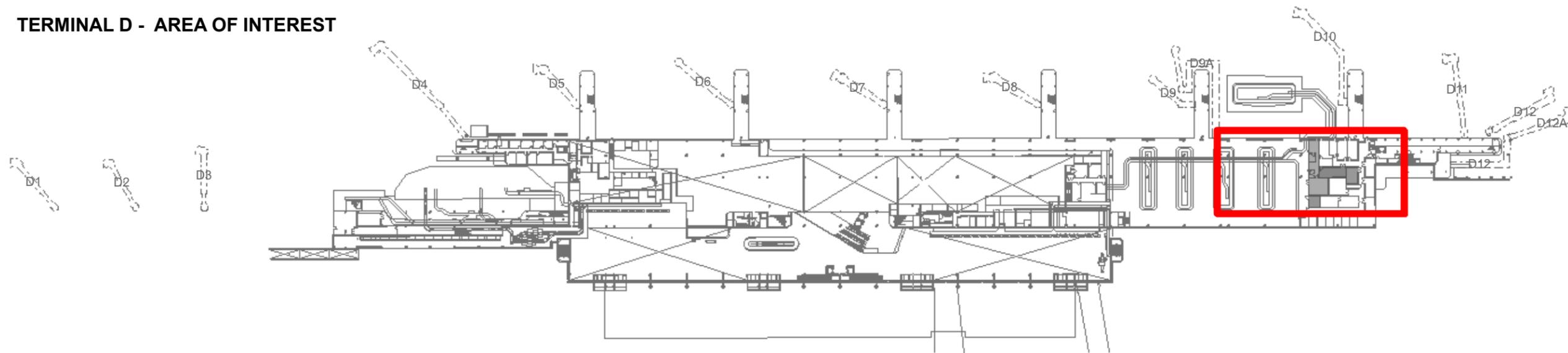
Vicinity Map



NOTE: S.F. DIMENSIONS HAS BEEN ROUNDED OFF

Floorplan information is mapped from best available record drawings and field surveys. Some floorplans have not yet been mapped as this is a work in progress. Actual locations require field verification prior to design and/or construction.

TERMINAL D - AREA OF INTEREST

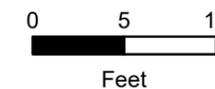
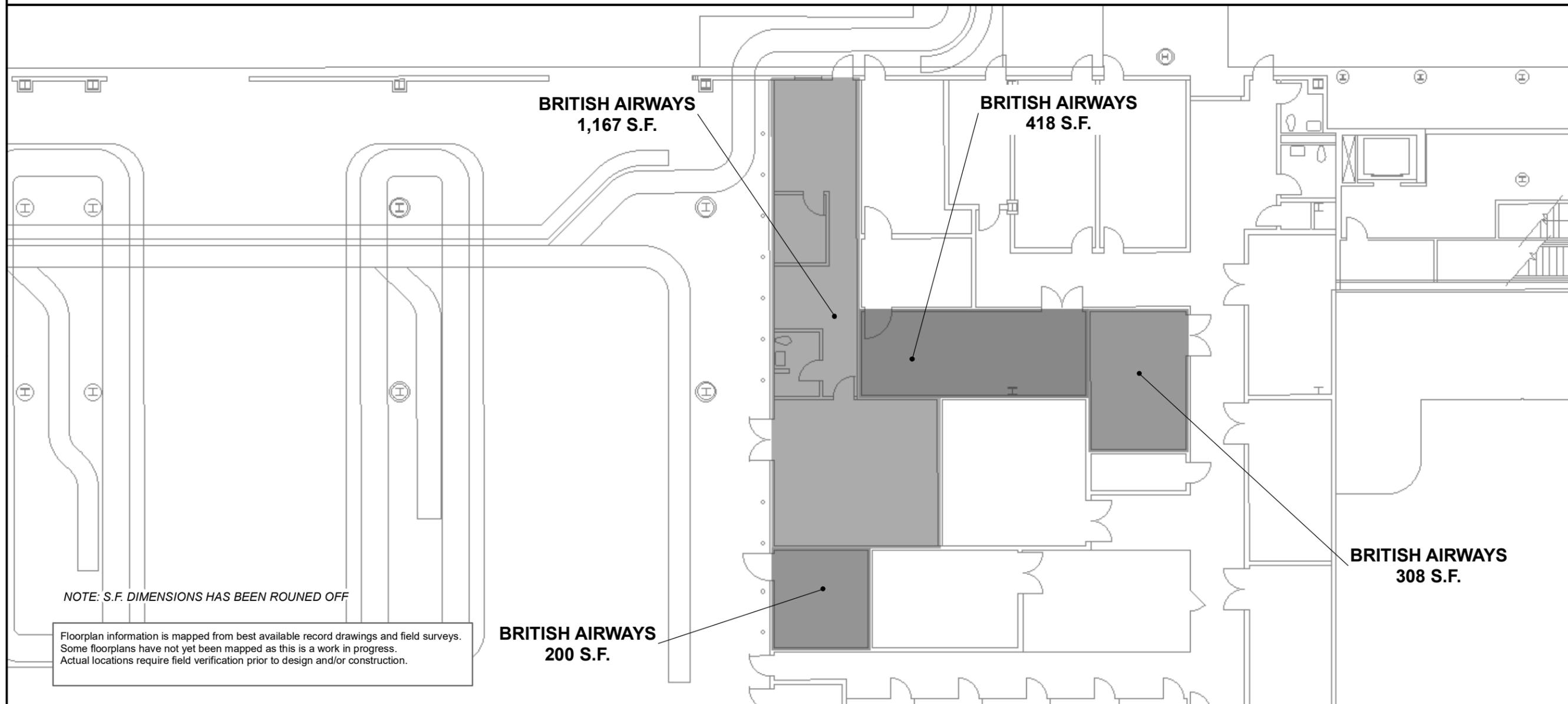


GEORGE BUSH
INTERCONTINENTAL
AIRPORT HOUSTON

**TERMINAL D - LEVEL 2
BRITISH AIRWAYS
AIRLINES
LEASE AREA
TOTAL: 2,093 S.F.**

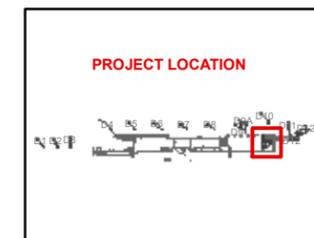
EXHIBIT F

PAGE 2



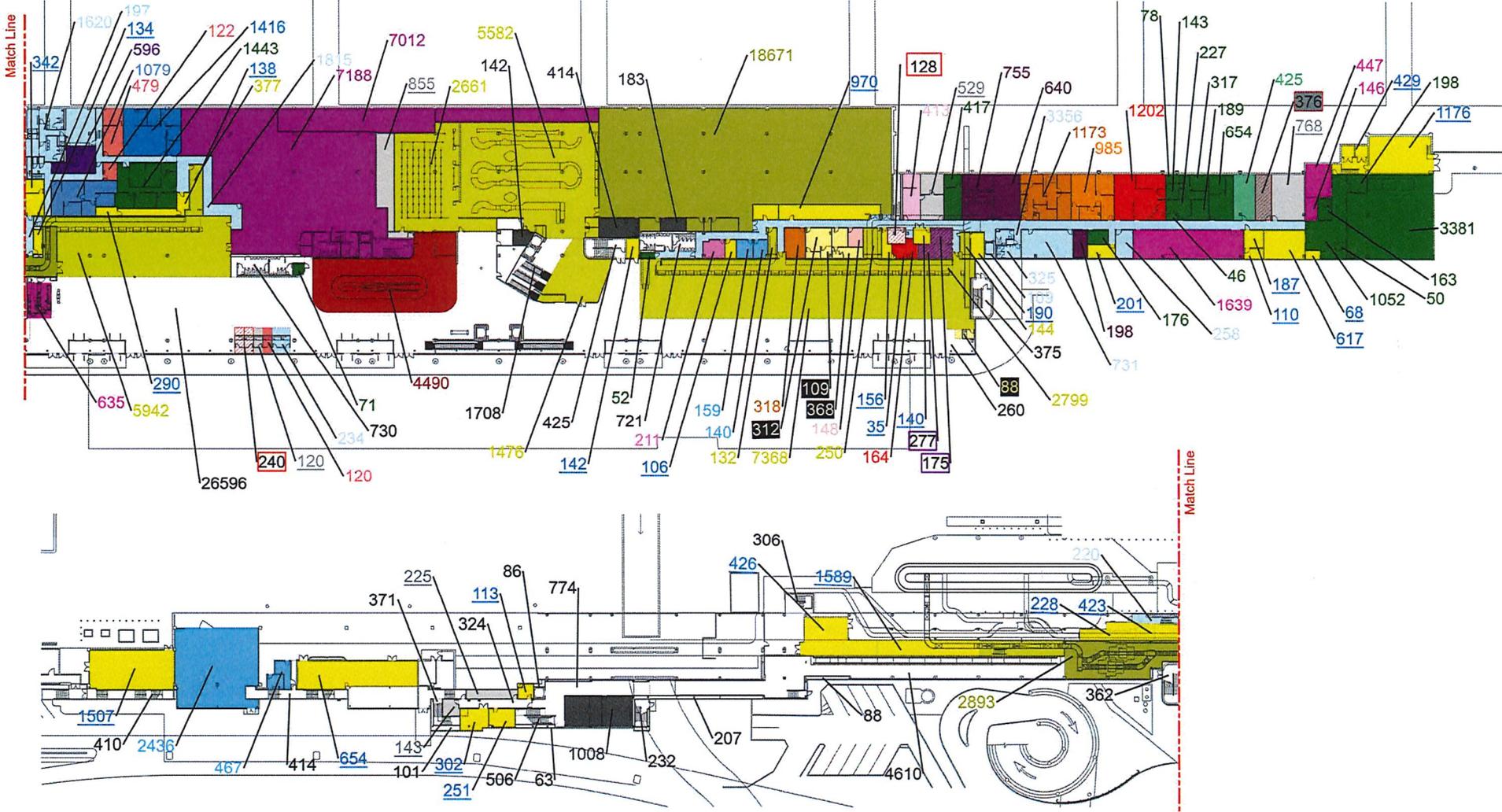
REQUESTED BY: CONNIE FRENCH
 ASIS PROJ MGR: BILL ZRIOKA
 AUTHOR: JOCELYN LE
 CHECKED BY: BRETT REDMAN
 PRINT DATE: 5/17/2023
 PATH:

Vicinity Map



NOTE: S.F. DIMENSIONS HAS BEEN ROUNDED OFF

Floorplan information is mapped from best available record drawings and field surveys. Some floorplans have not yet been mapped as this is a work in progress. Actual locations require field verification prior to design and/or construction.

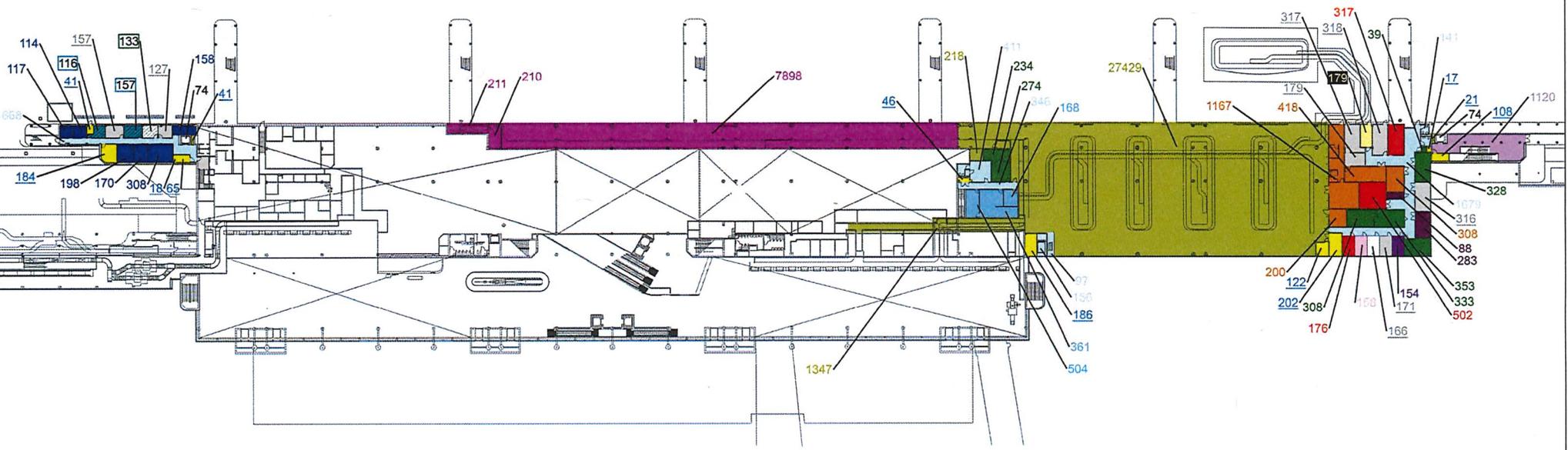


413	AEROMEXICO	1,416	EMIRATES	211	VOLARIS	8,657	HAS	368	3RD PARTY PROVIDER
1,593	ANA	596	LUFTHANSA	8,865	AIRLINE COMMON	10,924	MECH/ELEC	376	ARINC
985	AIR CHINA	721	QATAR	21,564	BAGGAGE MAKEUP	39,669	PUBLIC	452	HALLMARK
1,366	AIR FRANCE	1,079	SINGAPORE	2,867	CONCESSIONS	26,731	TICKETING AREA	3202	UNITED
425	AIR NEW ZEALAND	148	TACA	4,490	DOMESTIC NON-FIS BAGGAGE CLAIM	1,747	TSA		
1,491	BRITISH AIRWAYS	877	TURKISH AIRLINES	14,200	FORMER TERMINAL D FIS	2,640	UNASSIGNED		

Exhibit F - Page 3

TOTAL FLOOR AREA: 158,073

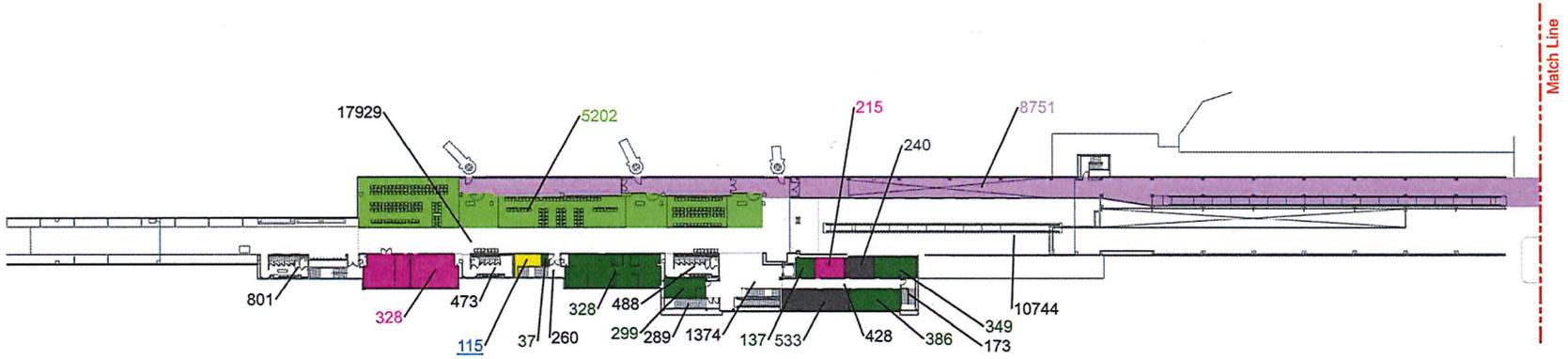
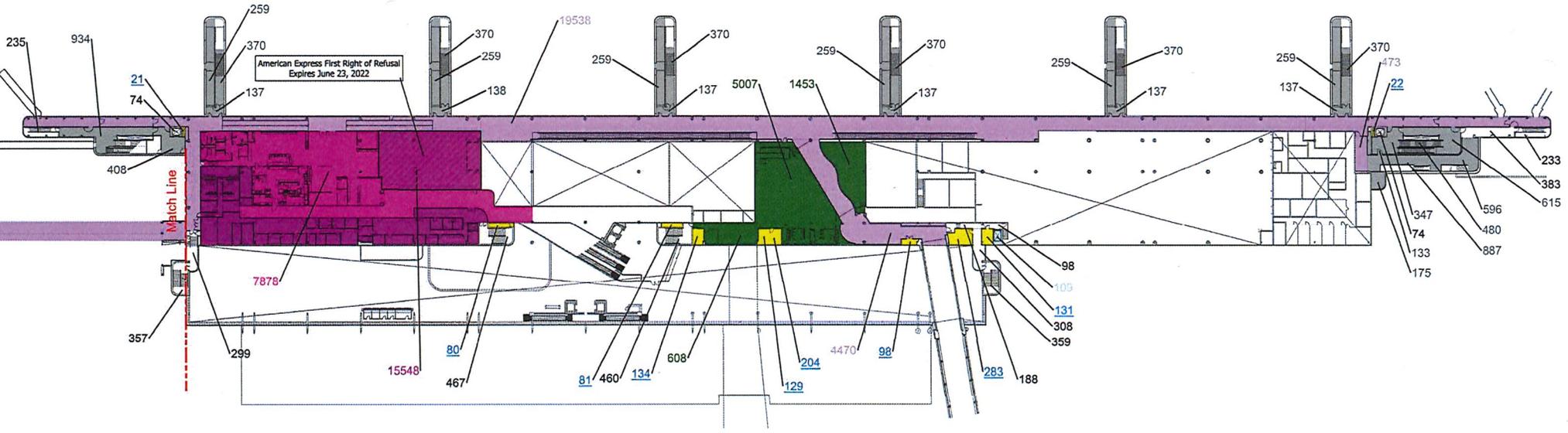




158	AEROMEXICO	154	LUFTHANSA	28,994	BAGGAGE MAKEUP	1,751	UNASSIGNED
371	ANA	179	TURKISH AIRLINES	8,319	FORMER TERMINAL D FIS	133	GLOBAL SERVICES
995	AIR FRANCE	1,033	UNITED AIRLINES	1,869	HAS	273	FENIX LOGISTICS
2,093	BRITISH AIRWAYS	3,534	AIRLINE COMMON	1,051	MECH/ELEC		
1,065	EVA	1,120	ARRIVAL AREA	148	PUBLIC		

Exhibit F - Page 4

TOTAL FLOOR AREA: 53,240



109		AIRLINE COMMON	15,548		FORMER TERMINAL D FIS	1,298		MECH/ELEC
33,232		ARRIVAL AREA	8,604		HAS	36,494		PUBLIC
8,421		CONCESSIONS	9,172		LOADING BRIDGE	773		TSA
		UNASSIGNED	5,202		DEPARTURE AREA			

TOTAL FLOOR AREA: 118,853 SF

Exhibit F - Page 5



TOTAL FLOOR AREA: 611,618

Exhibit F - Page 7

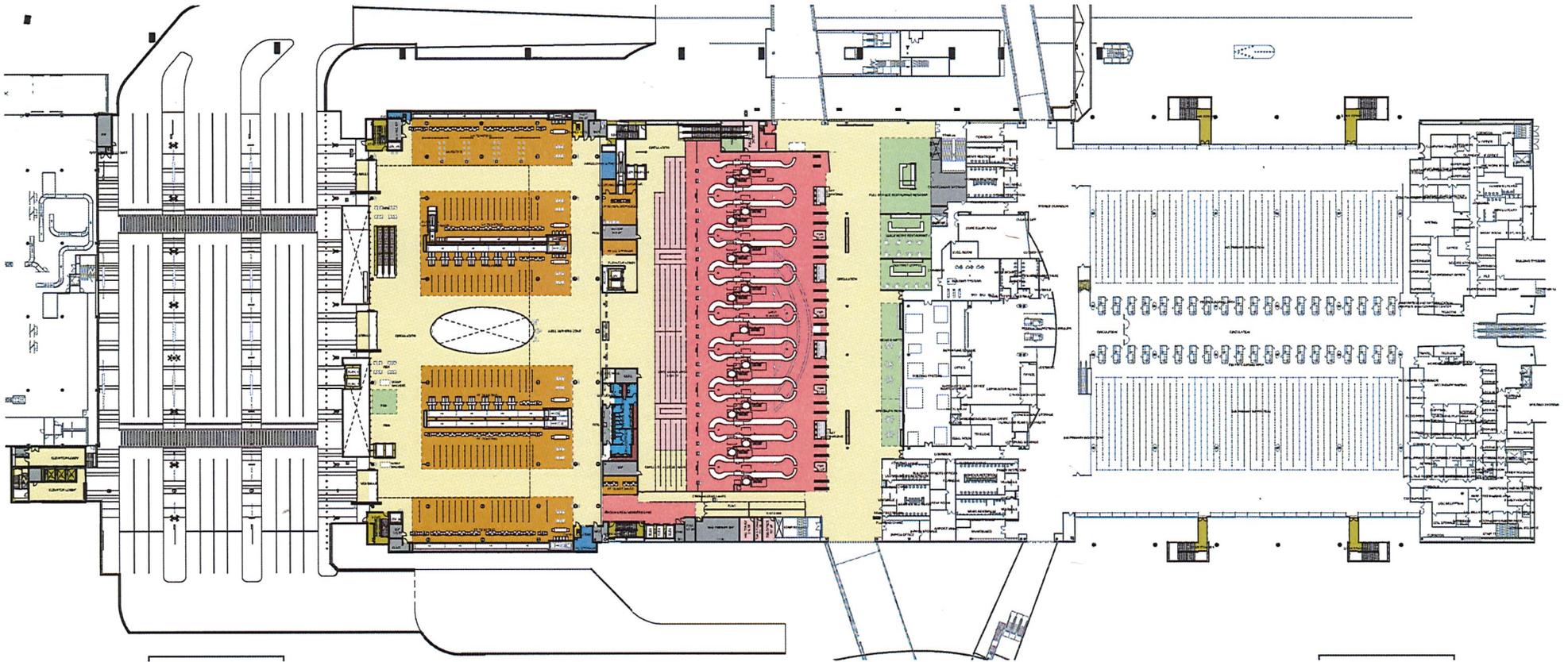
George Bush Intercontinental Airport
Houston, TX

Composite Space Allocation
January 1, 2022

AIRLINE COMMON



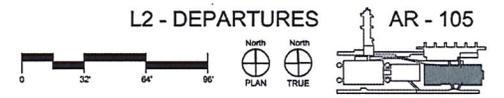
Exhibit

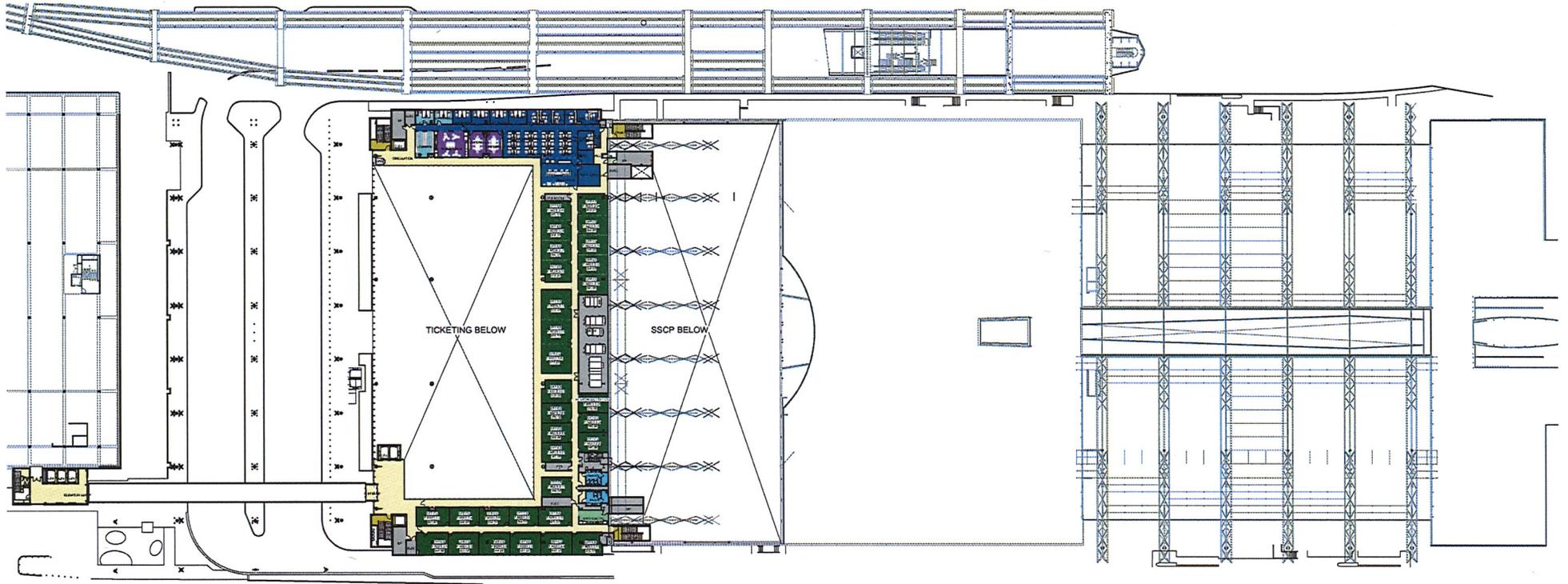


1 FIS_L2 DEPARTURES LEVEL - CD
 03.JUL.18 AR - 105 SCALE: 1" = 40'-0"

Exhibit F - Page 8
 Conceptual
 Departure Level

Preliminary draft, NOT FOR CONSTRUCTION

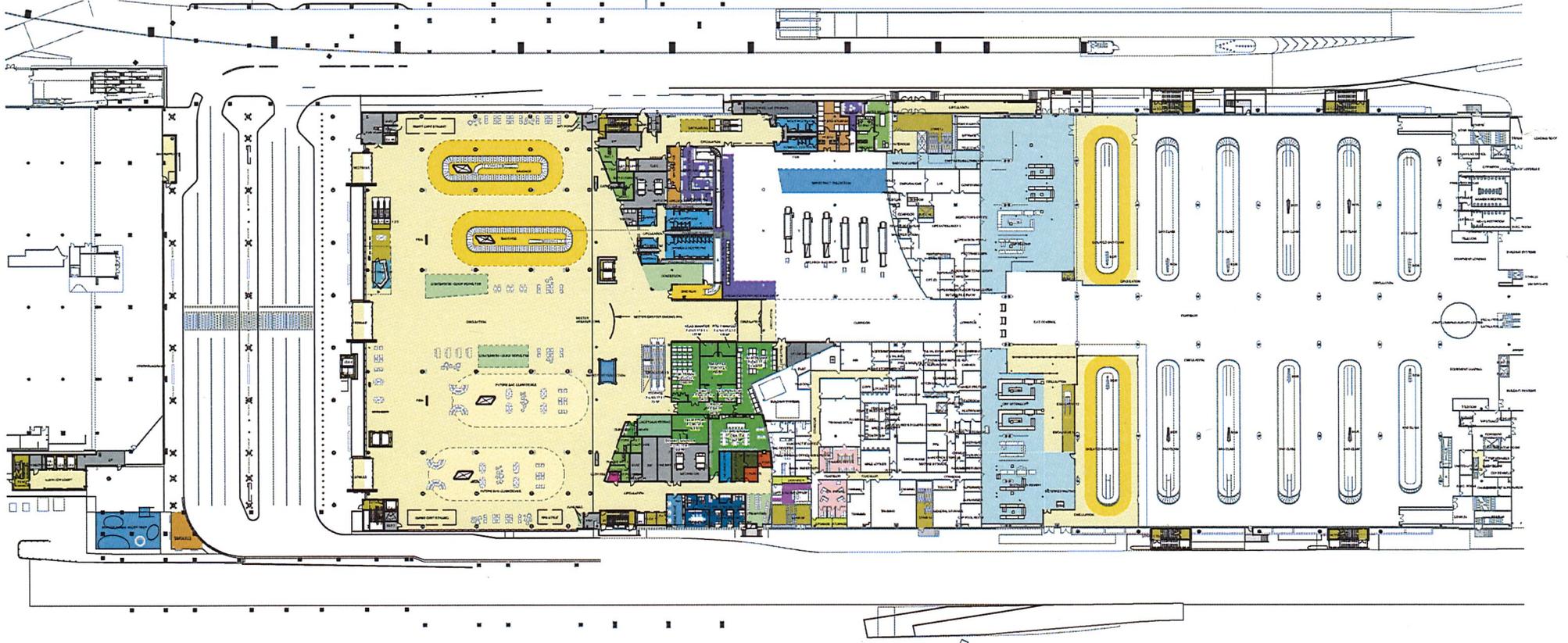




1 FIS_L2.5 ATO LEVEL - CD
 05 JUL 2018 SCALE: 1" = 40'-0"

Exhibit F - Page 9
 Conceptual
 ATO Level

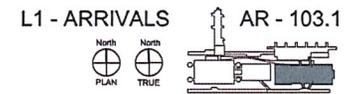
Preliminary draft. NOT FOR CONSTRUCTION



1 FIS_L1 ARRIVALS LEVEL - CD - Phase 1
 00 JEA AR - 103.1 SCALE: 1" = 40'-0"

Exhibit F - Page 11
 Conceptual
 Arrivals Level

Preliminary draft. NOT FOR CONSTRUCTION



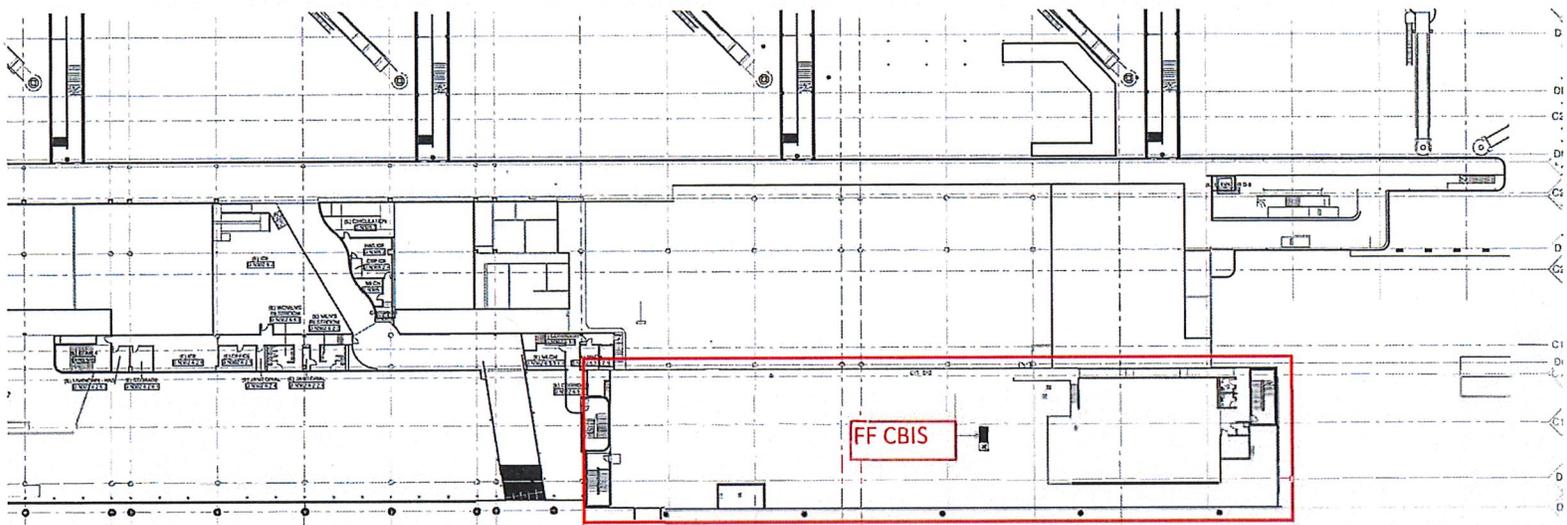
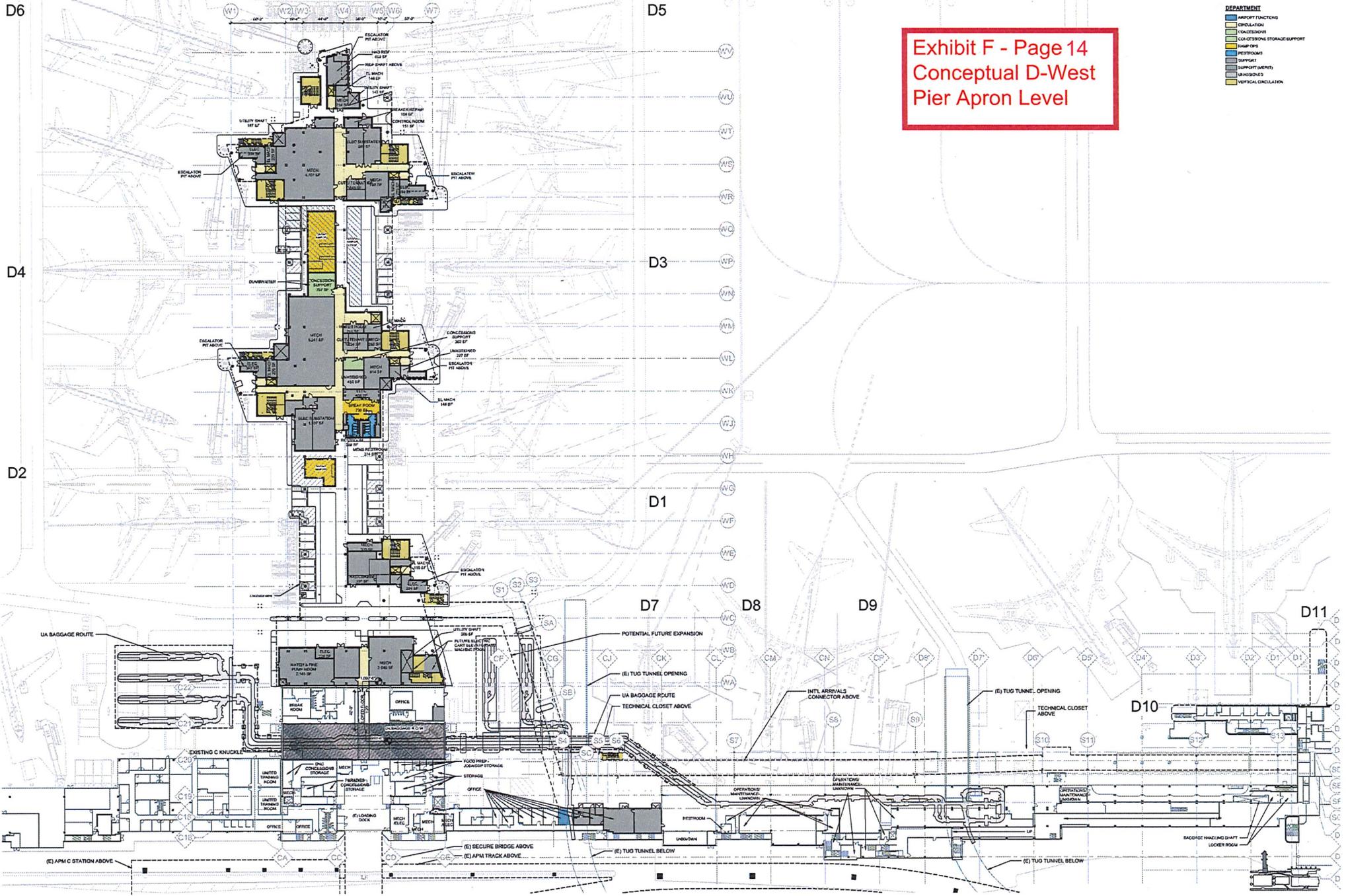


EXHIBIT F - Foreign Flag CBIS
Page 12
Conceptual
Terminal D Arrivals Level

INT'L ARRIVALS LEVEL
SCALE 1"= 20'

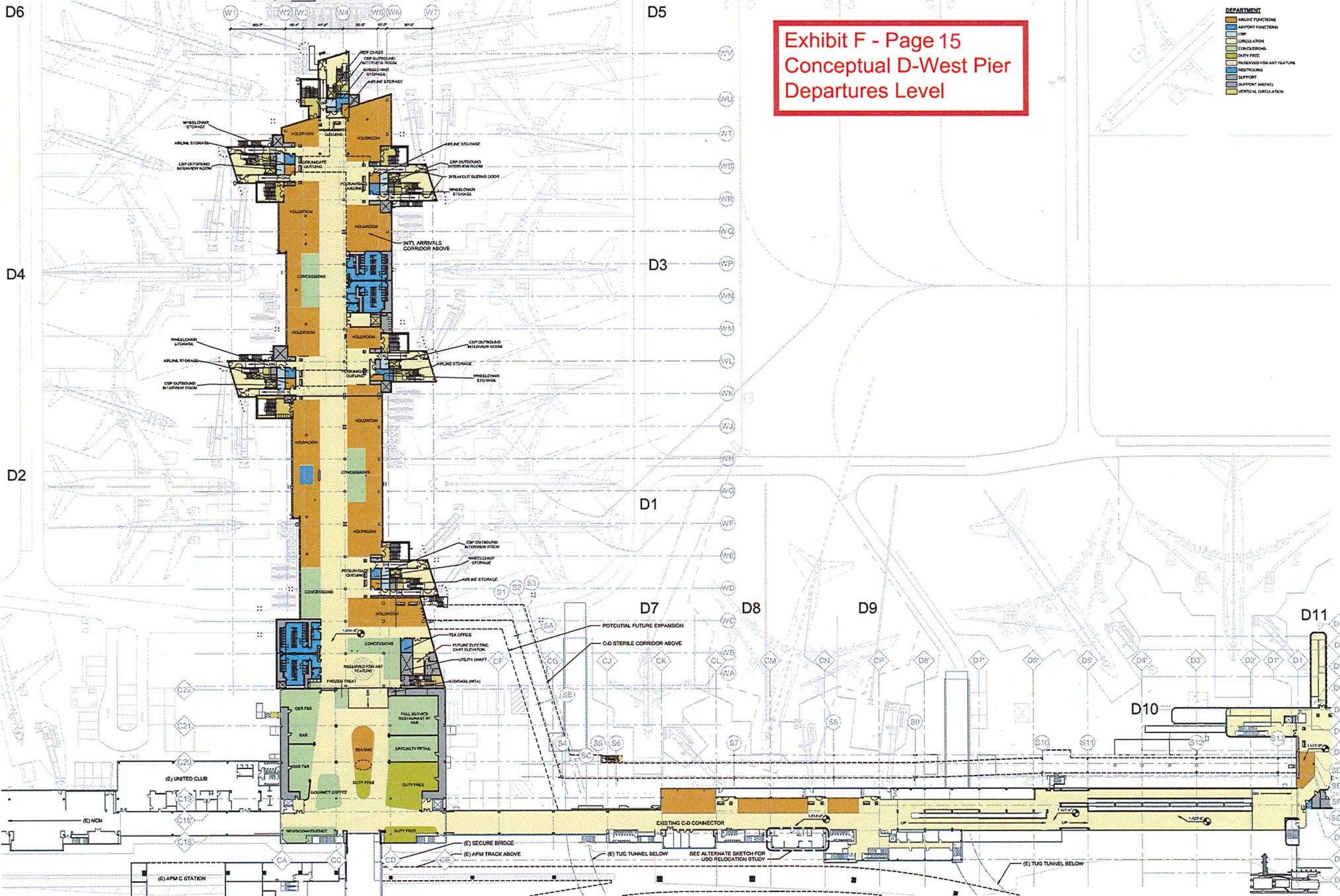




DEPARTMENT

- AIRPORT FUNCTIONS
- CONCINATION
- CONCRETE/STONE STORAGE/SUPPORT
- HANGAR
- RESTROOM
- SUPPORT
- SUPPORT ELEMENTS
- UNASSIGNED
- VERTICAL CIRCULATION

Exhibit F - Page 14
Conceptual D-West
Pier Apron Level



DEPARTMENT

- PUBLIC FUNCTIONS
- SUPPORT FUNCTIONS
- CONVEYANCE
- CONCESSIONS
- DUTY FREE
- RESERVED FOR ART FEATURE
- RESTROOMS
- SUPPORT (MEETS)
- VERTICAL CIRCULATION

Exhibit F - Page 15
Conceptual D-West Pier
Departures Level

D6

D4

D2

D5

D3

D1

D7

D8

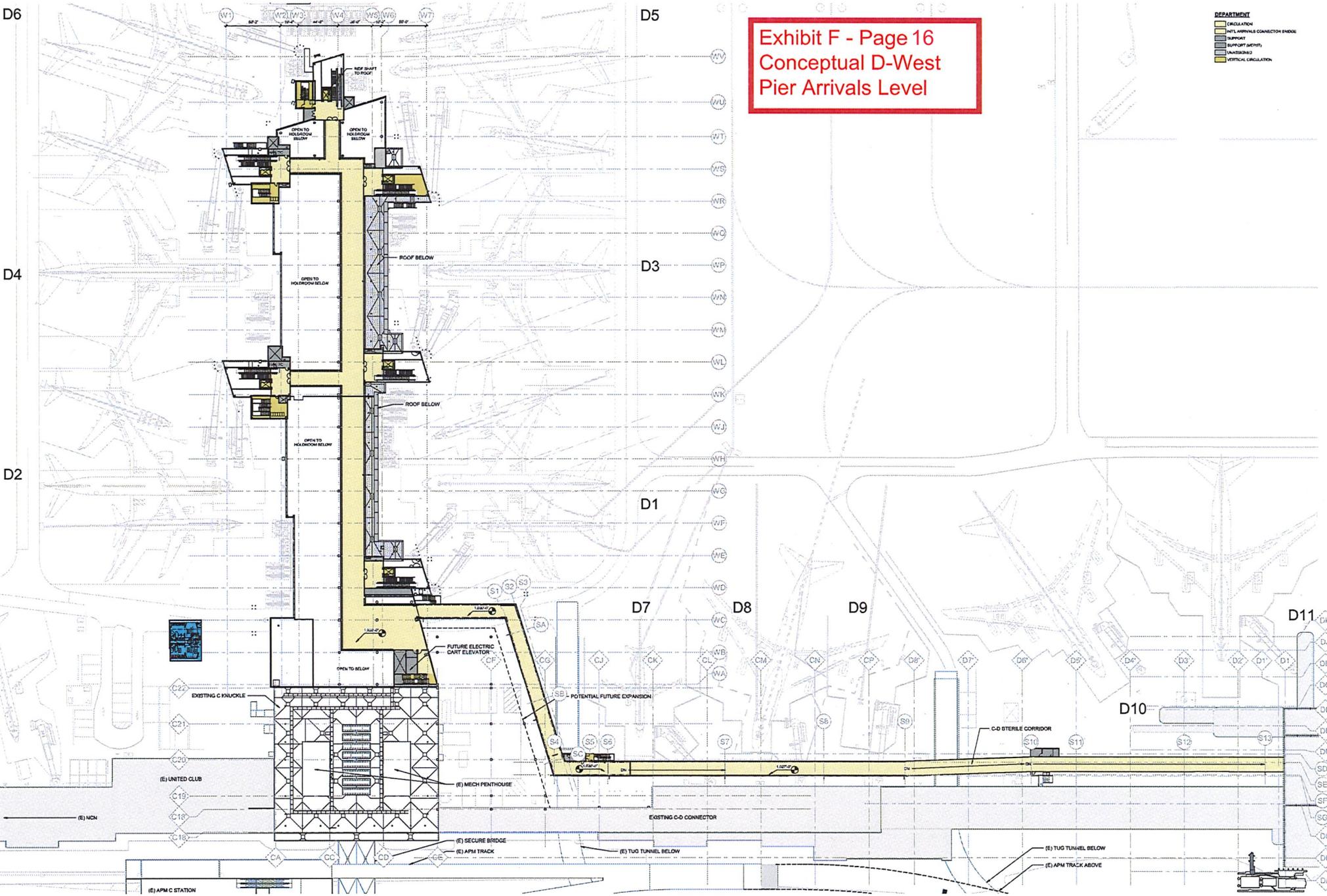
D9

D11

D10

Exhibit F - Page 16
Conceptual D-West
Pier Arrivals Level

DEPARTMENT	
[Symbol]	CIRCULATION
[Symbol]	INT'L ARRIVALS CONNECTION ENDS
[Symbol]	SUPPORT
[Symbol]	SUPPORT MECHS
[Symbol]	MECH/ELECTRICAL
[Symbol]	VERTICAL CIRCULATION



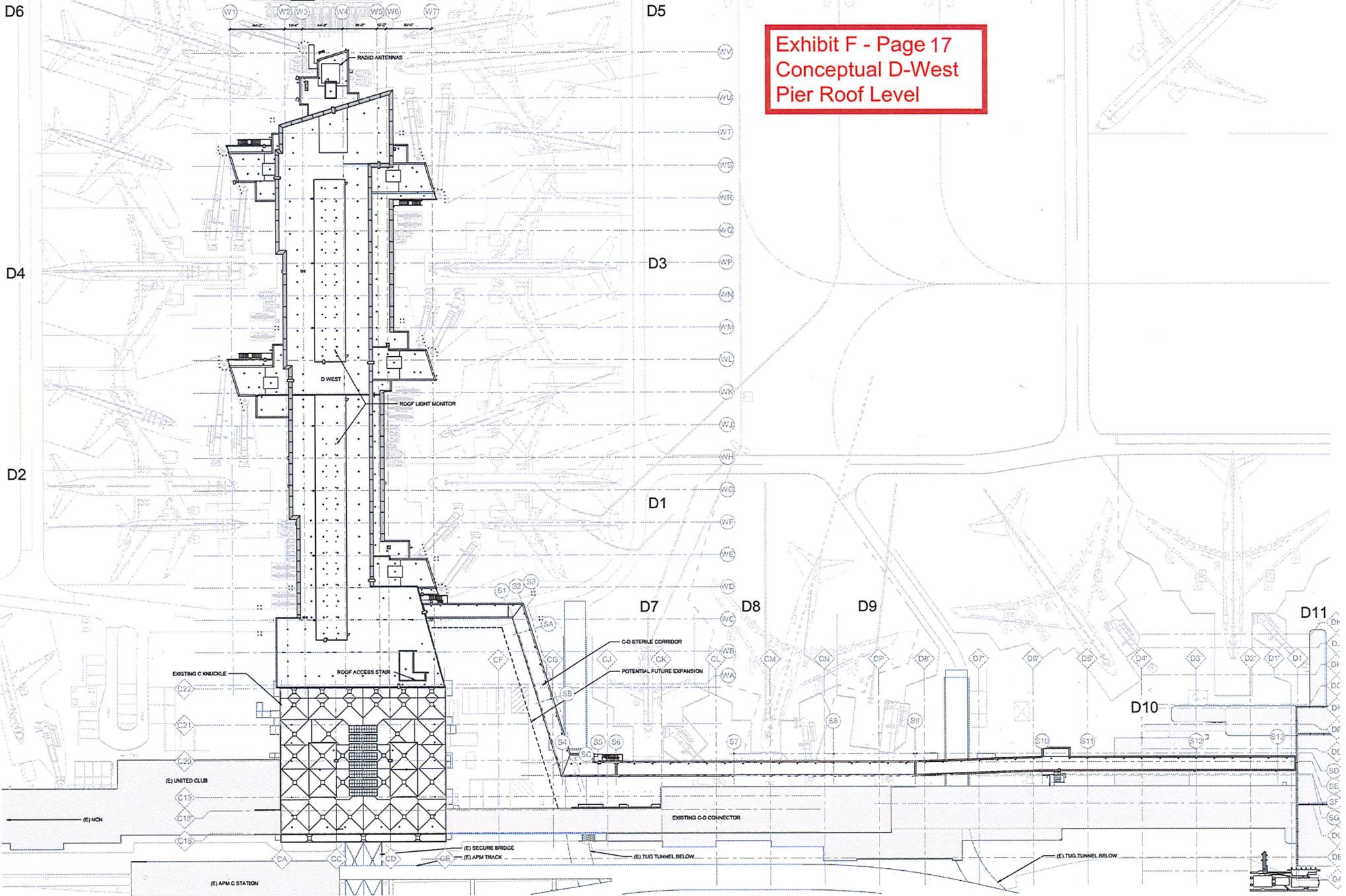


Exhibit F - Page 17
 Conceptual D-West
 Pier Roof Level

EXHIBIT G

Reserved

EXHIBIT H

Monthly Statistical Report Form

3 Pages

EXHIBIT "H"

MONTHLY STATISTICAL REPORT
for the month of _____, 20__

Houston Airport System
Finance Division
P.O. Box 60106
Houston, TX 77205

AIRPORT: _____

Ph: (281) 233-3000
Fx: (281) 233-7669

PASSENGER TRAFFIC	ARRIVALS			DEPARTURES				Passengers Using In-Transit Lounge
	Local (A)	Non-rev (B)	TOTAL (A+B)	Local (C)	Transfer (D)	Non-Rev (E)	TOTAL (C+D+E)	
Domestic			0				0	
International								
Mexico			0				0	
Latin America			0				0	
Europe			0				0	
Canada			0				0	
Asia			0				0	
Africa			0				0	
Australia			0				0	

AIR FREIGHT
(pounds)

ARRIVALS

DEPARTURES

Domestic		
International		
Mexico		
Latin America		
Europe		
Canada		
Asia		
Africa		
Australia		

AIR MAIL
(pounds)

--	--

REPORTING AIRLINE _____ PREPARED BY _____ APPROVED BY _____

TELEPHONE NUMBER _____ FAX NUMBER _____ E-MAIL ADDRESS _____

LOCAL: Passengers other than non-revenue and transfer.
 TRANSFER: Passengers that transfer from one flight to another within the same Airline or those passengers that use the in-transit lounge. Identified only on departing passengers.
 NON-REVENUE: Passengers that do not purchase their tickets.
 PASSENGER USING THE IN-TRANSIT LOUNGE: Passengers using the in-transit lounge, which are ALSO included in the Transfer category and the Departures Total.

THIS REPORT IS DUE TO THE CITY ON OR BEFORE THE 10TH DAY OF EACH MONTH

EXHIBIT "H"

THIS FORM REQUIRED IF OPERATING OUT OF MORE THAN ONE TERMINAL BUILDING

HOUSTON AIRPORT SYSTEM
George Bush Intercontinental Airport/Houston (IAH)

Airline

Month/Year

Terminal A				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals				0
Departures				0
Total	0	0	0	0

Terminal B				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals				0
Departures				0
Total	0	0	0	0

Terminal C				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals				0
Departures				0
Total	0	0	0	0

Terminal D				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals				0
Departures				0
Total	0	0	0	0

Terminal E				
Passenger Traffic	Domestic	International	Int'l. Pre-cleared	Total
Arrivals				0
Departures				0
Total	0	0	0	0

Prepared By _____ Date _____

Telephone Number _____

Approved By _____ Date _____

Fax Number _____

THIS REPORT IS DUE TO HOUSTON AIRPORT SYSTEM BEFORE THE 10TH DAY OF EACH MONTH.

EXHIBIT I

Illustrative Self-Invoicing Form

EXHIBIT "I"

HOUSTON AIRPORT SYSTEM

Self Invoicing Form on Actual Usage at Terminal D/Mickey Leland International Building
 George Bush Intercontinental Airport/Houston (IAH)
 Effective _____, 2023

 Airline _____
 Month/Year

ARRIVALS

Gate Arrival	
Total Arriving Passengers	
Rate	\$ -
Amount Due	\$ -

FIS/Bag Claim Area	
Total Arriving Passengers	
Less: Pre-cleared International Flight & Domestic Arriving Passengers	
Net Arriving Passengers	0
Rate	\$ -
Amount Due	\$ -

DEPARTURES

Gate Departure	
Total Departing Passengers	
Rate	\$ -
Amount Due	\$ -

Ticketing Area	
Total Departing Passengers	
Less: In-transit Departing Passengers	
Less: Continental Domestic/Mexico/Central and South America	
Net Departing Passengers	0
Rate	\$ -
Amount Due	\$ -

Total Terminal D use fees amount due City of Houston \$ -

This report and your check are to be submitted to the Houston Airport System by the 10th of each month.

 Prepared By Date

 Telephone Number

 Approved By Date

Remit to: Houston Airport System
 Finance Division
 P.O. Box 60106
 Houston, Tx 77205
 (281) 233-3000

EXHIBIT J

Sample Letter of Credit

4 Pages

EXHIBIT J
FORM OF LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____ (the "Beneficiary"), for the account of [CONTRACT PARTY], a _____ corporation, (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., Texas time on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the "Expiration Date").

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Houston, Texas.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary of such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least sixty (60) days prior to any such Expiration Date, Bank has sent Beneficiary written notice, at the address provided below, that Bank elects not to permit this Letter of Credit to be so extended, and will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to the Beneficiary by valid presentation on or prior to 5:00 p.m. Texas time, on or prior to the Expiration Date, of the following:

1. A copy of this Letter of Credit and all amendments; and

2. A copy of the Drawing Certificate in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Bank by facsimile at [facsimile number for draws] [REDACTED] or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [REDACTED]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date. Except in the case of an increase in the Available Amount, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of Texas, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By: _____

Name: _____

Title: _____

DRAWING CERTIFICATE

TO:

[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

**AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF CITY OF HOUSTON
THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)**

**DRAWN UNDER *[INSERT NAME OF ISSUING BANK]* LETTER OF CREDIT
NO. XXXXXX.**

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____

NAME AND TITLE

EXHIBIT K

Rate-Calculation Methodology

3 Pages

Exhibit K (Page 1 of 3)

CALCULATION OF FEES AND CHARGES APPLICABLE TO INTERNATIONAL CARRIERS¹

Applicable to International Carriers

George Bush Intercontinental Airport

Pro Forma FY 2025

DESCRIPTION	Exclusive Use Area	International Departure Cost Centers ²	International Arrivals Cost Centers ²	ICP Ticketing	ICP Security Checkpoint	Common VIP Club	Central FIS	Skyway	Airfield Area
Operation and Maintenance Expenses ³	\$2,427,000	\$5,422,000	\$5,466,000	\$1,958,000	\$1,837,000	\$1,094,000	\$37,392,000	\$20,369,000	\$35,930,000
Replenishment of Renewal and Replacement Fund Amortization ^{3,4}		-	-	-	-	-	-	-	-
Existing	244,000	1,933,000	3,037,000	297,000	278,000	110,000	7,105,000		32,303,000
Projected	2,456,000	4,847,000	5,280,000	2,039,000	1,912,000	1,106,000	4,820,000	130,000	1,501,000
Cost of Public Space	3,777,000	4,600,000	3,551,000	3,451,000	3,238,000	1,702,000	11,105,000		
Interest on Land	-	-	-	-	-	-	-	-	3,625,000
Reallocation of HAS Space	-	-	-	-	-	-	-	829,000	791,000
Base Capital Charge ⁵	129,000	117,000	152,000	-	-	56,000	-	2,195,000	-
Reduction for Amount over International CPE Cap	-	(1,563,000)	(1,613,000)	(720,000)	(676,000)	-	-	-	-
Domestic/Pre-Cleared Available to offset fees	-	(1,491,000)	(1,538,000)	(687,000)	(645,000)	-	-	-	-
Total Net Annual Cost	\$ 9,033,000	\$ 13,865,000	\$ 14,335,000	\$ 6,338,000	\$ 5,944,000	\$ 4,068,000	\$ 60,422,000	\$ 23,523,000	\$ 74,150,000

Unit Expense	Units								
Per Square Foot	51,444	\$175.59							
International Enplaned Passengers at Terminal D	1,484,000		\$9.34						
International Deplaned Passengers at Terminal D	1,484,000			\$9.66					
Enplaned Passengers Using ICP Ticketing	1,484,000				\$4.27				
Originating Passengers Using ICP Security Checkpoint	3,000,000					\$1.98			
Passengers Use Common VIP Club	200,000						\$20.34		
Deplaned Passengers from International Flights	5,406,000							\$11.18	
Total IAH Enplaned Passengers	23,157,000								\$1.02
Total Landed Weight	26,259,000								\$2.82

Notes:

- (1) Fees for Domestic/Pre-Cleared passengers will be based on same cost per enplaned or deplaned passengers as carriers operating in Terminal A.
- (2) Includes pro rata share of costs allocable to the Aircraft Apron Area and Loading Bridges.
- (3) Includes allocable System Costs.
- (4) Projected amounts equal 1.20 times amortization to include coverage, except for Airfield Area.
- (5) Base Capital equal to \$2.50 per square foot for all areas of Terminal D, the ICP, the Central FIS, or the Skyway that are fully amortized.

Exhibit K (Page 2 of 3)

CALCULATION OF INTERNATIONAL CPE CAP¹

George Bush Intercontinental Airport

	Actual 2018	2019	2020	2021	Estimated 2022	2023	2024	2025	2026	2027	2028	2029
International Fees Subject to CPE Cap ²												
Arrival Fee	\$ 5.22											
Departure Fee	5.39											
Ticketing Fee	5.62											
	16.23											
150% of Actual FY 2018 Rate	\$ 24.35											
Inflation rate		0.85%	0.00%	4.58%	10.24%	<i>2.00%</i>	2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
International CPE Cap ³		\$24.55	\$24.55	\$25.67	\$28.30	<i>\$28.87</i>	<i>\$29.45</i>	<i>\$30.04</i>	<i>\$30.64</i>	<i>\$31.25</i>	<i>\$31.87</i>	<i>\$32.51</i>

Notes:

(1) Assumed DBO of ITRP Phase 1 is FY 2025 for illustrative purposes.

(2) In accordance with Section 6.08 of the International Facilities Lease; total terminal fees to be paid in the first five years of operation for ITRP Phase 1 (including only the Arrival, the Departure and the Ticketing Charges as currently calculated, "International Charges") are subject to a cap.

(3) Italicized CPI rates are estimated for illustrative purposes, actual CPI rates will be applied.

Exhibit K (Page 3 of 3)**ILLUSTRATIVE CALCULATION OF REVENUE SHARING CREDITS**

George Bush Intercontinental Airport

Pro Forma FY 2025

		<u>2025</u>	
Gross Revenues		\$608,877,000	
Less: Operation and Maintenance Expenses		(404,929,000)	
Net Revenues	[A]	<u>\$203,948,000</u>	
Total Debt Service Requirements	[B]	126,885,000	
Debt service coverage	[A÷B=C]	1.61 x	
HAS Revenue Sharing Cap	If C>1.50, then [Bx1.50=D]	\$13,621,000	
Concession Revenues			Percent to total
IAH			
Terminal Concessions		\$30,708,000	
Automobile Parking		61,810,000	
Car Rental		32,236,000	
		<u>\$124,754,000</u>	<u>69.6%</u>
HOU			
Terminal Concessions		\$23,564,000	
Automobile Parking		22,127,000	
Car Rental		8,788,000	
		<u>\$54,479,000</u>	<u>30.4%</u>
		<u>\$179,233,000</u>	<u>100.0%</u>
50% of HAS Concession Revenues	[E]	\$89,617,000	
Amount Available for HAS Revenue Credits	If D>E, then E otherwise D	\$ 13,621,000	
Allocation of HAS Revenue Credits to IAH			
IAH Share of Revenue Credits ¹		\$ 9,481,000	69.6%
	Percentage allocable		
Allocable based on Terminal A and D enplaned passengers ²	24.6%	\$ 2,334,000	
Allocable based on IAH enplaned passengers ³	75.4%	<u>7,147,000</u>	
		<u>\$ 9,481,000</u>	

Notes:

- (1) IAH share of Revenue Credits equal to their percentage of concession revenues to total HAS concession revenues.
- (2) Percentage based on terminal concessions to IAH concessions.
- (3) Percentage based on parking and rental concessions to IAH concessions.

EXHIBIT L

Maintenance Matrix

1 Page

Exhibit L

George Bush Intercontinental Airport/Houston International Facilities Agreement

Summary of Operation and Maintenance Responsibilities

	Exclusive Use Areas	Common Use Areas	Public Use Areas
Building Exteriors	C	C	C
Passenger Loading Bridges (1) & (3)	-	-	
Baggage Handling Systems (1)	C	C	C
People Movers (2)	A	C	C
Installed Central HVAC System	C	C	C
Decorating and Redecorating (includes: painting and flooring)	A	C	C
Plumbing	A	C	C
Electric Lighting and Relamping (includes: changing light bulbs)	A	C	C
Janitorial Cleaning (3)	A	C	C
Window Cleaning (airline responsible for inside only)	A	C	C
Restroom Maintenance	A	C	C
Signage	A	C	C
Aircraft Apron Structural (4)	-	C	
Aircraft Parking Striping (5)	-	C	

KEY: A= Airline
C = City

- (1) City shall provide maintenance (including routine and scheduled maintenance) for all City--owned passenger loading bridges and City-owned baggage systems. Airline shall clear all jams from the baggage handling system.
- (2) To include City-owned and City-installed elevators, escalators and moving walkways.
- (3) Airline to provide trash removal inside Passenger Loading Bridges. City shall provide general and extraordinary cleaning in Passenger Loading Bridges.
- (4) Airline shall keep area clean, neat and orderly.
- (5) City shall stripe aircraft parking positions on preferential-use gates, after receipt and approval of Airline drawings.

••• Airline shall repair and maintain all Airline-installed improvements and systems.



Attachment D
IAH Terminal D IFA
Summary for Council



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 5/9/2023

District B

Item Creation Date:

HAS – International Facilities Agreement (IFA) Template for
IAH Terminal D/Federal Inspection Services (FIS)

Agenda Item#: 25.

Summary:

ORDINANCE authorizing the creation and execution of Form International Facilities Agreements by and between City of Houston and Various Terminal D Airlines at George Bush Intercontinental Airport/Houston - Revenue - **DISTRICT B - JACKSON**

Background:

RECOMMENDATION:

Enact an ordinance approving and authorizing the creation and execution of International Facilities Agreements (IFAs) for operations in Terminal D and the Federal Inspection Services (FIS) at George Bush Intercontinental Airport/Houston between the City of Houston, Texas, and Terminal D airlines.

SPECIFIC EXPLANATION:

The International Facilities Agreement (IFA) defines the terms and conditions by which the airlines may use the airfield for aircraft operations, lease space in Terminal D, and have common use of ticket counters, aircraft gates, and the Federal Inspection Services (FIS) area at George Bush Intercontinental Airport/Houston (IAH) from which to conduct their passenger service business.

On April 15, 2020, City Council approved a blanket amendment of the then-existing IFA to extend the term of the agreement to December 31, 2021, to allow negotiations to continue for a replacement IFA while construction and renovation was continuing at IAH Terminal D, and City Council approved other terms of the agreement negotiated by the Mayor. Due to the continuing effects of COVID-19 on international service to Houston, negotiations for a replacement agreement were delayed, and all Terminal D carriers converted to non-signatory airlines operating under Code of Ordinances Chapter 9 in 2022.

The parties have now agreed to new terms in a replacement IFA Template which is anticipated to be executed by the 24 airlines utilizing Terminal D. Any new airlines wishing to provide international service to Houston at IAH during the term of the IFA will be offered the same IFA Template for execution, unless they wish to remain non-signatory airlines operating under Chapter 9, which may impose an additional administrative fee.

The pertinent terms of the standardized IFA Template to be signed by the Terminal D carriers without a need to return to City Council for approval include the following:

1. Term: The Terminal D IFA will become effective upon the countersignature date of each airline-executed agreement. All agreements will expire on June 30, 2034. The parties may terminate the agreement for convenience upon 30 days' notice.
2. Rentals: Under the IFA, airlines are required to pay various fees under airport rates and charges including landing fees, terminal rents and fees, and FIS charges, which are set each fiscal year. Additionally, each airline shall be responsible for a charge equal to 0.20 times the amortization of the net cost of each Capital Improvement in or allocable to Terminal D or the International Central Processor (ICP) placed in service on or after the date of beneficial occupancy of any component of IAH Terminal Redevelopment Program (ITRP) Phase 1. Airlines shall also pay a base capital charge of \$2.50 per square foot for all areas of Terminal D or the ICP which have not been demolished or replaced, the original cost of which has been fully amortized.
3. Permitted Uses: In Terminal D and the FIS, airlines lease private offices and operations areas for exclusive use. They use, in common with others, the ticket counters, queuing areas, aircraft gates, holdrooms, and aircraft apron areas. All Terminal D airlines also have use of the baggage make-up area, the FIS, and the security checkpoint pursuant to access and assignment procedures. Under the new IFA Template, United Airlines will be allowed to have 10-year preferential scheduling rights on three gates on the west side of the Terminal D West Pier once gate construction is complete and made available to United. After the 10-year period, the gates will convert to common use and be available for any Terminal D airlines.
4. Rights to Other Leased Space: Certain support space and offices will be leased by airlines on an exclusive-use basis in Terminal D until relocation occurs with completion of the new ICP Ticketing Hall. Upon relocation from ticketing offices in Terminal D to new space in the ICP after construction, Terminal D airlines are anticipated to lease new airline ticketing offices.
5. Other: Terminal D airlines shall be required to provide standard insurance and indemnification as required in the IFA Template, as well as compliance with the Living Wage Executive Order. As previously authorized under the Restated and Amended ITRP Memorandum of Agreement, in the event that the HAS Debt Service Coverage ratio exceeds 1.50 at the end of any fiscal year following the date of beneficial occupancy of ITRP Phase 1, the City shall issue revenue sharing credits to signatory airlines in Terminal D.

Fiscal Note:

Revenue for this item will be included in the FY2024 Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

Director's Signature:

Mario C. Diaz
Houston Airport System

Estimated Revenue			

DEPARTMENT	FY2024	OUT YEARS	TOTAL
Houston Airport System	\$85,630,018.00	\$1,266,754,817.00	\$1,352,384,835.00

Prior Council Action:

5/13/20 (O) 2020-403

Amount and Source of Funding:

REVENUE

HAS Revenue Fund

Fund 8001

Contact Information:

Todd Curry 281/233-1796

Francisco Cuellar 281/233-1682

ATTACHMENTS:

Description

Signed Coversheet

Type

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

District B

Item Creation Date:

HAS – International Facilities Agreement (IFA) Template for IAH Terminal D/Federal Inspection Services (FIS)

Agenda Item#:

Background:

RECOMMENDATION:

Enact an ordinance approving and authorizing the creation and execution of International Facilities Agreements (IFAs) for operations in Terminal D and the Federal Inspection Services (FIS) at George Bush Intercontinental Airport/Houston between the City of Houston, Texas, and Terminal D airlines.

SPECIFIC EXPLANATION:

The International Facilities Agreement (IFA) defines the terms and conditions by which the airlines may use the airfield for aircraft operations, lease space in Terminal D, and have common use of ticket counters, aircraft gates, and the Federal Inspection Services (FIS) area at George Bush Intercontinental Airport/Houston (IAH) from which to conduct their passenger service business.

On April 15, 2020, City Council approved a blanket amendment of the then-existing IFA to extend the term of the agreement to December 31, 2021, to allow negotiations to continue for a replacement IFA while construction and renovation was continuing at IAH Terminal D, and City Council approved other terms of the agreement negotiated by the Mayor. Due to the continuing effects of COVID-19 on international service to Houston, negotiations for a replacement agreement were delayed, and all Terminal D carriers converted to non-signatory airlines operating under Code of Ordinances Chapter 9 in 2022.

The parties have now agreed to new terms in a replacement IFA Template which is anticipated to be executed by the 24 airlines utilizing Terminal D. Any new airlines wishing to provide international service to Houston at IAH during the term of the IFA will be offered the same IFA Template for execution, unless they wish to remain non-signatory airlines operating under Chapter 9, which may impose an additional administrative fee.

The pertinent terms of the standardized IFA Template to be signed by the Terminal D carriers without a need to return to City Council for approval include the following:

1. **Term:** The Terminal D IFA will become effective upon the countersignature date of each airline-executed agreement. All agreements will expire on June 30, 2034. The parties may terminate the agreement for convenience upon 30 days' notice.
2. **Rentals:** Under the IFA, airlines are required to pay various fees under airport rates and charges including landing fees, terminal rents and fees, and FIS charges, which are set each fiscal year. Additionally, each airline shall be responsible for a charge equal to 0.20 times the amortization of the net cost of each Capital Improvement in or allocable to Terminal D or the International Central Processor (ICP) placed in service on or after the date of beneficial occupancy of any component of IAH Terminal Redevelopment Program (ITRP) Phase 1. Airlines shall also pay a base capital charge of \$2.50 per square foot for all areas of Terminal D or the ICP which have not been demolished or replaced, the original cost of which has been fully amortized.
3. **Permitted Uses:** In Terminal D and the FIS, airlines lease private offices and operations areas for exclusive use. They use, in common with others, the ticket counters, queuing areas, aircraft gates, holdrooms, and aircraft apron areas. All Terminal D airlines also have use of the baggage make-up area, the FIS, and the security checkpoint pursuant to access and assignment procedures. Under the new IFA Template, United Airlines will be allowed to have 10-year preferential scheduling rights on three gates on the west side of the Terminal D West Pier once gate construction is complete and made available to United. After the 10-year period, the gates will convert to common use and be available for any Terminal D airlines.
4. **Rights to Other Leased Space:** Certain support space and offices will be leased by airlines on an exclusive-use basis in Terminal D until relocation occurs with completion of the new ICP Ticketing Hall. Upon relocation from ticketing offices in Terminal D to new space in the ICP after construction, Terminal D airlines are anticipated to lease new airline ticketing offices.
5. **Other:** Terminal D airlines shall be required to provide standard insurance and indemnification as required in the IFA Template, as well as compliance with the Living Wage Executive Order. As previously authorized under the Restated and Amended ITRP Memorandum of Agreement, in the event that the HAS Debt Service Coverage ratio exceeds 1.50 at the end of any fiscal year following the date of beneficial occupancy of ITRP Phase 1, the City shall issue revenue sharing credits to signatory airlines in Terminal D.

Fiscal Note:

Revenue for this item will be included in the FY2024 Budget. Therefore, no Fiscal Note is required as stated in the Financial Policies.

Director's Signature:

DS
FL

DocuSigned by:



9C69F3A4A7CB4BB...
Mario C. Diaz
Houston Airport System

Estimated Revenue			
DEPARTMENT	FY2024	OUT YEARS	TOTAL
Houston Airport System	\$85,630,018.00	\$1,266,754,817.00	\$1,352,384,835.00

Prior Council Action:

5/13/20 (O) 2020-403

Amount and Source of Funding:

REVENUE
HAS Revenue Fund
Fund 8001

Contact Information:

Todd Curry 281/233-1796
Francisco Cuellar 281/233-1682



Attachment E
HOU U&L Amendment No.2

**AMENDMENT NO. 2
TO
AIRPORT USE AND LEASE AGREEMENT**

THIS AMENDMENT NO. 2 TO AIRPORT USE AND LEASE AGREEMENT (“Amendment No. 2”) is made and entered into on the date of countersignature of the City Controller (the “Amendment No. 2 Effective Date”) by and between the **CITY OF HOUSTON, TEXAS**, a home-rule city (“City”) and **SOUTHWEST AIRLINES CO.**, a Texas corporation authorized to do business in the State of Texas (“Airline”) (each, singularly, a “Party” or, collectively, the “Parties”).

WITNESSETH:

WHEREAS, City and Airline entered into a Memorandum of Agreement, effective June 5, 2012, with respect to the William P. Hobby Airport International Expansion Project under which Airline constructed the West Terminal/West Concourse and West Concourse Apron Area at William P. Hobby Airport, (“Airport”), and the Federal Inspection Services Facility to initiate international passenger air service from the Airport, an airport owned by City and operated by the Houston Airport System (“HAS”); and

WHEREAS, City and Airline entered into Airport Use and Lease Agreement 75187 authorized by Ordinance No. 13-0129, passed by City Council on February 13, 2013, as amended by Amendment No. 1, dated March 18, 2014 (“Agreement”), under the terms of which Airline conducts its business at the Airport; and

WHEREAS, under the Agreement, Airline was given the right to preferentially lease four (4) of the five (5) international Gates in the West Terminal/West Concourse with the fifth (5th) Gate being a City Common Use Gate; and

WHEREAS, the Parties entered into a Memorandum of Agreement, dated March 4, 2022 (“2022 MOA”), which set forth the general parameters of the process to plan, design and construct additional Gates at the West Concourse; and

WHEREAS, the Parties now desire to enter into this Amendment No. 2 as contemplated in and based on the terms and conditions of the 2022 MOA.

NOW, THEREFORE, the City and Airline hereby agree as follows:

The Agreement is hereby amended as follows:

I.

Article I is amended as follows:

1. Deleting definition 47 (“Security Screening Space”) and replacing it with the following:

47. “Security Screening Space” means the space used for the screening of passengers (security screening checkpoints) or baggage (explosives detection screening space) in the Terminal Complex. Each separate component of Security Screening Space is shown in Exhibit C.

2. Adding the following new definitions:

57. “2022 Project” means development, design, and construction of one (1) additional Common-Use international Gate and six (6) additional Preferential-Use domestic Gates at the West Terminal/West Concourse of the Airport to handle aircraft, passengers, and cargo departing to, and arriving from, international and domestic destinations of scheduled and chartered flights as conceptually depicted on Exhibit C and more specifically described in Exhibit D-1 and the Project Definition Manual.

58. “2022 Project Costs” means all costs, damages, expenses, fees, charges, and debts incurred by Airline to design, plan, consult, construct, insure, and provide construction management for the design, planning, and construction of the 2022 Project (including the City Project Components and excluding the Southwest Proprietary Improvements), including those incurred during the 2022 MOA planning and design process, and related to the design and the performance of any Enabling Work. 2022 Project Costs shall include without limitation, all applicable costs, fees and taxes for planning, design, legal, construction management, construction, materials, labor, project management fees, and permit and utility fees of any kind or nature.

59. “City Project Components” means those certain components of the 2022 Project being more fully described in the PDM as: Add Alternate #1, the Clerestory and Connector Plaza Refresh and Add Alternate #2, and the Curbside Canopy, together with any modifications, additions or reductions thereto approved in writing by the Director. The City estimates that the total costs of the City Project Components will be approximately \$40,000,000. Construction of the City Project Components will be managed on behalf of the City by Southwest, which the City has determined will minimize disruption to the Airport operations, the traveling public and employees, streamline coordination efforts and maximize efficiencies. The City will not allocate any costs of the Clerestory and Connector Plaza Refresh to Airport Cost Centers that affect the rates and charges applicable to Airline under Article VI. The City will allocate all costs of the Curbside Canopy to the Terminal Roadways Airport Cost Center.

60. “Date of Beneficial Occupancy for the 2022 Project” or “2022 Project DBO” means the first day of the month following the dates(s) on which both of the following has occurred: (1) the Director has certified that the 2022 Project is substantially complete and ready for public occupancy and use; and (2) City has issued a certificate of occupancy for the 2022 Project. Issuance by City of a certificate of occupancy or a temporary certificate

of occupancy for only a portion of the 2022 Project shall not constitute the 2022 Project DBO.

61. “Enabling Work” means any and all construction or construction-related activities designated by Airline as necessary to prepare and plan for construction of the 2022 Project, including the ordering of long-lead items, preparation of the 2022 Project site, performance of construction activities to clear the site or remove barriers to construction of the 2022 Project, or the performance of discrete portions of Work to provide efficiencies in the management of the 2022 Project.

62. “Project Definition Manual” or “PDM” means the Project Definition Manual for the 2022 Project dated 10 April 2023, Version 1.4, which may be revised and/or updated upon mutual written agreement of the Director and Airline.

63. “Southwest Proprietary Improvements” means those certain components of the 2022 Project being more fully described in the PDM as: the Southwest Proprietary Improvements (non-reimbursable) for purposes of this Lease. For clarity and avoidance of doubt, the Southwest Proprietary Improvements shall be designed, installed, constructed, funded and financed solely by Airline; and the cost of the Southwest Proprietary Improvements shall be excluded from 2022 Project Costs.

II.

Conditioned upon all Signatory Airlines other than Airline having agreed in writing to an average Gate utilization requirement of five (5) Turns each day per Gate assigned to such Signatory Airline, the first sentence of Section 4.03.B of the Agreement shall be amended by deleting the phrase “four (4)” and replacing such phrase with “five (5)”.

III.

Section 5.05 of the Agreement is amended by adding “and West Concourse Apron Area” after “Central Concourse Apron Area.”

IV.

Section 5.07.B of the Agreement is amended by deleting it in its entirety and replacing it with the following:

B. Airport Security. Airline understands and agrees that fines and/or penalties may be assessed by the TSA for Airline’s noncompliance with the provisions of 49 CFR 1520, 1540 and 1542 (or successor regulations) or by other agencies for noncompliance with the regulations applicable to the Work. Airline shall, within thirty (30) days of receipt of written notice from the Director setting forth the amount of such fine or penalty, reimburse the City for fines or penalties assessed against the City because of Airline’s non-compliance with 49 CFR 1520, 1540 and 1542 (or successor regulations) while conducting the Work on the 2022 Project, as may be amended from time to time, or other applicable laws or regulations; provided, however, that such payment shall not be construed as waiving Airline's right to contest such fine or penalty.

V.

Section 6.02 of the Agreement is amended as follows:

1. Deleting paragraph 5 and replacing it with the following:

Fifty percent (50%) of the annual O&M Expenses and total Amortization allocable to the Terminal Roadways Airport Cost Center multiplied by a fraction, the numerator of which is of the number of square feet in the Central Terminal/Central Concourse, and the denominator of which is the sum of the number of square feet in the West Terminal/West Concourse plus the number of square feet in the Central Terminal/Central Concourse.

2. Deleting the final paragraph and replacing it with the following:

Additionally, Airline shall pay a Base Capital Charge of \$2.50 per square foot applied to that portion of the Leased Premises located in the Central Terminal/Central Concourse for which the Useful Life has expired, provided such portion of the Leased Premises will not be demolished or replaced during the applicable Fiscal Year. The Parties agree that Exhibit J depicts such portion of the Leased Premises to which the Base Capital Charge applies, as of the Amendment No. 2 Effective Date.

VI.

The Agreement is amended by adding a new Section 6.04A immediately after Section 6.04 as follows:

Section 6.04A West Terminal/West Concourse and West Concourse Apron Area Rents Upon and After 2022 Project DBO. From the 2022 Project DBO through the Expiration Date, the terms of Section 6.04 shall no longer apply, and rents for the West Terminal/West Concourse and the West Concourse Apron, including the 2022 Project, shall be calculated as follows:

1. **West Terminal/West Concourse Rental Rate.** The total requirement for the West Terminal/West Concourse Airport Cost Center will be calculated by adding together the following amounts:

- a. Direct and indirect Operation and Maintenance Expenses allocable to the West Terminal/West Concourse.
- b. Amortization of the net cost of each Capital Improvement in or allocable to the West Terminal/West Concourse.
- c. Annual replenishment of the Renewal and Replacement Fund allocable to the West Terminal/West Concourse area, if necessary, as required by the City's Bond Ordinances.

- d. Fifty percent (50%) of the annual O&M Expenses and total Amortization allocable to the Terminal Roadways Airport Cost Center multiplied by a fraction, the numerator of which is the number of square feet in the West Terminal/West Concourse, and the denominator of which is the sum of the number of square feet in the West Terminal/West Concourse plus the number of square feet in the Central Terminal/Central Concourse.

The annual rental rate for the West Terminal/West Concourse will be calculated by subtracting the Non-Signatory Airline premiums collected within the West Terminal/West Concourse Airport Cost Center from the total of the items in Section 6.04A.1.a. through e. above, then dividing the result by the total Usable Space in the West Terminal/West Concourse. The annual rent will be calculated by multiplying Airline's total square footage of its Leased Premises in the West Terminal/West Concourse by the annual rental rate calculated above for each Fiscal Year.

Additionally, Airline shall pay a Base Capital Charge of \$2.50 per square foot applied to that portion of the Leased Premises located in the West Terminal/West Concourse for which the Useful Life has expired, provided such portion of the Leased Premises will not be demolished or replaced during the applicable Fiscal Year. The Parties agree that Exhibit J depicts such portion of the Leased Premise to which the Base Capital Charge applies, as of the Amendment No. 2 Effective Date.

2. **West Concourse Apron Area Rental Rates.** The total requirement for the West Concourse Apron Area Airport Cost Center will be calculated by adding together the following amounts:

- a. Direct and indirect Operation and Maintenance Expenses allocable to the West Concourse Apron Area.
- b. Amortization of the net cost of each Capital Improvement in or allocable to the West Concourse Apron Area (excluding the fuel system described in Section 7.06(H) below).
- c. Annual replenishment of the Renewal and Replacement Fund allocable to the West Concourse Apron Area, if necessary, as required by the City's Bond Ordinances.

The annual West Concourse Apron Area Rental Rate will then be calculated by subtracting the Non-Signatory Airline premiums collected within the West Concourse Apron Area Airport Cost Center from the total of items in Section 6.04.B.2.a. through d above, dividing the total costs allocable to the West Concourse Apron Area by the total square footage of pavement designated as the West Concourse Apron Area.

VII.

The second sentence of Section 6.07.B of the Agreement is amended by inserting the word "separately" after "calculated."

VIII.

Section 6.10 of the Agreement is amended by deleting the first sentence and replacing it with the following:

The aggregate rental cost of each component of Security Screening Space shown on Exhibit C shall be separately allocated as follows:

IX.

Section 6.12 of the Agreement is amended inserting a new sentence after the second sentence of the first paragraph as follows:

Beginning on the first day of the Fiscal Year following 2022 Project DBO, "Baseline Passengers" shall mean the number of Enplaned Passengers at the Airport in the prior twelve calendar months preceding July 1, 2019.

Section 6.12 of the Agreement is further amended by adding the following at the end of the paragraph titled "Step 3":

Beginning on the first day of the Fiscal Year following 2022 Project DBO, such cap on the total Incremental Inside Concession Revenue credit shall increase from \$3,900,000 to \$4,200,000.

X.

Section 6.15 of the Agreement is amended by deleting subparagraph A and replacing it with the following:

- A. Prior to the 2022 Project DBO, the City will not levy fees or charges pursuant to this Agreement which would result in the actual total cost per Domestic Enplaned Passenger for the combined three designated Airport Cost Centers to exceed the total cost per Domestic Enplaned Passenger for those Airport Cost Centers for the year ending June 30, 2012, adjusted by the cumulative CPI through the year of calculation and adding any costs of the 2022 Project that are allocable to the three designated Airport Cost Centers.

XI.

Article VII is amended by adding the following Section 7.06:

Section 7.06. Construction of the 2022 Project by Airline

A. City Review and Approval of Design and Construction Documents. Airline will take the lead in planning and designing the 2022 Project, which shall be accomplished in coordination with HAS. In accordance with the Project Definition Manual, Airline shall submit to the Director for review and written approval the plans, drawings, and specifications for the 2022 Project at completion of the Schematic Design and Design Development phases, and at 65% and 95% of Construction Documents phase. The Director will expedite review and approval of any

Construction Documents for any Enabling Work or any phased construction process for the 2022 Project as may be requested by Airline. “Construction Documents”, “Contractor” and “Enabling Work” shall have the meaning set forth in Exhibit D-2.

Where Director consent or approval is required, the Director shall not unreasonably withhold such consent or approval. The final Construction Documents for the 2022 Project must be approved through the HAS Tenant Improvement Program (“TIP”) prior to commencement of construction of the 2022 Project based on the HAS draft design criteria manual dated January 14, 2022.

B. Easements and Licenses for the West Concourse Expansion Project. The City will grant Airline such construction easements and licenses as necessary for construction of the 2022 Project including any Enabling Work.

C. City Liaison. The City shall have a representative that will coordinate on matters related to the 2022 Project between Airline and the City. The costs of such representative for hours actually worked on the 2022 Project will be funded by City (not Airline), and will be recovered by City over a commercially reasonable amortization period through Airport rates and charges.

D. Project Delivery. The 2022 Project improvements are for the primary use and benefit of City and title will vest in the City on a brick-by-brick basis, subject to the terms and provisions of this Agreement, and without further notice or action. The improvements are exempt from Texas sales and use tax under Texas Tax Code Section 151.311 and Rule 3.291. City will issue an exemption certificate pursuant to Section 151.309 of the Texas Tax Code relating to taxable items sold, leased or rented to, or stored used or consumed by governmental entities. The vesting in the City will also be evidenced by a bill of sale assigning the tangible personal property and fixtures related to the 2022 Project from Airline to City in substantially the form as Exhibit M, attached hereto and made a part hereof for all purposes.

E. Reimbursement. From and to the extent of the Allocated Funds, as defined in Section 7.06(G) and the \$20,000,000.00 that the City previously appropriated as set forth in the 2022 MOA, and in exchange for transfer of full ownership and title to all real property improvements, as described in Section 7.06(D) herein, as well as title to any fixtures whose cost is reimbursed by the City, the City shall reimburse Airline for all 2022 Project Costs then incurred on a monthly basis, as set forth in Section III.B of Exhibit D-2, attached hereto and made a part hereof for all purposes, unless otherwise agreed to in writing by the Director and Airline. The City shall reduce the amount to be paid through rates and charges by Airline for any amounts received in Federal grants. Currently, it is the City’s intent to fund the 2022 Project, separate from the \$20,000,000.00 mentioned above, at an anticipated amount of \$450,000,000.00, in two tranches, as follows: (1) the Original Allocation of \$250,000,000.00 for the 2022 Project and (2) the Director will request the City make a Supplemental Allocation of \$200,000,000.00 no less than 12 months after the Amendment No. 2 Effective Date and no later than 15 months after the Amendment No. 2 Effective Date. Airline shall be paid the actual costs incurred during the term of this Agreement. Airline shall present such costs through a monthly invoice with documentation to support the costs. Payment shall be made by City to Airline within thirty (30) days of the accepted or redlined invoice date. If the City is unable to appropriate and allocate sufficient funds necessary for fully funding the 2022 Project Costs, Airline may, in the exercise of its sole discretion, construct the 2022 Project

or portions thereof, the later purchase of which by the City will be reflected as a credit to Airline against the rates, fees and charges under the Agreement. Upon completion of the 2022 Project, or portion thereof that Airline constructs, Airline shall have exclusive use of the additional gates within the 2022 Project until such time as the City has fully reimbursed Airline for the 2022 Project Costs.

F. Duty to Pay. So long as City has complied with its obligations under this Agreement, including making timely payments to Airline hereunder, Airline shall make timely payments to all contractors it engages for performance of the 2022 Project. Nothing contained in this Agreement shall grant or be deemed to grant to any contractors Airline engages for performance of the 2022 Project, any right of action or claim against the City, its officers, agents, employees and representatives with respect to any work any of them may do in connection with the 2022 Project. Nothing contained in this Agreement shall create or be deemed to create any relationship between the City and any Contractor engaged by Airline or any other person engaged by Airline or any of their subcontractors in the performance of services under this Agreement.

G. Limit of Appropriation

1. Notwithstanding anything to the contrary in this Agreement or the 2022 MOA except for Section 7.06.E, City's duty to pay money to Airline for 2022 Project Costs is limited in its entirety by the provisions of this Section 7.06(G).
2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, City hereby appropriates and allocates the sum of \$250,000,000.00 (the "Original Allocation"). The executive and legislative officers of City, in their discretion, may allocate supplemental funds for this Agreement but they are not obligated to do so.
 - a. If the City makes a Supplemental Allocation, it shall do so by issuing to Airline a service release order or similar document approved by the City Controller, containing the language set out below, and obtaining approval of City Council by Ordinance.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, City Controller certifies that, upon the request of the Director, the supplemental sum set out below has been allocated for the purposes of this Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ _____

3. City Council delegates the Director the authority to reallocate funds between funding segments/categories as may be agreed to in the Project Budget set by Airline and the Director.

4. The Original Allocation plus all Supplemental Allocations are the Allocated Funds. City shall never be obligated to pay any money under this Agreement for the 2022 Project in excess of the Allocated Funds, except as provided in Section 7.06.E.
5. Airline must assure itself that sufficient allocations have been made to pay for services it provides.

H. Fuel System The Parties acknowledge that the fuel system being expanded by Airline under the terms and conditions of that certain Amended and Restated Lease Agreement by and between the Parties dated May 16, 2022, City Contract No. 79617, entered by authority of Ordinance No. 2022-0353 (the "Fuel System Lease") will remain the property of Airline until or unless the entire fueling system is purchased by City under the terms and conditions of the Fuel System Lease. The Parties agree that the costs for such fuel system expansion shall be excluded from capital costs used to calculate rates under this Agreement, and the City shall have no obligation under this Amendment No. 2 to reimburse Airline for any costs of such fuel system expansion. Airline and City acknowledge that their respective responsibilities for such fuel system are set forth in the Fuel System Lease, which remains in full force and effect as of the Amendment No. 2 Effective Date.

I. Additional Terms and Conditions of the 2022 Project The 2022 Project shall also be subject to additional terms and conditions contained in Exhibit D-2, attached hereto and incorporated herein.

XII.

Section 8.01.E of the Agreement is amended by adding the following at the end of said Section:

As previously agreed by the Parties, the City and the Airline agree that as of August 2, 2020, Airline took over responsibility for routine and scheduled maintenance and exterior equipment cleaning for all City-owned passenger loading bridges, including gate service equipment (pre-conditioned air and 400 Hz systems) and baggage handling systems. The costs associated with Airline's maintenance of the passenger loading bridges and baggage handling systems shall be allocated in accordance with this Agreement's terms and practices so that users of City-owned passenger loading bridges and baggage handling systems will be invoiced for the allocable portion for their use of these facilities.

XIII.

Section 14.05 of the Agreement is amended by deleting it in its entirety.

Section 14.26 of the Agreement is amended by deleting it in its entirety.

Effective as of the Amendment No. 2 Effective Date, Section 14.03 of the Agreement is amended by deleting it in its entirety and replacing with the following; provided, however, the following shall not apply to any contracts entered by Airline prior to the Amendment No. 2 Effective Date:

Section 14.03. Certain Federal Requirements

I. COMPLIANCE WITH GRANT ASSURANCE OBLIGATIONS

A. SUBORDINATION CLAUSE

This Agreement is subject and subordinate to the terms and conditions of any existing or future agreement entered into between the City and the United States of America for the improvement or operation and maintenance of Airport, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, or the expenditure of federal funds for the improvements or development of Airport. Airline shall reasonably abide by the requirements of agreements entered into between the City and the United States.

B. RIGHT OF AVIGATION

It will be a condition of this Agreement, that the City reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property herein described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on Airport.

Airline, by entering into this Agreement agrees for itself, its successors, and assigns that it will not do or permit to be done by its officers, agents, employees, contractors or invitees, any act or omission that could reasonably be expected to interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event this covenant is breached, the City reserves the right, in addition to any other rights or remedies under this Agreement or in law or equity, to enter upon the Leased Premises and cause the abatement of such interference at the expense of Airline.

C. RIGHT TO DEVELOP AIRPORT

Subject to this Agreement, the City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or view of Contractor and without interference or hindrance.

D. WAR OR NATIONAL EMERGENCY

This Agreement shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

II. FEDERALLY MANDATED PROVISIONS

For the purposes of this Section 14.03.II only, the use of the word "Contractor" shall mean Airline, the use of the words "Sponsor" and "Owner" shall mean City and "FAA" shall mean the Federal Aviation Administration.

1. General Civil Rights Provisions.

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Contactor transfers its obligation to another, the transferee is obligated in the same manner as Contractor. The above provision obligates Contractor for the period during which the Leased Premises is owned, used or possessed by Contractor and the Airport remains obligated to the Federal Aviation Administration.

2. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

The Contractor for itself and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

3. Title VI Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

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

4. Compliance with Nondiscrimination Requirements.

During the performance of this Agreement and to the extent applicable, Contractor, for itself, its assignees, and successors in interest agrees as follows:

- a. Compliance with Regulations.** Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement
- b. Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Subcontracts, including Procurements of Materials and Equipment.** In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- d. Information and Reports.** Contractor will provide all reasonably requested information and reports required by applicable laws and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance.** In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

 - i.** Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - ii.** Cancelling, terminating, or suspending a contract, in whole or in part.
- f. Incorporation of Provisions.** Contractor will include the provisions of paragraphs (a) through (f) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance.

Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

5. Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

- a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- b. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- h. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- i. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- k. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Contractor must take reasonable steps to ensure that LEP persons have meaningful access to Airline’s programs (70 Fed. Reg. at 74087 to 74100);
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits Contractor from discriminating because of sex in education programs or activities (20 USC 1681 *et seq*).

XIV.

Section 14.13 of the Agreement is amended by deleting it in its entirety and replacing it with the following:

Section 14.13. Place of Payments

All electronic payments by wire transfer to City shall be sent to:

BANK NAME:	JP Morgan Chase
BANK ADDRESS:	707 Travis Street, 9 North Mail Code: TX2-N026 Houston, TX 77002
ABA ROUTING NUMBER:	111000614 - ACH 021000021 - Wire
SWIFT CODE:	CHASUS33
ACCOUNT NUMBER:	001-03333978
ACCOUNT NAME:	City of Houston Aviation System Deposits
ADDRESS:	16930 JFK Blvd Houston, TX 77032

REMITTANCE ADVICE DETAILS: HAS-WireTransfers@houstontx.gov

CONTACT NUMBERS: Office: 281-233-1387
Fax: 281-233-1574

The lockbox address to receive paper checks is as follows:

Houston Airport System
AKS-COH
PO Box 204172
Houston, Texas 77216-4172

Postage, delivery charges or wire/transfer fees for payments must be paid by Assignee.

Payment method or location may be modified upon written notification from the Director or the Director's designee. Airline agrees and acknowledges that any payments made which are not designated as to how to apply the payment, may be applied to the oldest balance owed by Airline first in the Director's sole discretion.

XV.

Article XIV of the Agreement is amended by adding the following sections:

Section 14.28. Compliance with Certain State Law Requirements

Anti-Boycott of Israel. Airline certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

Anti-Boycott of Energy Companies. Airline certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

Anti-Boycott of Firearm Entities or Firearm Trade Associations. Airline certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Code, Airline certifies that, at the time of this Agreement neither Airline nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Airline, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.

Section 14.29. Human Trafficking

To the extent this Agreement constitutes a service contract or the purchase of goods or services to which the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, applies, Airline shall comply with its terms and conditions of Sections 4.1 and 4.5 of Executive Order 1-56.

Section 14.30. Living Wage Executive Order

To the extent this Agreement constitutes a City Contract under the requirements and terms of the City of Houston's Policy on Ensuring Payment of Living Wage by Air Carriers and Concessionaires and Their Subcontractors and Concessionaires, as set forth in Executive Order 1-64 (the "Living Wage Executive Order"), amended February 15, 2022, and as may be further amended, Airline agrees to comply with such Living Wage Executive Order, as may be amended from time to time, and the requirement and terms of such Living Wage Executive Order are incorporated into this Agreement for all purposes, except as may be preempted by state or federal law. Airline shall use commercially reasonable efforts to notify the City's Chief Procurement Officer, City Attorney, and the Director within 7 days after an Airline actually becomes aware of any violation of Airline, any Contractor or its Subcontractors providing labor, materials, software, services or goods (each as applicable) under this Agreement or purchase order, if any or that such violations may have occurred or are reasonably likely to occur; provided, however, that a failure by Airline to so notify the City's Chief Procurement Officer, City Attorney, or Director shall not, in and of itself, constitute a breach of this Agreement.

Section 14.31. Airline's Debt

If Airline, at any time during the term of this Agreement, incurs a "debt," as the word is defined in Section 15-122 of the City of Houston, Texas Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Airline has incurred a debt, it shall immediately notify Airline in writing. If Airline does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Airline under this Agreement, and Airline waives any recourse therefor.

XVI.

Exhibits to the Agreement are amended by doing the following:

1. Exhibit B to the Agreement is amended by replacing the existing Exhibit B ("Existing Exhibit B") with the new Exhibit B, attached hereto ("New Exhibit B"). Following completion of the Work, Airline shall submit to the Director for review and written approval a further replacement for Exhibit B, reflecting changes to the Terminal Complex as a result of the completed Work ("Further Replacement of Exhibit B"). The Director shall not unreasonably withhold, condition or delay such approval. Upon the Director's approval, the approved Exhibit B shall replace Exhibit B attached hereto, without the need of a formal amendment to the Agreement. Notwithstanding the foregoing, from the Amendment No. 2 Effective Date until the date that the Director approves the Further Replacement of Exhibit B, the City shall continue to utilize Existing Exhibit B as the basis for calculating rates and charges and charging Airline for its use of the Airport under Articles 5 and 6.

2. Exhibit C to the Agreement is amended by replacing it with a new Exhibit C, attached hereto. Following completion of the Work, Airline shall submit to the Director for review and written approval a further replacement for Exhibit C, reflecting changes to the Terminal Complex as a result of the completed Work. The Director shall not unreasonably withhold, condition or delay such approval. Upon the Director's approval, the approved Exhibit C shall replace Exhibit C attached hereto, without the need of a formal amendment to the Agreement.
3. Exhibit D to the Agreement is amended by replacing it with the new Exhibits D-1, D-2 and D-3, attached hereto.
4. Exhibit F to the Agreement is amended by replacing it with the new Exhibits F-1, F-2 and F-3, attached hereto.
5. Exhibit H to the Agreement is amended by replacing it with a new Exhibit H, attached hereto.
6. Adding Exhibit M to the Agreement, attached hereto and made a part hereof for all purposes.

XVII.

Except as amended hereby, the terms and conditions of the Agreement remain as originally written.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, this Amendment No. 2 has been entered into and effective as of the date of countersignature. The Parties hereby agree that each Party may sign and deliver this Amendment No. 2 electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature. Each person signing this Amendment No. 2 represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Amendment No. 2. Each Party represents and warrants to the other that the execution and delivery of this Amendment No. 2 and the performance of such Party's obligations hereunder have been duly authorized and that this Amendment No. 2 is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

Signatures:

ATTEST:

SOUTHWEST AIRLINES CO.

"Airline"

By: Holley Gaman
Name: Holley Gaman
Title: Executive Assistant

By: [Signature]
Name: Mark Shaw
Title: EVP Chief Legal & Regulatory Officer

TAX ID No.: 74-1563240

DS



ATTEST/SEAL:

DocuSigned by:

City Secretary - Pat Jefferson-Daniel

2F30AB368C0B4B1...

Pat Jefferson-Daniel
City Secretary

APPROVED:

DocuSigned by:

Mario C. Diaz

F8C1071BBB8/A0046F...

Mario C. Diaz, Director
Houston Airport System

APPROVED AS TO FORM:

DocuSigned by:

Sameera Kapasi Mahendru

AABF1B7692BF423...

Assistant City Attorney
L. D. File No. LD-CON-0000001178

CITY OF HOUSTON, TEXAS

"City"

Sylvester Turner

Sylvester Turner
Mayor

DocuSigned by:

Amanda Washington

D4243AF78FFF4D6...

COUNTERSIGNED:

DS

Chris Brown

Chris Brown
City Controller

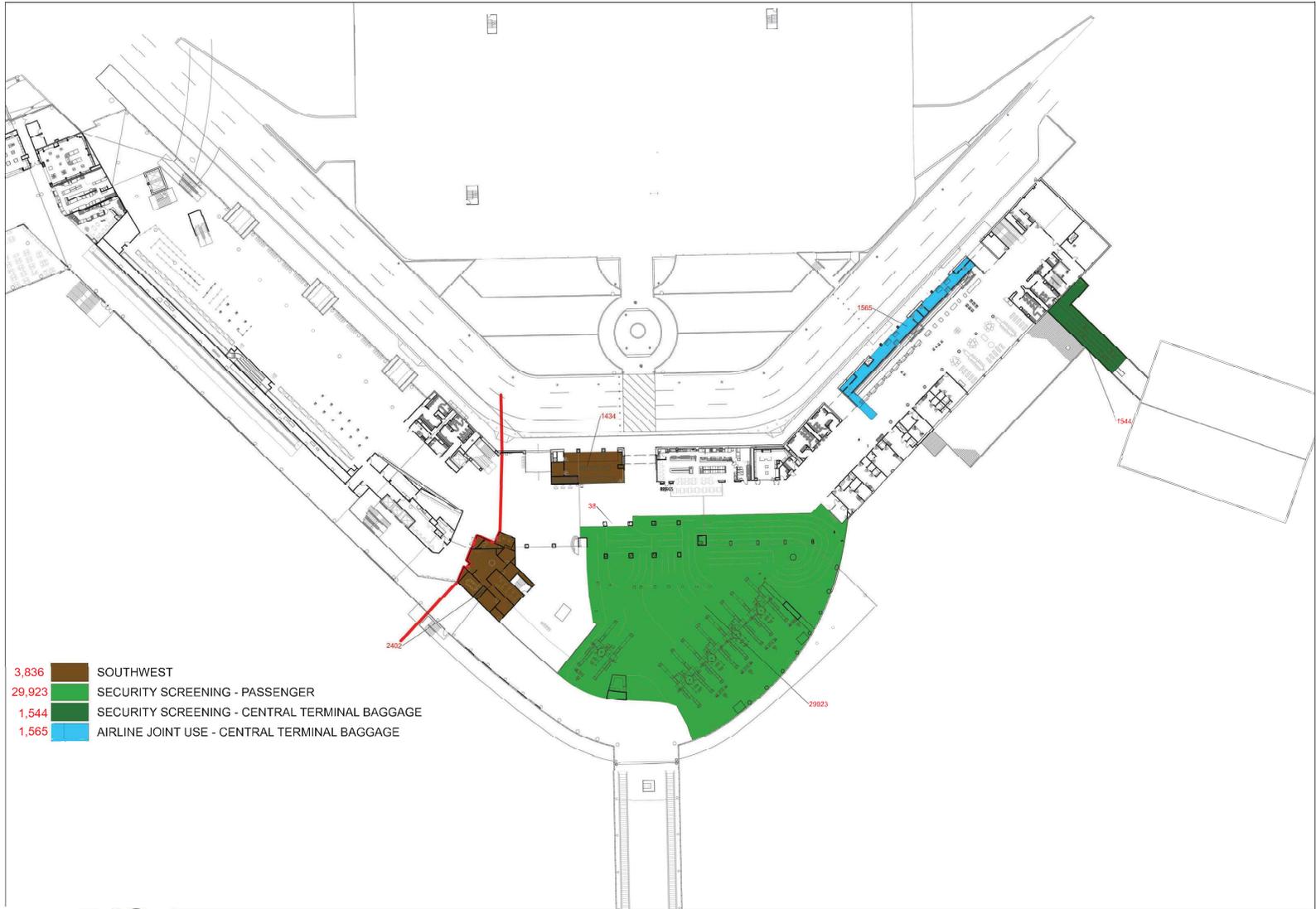
DocuSigned by:

Chanelle Clark

B172D137C7AD44E...

DATE COUNTERSIGNED:

8/30/2023



- 3,836 SOUTHWEST
- 29,923 SECURITY SCREENING - PASSENGER
- 1,544 SECURITY SCREENING - CENTRAL TERMINAL BAGGAGE
- 1,565 AIRLINE JOINT USE - CENTRAL TERMINAL BAGGAGE

ASIS
 Online
 Airport Spatial
 Information System

183.1875 AIRPORT SYSTEM
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 Print Date: 7/12/2023
 Author: AG
 Check By:
 Project Code: 1922262

William P. Hobby Airport
 Houston, TX

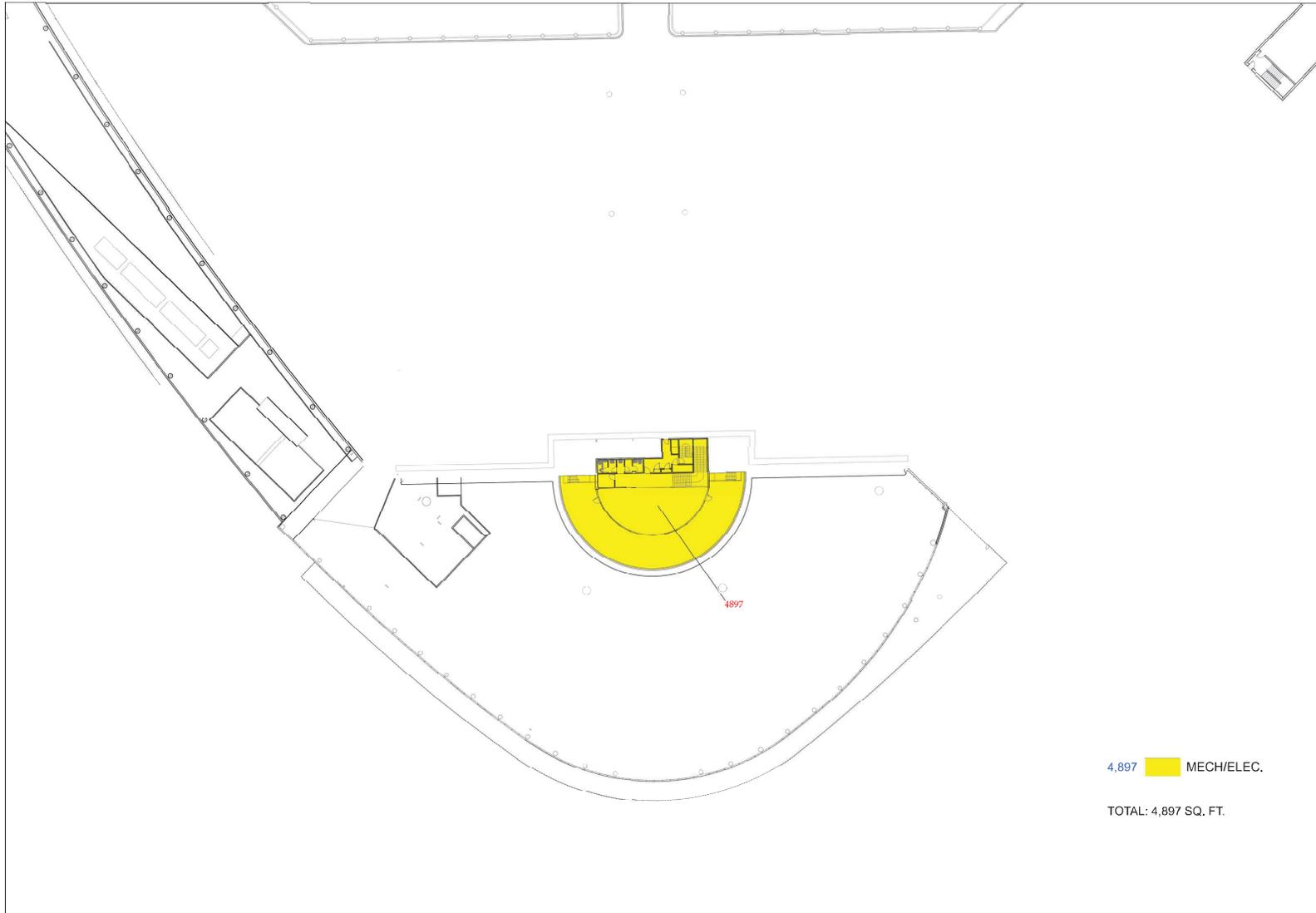
Composite Space Allocation
 2023

Terminal
 Upper Level

↑
 1" = 75'

Exhibit
B
 Page 1 of 7

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ASIS
Online
Airport Spatial
Information System

HOUSTON AIRPORT SYSTEM
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Print Date: 5/28/2022
Author: AG
Checked By: _____
Print Time: 11:22:52

William P. Hobby Airport
Houston, TX

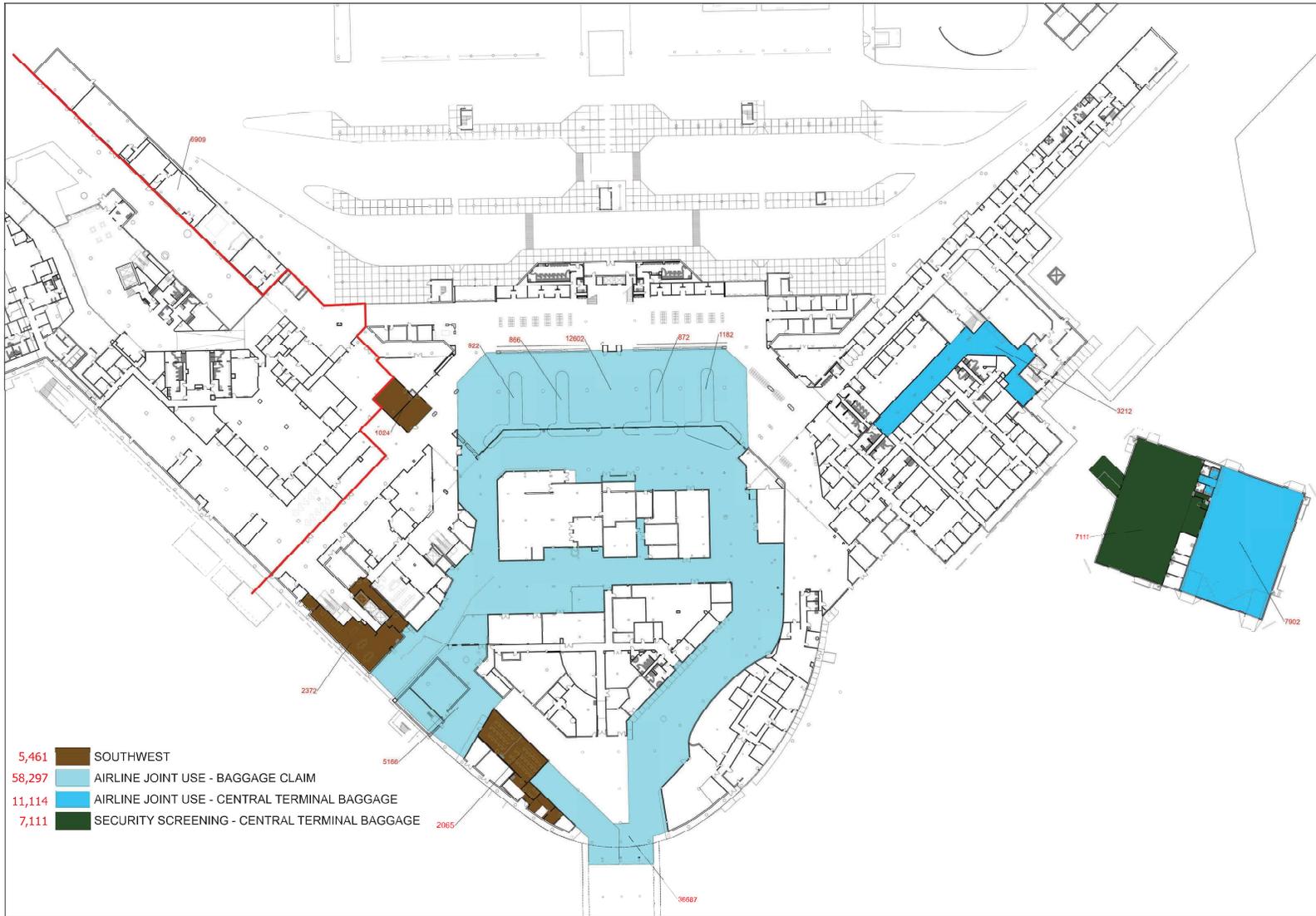
Composite Space Allocation
2023

Terminal
Mezzanine Level

↑
1" = 75'

Exhibit
B
Page 2 of 7

Path: Z:\ASIS\Project\ASIS\Composite Space Allocation\Composite Space Allocation 2023-01.rvt



- 5,461 SOUTHWEST
- 58,297 AIRLINE JOINT USE - BAGGAGE CLAIM
- 11,114 AIRLINE JOINT USE - CENTRAL TERMINAL BAGGAGE
- 7,111 SECURITY SCREENING - CENTRAL TERMINAL BAGGAGE

ASIS
 Online
 Airport Spatial
 Information System

HEXAGONAL SYSTEM

Requested By: []
 Print Date: 7/12/2023
 Address: []
 Check By: []
 Project Code: P122362

William P. Hobby Airport
 Houston, TX

Composite Space Allocation
 2023

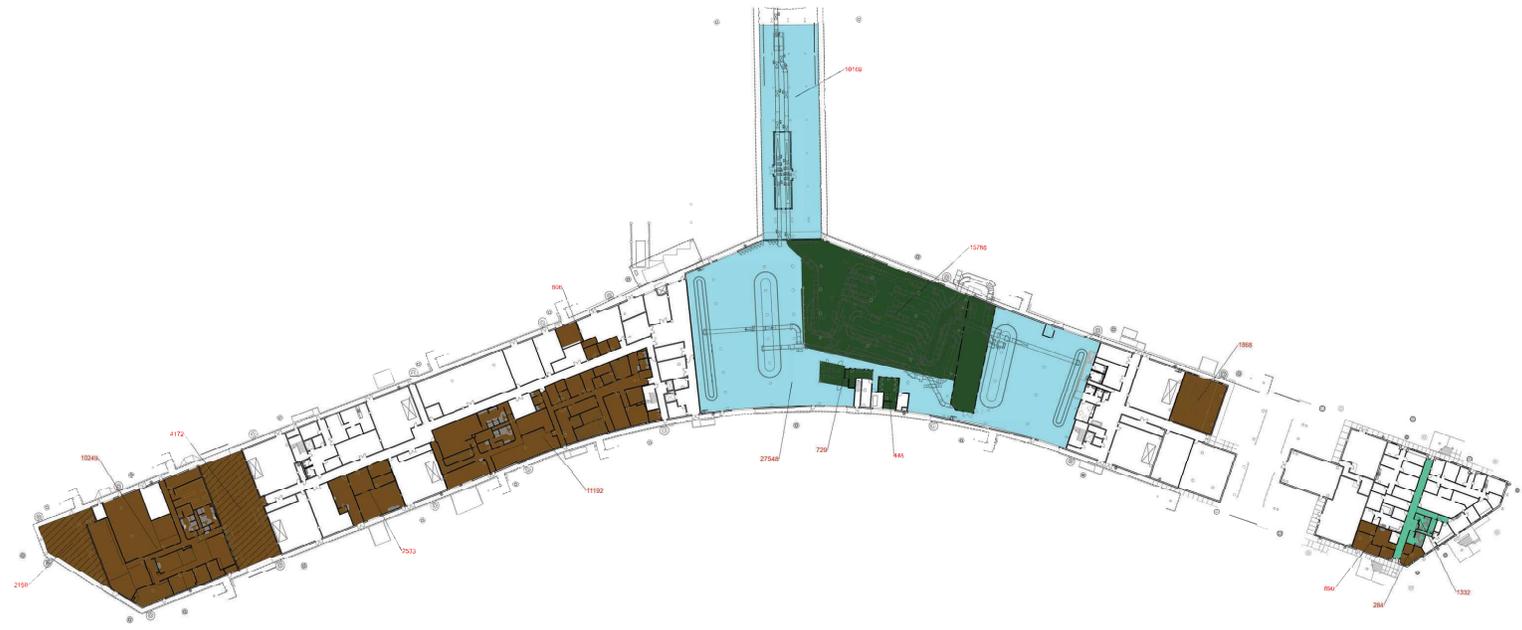
Terminal
 Baggage Claim Level

↑
 1" = 100'

Exhibit
B
 Page 3 of 7

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- 6,370 SOUTHWEST UNENCLOSED
- 27,822 SOUTHWEST
- 16,963 SECURITY SCREENING - CENTRAL CONCOURSE BAGGAGE
- 37,717 AIRLINE JOINT USE - CENTRAL CONCOURSE BAGGAGE
- 1,332 AIRLINE JOINT USE - SECURE CIRCULATION



ASIS
 Online
 Airport Spatial
 Information System

HEXAGONAL SYSTEM
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 Print Date: 5/22/2022
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 Check By: _____
 Project Code: P1022362

William P. Hobby Airport
 Houston, TX

Composite Space Allocation
 2023

Central Concourse
 Apron Level

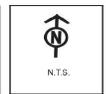


Exhibit
B
 Page 5 of 7

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ASIS
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Online Airport Spatial Information System
Requested By: 901
Print Date: 7/12/2023
Address:
Checked By:
Print Date: 7/12/2023

William P. Hobby Airport
Houston, TX

Proposed
Composite Space Allocation
2023

Aircraft Parking Area

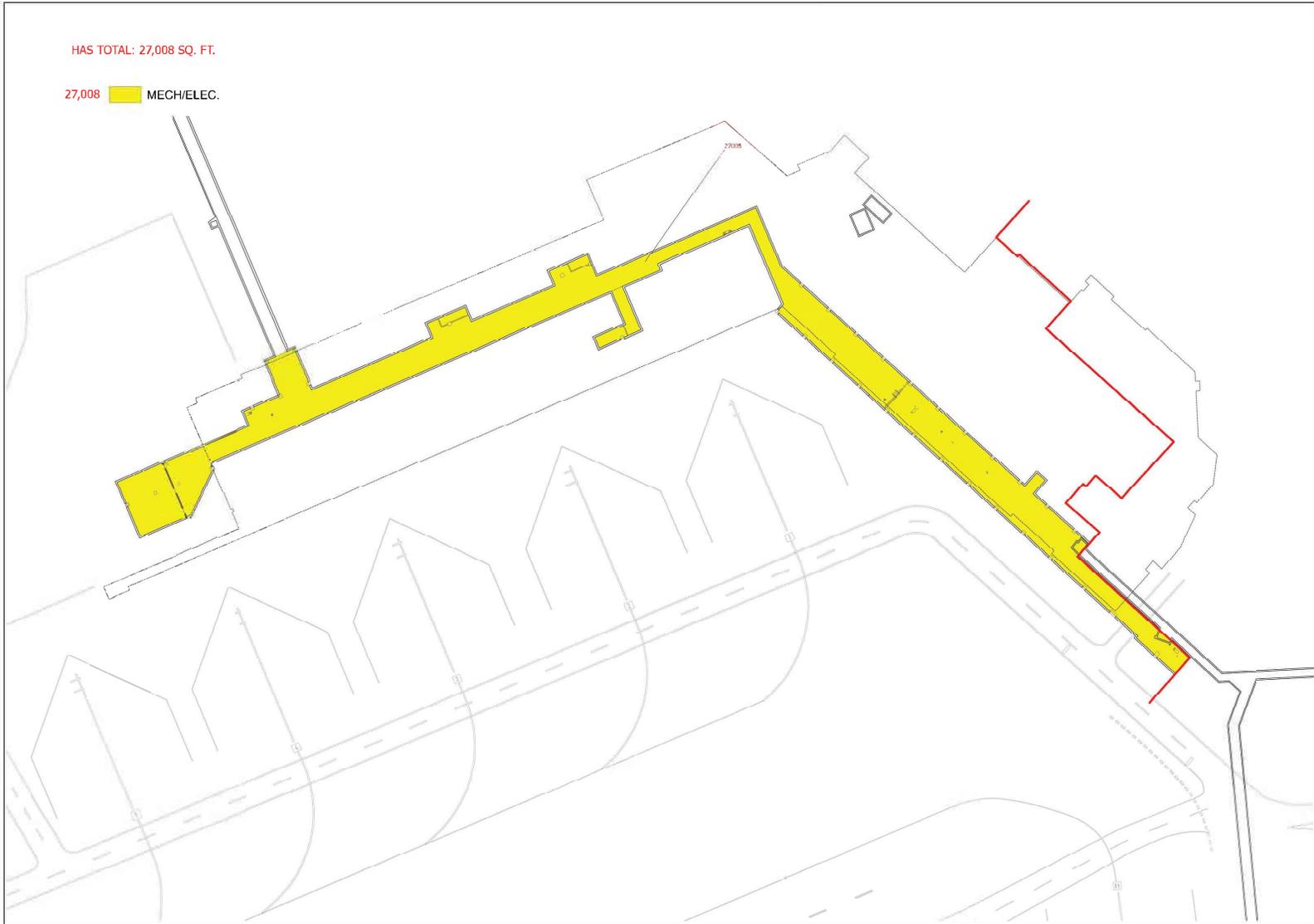
N.T.S.

Exhibit
B
Page 7 of 7

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HAS TOTAL: 27,008 SQ. FT.

27,008 MECH/ELEC.



ASIS
HEAVENPORT SYSTEM
Online Airport Spatial Information System
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Author: AS
Checked By: [Signature]
Print: 1/28/23 11:20:23

William P. Hobby Airport
Houston, TX

Composite Space Allocation
2023

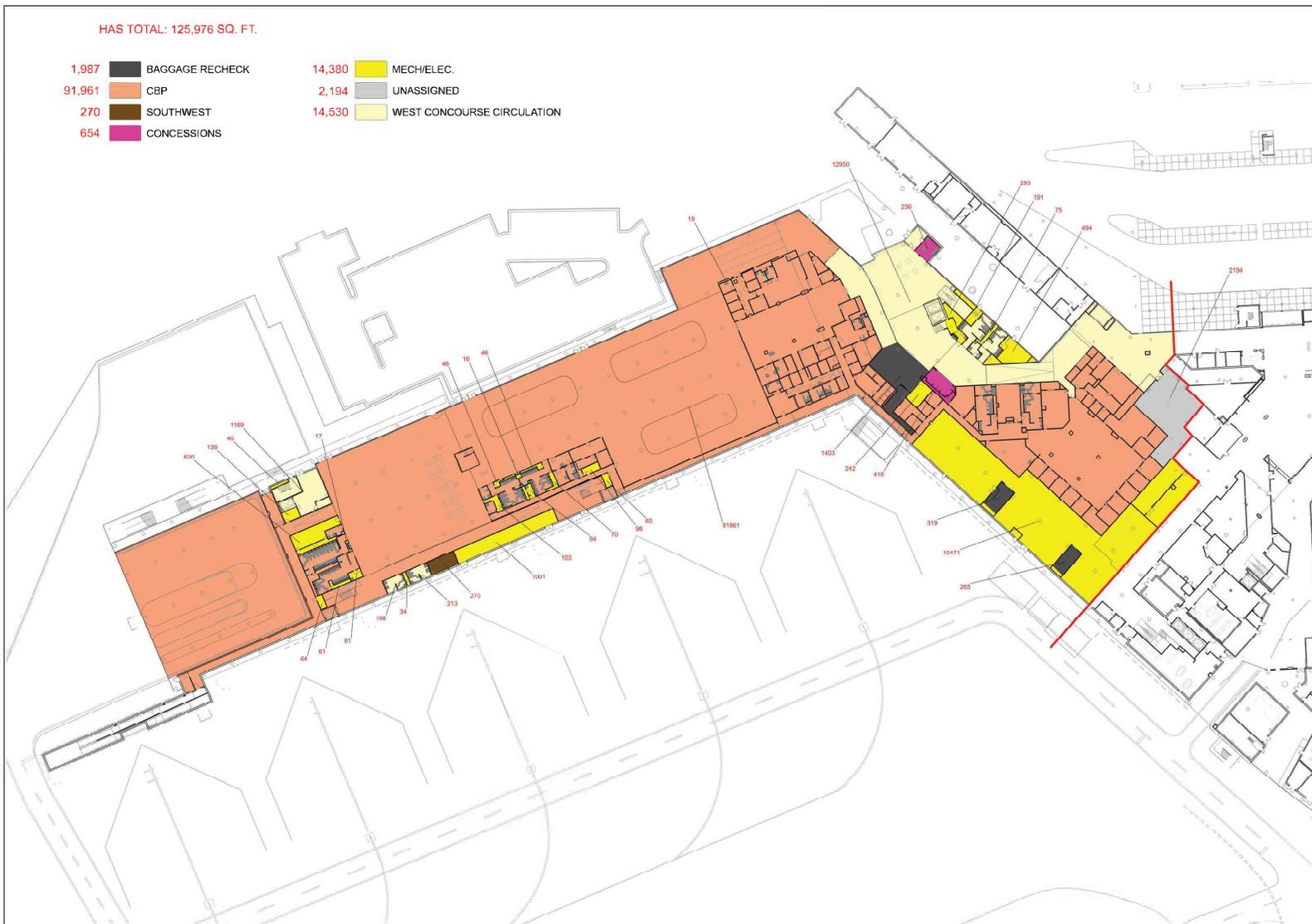
West Concourse
Basement Level


N.T.S.

Exhibit
B
Page 1 of 8

HAS TOTAL: 125,976 SQ. FT.

- | | | | |
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| 1,987 | BAGGAGE RECHECK | 14,380 | MECH/ELEC. |
| 91,961 | CBP | 2,194 | UNASSIGNED |
| 270 | SOUTHWEST | 14,530 | WEST CONCOURSE CIRCULATION |
| 654 | CONCESSIONS | | |



ASIS HEUSNARBUCK SYSTEM
 Online Airport Spatial Information System
 Proj. No.: 104
 Proj. Date: 7/12/2023
 Author: AC
 Checker: BJ
 Project Name: 11400000

William P. Hobby Airport
Houston, TX

Composite Space Allocation
20 2 3

West Concourse
Apron Level

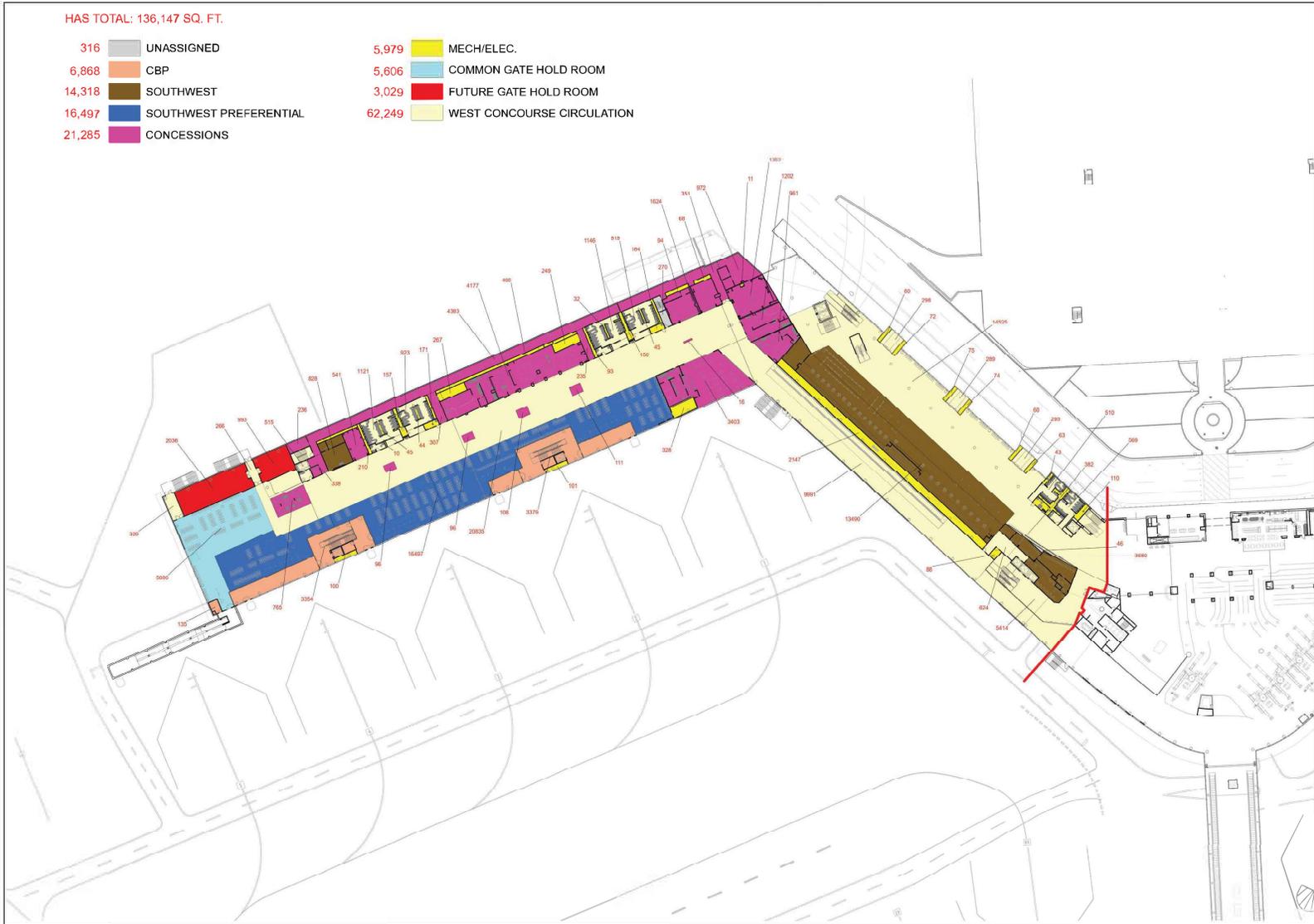
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N.T.S.

Exhibit
B
Page 2 of 6

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- | | | | |
|--------|------------------------|--------|----------------------------|
| 316 | UNASSIGNED | 5,979 | MECH/ELEC. |
| 6,868 | CBP | 5,606 | COMMON GATE HOLD ROOM |
| 14,318 | SOUTHWEST | 3,029 | FUTURE GATE HOLD ROOM |
| 16,497 | SOUTHWEST PREFERENTIAL | 62,249 | WEST CONCOURSE CIRCULATION |
| 21,285 | CONCESSIONS | | |



ASIS HEXTER SYSTEMS
 Online Airport Spatial Information System
 FILE NO: KH
 TAG DATE: 7/12/2023
 AUTHOR: AS
 CHECK BY:
 FILE NAME: 17142301X

William P. Hobby Airport
Houston, TX

Composite Space Allocation
2023

West Concourse
Ticketing Level

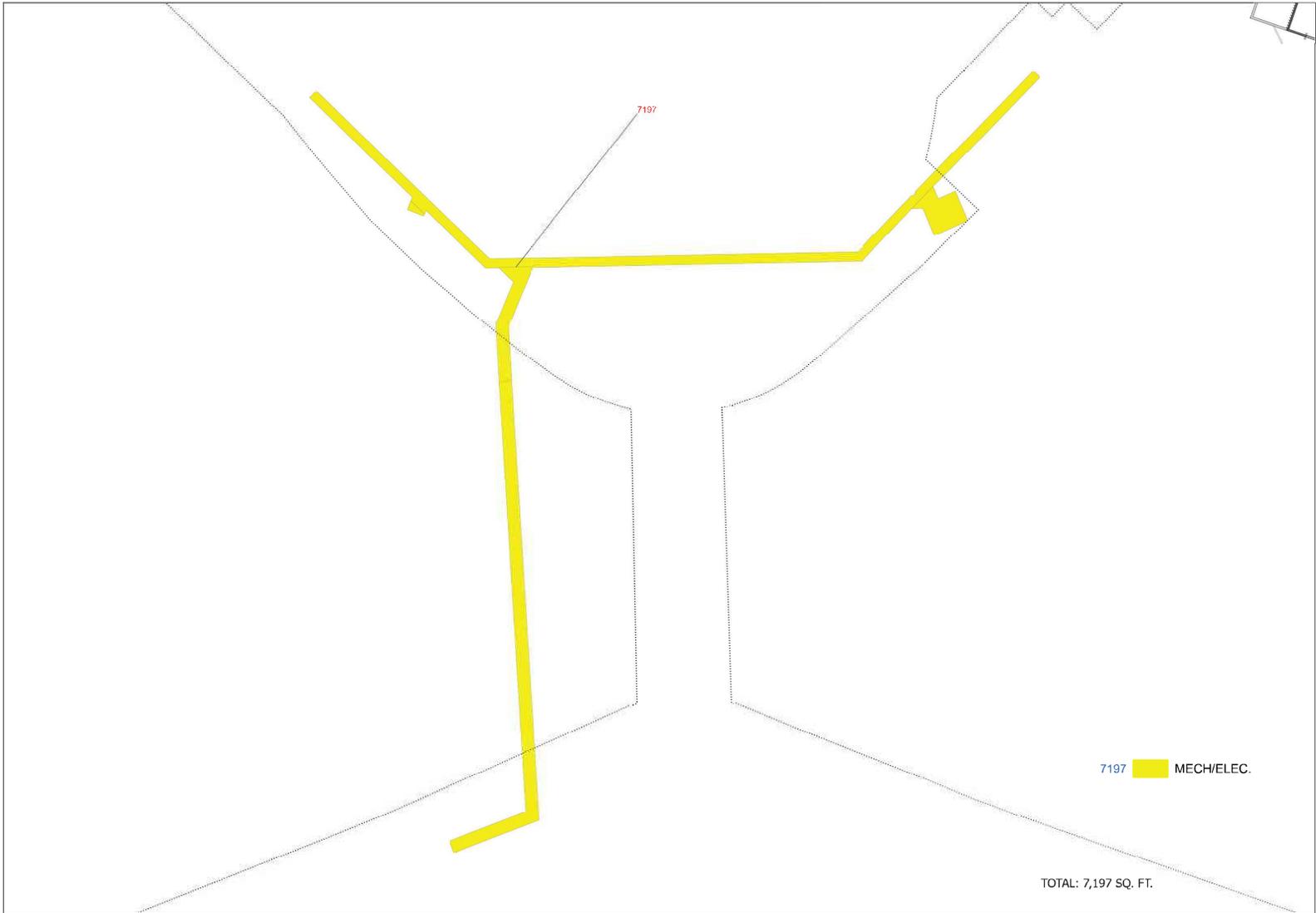


Exhibit
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Page 3 of 6

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ASIS HOUSTON AIRPORT SYSTEM
Online Airport Spatial Information System
Requested By: KH
Proj Date: 7/12/2023
ASIS No:
Client No:
ASIS Date: 7/12/2023

William P. Hobby Airport
Houston, TX

Composite Space Allocation
2023

Terminal
Utility Tunnel Level

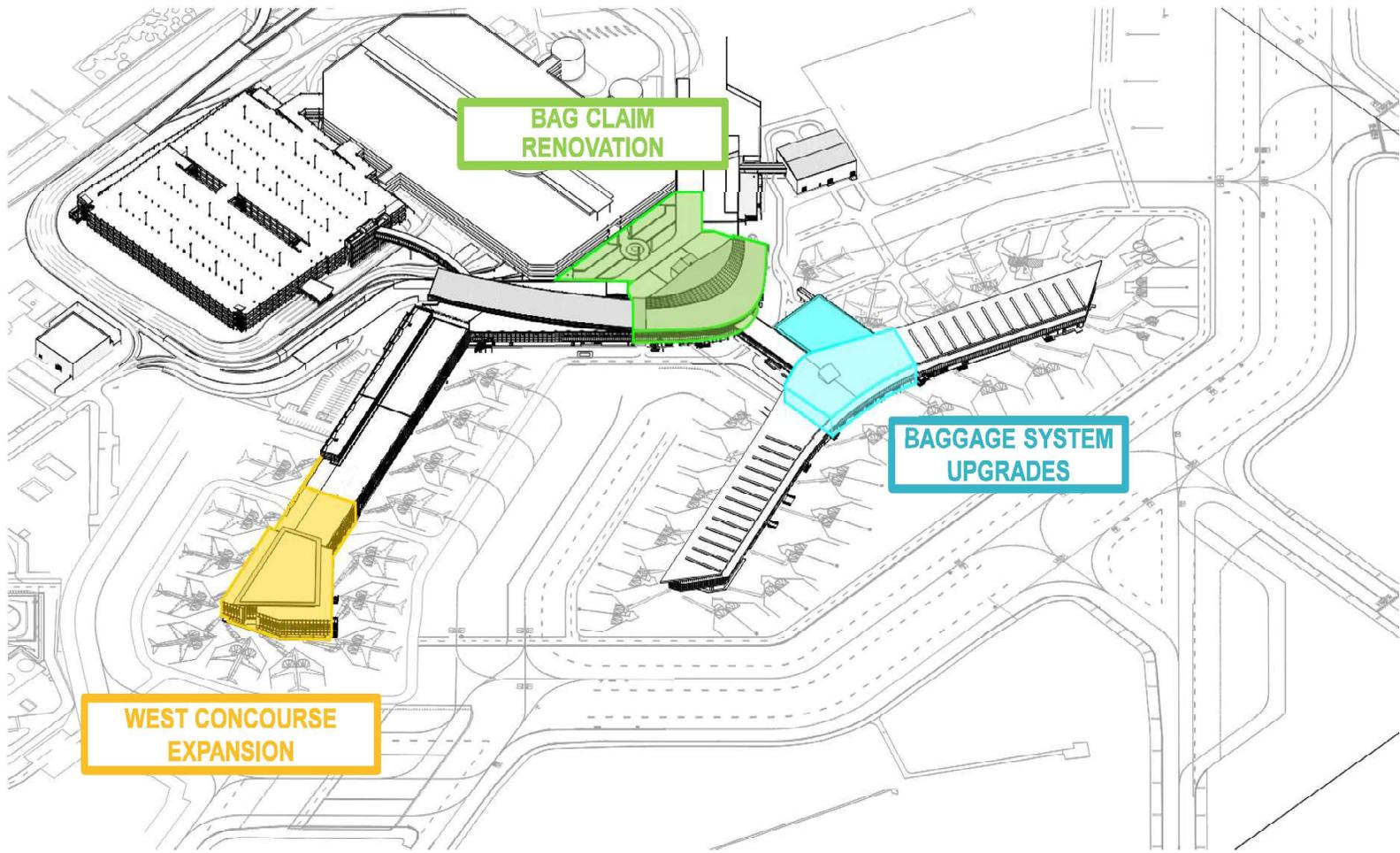
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N.T.S.

Exhibit
B
Page 6 of 6

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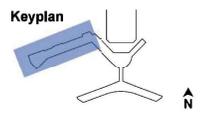
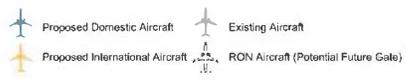
Conceptual

Project Components



Conceptual

West Concourse Recommended Plans



Level 1

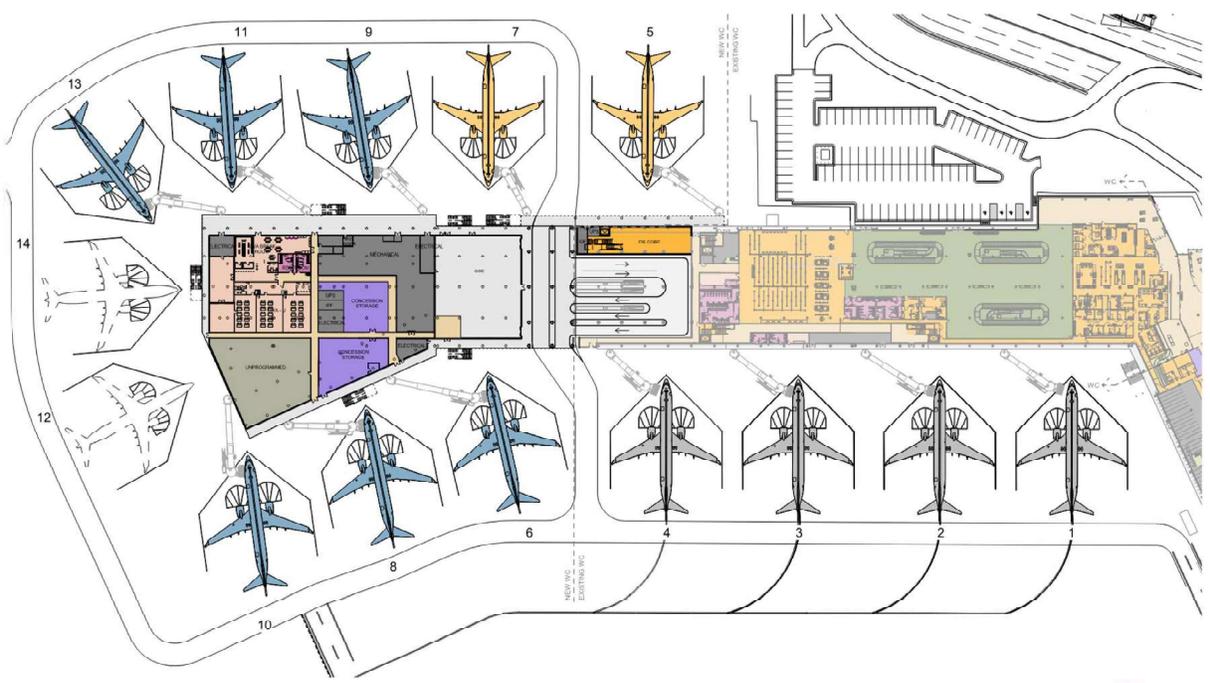
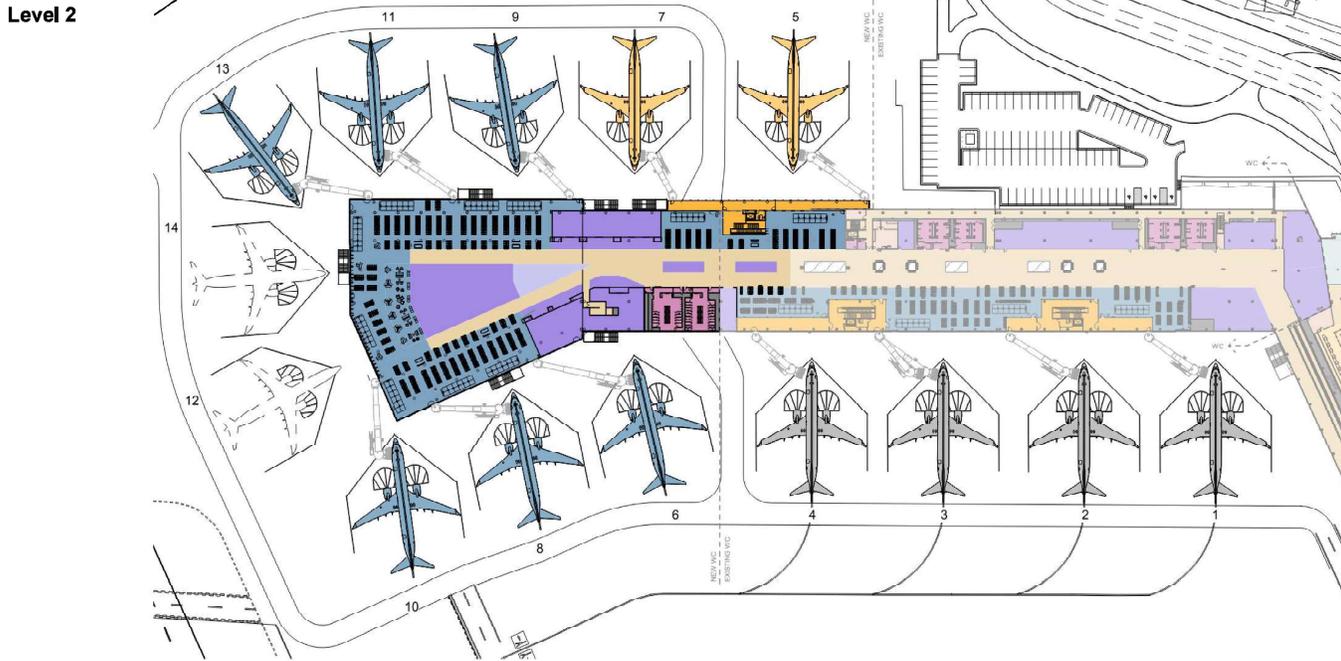
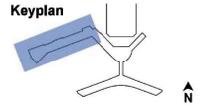
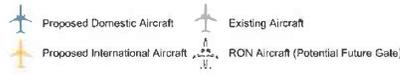
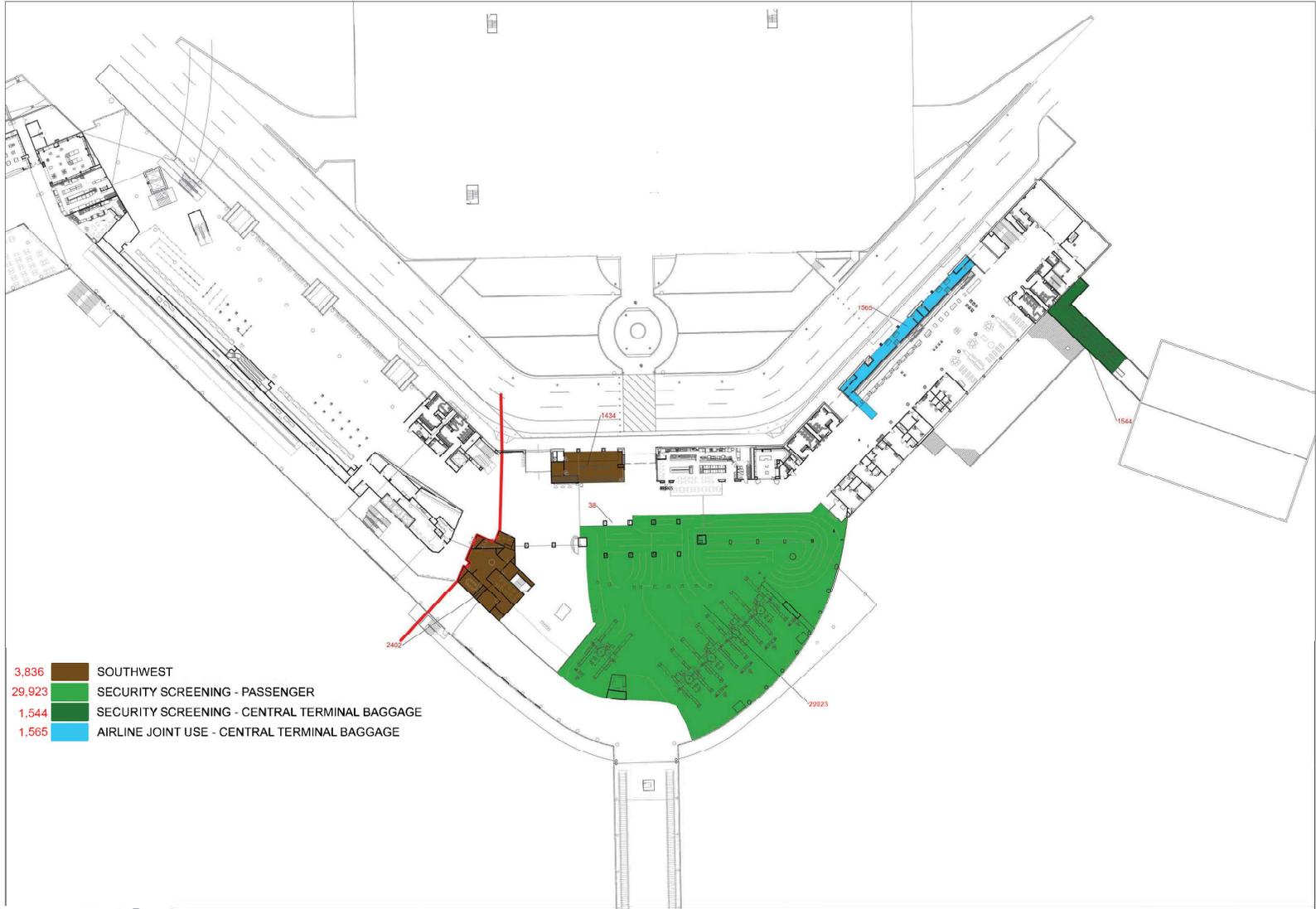


Exhibit C

Conceptual

West Concourse Recommended Plans





- 3,836 SWH WEST
- 29,923 SECURITY SCREENING - PASSENGER
- 1,544 SECURITY SCREENING - CENTRAL TERMINAL BAGGAGE
- 1,565 AIRLINE JOINT USE - CENTRAL TERMINAL BAGGAGE

ASIS AIRPORT SPATIAL INFORMATION SYSTEM
Requested By: KJ
Request#: 12/2023
Author: JZ
Checked By:
Issue Date: 12/2023

William P. Hobby Airport
Houston, TX

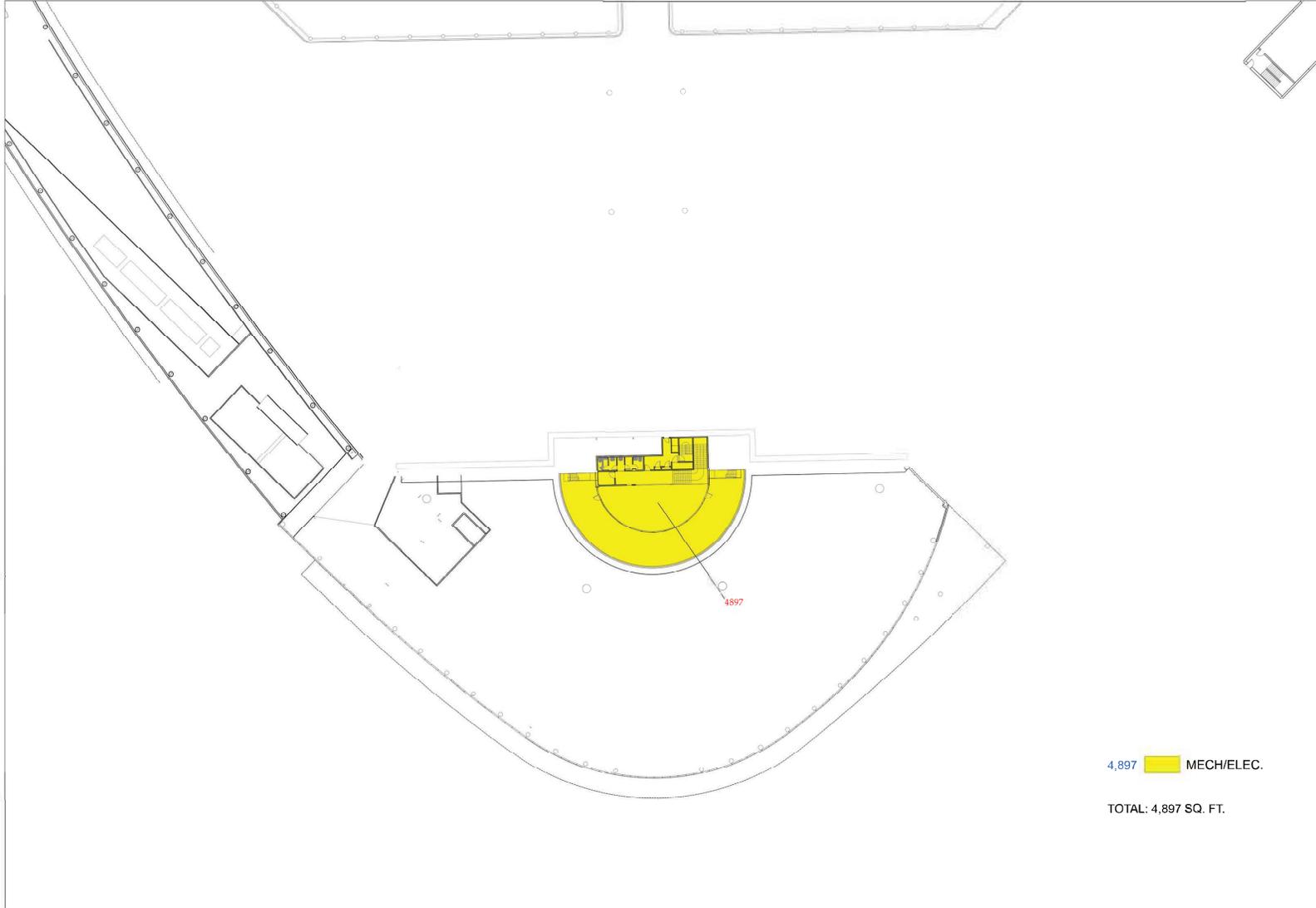
Composite Space Allocation
2023

Terminal
Upper Level

↑
1" = 75'

Exhibit
C
Page 1 of 7

Path: Z:\ASIS_P\Projects\ASIS\Projects\ASIS\Composite Space Allocation\ASIS\Composite Space Allocation 2023 - 08/24/23.dwg



4,897 MECH/ELEC.
TOTAL: 4,897 SQ. FT.

ASIS
Online
Airport Spatial
Information System

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Author: AS
Checked By: _____
Issue Date: 01/03/2023

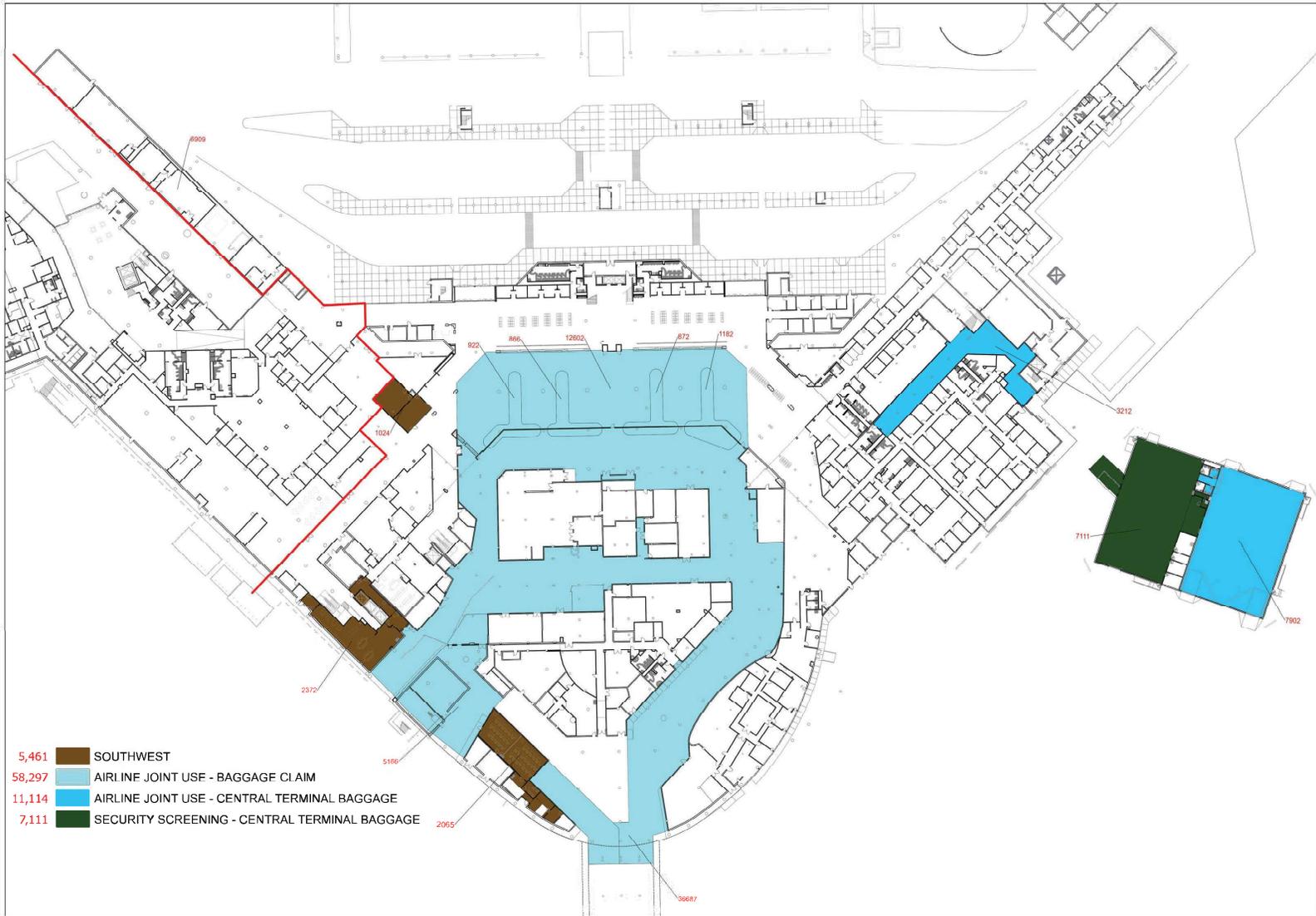
William P. Hobby Airport
Houston, TX

Composite Space Allocation
20 2 3

Terminal
Mezzanine Level


1" = 75'

Exhibit
C
Page 2 of 7



- 5,461 SOUTHWEST
- 58,297 AIRLINE JOINT USE - BAGGAGE CLAIM
- 11,114 AIRLINE JOINT USE - CENTRAL TERMINAL BAGGAGE
- 7,111 SECURITY SCREENING - CENTRAL TERMINAL BAGGAGE

ASIS
Online
Airport Spatial
Information System

HOBBS AIRPORT SYSTEM

Document No: SH
File Date: 07/27/2023
Author: AG
Check: BY
Issue Date: 01/20/2023

**William P. Hobby Airport
Houston, TX**

**Composite Space Allocation
2023**

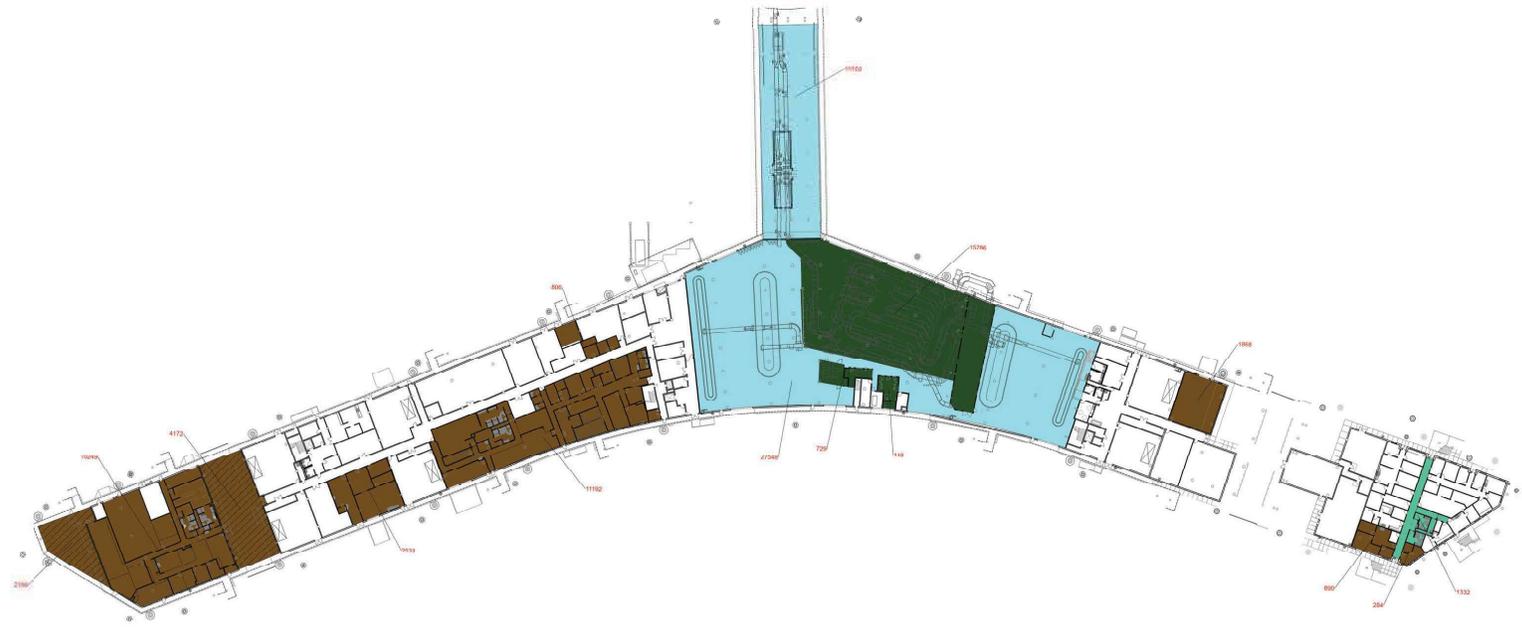
**Terminal
Baggage Claim Level**


1" = 100'

Exhibit
C
Page 3 of 7

File: C:\ASIS_Planet\Hobby\ASIS\Composite Space Allocation\2023\Composite Space Allocation 2023 - 08/24/23.dwg

- 6,370 SOUTHWEST UNENCLOSED
- 27,822 SOUTHWEST
- 16,963 SECURITY SCREENING - CENTRAL CONCOURSE BAGGAGE
- 37,717 AIRLINE JOINT USE - CENTRAL CONCOURSE BAGGAGE
- 1,332 AIRLINE JOINT USE - SECURE CIRCULATION



ASIS
 Online Airport Spatial Information System
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 Author: AG
 Checker: BJ
 Project Number: 11100000

William P. Hobby Airport
 Houston, TX

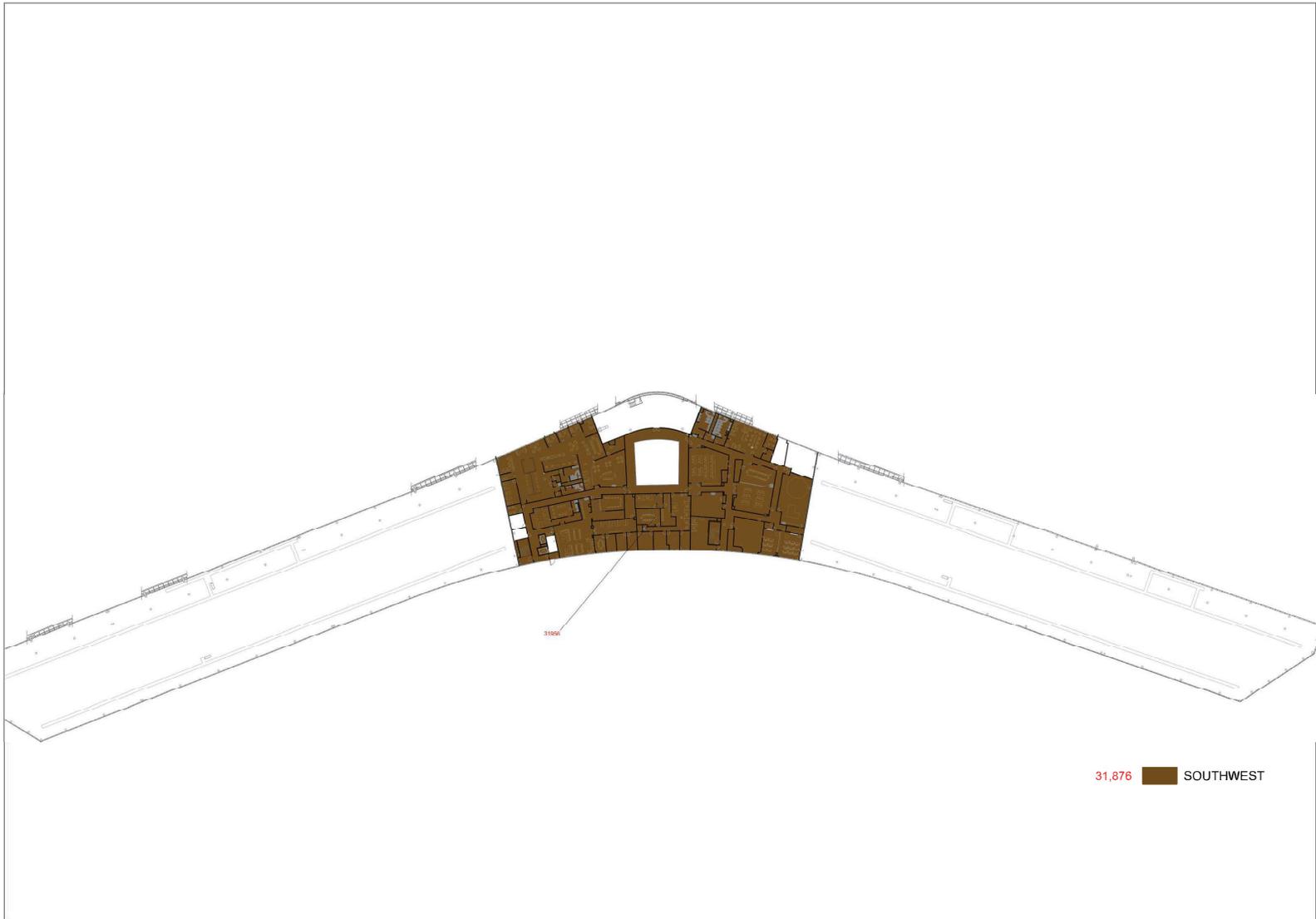
Composite Space Allocation
 2023

Central Concourse
 Apron Level



Exhibit
C
 Page 5 of 7

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ASIS
Online
Airport Spatial
Information System

HCCLENN/AIRPORT/2023FM
Sequential Ref: 301
Proj Date: 9/12/2023
Author: AG
Checker: RJ
Issue Date: 9/12/2023

William P. Hobby Airport
Houston, TX

Composite Space Allocation
2023

Central Concourse
Mezzanine Level

↑
N
1" = 75'

Exhibit
C
Page 6 of 7

Path: Z:\ASIS_P\p\2023\HCC\2023FM\2023 Composite Space Allocation\2023 Composite Space Allocation 2023 - 09/12/2023.dgn



ASIS
Online
Airport Spatial
Information System

HEXAGON AIRPORT SYSTEM
Software Rev. 101
Tool Date: 7/12/2023
Author: BJA
Checked By:
Print Date: 04/10/2023

William P. Hobby Airport
Houston, TX

Proposed
Composite Space Allocation
2023

Aircraft Parking Area

N.T.S.

Exhibit
C
Page 7 of 7

EXHIBIT D-1
2022 Project

The “2022 Project” means development, design, and construction of the following, as preliminarily depicted in Exhibit C, and described in this Exhibit D-1 and Exhibit D-2 and as deemed necessary upon completion and approval of the Project Definition Manual by Airline:

Seven (7) new Gates in the West Terminal/West Concourse (comprised of one (1) new Common-Use international Gate and six (6) new Preferential-Use domestic Gates) capable of handling Aircraft Design Group III (narrow-body such as Boeing 737 series and Airbus 320 series), the design of which will be architecturally similar to the initially-constructed West Terminal/West Concourse Gates, so as to achieve a cohesive seamless appearance;

Additional West Terminal/West Concourse restrooms and concessions spaces sized appropriately to support the additional demand associated with the additional Gates;

Associated ramp and extended hydrant fueling system improvements, subject to Section 7.06(I), apron, and drainage work to support the additional Gates;

Outbound baggage system expansion, to support additional baggage demand associated with the additional Gates;

Inbound baggage system in cooperation with the City, to support additional baggage demand associated with the additional Gates;

Renovation and updating of interior finishes and wayfinding located in the Hobby baggage claim hall (including existing restrooms serving the baggage claim hall), associated with expansion of the Hobby baggage systems to support additional baggage demand associated with the additional Gates;

Utility infrastructure expansion, including expansion or renovation of the sewer system, and other Mechanical, Electrical, Plumbing (MEP) systems associated with the expansion of baggage system and the additional Gates;

Other impacted spaces in or around the terminal complex to facilitate expansion of baggage systems and Gates; and

All Enabling Work.

EXHIBIT D-2
2022 Project Additional Terms and Conditions

I. DEFINITIONS

“2022 Project Notice to Proceed” means that certain written notice, issued by Airline to the Construction Contractor, directing the Construction Contractor to proceed with the construction of the 2022 Project.

“Construction Contractor” means that certain entity or individual with whom Airline contracts directly to provide planning, design, and construction of the 2022 Project, including any Enabling Work. The Construction Contractor may do so through a delivery method of Airline’s choice, but which may include design-build, construction manager at risk, or a negotiated construction contract.

"Construction Documents" means any and all Contract Documents as well as all graphic and written information prepared or assembled by Airline, its Contractor, and Subcontractors. Construction Documents shall include all plans, drawings, and specifications for the 2022 Project and its components, including any Enabling Work.

"Contract Documents" means any and all construction contract(s) into which Airline enters with a Contractor for Work to be performed to construct and complete the 2022 Project, together with all change orders and amendments issued pursuant to such Contract Documents, including those supplemental conditions provided by Airline.

"Contractor" means the construction manager at risk, a design professional, and/or a general contractor(s), or any other contractor or service provider with whom Airline or its Construction Contractor enters into a contract(s) to plan, design and/or construct all or part of the 2022 Project.

"Subcontractors" means those subcontractors with whom the Contractor(s) enters into subcontracts for the principal purpose of providing design and construction services in connection with the performance of the Work.

"Work" means the construction of the 2022 Project required by the Contract Documents. The Work as that term is used in the Contract Documents may constitute the whole or a part of the Airline 2022 Project and includes all Enabling Work.

II. DUTIES OF AIRLINE

A. Payment of Contractor(s) - Airline’s Duty to Pay

So long as the City has complied with its obligations under the Agreement, including making timely payments to Airline of any amounts due under this Amendment No. 2, Airline shall make timely payments to all Contractors it engages for performance of the Work as allowed by this Amendment No 2.

Nothing contained in the Agreement, as amended by this Amendment No. 2, shall grant or be deemed to grant to any Contractors, Subcontractors or any other person engaged by

Airline in the performance of any part of the 2022 Project, any right of action or claim against the City, its officers, agents, employees, and representatives with respect to any Work any of them may do in connection with the 2022 Project or portion thereof, including the Enabling Work. Nothing contained in the Agreement, as amended by this Amendment No. 2, shall create or be deemed to create any relationship between the City and any Contractor engaged by Airline or any other person engaged by Airline or any of their subcontractors in the performance of the services under the Agreement and the Contract Documents.

B. Release and Indemnification of the City.

EXCEPT TO THE EXTENT CAUSED BY THE CITY'S SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AIRLINE AGREES TO AND SHALL RELEASE THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY PARTIES") FROM ALL LIABILITY FOR INJURY, SICKNESS, DISEASE, DEATH, DAMAGE, OR LOSS TO ANY PERSONS OR PROPERTY SUSTAINED BY AIRLINE IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF THE WORK, EVEN IF THE INJURY, SICKNESS, DISEASE, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S CONCURRENT NEGLIGENCE, STRICT PRODUCTS LIABILITY, OR STRICT STATUTORY LIABILITY.

THE FOLLOWING PROVISIONS SHALL APPLY TO THE PERFORMANCE OF THE WORK AND SECTION 7.01(K) OF THE AGREEMENT SHALL NOT APPLY TO THE PERFORMANCE OF THE WORK (WITH NO INTENT TO LIMIT AIRLINE'S INDEMNITY OBLIGATION TO THE CITY AS SET OUT IN SUBSECTION (E) BELOW WITH RESPECT TO THE MATTERS SET FORTH THEREIN). AIRLINE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY PARTIES HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, SICKNESS, DISEASE, DEATH, DAMAGE, OR LOSS TO ANY PERSON OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE OF THE WORK THAT IS CAUSED BY:

1. THE ACTUAL OR ALLEGED NEGLIGENCE, OR WILLFUL MISCONDUCT OF AIRLINE OR ITS CONTRACTORS, OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS OR DIRECTORS (EVEN IF AN INDEMNIFIED PARTY IS PARTIALLY RESPONSIBLE FOR THE CLAIM, BUT IN SUCH EVENT, AIRLINE SHALL NOT BE REQUIRED TO INDEMNIFY ANY INDEMNITEE FOR THAT PORTION OF THE CLAIM THAT RESULTS FROM THE FAULT OF AN INDEMNITEE); AND
2. THE STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, OF AIRLINE OR ANY CONTRACTOR ENGAGED BY AIRLINE.

AIRLINE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS AS PROVIDED HEREIN DURING THE PERIOD FROM THE AMENDMENT NO. 2 EFFECTIVE DATE THOURGH AND UNTIL FOUR YEARS AFTER 2022 PROJECT DBO. UNLESS OTHERWISE PROVIDED HEREIN, AIRLINE'S INDEMNIFICATION OBLIGATION SHALL BE LIMITED TO \$1,000,000 PER OCCURRENCE. AIRLINE SHALL NOT BE REQUIRED TO INDEMNIFY THE CITY HEREUNDER TO THE EXTENT THAT ANY SUCH CLAIM OF DEMAND RESULTS FROM THE NEGLIGENCE OF ANY PARTY OTHER THAN AIRLINE, WHICH INCLUDES ANY CONTRACTOR ENGAGED BY AIRLINE, OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS OR DIRECTORS (IT BEING ACKNOWLEDGED THAT AIRLINE SHALL NOT BE LIABLE TO THE EXTENT THAT THE DAMAGES OR CLAIMS ARE A DIRECT RESULT OF THE ACTS OR OMISSIONS OF THE CITY, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS OR CONSULTANTS). THE FOREGOING INDEMNITY SHALL NOT APPLY TO ENVIRONMENTAL CLAIMS (TO WHICH THE PROVISIONS FOR ENVIRONMENTAL INDEMNITY CONTAINED IN SUBSECTION (E) BELOW SHALL BE APPLICABLE). THE CITY SHALL BE RESPONSIBLE FOR ASSERTING ANY DEFENSE OF GOVERNMENTAL IMMUNITY AS IT MAY EXIST FROM TIME TO TIME AND SHALL DO SO ON ITS OWN ACCORD OR AT THE REQUEST OF AIRLINE.

INDEMNIFICATION PROCEDURES

- (1) Notice of Claims. If the City is served with a lawsuit which could give rise to an indemnified loss, the City shall give written notice to Airline within 30 days of service of such lawsuit. The notice must include the following:
 - (a) a description of the indemnification event in reasonable detail,
 - (b) the basis on which indemnification may be due, and
 - (c) the anticipated amount of the indemnified loss, if known.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Airline is prejudiced, suffers loss, or incurs expense because of the delay.

- (2) Defense of Claims
 - (a) Assumption of Defense. Airline may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Airline shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Airline must advise the City as to whether or not it

will defend the claim. If Airline does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

- (b) Continued Participation. If Airline elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

C. Insurance

In its performance of the 2022 Project, Airline shall comply with Exhibit D-3 of the Agreement.

D. Warranties

In its performance of the 2022 Project, Airline shall comply with Section 7.01(G) of the Agreement.

E. Compliance with Environmental Laws

Airline shall contractually require the Contractors to

(1) comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:

- (a) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
- (b) the Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;
- (c) the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
- (d) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
- (e) the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
- (f) the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
- (g) the Clean Water Act, 33 U.S.C., Section 1251, et seq.;
- (h) the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;

- (i) the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;

or their State counterparts (collectively, "Environmental Laws").

(2) Within 30 days of receipt of an invoice, Airline shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental agency for Airline's (or its Contractor's, agents' and employees') failure to comply with the Environmental Laws.

(3) Airline shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airport, or any other areas or facilities subject to this Agreement, except in strict compliance with the Environmental Laws. "Hazardous Materials" include, but are not limited to:

- (a) all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws,
- (b) asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or
- (c) any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

(4) The Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES"), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airport. Airline is familiar with these NPDES stormwater regulations, and shall conduct operations under this Agreement in accordance with 40 CFR Part 122, as amended from time to time. Airline understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

(5) Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Airline shall implement 'Best Management Practices' as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Airline as defined in the federal stormwater regulations.

(6) The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Agreement. Airline shall be bound by all applicable portions of the permit.

(7) Airline shall implement the NPDES requirements at its sole expense as part of the 2022 Project Costs, unless otherwise agreed to in writing between the City and Airline. Airline shall meet all deadlines that may be imposed or agreed to by the City and Airline. Time is of the essence.

(8) If either Party asks, the other Party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.

(9) Airline appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.

(10) Airline shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

(11) The City may enter upon the 2022 Project premises at any time for purposes of inspection to ensure that Airline is complying with this Section and any other provisions in this Agreement without committing a trespass.

(12) The City's remedies with regard to this Section II.D, including without limitation Section II.D(13) below, are cumulative and survive termination of this Agreement.

(13) WITH NO INTENT TO LIMIT AIRLINE'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTION II(B), AIRLINE SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO:

(a) ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO AIRLINE, ITS CONTRACTOR'S, EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORT PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS AGREEMENT;

(b) ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY AIRLINE, ITS CONTRACTOR, EMPLOYEES, OR AGENTS;

(c) THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY AIRLINE, ITS CONTRACTOR, EMPLOYEES, OR AGENTS AT THE AIRPORT THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

(d) ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY AIRLINE, ITS CONTRACTOR, EMPLOYEES, OR AGENTS AT THE AIRPORT; OR

(e) ANY VIOLATION BY AIRLINE, ITS CONTRACTOR, EMPLOYEES, OR AGENTS OF ANY ENVIRONMENTAL LAWS.

PROVIDED HOWEVER, THAT, EXCEPT TO THE EXTENT (AND ONLY TO THAT EXTENT) CAUSED OR CONTRIBUTED TO BY AIRLINE, ITS CONTRACTORS, AND THEIR EMPLOYEES, NONE OF THE FOREGOING INDEMNITIES SHALL REQUIRE AIRLINE TO INDEMNIFY THE CITY FOR LOSSES, COSTS, EXPENSES, CLAIMS, DEMANDS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES AND EXPENSES THAT ARISE OUT OF OR RESULT FROM (A) THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, OR GROSS NEGLIGENCE) OR WILLFUL MISCONDUCT OF THE CITY OR ITS AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS OR (B) THE IMPROPER ACTIONS OR NEGLIGENCE OF OTHER PARTIES. THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT.

F. **Tax Exempt Status**

The City hereby acknowledges that the work performed by Airline under this Amendment No. 2, including the 2022 Project, is being performed by Airline on behalf of the City and shall be exempt from sales and other similar taxes, to the extent allowed by law.

G. **Minority and Women Business Enterprises.**

The provision of this Section is only applicable to the design and construction of those portions of the 2022 Project reimbursed by City.

It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. In connection with Airline's design and construction of the reimbursed portions of the 2022 Project, the objectives set forth in Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated in this Amendment No. 2.

Best Efforts shall be used to cause Airline's contractors hereunder to meet the following MWBE participation goals: twenty-five percent (25%) for design, five point three percent (5.3%) for the baggage handling system construction and thirty percent (30%) for construction other than the

baggage handling system construction to be further categorized after consultation with the City's Office of Business Opportunity ("OBO").

As part of using Best Efforts under this Section only, Airline, at a minimum, agrees to:

If requested by OBO, coordinate with the City of Houston an outreach program (if and as applicable) to target the local certified small, minority and women businesses to participate in contracting opportunities, which outreach program will include outreach to organizations and trade associations that serve small, minority and women as it pertains to the relevant scope of work.

If requested by OBO, provide to the City, for posting on the City and HAS websites, and additionally work with the City to notify pertinent organizations that serve small, minority and women-owned businesses, its request for proposals for construction, along with the requirements of the 2022 Project.

Develop a strategy to create bid packages in size and scope that will encourage maximum opportunity for MWBE participations.

Designate an MWBE liaison officer who will coordinate any MWBE efforts and maintenance of records, as required herein, with the City.

Report the MWBE utilization as provided in this Section.

If requested by OBO, meet no less than once a month with the City's Office of Business Opportunity to discuss MWBE performance and participation.

Airline shall require written subcontracts with all MWBE for construction/consulting services be in writing and shall submit all disputes with MWBE subcontractors and consultants to binding arbitration in Houston, Texas, if directed to do so by the Office of Business Opportunity Director. If MWBE is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000.00 or less, then the subcontract must also be signed by the attorneys of such contractor.

Airline shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

- a. [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- b. Within five (5) business days of execution of this subcontract, Contractor [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to

be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent

c. After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the OBO Director. The OBO Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

III. DUTIES OF CITY

A. Cooperation by City

The City shall cooperate with Airline in connection with the 2022 Project and shall provide to Airline timely access to the 2022 Project site, reasonable construction staging and construction employee parking, any and all records related to the 2022 Project site, and all information reasonably requested by Airline for performance of the Work at the 2022 Project. The City acknowledges that this Amendment No. 2 is to support the efficient design and construction of the 2022 Project.

B. Payment and Reimbursement

1. The City shall reimburse and pay to Airline all 2022 Project Costs incurred by Airline, in accordance with the terms and conditions of the Agreement (as modified by this Amendment No. 2), subject to Section 7.06(G) of the Agreement, relating to appropriations made by the City.

If Airline receives payment from the City for Work performed by any Contractor or for materials provided by any Contractor, and Airline withholds payment to the Contractor or supplier on account of a deficiency in the quality or quantity of the Work or materials, the City may withhold a corresponding amount from any pending or future payments to Airline until the next regular payment to Airline occurring after the City receives reasonable documentation that the deficiency has been remedied. However, nothing contained in this Section shall be construed as a waiver of any rights of Airline under Tex. Gov't. Code § 2251 *et seq.*

2. (a) Subject to Section 7.06(G) of the Agreement, the City and Airline acknowledge and agree that they will jointly prepare a schedule to be approved by the Director (such approval not to be unreasonably withheld, delayed or conditioned) setting forth the scope of the 2022 Project and anticipated 2022 Project Costs.

(b) Subject to Section 7.06(G) of the Agreement, the City shall pay to Airline all 2022 Project Costs incurred by Airline on a monthly basis, within thirty (30) days of the City's receipt of a monthly invoice submitted by Airline and approved by the Director, which approval of the Director and payment by the City, notwithstanding anything contained herein to the contrary, shall not be unreasonably withheld, delayed or conditioned. The invoices submitted by Airline to the City's address noted herein must show the following: (i) a summary of the services performed, or materials furnished or fabricated by Airline, its Contractors,

and the Subcontractors during the period covered by the invoice on an itemized basis; (ii) the total amount due for the services being invoiced, (iii) any other back-up information reasonably required by the Director. Airline shall submit the invoice for reimbursement on a pass-through cost basis, without Airline markup, Airline shall submit invoices in the form approved by the Director and Airline, and (iv) a copy of the updated schedule, a monthly status report, and a list of the planned activities for the following month.

(c) Each invoice submitted by Airline to the City shall also include the following:

Each invoice for services rendered and charged on an hourly basis must include a detailed description of the work performed and the billing rate and number of hours worked for each of Airline's and the Contractors' employees who worked during the invoice period, if applicable. Documentation submitted in support of such invoices must include the name of the individual performing services, billing rate, and hours expended. Each invoice for services rendered and charged on a lump sum basis must include schedule of values for services provided. Further, at the Director's sole discretion, supporting documentation including copies of original time sheets that Airline certifies are true and accurate copies may be requested. Itemized list of reimbursable expenses not included in one of the categories listed in this subsection (c). Contractor(s) Costs, including a copy of each Contractor's actual invoice and supporting documentation for itemized reimbursable expenses in amounts not to exceed the cost schedule described in subsection (a) above. If requested by the Director, additional supporting documentation will be provided by the Contractors.

Upon completion of the 2022 Project in accordance with the Construction Documents and subject to Section 7.06(G) of the Agreement, any amounts that remain unpaid by the City to Airline, including all 2022 Project Costs, shall be paid by the City to Airline within thirty (30) days of the 2022 Project subject to invoicing and documentation in accordance with this Agreement.

(d) All invoices submitted by Airline and approved by the Director shall be paid by check or wire transfer within 30 days of receipt by the City of each such invoice from Airline. Checks will be payable to Airline at the following Airline address: Southwest Airlines, 2702 Love Field Drive, Attn: Denise McElroy HDQ – 4PF Dallas, TX 75235. If paid by wire transfer, payments should include a contact name or department and shall be made to the following account:

Southwest Airlines
JP Morgan Chase Bank
2200 Ross Ave.
Dallas, TX 75201
ABA # 021000021
SWIFT: CHASU33
A/C # 98120109

The Director shall approve or disapprove Airline's invoices within twenty (20) days after receiving them; provided, however, that with respect to any invoice approved in part, the Director

shall cause to be paid that portion of any invoice as is approved by the Director within thirty (30) days of City's receipt of such invoice from Airline. Any portion of the invoice that is not approved shall be set forth in a prompt written response to Airline detailing the reasons why any portion of the invoice has been rejected and requesting clarification or remedial action. Airline shall promptly resolve the dispute, provide clarification and/or remedial action, and resubmit the invoice. The City shall promptly pay the revised invoice as approved by the Director, in accordance with this Agreement. The Parties hereto agree that neither partial payments made, nor approval of invoices or services by the Director, constitute final acceptance or approval of the services to which the partial payment or approval relates. Invoices (and any documentation as required herein) to be submitted by Airline may be submitted by Airline to the City via email, with receipt confirmed by the recipient, to the following address: philip.marlowe@houston.tx.gov with a copy to: Brendan.Fuller@houston.tx.gov or, by mail, to the following address (or to such other email address or mailing address that the Director may designate in writing):

Houston Airport System
 Attn: Philip Marlowe, Infrastructure
 P.O. Box 60106
 Houston, TX 77205-0106

IV. MISCELLANEOUS

A. Independent Contractor and Responsibility for Work

The City has no control or supervisory powers over the manner or method of Airline's employees or Airline's Contractors performing under this Amendment No. 2. All personnel Airline uses or provides are its employees or Contractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Airline is solely responsible for the compensation of its employees, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

B. Force Majeure Applicable to the 2022 Project

Notwithstanding any provision of the Agreement to the contrary, including but not limited to Section 14.11, the following provision shall govern Force Majeure events for the 2022 Project.

1. Timely performance by both parties of their respective obligations for the 2022 Project is essential. However, neither party is liable for reasonable delays in performing its 2022 Project obligations to the extent the delay is caused by Force Majeure that directly impacts the City or Airline. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance of 2022 Project obligations. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Airline, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes

performance more difficult, expensive or impractical. Force Majeure does not entitle Airline to extra Reimbursable Expenses or payment.

2. This relief is not applicable unless the affected party does the following:

(a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

(b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The Director will review claims that a Force Majeure that directly impacting the City or Airline has occurred and render a written decision within 14 days. The decision of the Director is final. Notwithstanding the foregoing, Airline and the City agree that the COVID-19 pandemic shall not be deemed a Force Majeure Event, provided that Airline shall have the right (without being deemed a breach of the Agreement) to extend the time for performance of any Work on the 2022 Project, modify the schedule to be established under Section III(B)(2)(a) above, modify the 2022 Project Costs, and/or adopt other health-related protocols affecting the design and construction of the 2022 Project or any portion thereof Airline decides to construct, including, but not limited to the Enabling Work, based upon the requirements of applicable law or public health recommendations concerning the COVID-19 pandemic.

4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of the Agreement by the City.

5. If the Force Majeure continues for more than 30 days from the date performance is affected, either party may terminate their obligations with respect to the 2022 Project by giving 7 days' written notice to the other. This termination is not a default or breach of the Agreement. AIRLINE WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION OF ITS 2022 PROJECT OBLIGATIONS EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.

6. Airline is not relieved from performing its 2022 Project obligations due to a strike or work slowdown of its employees. Airline shall employ only fully trained and qualified personnel during a strike.

C. Ambiguities

If any term of Amendment No. 2, including this Exhibit D-1, is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

D. Parties In Interest

The Agreement does not bestow any rights upon any third party but binds and benefits the City and Airline only. There are no third-party beneficiaries of the Agreement and no third party may rely upon the obligation herein. The Agreement does not create or confer any legal claim or cause of action in favor of any party not a signatory to the Agreement, and the obligation and legal duties imposed on any party by the Agreement are owed exclusively to the other party or parties and are not owed to any party not a signatory to the Agreement.

E. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Airline's, and Airline's Contractors' books and records relating to 2022 Project Costs, and (2) inspections of the 2022 Project site. Airline and all Contractors shall keep their books and records available for this purpose for at least four (4) years after the 2022 Project DBO. This provision does not affect the applicable statute of limitations. Such inspections and audits shall not create any liability on the City for the professional or technical accuracy of the Work or services performed under this Agreement.

F. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City premises is prohibited. With respect to the Work under this Amendment No. 2, Airline shall comply and shall require all of its Contractors to comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Amendment No. 2 and is on file in the City Secretary's Office.

(2) Before the City signs this Amendment No. 2, Airline shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

(a) a copy of its drug-free workplace policy

(b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "F-1," together with a written designation of all safety impact positions and,

(c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F-2."

If Airline files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every 6 months during the performance of the Work under this Amendment No. 2 or on completion of such Work if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "F-3." Airline shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of such Work. The first 6-month period begins to run on the date the City issues its 2022 Project Notice to Proceed or if

no 2022 Project Notice to Proceed is issued, on the first day Airline begins Work under this Amendment No. 2.

(3) Airline also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Airline's employee work force.

(4) Airline shall require that its subcontractors comply with the Executive Order, and Airline shall secure and maintain the required documents for City inspection.

G. Preservation of Contracting Information

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to the Agreement and Airline agrees that the Agreement can be terminated if Airline knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to the Agreement, then for the duration of the Agreement (including the initial term, any renewal terms, and any extensions), Airline shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to the 2022 Project as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Airline shall provide any Contracting Information related to the 2022 Project that is in the custody or possession of Airline. Upon the 2022 Project DBO, Airline shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to the 2022 Project that is in the custody or possession of Airline, or (b) preserve the Contracting Information related to the 2022 Project as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

If Airline fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Airline and may terminate the Agreement. To effect final termination, the Director must notify Airline in writing with a copy of the notice to the CPO. After receiving the notice, Airline shall, unless the notice directs otherwise, immediately discontinue all services under the Agreement, and promptly cancel all orders or subcontracts chargeable to the Agreement.

EXHIBIT D-3**2022 Project Insurance Requirements**

Project Insurance. With no intent to limit Southwest's liability or indemnification provisions set forth in Section 7.01.J of the agreement, Southwest shall cause Project contractors to provide and maintain certain insurance in full force and effect until at least final completion of the Project. If any of the insurance is written as "claims made" coverage, then Southwest agrees to cause Project contractors to keep such claims made insurance in full force and effect by purchasing policy period extensions for at least three years after final completion of the Project. The minimum coverage is as follows:

COVERAGE	LIMIT OF LIABILITY
Workers Compensation:	Statutory for Workers' Compensation
	Bodily Injury by Accident \$1,000,000 (each accident)
Employer's Liability:	Bodily Injury by Disease \$1,000,000 (policy limit)
	Bodily Injury by Disease \$1,000,000 (each employee)
Commercial General Liability:	Combined single limit of \$5,000,000 (each occurrence), subject to general aggregate of \$10,000,000;
Including Contractor's Protective, Broad Form Property Damage, Contractual Liability, Explosion, Underground and Collapse, Bodily Injury, Personal Injury, Products, and Completed Operations (for a period of one year following completion of the Project).	Products and Completed Operations \$1,000,000 aggregate.
Owner's and Contractor's Protective Liability:	\$1,000,000 combined single limit each Occurrence/aggregate.
Installation Floater:	Value of stored material or equipment, listed on Certificates of Payments, but not yet incorporated into the Work.
Automobile Liability Insurance:	\$5,000,000 combined single limit each Occurrence for
(For automobiles furnished by Contractor in course of his performance under the Contract, including Owned, Non-owned, and Hired Auto coverage)	(1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos.
Excess Coverage:	\$25,000,000 each Occurrence/combined aggregate in excess of limits specified for Employer's Liability, Commercial General Liability, and Automobile Liability.

Defense costs are excluded from the face amount of policy.

Aggregate Limits are per 12-month policy period unless otherwise indicated.

1. **Professional Liability Coverage.** In connection with the design of the Project, Southwest shall also provide for professional liability coverage in the amount of \$1,000,000 per occurrence; \$2 million aggregate.

2. **Form of Policies.** Insurance may be in one or more policies of insurance, the form of which is subject to approval of the Director. It is agreed, however, that nothing the Director does or fails to do relieves Southwest from its duties to provide the required coverage under this Agreement. The Director's actions or inactions do not waive the City's rights under this Agreement.

3. **Issuers of Policies.** The issuer of any policy shall have a Certificate of Authority to transact insurance business in Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide, and the issuer must be an eligible nonadmitted insurer in the State of Texas.

4. **Insured Parties.** Each policy, except those for Worker's Compensation, Owner's and Contractor's Protective Liability, and Professional Liability, must name the City and its officers, agents, and employees as Additional Insured parties on the original policy and all renewals or replacements.

5. **Deductibles.** Southwest shall be responsible for and bear any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, agents, or employees.

6. **Cancellation.** Southwest shall notify the Director in writing 30 days prior to any cancellation or material change to Southwest's insurance coverage. Within the 30 day period, Southwest shall provide other suitable policies in lieu of those about to be canceled or nonrenewed so as to maintain in effect the required coverage. If Southwest does not comply with this requirement, the Director, at his discretion, may: (i) immediately stop work on the Project, or (ii) or purchase the required insurance with City funds and invoice Southwest for such costs.

7. **Subrogation.** Each policy, except Professional Liability and Owner's and Contractor's Protective Liability must contain an endorsement to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents, or employees.

8. **Endorsement of Primary Insurance.** Each policy, except Worker's Compensation, Professional Liability, and Contractor's Protective Liability must contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement.

9. **Liability for Premium.** Southwest is solely responsible for payment of all insurance premiums and the City is not obligated to pay such premiums.

10. **Subcontractors.** Southwest shall ensure that all subcontractors whose subcontracts exceed \$100,000 obtain Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability coverage that meets all the requirements of this Section 7.01.L except amount of coverage. The amount of coverage must be commensurate with the amount of the subcontract, but not less than \$500,000 per occurrence. Additionally, coverage exposure shall be limited to each subcontractor's scope of work and then, only for the duration of its work on the Project.

11. **Proof of Insurance.** Prior to commencing any work on the Project, Southwest shall furnish the Director with Certificates of Insurance, along with an affidavit from Southwest confirming that the Certificate accurately reflects insurance coverage that is available as required herein. If requested in writing by the Director, Southwest shall furnish with certified copies of Southwest's actual insurance policies. At the time this Agreement is signed, Southwest must furnish to the Director certificates of insurance. These certificates must bear the Project name for which they are issued. If requested by the Director, Southwest must provide the originals of all policies referred to above, or copies certified by the agent or attorney-in-fact issuing them. Southwest shall continuously and without interruption, maintain in force the required insurance

coverage specified in Section 7.01.K of the agreement. If Southwest does not comply with this requirement, the Director, at his or her sole discretion, may: (i) immediately suspend Southwest from any further performance under this Agreement and begin procedures to terminate for default, or (ii) purchase the required insurance with City funds and require reimbursement from Southwest. The City shall never waive or be estopped to assert its right to terminate this Agreement because of its acts or omissions regarding its review of insurance documents.

12. **Insurance under Construction Contract.** All insurance policies required under the construction contract(s) must be issued in the name of the Contractor, Southwest and the City, as their interests may appear. In any event, the City (and its officers, agents, and employees) shall be named as additional insured parties on all policies and all renewals or replacements except those for Workers' Compensation, Professional Liability, and Owner's and Contractor's Protective Liability.

EXHIBIT F-1

Drug Policy Compliance Agreement

I, _____ as an officer or officer of
(Name) (Print/Type) (Title)

(Name of Company) _____ (Contractor)

Have authority to bind Engineer with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Engineer that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Engineers (Executive Order No. 1 31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Engineer that full compliance with the Mayor's Drug Policy and Executive Order No.1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1 31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

Date

Engineer Name

Signature

Title

EXHIBIT F-2

CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS IN PERFORMANCE OF A CITY CONTRACT

I, _____, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____,

(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

**EXHIBIT F-3
DRUG POLICY DECLARATION**

I, _____ as an owner or
 (Name) (Print/Type) (Title)

officer of _____ (Contractor)(Name of Company), have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____.

_____ A written Drug Free Workplace Policy has been implemented and employees
 Initials notified. The Policy meets the criteria established by the Mayor’s Amended Policy on Drug Detection and Deterrence (Mayor’s Policy)

_____ Written drug testing procedures have been implemented in conformity with the
 Initials Mayor’s Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
 Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
 Initials performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is ____.

_____ From _____ (Start date) to _____ (End date) the following test has occurred:
 Initials

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City
 Initials worksite consistent with the Mayor’s Policy and Executive Order No. 1-31.

_____ I affirm that the falsification or failure to submit this declaration timely in
 Initials accordance with established guidelines will be considered a breach of contract

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Date)

(Typed or Printed Name)

(Signature)

(Title)

EXHIBIT M

BILL OF SALE

THE STATE OF _____ §

§ KNOW ALL BY THESE PRESENTS:

COUNTY OF _____ §

THAT SOUTHWEST AIRLINES CO., a Delaware corporation authorized to do business in the State of Texas (hereinafter called “Grantor”), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable considerations to it in hand paid by the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule City situated principally in Harris County, Texas (hereinafter called “Grantee”), the receipt and sufficiency of which are here acknowledged and confessed, has **GRANTED, BARGAINED, SOLD AND CONVEYED** and by these presents does hereby confirm that it has **GRANTED, BARGAINED, SOLD AND CONVEYED** unto the Grantee those certain capital improvements more fully described in Exhibit “M-1” attached hereto and incorporated herein for all purposes, known and referred to as the 2022 Project, located in and at William P. Hobby Airport on the site leased or granted to Grantee by Grantor, with all warranties required in Exhibit D-2, Section II(D) of the Agreement. It is acknowledged and agreed that Grantor has already conveyed the herein described to Grantee pursuant to Contract No. C75187, passed and adopted by City Council Ordinance _____, on _____ as it may be amended from time to time (the “Agreement”) and that this Bill of Sale is being delivered solely to further confirm the conveyance therein made.

TO HAVE AND TO HOLD the aforesaid capital improvements, together with all and singular the rights and appurtenances thereto in any way belonging unto Grantee, its successors and assigns forever; and it is hereby agreed that Grantor, its successors and legal representatives are hereby bound to **WARRANT AND FOREVER DEFEND**, all and singular, said property unto Grantee, its successors and assigns against every person whosoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise.

The Parties have executed this instrument in multiple copies and/or counterparts, each of which is an original. Each person signing this instrument represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this instrument. Each party represents and warrants to the other that the execution and delivery of this instruments and the performance of such Party’s obligations hereunder have been duly authorized and that the instrument is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Execution and delivery of this conveyance is made pursuant to the terms of that certain Agreement by and between Grantor and Grantee.

EXECUTED as of the _____ day of _____, _____.

SOUTHWEST AIRLINES CO.

By: _____

Title: _____

Federal Tax I.D. No. _____

WITNESSED:

By: _____

Title: _____

THE STATE OF _____ §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of **SOUTHWEST AIRLINES CO.**, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, _____.

Notary Public in and for

_____ County, _____

(SEAL)ACCEPTED:

THE CITY OF HOUSTON, TEXAS

ATTEST:

Name:
City Secretary

Name:
Mayor

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the _____ day of _____, _____. by [Name], Mayor of **THE CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city situated in Harris, Fort Bend and Montgomery Counties, Texas, on behalf of said corporation.

Notary Public, State of Texas
(Notary Seal)

APPROVED AS TO FORM:

Senior Assistant City Attorney
LD # _____

EXHIBIT “M-1”

DESCRIPTION OF CAPITAL IMPROVEMENTS

(To be attached when Bill of Sale is completed)

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

- Funds have been encumbered out of funds previously appropriated for such purpose.
- Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- Other - Grant Funds Available

[Signature]
 City Controller of the City of Houston, Texas

Date: 08-29, 2023

[Handwritten notes]
 8200-1800-520126
 8011-1800-520126
 O.H.# 460001128
 FMBB# 300034602

FUND REF: 8011-1800-520126 AMOUNT: 250,000,000.00 ENCUMB. NO.: FR# 300006042
 City of Houston Ordinance No. 2023-698

AN ORDINANCE APPROPRIATING THE SUM OF \$150,000,000.00 OUT OF THE AIRPORT SYSTEM CONSOLIDATED 2011 CONSTRUCTION FUND AND THE SUM OF \$100,000,000.00 OUT OF THE AIRPORTS IMPROVEMENT FUND; APPROVING AND AUTHORIZING AMENDMENT NO. 2 TO AN AIRPORT USE AND LEASE AGREEMENT AT WILLIAM P. HOBBY AIRPORT BETWEEN THE CITY OF HOUSTON AND SOUTHWEST AIRLINES CO.; CONTAINING PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. The City Council hereby appropriates the sum or sums of money set out in the title of this Ordinance, out of the respective fund or funds set out in such title for the purpose or purposes set out in such title as follows: The sum of **\$150,000,000.00** is appropriated out of the Airport System Consolidated 2011 Construction Fund and the sum of **\$100,000,000.00** is appropriated out of the Airports Improvement Fund.

Section 2. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document which is attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

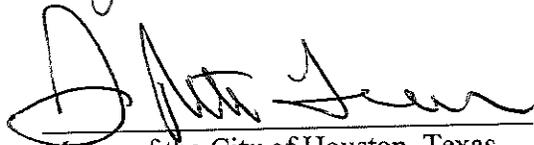
Section 3. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 4. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said contract without further authorization from Council.

Section 5. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 30th day of August, 2023.

APPROVED this 30th day of August, 2023.



Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

DocuSigned by:

Sameera Kapasi Mahendru

B685BACE44854BE

(Prepared by Legal Dept.

(SKM:trl 08/04/2023)

Assistant City Attorney

(Requested by Mario C. Diaz, Director, Houston Airport System)

(L.D. File No. LD-CON-0000001178)

Meeting 8/30/2023

Aye	No	
✓		Mayor Turner
....	....	Council Members
Absent on personal business		Peck
✓		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
	✓	Huffman
✓		Cisneros
✓		Gallegos
✓		Pollard
✓		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
✓		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW
 Date: 9/5/2023

CERTIFICATE OF CITY CONTROLLER

I, Chris B. Brown, City Controller of the City of Houston, Texas, pursuant to Article II, Section 19a of the Charter of the City of Houston, with respect to the sum of \$150,000,000.00 required for the project referenced in the title of this ordinance, do hereby certify as follows:

- (1) The sum of \$150,000,000.00 will be funded from airport bond proceeds and/or airport commercial paper proceeds pursuant to Ordinance No. 2010-0912 authorizing the creation of the Airport System Consolidated 2011 Construction Fund (8206). To the extent that this sum will be paid with bond proceeds, it is in the treasury in the said fund, and is not appropriated for any other purpose.
- (2) To the extent that the \$150,000,000.00 will be paid by commercial paper proceeds, funds will be received into the treasury and available before the maturity of said obligation, and such anticipated funds have not already been appropriated for any other purpose. Such sum will be received as a cash draw(s) to the City of Houston pursuant to the Airport Commercial Paper Ordinance, Ordinance Nos. 2013-1064 and 2016-847.


Chris B. Brown
City Controller
08-29-23

Airport.Cert8206



Attachment F
HOU U&L Amendment No.2
Summary for Council



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 8/29/2023

District I

Item Creation Date: 8/4/2023

HAS – Amendment No. 2 to the Airport Use and Lease Agreement with Southwest Airlines Co. at HOU

Agenda Item#: 27.

Summary:

ORDINANCE appropriating \$150,000,000.00 out of Airport System Consolidated 2011 Construction Fund and \$100,000,000.00 out of Airports Improvement Fund; approving and authorizing Amendment No. 2 to an Airport Use and Lease Agreement at William P. Hobby Airport between City of Houston and **SOUTHWEST AIRLINES CO - DISTRICT I - GALLEGOS**

Background:

RECOMMENDATION:

Enact an ordinance appropriating \$150,000,000.00 from the Airport System Consolidated 2011 Construction Fund (8206) and \$100,000,000.00 from the Airports Improvement Fund (8011), and authorizing Amendment No. 2 to the Airport Use and Lease Agreement between the City of Houston and Southwest Airlines Co. at William P. Hobby Airport (HOU).

SPECIFIC EXPLANATION:

On February 13, 2013, City Council approved Airport Use and Lease Agreement No. 75187 (U&L) with Southwest Airlines Co. (Southwest) at William P. Hobby Airport (HOU). The U&L defines the terms and conditions by which Southwest may conduct its commercial air transportation of persons, property, cargo, and mail as a certificated air carrier; use the airfield for aircraft operations; lease space in the terminal and concourses; have preferential use of ticket counters and aircraft gates; and use the Federal Inspection Services (FIS) area at HOU. Pursuant to a competition plan review by the Federal Aviation Administration (FAA), the City was required to enter into Amendment No. 1 to the U&L to include provisions regarding passenger facility charges and clarification on gate usage, which City Council approved on March 12, 2014, by authority of Ordinance No. 2014-214.

Subsequent to entering into the U&L, Southwest constructed a West Concourse with five international gates, four leased preferentially to Southwest, and one reserved as a City gate to be used on a common-use basis. Under the provisions of the U&L allowing the City to purchase the completed West Concourse, the City reimbursed Southwest for such Concourse taking over full control thereof.

Due to expected growth needs, Southwest proposes to expand the West Concourse with seven additional gates, six to lease preferentially, and one additional City gate to use for common-use by airlines for international or domestic operations. By authority of Ordinance No. 2022-176, adopted

on March 2, 2022, the parties entered into Memorandum of Agreement No. 4600017128 pertaining to the expansion project ("2022 Project"), and the City appropriated \$20,000,000.00 for Southwest to beginning planning and design on the 2022 Project.

Southwest has now completed a project definition manual outlining the components of the 2022 Project and the parties are ready to proceed with this Amendment No. 2 to the U&L. The requested \$250,000,000.00 appropriation will allow the City to reimburse Southwest on a monthly basis, with title vesting in the City on a brick-by-brick basis, for Southwest to construct the West Concourse expansion and related components. A supplemental appropriation request of \$200,000,000 will be made between 12 to 15 months after the initial appropriation. Project costs are fully recoverable from the airlines following project completion in 2027 through the airline use and lease agreements. The project also includes additional concession space, generating additional non-aeronautical revenue.

The pertinent terms of the U&L include the following:

1. Term: The U&L is currently in effect and will expire on June 30, 2040. Southwest may terminate the agreement with 60 days' advance written notice upon the occurrence of certain events affecting its right to provide air carrier service or rights to use the airport.
2. Rentals: Under the U&L, Southwest pays various fees under airport rates and charges including landing fees, terminal rents and fees, and FIS charges, which are set each fiscal year. Southwest shall also pay a base capital charge of \$2.50 per square foot for all areas of HOU terminal space which have not been demolished or replaced, the original cost of which has been fully amortized.
3. 2022 Project Reimbursement: Southwest shall construct a seven-gate expansion in the West Concourse, including holdrooms, concession shell space, restrooms, aircraft apron, outbound and inbound baggage handling system expansion, baggage claim area renovation, restroom improvements, clerestory modifications in the central processor, and a canopy across the departure ramp/roadway from the garage to the terminal building for passenger convenience. The City shall reimburse the actual costs on a monthly basis, and title to such elements shall vest in the City on a brick-by-brick basis. An MWBE goal has been established for the scope of work pertaining to the 2022 Project consisting of 25% for design, 5.3% for construction of the baggage handling system, and 30% for construction of all elements other than construction of the baggage handling system.
4. Permitted Uses: At HOU, Southwest leases private offices and operations areas for exclusive use. It leases, on a preferential basis, ticket counters, queuing areas, baggage makeup areas, aircraft gates, holdrooms, and aircraft apron areas. All HOU airlines use the baggage claim area, the FIS, and the security checkpoint pursuant to access and assignment procedures.
5. Other: Southwest shall be required to provide standard insurance and indemnification as required in the U&L, as well as compliance with the Living Wage Executive Order. Southwest currently has the ability to receive up to \$3.9 Million annually in inside concession revenue sharing, based on the growth in passengers against a 2015 baseline. A new baseline of 2019 will be established which will also result in the annual cap on inside concession revenue participation to increase to \$4.2 Million annually.

Fiscal Note:

No significant Fiscal Operating impact is anticipated as a result of this project.

Director's Signature:

Mario C. Diaz
Houston Airport System

Andy Icken
Chief Development Officer

Prior Council Action:

2/13/13 (O) 2013-129

3/12/14 (O) 2014-214

3/02/22 (O) 2022-176

Amount and Source of Funding:

\$150,000,000.00 Airport System Consolidated 2011 Construction Fund (8206)

\$100,000,000.00 Airports Improvement Fund (8011)

\$250,000,000.00 TOTAL

Contact Information:

Todd Curry 281/233-1796

Francisco Cuellar 281/233-1682

ATTACHMENTS:

Description

Signed Coversheet

Type

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

District I

Item Creation Date: 8/4/2023

HAS – Amendment No. 2 to the Airport Use and Lease Agreement with Southwest Airlines Co. at HOU

Agenda Item#:

Background:

RECOMMENDATION:

Enact an ordinance appropriating \$150,000,000.00 from the Airport System Consolidated 2011 Construction Fund (8206) and \$100,000,000.00 from the Airports Improvement Fund (8011), and authorizing Amendment No. 2 to the Airport Use and Lease Agreement between the City of Houston and Southwest Airlines Co. at William P. Hobby Airport (HOU).

SPECIFIC EXPLANATION:

On February 13, 2013, City Council approved Airport Use and Lease Agreement No. 75187 (U&L) with Southwest Airlines Co. (Southwest) at William P. Hobby Airport (HOU). The U&L defines the terms and conditions by which Southwest may conduct its commercial air transportation of persons, property, cargo, and mail as a certificated air carrier; use the airfield for aircraft operations; lease space in the terminal and concourses; have preferential use of ticket counters and aircraft gates; and use the Federal Inspection Services (FIS) area at HOU. Pursuant to a competition plan review by the Federal Aviation Administration (FAA), the City was required to enter into Amendment No. 1 to the U&L to include provisions regarding passenger facility charges and clarification on gate usage, which City Council approved on March 12, 2014, by authority of Ordinance No. 2014-214.

Subsequent to entering into the U&L, Southwest constructed a West Concourse with five international gates, four leased preferentially to Southwest, and one reserved as a City gate to be used on a common-use basis. Under the provisions of the U&L allowing the City to purchase the completed West Concourse, the City reimbursed Southwest for such Concourse taking over full control thereof.

Due to expected growth needs, Southwest proposes to expand the West Concourse with seven additional gates, six to lease preferentially, and one additional City gate to use for common-use by airlines for international or domestic operations. By authority of Ordinance No. 2022-176, adopted on March 2, 2022, the parties entered into Memorandum of Agreement No. 4600017128 pertaining to the expansion project ("2022 Project"), and the City appropriated \$20,000,000.00 for Southwest to beginning planning and design on the 2022 Project.

Southwest has now completed a project definition manual outlining the components of the 2022 Project and the parties are ready to proceed with this Amendment No. 2 to the U&L. The requested \$250,000,000.00 appropriation will allow the City to reimburse Southwest on a monthly basis, with title vesting in the City on a brick-by-brick basis, for Southwest to construct the West Concourse expansion and related components. A supplemental appropriation request of \$200,000,000 will be made between 12 to 15 months after the initial appropriation. Project costs are fully recoverable from the airlines following project completion in 2027 through the airline use and lease agreements. The project also includes additional concession space, generating additional non-aeronautical revenue.

The pertinent terms of the U&L include the following:

1. **Term:** The U&L is currently in effect and will expire on June 30, 2040. Southwest may terminate the agreement with 60 days' advance written notice upon the occurrence of certain events affecting its right to provide air carrier service or rights to use the airport.
2. **Rentals:** Under the U&L, Southwest pays various fees under airport rates and charges including landing fees, terminal rents and fees, and FIS charges, which are set each fiscal year. Southwest shall also pay a base capital charge of \$2.50 per square foot for all areas of HOU terminal space which have not been demolished or replaced, the original cost of which has been fully amortized.
3. **2022 Project Reimbursement:** Southwest shall construct a seven-gate expansion in the West Concourse, including holdrooms, concession shell space, restrooms, aircraft apron, outbound and inbound baggage handling system expansion, baggage claim area renovation, restroom improvements, clerestory modifications in the central processor, and a canopy across the departure ramp/roadway from the garage to the terminal building for passenger convenience. The City shall reimburse the actual costs on a monthly basis, and title to such elements shall vest in the City on a brick-by-brick basis. An MWBE goal has been established for the scope of work pertaining to the 2022 Project consisting of 25% for design, 5.3% for construction of the baggage handling system, and 30% for construction of all elements other than construction of the baggage handling system.
4. **Permitted Uses:** At HOU, Southwest leases private offices and operations areas for exclusive use. It leases, on a preferential basis, ticket counters, queuing areas, baggage makeup areas, aircraft gates, holdrooms, and aircraft apron areas. All HOU airlines

use the baggage claim area, the FIS, and the security checkpoint pursuant to access and assignment procedures.

5. Other: Southwest shall be required to provide standard insurance and indemnification as required in the U&L, as well as compliance with the Living Wage Executive Order. Southwest currently has the ability to receive up to \$3.9 Million annually in inside concession revenue sharing, based on the growth in passengers against a 2015 baseline. A new baseline of 2019 will be established which will also result in the annual cap on inside concession revenue participation to increase to \$4.2 Million annually.

Fiscal Note:

No significant Fiscal Operating impact is anticipated as a result of this project.

Director's Signature:

DS
FL

DocuSigned by:
Mario Diaz
9C60F3A4A7CB4BB

Mario C. Diaz
Houston Airport System

DocuSigned by:
Andy Icken
F405371A27C1498

Andy Icken
Chief Development Officer

Prior Council Action:

2/13/13 (O) 2013-129
3/12/14 (O) 2014-214
3/02/22 (O) 2022-176

Amount and Source of Funding:

\$150,000,000.00 Airport System Consolidated 2011 Construction Fund (8206)
\$100,000,000.00 Airports Improvement Fund (8011)
\$250,000,000.00 TOTAL

Contact Information:

Todd Curry 281/233-1796
Francisco Cuellar 281/233-1682



Attachment G
HOU City-Southwest
Memorandum of Agreement 2022

4600017128
2022-0174

**MEMORANDUM OF AGREEMENT
WILLIAM P. HOBBY AIRPORT WEST CONCOURSE EXPANSION PROJECT**

This Memorandum of Agreement ("2022 MOA") is entered into between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city principally situated in Harris County, Texas ("City"), and **SOUTHWEST AIRLINES CO.**, a Texas corporation, authorized to do business in the State of Texas ("Southwest") (each, singularly, a "Party" or, collectively, the "Parties"), regarding the proposed William P. Hobby Airport ("Airport" or "Hobby") West Concourse ("West Concourse") Expansion Project, as more specifically described in Section 2. The initial addresses of the City and Southwest are as follows:

<u>City</u>	<u>Southwest</u>
Director Houston Airport System City of Houston	Airport Affairs Southwest Airlines Co.
<u>Delivery Address:</u> 16930 John F. Kennedy Blvd Houston, TX 77032	<u>Delivery Address:</u> 2702 Love Field Drive – HDQ 4PF Dallas, Texas 75235
<u>Mailing Address:</u> P.O. Box 60106 Houston, Texas 77205-0106	<u>Mailing Address:</u> P.O. Box 36611 Dallas, Texas 75235-1611

WITNESSETH:

WHEREAS, the City is the owner of Hobby, which is depicted on Exhibit "A" and is managed and operated by the City's Houston Airport System ("HAS") as an enterprise fund, whose functions are public and governmental functions, exercised for a public purpose, and matters of public necessity; and

WHEREAS, the City has been granted the authority by the State of Texas, pursuant to Chapter 22 of the Texas Transportation Code, to enter into leases for commercial purposes on the Airport; and

WHEREAS, Southwest is engaged in the business of commercial air transportation of persons, property, cargo, and mail as a scheduled air carrier and is certificated or otherwise authorized by the Federal Aviation Administration ("FAA"), to engage in such business; and

WHEREAS, pursuant to Contract No. 74757, effective June 5, 2012, the City and Southwest entered into a Memorandum of Agreement with respect to the Hobby International Expansion Project ("International Gates") under which Southwest constructed the West Concourse at

Hobby for International Gates, and Federal Inspection Services ("FIS") facilities to initiate international passenger air service from Hobby; and

WHEREAS, Southwest was given the right to preferentially lease four (4) of the five (5) International Gates in the West Concourse with the fifth (5th) gate being a City common-use gate, as noted in Southwest's current Use and Lease Agreement No. 75187 ("U&L Agreement"), enacted by authority of Ordinance 2013-129, and countersigned on February 25, 2013; and

WHEREAS, Southwest has expressed the need to grow its air traffic from Hobby and the Parties agree that there is a significant need for the development of one (1) additional common-use international gate and six (6) additional preferential-use domestic gates at the West Concourse of Hobby to handle aircraft, passengers, and cargo departing to, and arriving from, international and domestic destinations on scheduled and chartered flights; and

WHEREAS, it has been determined by the Parties that it would be in the best interest of the City for Southwest to plan, design and construct the 2022 Project and wish to set forth the general parameters of that process in this 2022 MOA and subsequent amendment to the U&L Agreement ("U&L Amendment").

NOW, THEREFORE, for and in consideration of the benefits, promises and mutual covenants contained herein and in consideration of the amounts to be paid to and funded by the City, the City and Southwest do hereby agree as follows:

INDEX

This 2022 MOA consists of the following Articles:

	<u>Page</u>
1 Effective Date, Term and U&L Amendment	3
2 Project	4
3 Project Planning and Management	6
4 City Liaison	7
5 Project Delivery	7
6 Appropriation and Allocation of Funds; Payment to Southwest	8
7 Funding Sources – In General	9
8 Use of the West Concourse	9
9 Rates and Charges	10
10 Revenue Sharing – Signatory Carriers	11
11 Governing Law, Validity, Venue	11
12 Certain Federal Requirements	11
13 Compliance with Certain State Law Requirements	15
14 Human Trafficking	16
15 Living Wage Executive Order	16
16 Other Terms	16

Exhibits: The following exhibits are attached to this 2022 MOA and fully incorporated herein by reference:

- Exhibit A: Existing Airport Property Depiction
- Exhibit B: Preliminary Project Depiction
- Exhibit B-1: Preliminary Project Definition
- Exhibit C: 2022 MOA Additional Terms and Conditions
- Exhibit D: Drug Policy Compliance Agreement
- Exhibit E: Drug Policy Compliance Declaration
- Exhibit F: Contractor's Certification of No Safety Impact Positions
In Performance of A City Contract

Capitalized terms as used herein are defined in the body of this 2022 MOA or are otherwise defined in **Exhibit C**.

1 Effective Date, Term and U&L Amendment

1.1 This 2022 MOA will be effective on the date of countersignature by the City Controller after adoption by City Council and signature by Southwest (the "Effective Date"). This 2022 MOA shall expire:

(i) upon the effective date of the U&L Amendment; or

(ii) upon the earlier termination by Southwest, as set forth in Exhibit "C", Section IV(B).

1.2 The Parties agree to negotiate in good faith to execute the U&L Amendment based on the terms and conditions set forth in this 2022 MOA provided, however, execution of the U&L Amendment shall occur no later than thirty (30) days prior to the issuance of the 2022 Project Notice to Proceed, unless the Parties mutually agree otherwise. The Parties acknowledge that once such U&L Amendment is executed, the terms and conditions of the U&L Amendment will govern the Parties rights and obligations and this 2022 MOA shall expire and be of no further force or effect, except and provided however, this 2022 MOA shall remain valid solely for the purposes of expending any remaining balance of Allocated Funds for the purposes set for the herein, for construction of the 2022 Project, and for any other purpose set forth in the U&L Amendment. Southwest shall have no obligation under this 2022 MOA to commence construction of the 2022 Project or any portion thereof, but may choose to issue the 2022 Project Notice to Proceed and construct the 2022 Project, or portions thereof, prior to the execution of the U&L Amendment and/or any appropriation or allocation by the City for 2022 Project Costs not covered by Allocated Funds. If Southwest decides to proceed on such basis, this 2022 MOA and a 2022 Project definition manual mutually agreed upon between the Director and Southwest, showing spatial, performance, functional

and technical requirements for the 2022 Project or portion thereof that Southwest constructs ("Project Definition Manual") will control such construction.

- 1.3 If (i) there is no mutual agreement on a Project Definition Manual, or the Parties fail to execute the U&L Amendment prior to the exhaustion of the Allocated Funds, or the City is unable to appropriate and allocate sufficient funds (in addition to the Allocated Funds) necessary for fully funding 2022 Project Costs anticipated during the term of this 2022 MOA, and (ii) Southwest decides not to commence construction or Southwest terminates this 2022 MOA in accordance with Exhibit "C", Section IV(B), the City may purchase whatever design documents Southwest has prepared under this 2022 MOA, for the actual cost of the preparation of the design documents, with full rights to use such documents on an "AS-IS" basis. The cost of that purchase will be reflected as a credit to Southwest in the normal Hobby rates, fees and charges under the existing U&L Agreement. The City may include such design costs in the rate base for the ensuing fiscal year.
- 1.4 If the Parties fail to execute the U&L Amendment prior to the exhaustion of the Allocated Funds and the City is unable to appropriate and allocate sufficient funds (in addition to the Allocated Funds) necessary for fully funding the 2022 Project Costs, Southwest may, in the exercise of its sole discretion, issue the Project Notice to Proceed and construct the 2022 Project or portions thereof, the later purchase of which by the City will be reflected as a credit to Southwest against the Hobby rates, fees and charges under the existing U&L Agreement. Upon completion of the 2022 Project, or portion thereof that Southwest constructs, Southwest shall have exclusive use of such Additional Gates until such time as the City has fully reimbursed Southwest for the 2022 Project Costs.

2 Project

- 2.1 The "2022 Project" means development, design, and construction of the following, as preliminarily depicted in Exhibit "B", and preliminarily defined in Exhibit "B-1", both attached hereto and as deemed necessary upon completion and approval of the Program Definition Manual by Southwest:
 - 2.1.1 Seven (7) new Gates (as that term is defined in the U&L Agreement to include passenger holdrooms, passenger loading bridges and aircraft parking position), in the West Concourse (comprised of one (1) new common-use international gate and six (6) new preferential-use domestic gates) capable of handling Aircraft Design Group III (narrow-body such as Boeing 737 series and Airbus 320 series) (the "Additional Gates"), the design of which will be architecturally similar to the initially-constructed West Concourse gates, so as to achieve a cohesive seamless appearance;

- 2.1.2 Additional West Concourse restrooms and concessions spaces sized appropriately to support the additional demand associated with the Additional Gates;
 - 2.1.3 Associated ramp and extended hydrant fueling system improvements, subject to Section 5.3, apron, and drainage work to support the Additional Gates;
 - 2.1.4 Outbound baggage system expansion, to support additional baggage demand associated with the Additional Gates;
 - 2.1.5 Inbound baggage system in cooperation with the City, to support additional baggage demand associated with the Additional Gates;
 - 2.1.6 Renovation and updating of interior finishes and wayfinding located in the Hobby baggage claim hall (including existing restrooms serving the baggage claim hall), associated with expansion of the Hobby baggage systems to support additional baggage demand associated with the Additional Gates;
 - 2.1.7 Utility infrastructure expansion, including expansion or renovation of the sewer system, and other Mechanical, Electrical, Plumbing (MEP) systems associated with the expansion of baggage system and the Additional Gates;
 - 2.1.8 Other impacted spaces in or around the terminal complex to facilitate expansion of baggage systems and gates; and
 - 2.1.9 All Enabling Work.
- 2.2 Southwest shall complete the Project Definition Manual within twelve (12) months of executing this 2022 MOA. The Project Definition Manual shall serve as the substantive basis for determining whether to construct the 2022 Project and what elements to be included.
- 2.2.1 The Project Definition Manual will form the foundation for the 2022 Project and the design of additional gates, increased baggage handling capacity, and other Enabling Work. The Project Definition Manual will serve as basis of design for the 2022 Project and contains background information and project development criteria. At a minimum, the Project Definition Manual must include the following information associated with the additional seven (7) West Concourse Gates:
 - 1. Describe project vision and purpose
 - 2. Describe project background, objectives and outcomes

3. Describe Scope and preferred development plan
 - o In-scope and out-of-scope items
4. Identify Design requirements
 - o Design Standards as further defined in Section 3.2
 - o Building Code Compliance
5. Provide Preliminary Project Schedule
 - o Phasing (identifying any operational impacts)
 - o Key Milestones
 - o Design Deliverables
 - o Required Approval Dates
6. Discuss Project Constraints, Assumptions, Risks and Interfaces/Dependencies
7. Provide Project Budget & Estimate
8. Develop and Analyze Design Day Flight Schedule
 - o Opening Day Design Day Flight Schedule
 - o 2030 Design Day Flight Schedule
9. Complete Performance Modeling of key processes for Security Screening Checkpoint (SSCP), Curbside, Bag systems/Baggage Claim
10. Develop Utility Plans – existing utilities and future utilities necessitated by gate expansion

The Project Definition Manual will be developed in cooperation with HAS and will represent a common understanding of the 2022 Project, requirements, alternative analysis as needed, and conceptual design of preferred alternatives to 10% design level. Southwest shall provide HAS with a project summary with the submission of each invoice which details the progress of the Project Definition Manual development. Payment requests shall not exceed the corresponding percentage complete of the final Project Definition Manual.

HAS will not present the U&L Amendment to City Council for approval until the Project Definition Manual is received by HAS. Deviations from the approved Project Definition Manual provided here will not be permitted without HAS approval. It is acknowledged by the Parties that the 2022 Project will be a subset of work identified through the Project Definition Manual development process. To the extent the Parties identify certain work is desired by the City and the City desires to perform that work, the City shall pay for that work separate and apart from the funds allocated for the 2022 Project.

3 Project Planning and Management

- 3.1 Southwest will take the lead in planning and designing the 2022 Project, which shall be accomplished in coordination with HAS. The Director shall review and

approve the plans, drawings and specifications for the 2022 Project at completion of the Schematic Design and Design Development phases, and at 65% and 95% Construction Documents phase, all in accordance with the mutually agreed upon Project Definition Manual. The Director will expedite review and approval of any Construction Documents for any Enabling Work or any phased construction process for the 2022 Project as may be requested by Southwest.

- 3.2 Where Director consent or approval is required, the Director shall not unreasonably withhold such consent or approval. The final Construction Documents for the 2022 Project must be approved through the HAS Tenant Improvement Program ("TIP") prior to commencement of construction of the 2022 Project based on the HAS draft design criteria manual dated 01/14/22. Upon completion of the Project Definition Manual, the Parties will establish a 2022 Project budget, and a 2022 Project schedule. While neither are final as of the execution of this 2022 MOA, the budget is currently estimated to be, in a rough order of magnitude, approximately \$250 Million Dollars. The 2022 Project Schedule currently estimates commencement of construction in the 2nd quarter of Calendar Year 2023 and beneficial occupancy in the 3rd quarter of 2025. The City will grant Southwest such construction easements and licenses as necessary for construction of the 2022 Project including any Enabling Work.
- 4 **City Liaison**. The City will appoint an HAS employee for this 2022 Project who will coordinate on matters related to the 2022 Project between Southwest and the City. Southwest agrees that the cost of such employee for hours actually worked on the 2022 Project, will be funded by the City (not Southwest), and will be recovered by the City over a commercially reasonable amortization period through Airport rates and charges.
- 5 **Project Delivery**
 - 5.1 Under this 2022 MOA, Southwest may plan, design and construct portions of the 2022 Project based on the Project Definition Manual, including any Enabling Work, which may proceed prior to the construction of the overall 2022 Project. The City will grant Southwest such construction easements and licenses as necessary for performance of the Enabling Work.
 - 5.2 The 2022 Project improvements are for the primary use and benefit of the City. The improvements are exempt from Texas sales and use tax under Texas Tax Code Section 151.311 and Rule 3.291. The City will issue an exemption certificate pursuant to Section 151.309 of the Texas Tax Code relating to taxable items sold, leased or rented to, or stored used or consumed by governmental entities. The vesting may be accomplished by a bill of sale assigning the tangible personal property and fixtures related to the 2022 Project from Southwest to the City on a mutually agreeable form.

- 5.3 The fuel hydrant system extension will remain the property of Southwest until or unless the entire fueling system is purchased by the City. The costs for the extension of the existing hydrant system to serve the expansion of the West Concourse shall be excluded from capital costs used to calculate rates under this 2022 MOA. The City shall not reimburse any costs of the fuel hydrant system expansion.
- 5.4 Southwest's planning, design and construction of the 2022 Project will be subject to, and performed in compliance with, all applicable local, state and federal laws, regulations and requirements, ordinances and executive orders, including, without limitation, those of the U.S. Department of Homeland Security, U.S. Customs and Border Protection, Transportation Security Administration, Federal Aviation Administration, the City, and HAS. These include, but are not limited to, City MWBE good faith goal requirements, Hire Houston First, Pay or Play, Drug Free Workplace Policy, Civic Art Program, Living Wage and Prevailing Wages ordinances/executive orders.

6 Appropriation and Allocation of Funds; Payment to Southwest

- 6.1 **Planning and Design.** Subject to reimbursement from the Allocated Funds (as defined below) or as otherwise provided in Sections 1.2 - 1.4 above, Southwest may commence and fund the planning and design of the 2022 Project, including the preparation of the Project Definition Manual and the Project Construction Documents. Notwithstanding anything in Section 6.2 to the contrary, Southwest will have the right to continue with the 2022 Project as provided in Sections 1.2-1.4 above.
- 6.2 **Limit of Appropriation.**
 - 6.2.1 The City's duty to pay money to Southwest under this 2022 MOA is limited in its entirety by the provisions of this Section.
 - 6.2.2 In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of \$20,000,000.00 to pay money due under this 2022 MOA during the City's current fiscal year (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this 2022 MOA, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:
 - 6.2.2.1 The allocation of supplemental funds or Supplemental Allocation for this 2022 MOA shall not be effective unless the City has issued to Southwest a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When

necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the Director, the supplemental sum set out below has been allocated for the purposes of the 2022 MOA out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ _____

6.2.3 The Original Allocation plus all Supplemental Allocations are the Allocated Funds. The City shall never be obligated to pay any money under this 2022 MOA in excess of the Allocated Funds. Southwest must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Southwest's only remedy is suspension or termination of its performance under this 2022 MOA, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

6.3 **Payment to Southwest.** From and to the extent of the Allocated Funds, the City shall reimburse Southwest for all 2022 Project Costs then incurred on a monthly basis, as set forth in Section III(B) of Exhibit "C", attached hereto and made a part hereof for all purposes, unless otherwise agreed to in writing by the HAS Director and Southwest. Southwest shall be paid the actual costs incurred during the term of this 2022 MOA. Southwest shall present such costs through a monthly invoice with documentation to support the costs. Payment shall be made by the City to Southwest within thirty (30) days of the accepted or redlined invoice date.

7 Funding Sources – In General

7.1 The City intends to pursue grant funding sources for a portion of the 2022 Project, while seeking to optimize the use of Passenger Facility Charges to net down the cost of the Project to be recovered by the airlines via the rate base, as is the normal course of practice.

8 Use of the West Concourse

8.1 The U&L Amendment will provide that upon the date of beneficial occupancy of the 2022 Project (to be defined in the U&L Amendment), Southwest will have the right to (a) lease six (6) additional gates in the West Concourse on a preferential basis in accordance with the terms and conditions for use of preferential use gates under the U&L Agreement; and (b) use one (1) gate in the West Concourse on a

common-use basis assigned by the Director in accordance with the terms and conditions for use of common-use gates under the U&L Agreement.

9 Rates and Charges

- 9.1 The U&L Amendment will provide that costs will be recovered based on cost per square foot rather than cost per international deplaned passengers, similar to Sections 6.02 and 6.03 of the U&L Agreement, and Section 6.04 will similarly be revised to reflect such methodology; provided, however, the cost recovery methodology for the West Concourse under Section 6.05 of the U&L Agreement will remain unchanged.
- 9.2 The U&L Amendment will further provide that Southwest will pay its pro rata share of operation and maintenance costs upon City's reimbursement to Southwest of the portion of the 2022 Project brought online. Recognizing that the City's airport operating budget will necessarily increase once the 2022 Project or portion of the 2022 Project is completed, Southwest, after consultation with the City, will negotiate a modification to the CPE cap pursuant to Section 6.15 of the U&L Agreement to account for any additional debt service or operations and maintenance ("O&M") attributable to any portion of the 2022 Project that affects or is allocable to i) Central Terminal/Central Concourse; ii) Central Concourse Apron; or iii) Airfield cost centers. The budget will incorporate the level of service standards agreed to by the Parties with respect to staffing, cleaning and maintenance of the 2022 Project.
- 9.3 In order to control costs in the terminal complex, and pursuant to the rights listed in Section 8.01 of the U&L Agreement, the City and Southwest agreed by letter dated July 20, 2020, to transfer the obligation of routine and scheduled maintenance and exterior equipment cleaning for all City-owned Passenger Loading Bridges, including gate service equipment (pre-conditioned air and 400 Hz systems) and Baggage Handling Systems, as of August 2, 2020. The City and Southwest also agreed that the costs associated with Southwest's maintenance of the Passenger Loading Bridges and Baggage Handling Systems shall be allocated in accordance with the U&L Agreement terms and practices so that users of City-owned Passenger Loading Bridges and Baggage Handling Systems will be invoiced for the allocable portion for their use of these facilities. Adjustments to the CPE cap from such transfer of allowable and allocable costs are reflected in annual airline rates and charges, and any additional adjustments shall be made reflecting the expansion of the Baggage Handling System and increase in numbers of the Passenger Loading Bridges.
- 9.4 If an expansion of the outbound baggage screening system is required as a result of the West Concourse Expansion Project, the rental rates for the equipment will be calculated as specified in Section 6.07 of the U&L Agreement, but the square

footage area will be calculated as specified in Section 6.10 of the U&L Agreement, regardless of where the system is located.

10 Revenue Sharing – Signatory Carriers

10.1 Notwithstanding any other provision(s) contained herein or in any other agreement between the Parties, the Parties agree to implement for the benefit of all signatory airlines at the Airport, a Net Revenue sharing formula. In the event the Houston Airport System’s debt service coverage ratio exceeds 1.50 at the end of any Fiscal Year immediately following the final Date of Beneficial Occupancy of the West Concourse Expansion Project, one-half of the Net Revenues – as defined in the Houston Airport System’s Master Bond Ordinance, adjusted for any expenditures and/or debt service funded by the Airport Improvement Fund, that cause the debt service coverage ratio to exceed 1.50, will be shared with all HOU signatory commercial airlines that operated within Houston Airport System during such Fiscal Year based on each airline’s percentage of the aggregate landed weight. The Parties acknowledge this revenue sharing may likely require an amendment to the short-term HOU U&L agreements with the other airlines to reflect such new revenue-sharing program and the City shall negotiate such amendment with the other airlines.

11 Governing Law, Validity, Venue

11.1 This 2022 MOA contains the terms and conditions regarding the 2022 Project and the intended changes to the U&L Agreement. The Parties shall follow the terms and conditions set forth herein as to the matters contained herein until they are superseded by the U&L Amendment.

11.2 This 2022 MOA shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this 2022 MOA shall lie exclusively in Harris County, Texas.

12 Certain Federal Requirements

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

12.2 During the performance of this 2022 MOA, Southwest, for itself, its assignees, and successors in interest (hereinafter referred to as “Southwest”), agrees as follows:

(i) Compliance with Regulations. Southwest (hereinafter includes its consultants)

will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth below ("Nondiscrimination Acts and Authorities"), as they may be amended from time to time, which are herein incorporated by reference and made a part of this 2022 MOA.

(ii) Nondiscrimination. With regard to the work performed by Southwest during this 2022 MOA, Southwest will not discriminate on the grounds of race, color, or national origin in the selection and retention of Contractors, including procurements of materials and leases of equipment. Southwest will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when this 2022 MOA covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21. Southwest will require the Contractor to comply with this provision as it concerns Contractor's Subcontractors

(iii) Solicitations for Contracts, including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by Southwest for work to be performed under a contract for construction of the 2022 Project, including procurements of materials, or leases of equipment, each potential Contractor or supplier will be notified by Southwest of the Contractor's obligations under this 2022 MOA and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin. Southwest will require the Contractor to notify its Subcontractors of said obligations.

(iv) Information and Reports. Southwest will provide all information and reports required by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Director or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Southwest or its Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Southwest will so certify to the Director or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

(v) Sanctions for Noncompliance. In the event of Southwest's or its Contractor's noncompliance with the non-discrimination provisions of this 2022 MOA, the Director will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- (1) Withholding payments to Southwest or its contractor under this 2022 MOA or Southwest's contract with such Contractor until Southwest or its Contractor complies; and/or
- (2) Cancelling, terminating, or suspending this 2022 MOA or Southwest's contract with such Contractor, in whole or in part.

(vi) Incorporation of Provisions. Southwest will include the provisions of paragraphs (i) through (vi) in every contract, including procurements of materials and leases of equipment, unless exempt by the Nondiscrimination Acts and Authorities and directives issued pursuant thereto. Southwest will take action with respect to any contract or procurement as the Director or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Southwest becomes involved in, or is threatened with litigation by a Contractor, or supplier because of such direction, Southwest may request the City to enter into any litigation to protect the interests of the City. In addition, Southwest may request the United States to enter into the litigation to protect the interests of the United States.

- 12.3 Southwest for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this 2022 MOA for a purpose for which an FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Southwest will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- 12.4 Southwest, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, (i) no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airport; (ii) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (iii) Southwest will use the Airport in compliance with all other requirements imposed by or pursuant to the Nondiscrimination Acts and Authorities.
- 12.5 In the event of breach of any of the above nondiscrimination covenants, the Director shall have the right to terminate this 2022 MOA and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if this 2022 MOA had never been made or issued. Further, Southwest shall include the provisions of this Section in subcontracts it enters into pursuant to this 2022 MOA.

12.6 During the performance of this 2022 MOA, Southwest, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq., 78 Stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. Section 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794 et seq.), as amended (prohibits discrimination on the basis of disability), 49 C.F.R. Part 27, and 28 C.F.R. Parts 35 and 36;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. Section 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. Section 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (P.L. 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. Sections 12131–12189) as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 U.S.C. Section 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, Southwest must take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. Section 1681 et seq.).

- 12.7 Southwest acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant Agreements with the City that are applicable to the Airport are by reference made a part hereof to the same extent as though copied herein at length.
- 12.8 Nothing herein shall be deemed to grant Southwest any exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended, within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended or supplemented.
- 12.9 This 2022 MOA shall be subordinate to the provisions of any existing or future agreements between the City and the United States of America relative to the operation and maintenance of the Airport, including but not limited to the terms of the sponsor assurances that are incorporated into grants provided to the City pursuant to the Airport Improvement Program (49 U.S.C. Section 47101 et seq.).

13 Compliance with Certain State Law Requirements

- 13.1 Anti-Boycott of Israel. Southwest certifies that it is not currently engaged in, and agrees for the duration of this 2022 MOA not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 13.2 Anti-Boycott of Energy Companies. Southwest certifies that it is not currently engaged in, and agrees for the duration of this 2022 MOA not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 13.3 Anti-Boycott of Firearm Entities or Firearm Trade Associations. Southwest certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this 2022 MOA, as defined by Section 2274.001 of the Texas Government Code.
- 13.4 Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Code, Southwest certifies that, at the time of this 2022 MOA neither Southwest nor any wholly owned subsidiary, majority-owned

subsidiary, parent company or affiliate of Southwest, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Code as a company known to have contracts with or provide supplies or to a foreign terrorist organization.

14 Human Trafficking

14.1 To the extent this 2022 MOA constitutes a service contract or the purchase of goods or services to which the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, applies, Southwest shall comply with its terms and conditions of Sections 4.1 and 4.5 of Executive Order 1-56.

15 Living Wage Executive Order

15.1 To the extent this 2022 MOA constitutes a City Contract under the requirements and terms of the City of Houston's Policy on Ensuring Payment of Living Wage by Air Carriers and Concessionaires and Their Subcontractors and Concessionaires, as set forth in Executive Order 1-64 (the "Living Wage Executive Order"), Southwest agrees to comply with such Living Wage Executive Order, as may be amended from time to time, and the requirement and terms of such Living Wage Executive Order are incorporated into this 2022 MOA for all purposes, except as may be preempted by state or federal law. Southwest shall use commercially reasonable efforts to notify the City's Chief Procurement Officer, City Attorney, and the Director within 7 days after an officer Southwest actually becomes aware of any violation of Southwest, any Contractor or its Subcontractors providing labor, materials, software, services or goods (each as applicable) under this 2022 MOA or purchase order, if any or that such violations may have occurred or are reasonably likely to occur; provided, however, that a failure by Southwest to so notify the City's Chief Procurement Officer, City Attorney, or Director shall not, in and of itself, constitute a breach of this 2022 MOA.

16 Other Terms

16.1 Southwest and the Director anticipate entering into future agreements concerning the move-out and demolition of the aircraft maintenance hangar on the east ramp of the Airport that Southwest currently leases under ground lease agreement number 21623, which shall expire on November 3, 2023. Such lease tract is anticipated to be the future site of a cargo provisioning building to be constructed pursuant to terms of a future agreement. Additionally, Southwest and the Director anticipate terminating the current cargo and provisioning building located on the north ramp of the Airport and demolishing same. Any use related to redevelopment of any tracts shall be included in a future agreement which will be presented to City Council for approval.

IN WITNESS WHEREOF, this 2022 MOA has been entered into and effective as of the date of countersignature. The Parties hereby agree that each Party may sign and deliver this 2022 MOA electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature. Each person signing this 2022 MOA represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this 2022 MOA. Each Party represents and warrants to the other that the execution and delivery of this 2022 MOA and the performance of such Party's obligations hereunder have been duly authorized and that this 2022 MOA is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

Signatures:

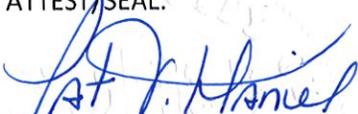
ATTEST/SEAL:

By: 
Name: Tanya Jones
Title: Lease Coordinator

SOUTHWEST AIRLINES CO.
"Southwest"

By: 
Name: Mark Shaw
Title: Exec Chief Legal & Regulatory Officer
TAX ID No.: 74-1563240

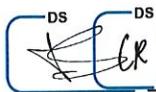
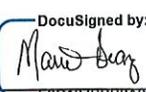
ATTEST/SEAL:


Pat Jefferson-Daniel
City Secretary

CITY OF HOUSTON, TEXAS
"City"


Sylvester Turner *Ammandawashnefts*
Mayor *3-3-2022*

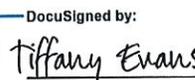
APPROVED:

 DS DS
DocuSigned by:

F8C107BBB8A045F...
Mario C. Diaz, Director
Houston Airport System

COUNTERSIGNED:


Chris Brown *Jerald Holt*
City Controller

APPROVED AS TO FORM:

DocuSigned by:

BB13A234A44E42B...
Assistant City Attorney
L. D. File No. *004220035001*

DATE COUNTERSIGNED:

3-4-22

EXHIBIT "A"

EXISTING AIRPORT PROPERTY DEPICTION



EXHIBIT "B"

PRELIMINARY PROJECT DEPICTION
(subject to change)

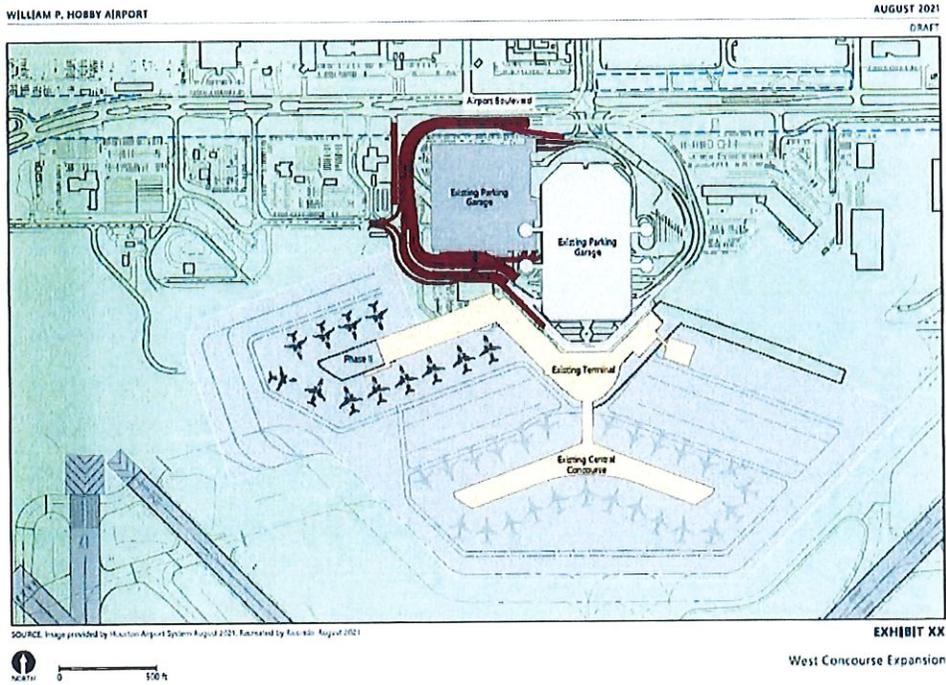


EXHIBIT "B-1"
Preliminary Project Definition
(subject to change)

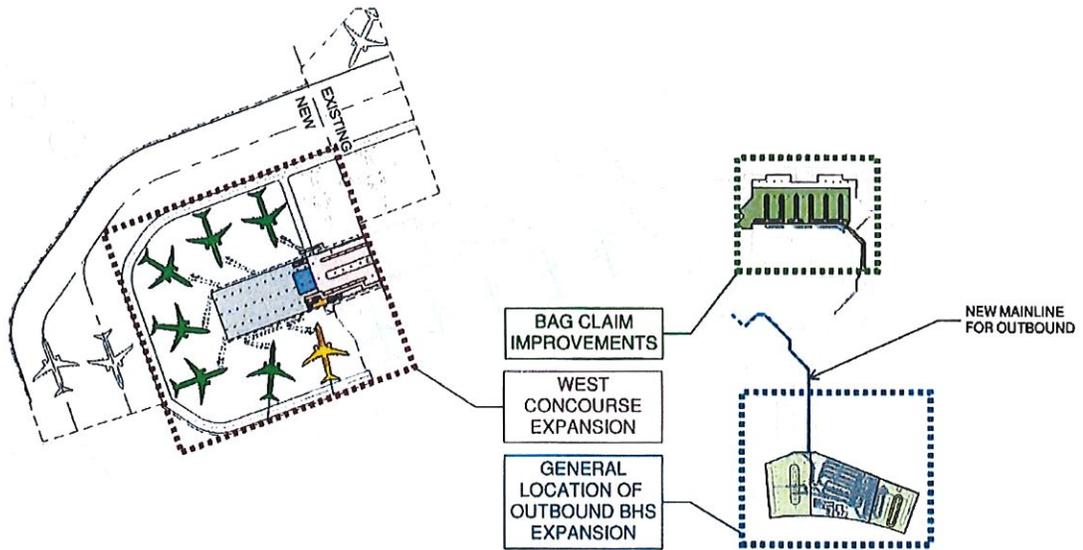


EXHIBIT "C"

2022 MOA ADDITIONAL TERMS AND CONDITIONS

I. DEFINITIONS

"2022 Project Costs" include all costs, damages, expenses, fees, charges, and debts incurred by Southwest to design, plan, consult, construct, insure, and provide construction management for the design, planning, and construction of the Project, including those incurred during the MOA Planning and Design process, and related to the design and the performance of any Enabling Work. Project Costs shall include without limitation, all applicable costs, fees and taxes for planning, design, legal, construction management, construction, materials, labor, project management fees, and permit and utility fees of any kind or nature.

"2022 Project Notice to Proceed" or "PNTP" means that certain written notice, issued by Southwest to the Construction Contractor, directing the Construction Contractor to proceed with the construction of the Project.

"Construction Contractor" means that certain entity or individual with whom Southwest contracts directly to provide planning, design, and construction of the Project, including any Enabling Work. The Construction Contractor may do so through a delivery method of Southwest's choice, but which may include design-build, construction manager at risk, or a negotiated construction contract.

"Construction Documents" means any and all Contract Documents as well as all graphic and written information prepared or assembled by Southwest, its Contractor, and Subcontractors. Construction Documents shall include all plans, drawings, and specifications for the Project and its components, including any Enabling Work.

"Contract Documents" means any and all construction contract(s) into which Southwest enters with a Contractor for Work to be performed to construct and complete the Project, together with all change orders and amendments issued pursuant to such Contract Documents, including those supplemental conditions provided by Southwest.

"Contractor" means the construction manager at risk, a design professional, and/or a general contractor(s), or any other contractor or service provider with whom Southwest or its Construction Contractor enters into a contract(s) to plan, design and/or construct all or part of the Project.

"Enabling Work" means any and all construction or construction-related activities designated by Southwest as necessary to prepare and plan for construction of the Project, including the ordering of long-lead items, preparation of the Project site, performance of construction activities to clear the site or remove barriers to construction of the Project, or the performance of discrete portions of Work to provide efficiencies in the

management of the Project.

"Subcontractors" means those subcontractors with whom the Contractor(s) enters into subcontracts for the principal purpose of providing design and construction services in connection with the performance of the Work.

"Work" means the construction of the Project required by the Contract Documents. The Work as that term is used in the Contract Documents may constitute the whole or a part of the Southwest Project and includes all Enabling Work.

II. DUTIES OF SOUTHWEST

A. Payment of Contractor(s) - Southwest's Duty to Pay

So long as the City has complied with its obligations under this 2022 MOA, including making timely payments to Southwest of any amounts due hereunder, Southwest shall make timely payments to all Contractors it engages for performance of the Work as allowed by this 2022 MOA.

Nothing contained in this 2022 MOA shall grant or be deemed to grant to any Contractors, Subcontractors or any other person engaged by Southwest in the performance of any part of the 2022 Project, any right of action or claim against the City, its officers, agents, employees, and representatives with respect to any Work any of them may do in connection with the 2022 Project or portion thereof, including the Enabling Work. Nothing contained in this 2022 MOA shall create or be deemed to create any relationship between the City and any Contractor engaged by Southwest or any other person engaged by Southwest or any of their subcontractors in the performance of the services under this 2022 MOA and the Contract Documents.

B. RELEASE AND INDEMNIFICATION OF THE CITY.

EXCEPT TO THE EXTENT CAUSED BY THE CITY'S SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SOUTHWEST AGREES TO AND SHALL RELEASE THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY PARTIES") FROM ALL LIABILITY FOR INJURY, SICKNESS, DISEASE, DEATH, DAMAGE, OR LOSS TO ANY PERSONS OR PROPERTY SUSTAINED BY SOUTHWEST IN CONNECTION WITH OR INCIDENTAL TO SOUTHWEST'S PERFORMANCE UNDER THIS 2022 MOA, EVEN IF THE INJURY, SICKNESS, DISEASE, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S CONCURRENT NEGLIGENCE, STRICT PRODUCTS LIABILITY, OR STRICT STATUTORY LIABILITY.

WITH NO INTENT TO LIMIT SOUTHWEST'S INDEMNITY OBLIGATION TO THE CITY AS SET OUT IN SECTION 13 BELOW WITH RESPECT TO THE MATTERS SET FORTH THEREIN, SOUTHWEST AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY PARTIES HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, SICKNESS, DISEASE, DEATH, DAMAGE, OR

LOSS TO ANY PERSON OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS 2022 MOA THAT IS CAUSED BY:

1. THE ACTUAL OR ALLEGED NEGLIGENCE, OR WILLFUL MISCONDUCT OF SOUTHWEST OR ITS CONTRACTORS, OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS OR DIRECTORS (EVEN IF AN INDEMNIFIED PARTY IS PARTIALLY RESPONSIBLE FOR THE CLAIM, BUT IN SUCH EVENT, SOUTHWEST SHALL NOT BE REQUIRED TO INDEMNIFY ANY INDEMNITEE FOR THAT PORTION OF THE CLAIM THAT RESULTS FROM THE FAULT OF AN INDEMNITEE); AND

2. THE STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, OF SOUTHWEST OR ANY CONTRACTOR ENGAGED BY SOUTHWEST.

SOUTHWEST SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS AS PROVIDED HEREIN DURING THE TERM OF THIS 2022 MOA AND FOR FOUR YEARS AFTER THIS 2022 MOA TERMINATES. UNLESS OTHERWISE PROVIDED HEREIN, SOUTHWEST'S INDEMNIFICATION OBLIGATION SHALL BE LIMITED TO \$1,000,000 PER OCCURRENCE. SOUTHWEST SHALL NOT BE REQUIRED TO INDEMNIFY THE CITY HEREUNDER TO THE EXTENT THAT ANY SUCH CLAIM OF DEMAND RESULTS FROM THE NEGLIGENCE OF ANY PARTY OTHER THAN SOUTHWEST, WHICH INCLUDES ANY CONTRACTOR ENGAGED BY SOUTHWEST, OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS OR DIRECTORS (IT BEING ACKNOWLEDGED THAT SOUTHWEST SHALL NOT BE LIABLE TO THE EXTENT THAT THE DAMAGES OR CLAIMS ARE A DIRECT RESULT OF THE ACTS OR OMISSIONS OF THE CITY, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS OR CONSULTANTS). THE FOREGOING INDEMNITY SHALL NOT APPLY TO ENVIRONMENTAL CLAIMS (TO WHICH THE PROVISIONS FOR ENVIRONMENTAL INDEMNITY CONTAINED IN SECTION 13 BELOW SHALL BE APPLICABLE).

C. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City is served with a lawsuit which could give rise to an indemnified loss, the City shall give written notice to Southwest within 30 days of service of such lawsuit. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss, if known.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 30-day period, it does not waive any right to indemnification except to the extent that Southwest is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Southwest may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City Attorney. Southwest shall then control the defense and any negotiations to settle the claim, subject to the City Attorney's consent or agreement to the settlement, which consent or agreement shall not unreasonably be withheld. Within 10 days after receiving written notice of the indemnification request, Southwest must advise the City as to whether or not it will defend the claim. If Southwest does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Southwest elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations.

D. Insurance

Southwest shall comply with section 7.01(L) of the Airport Use and Lease Agreement executed in 2013 between the City and Southwest, contract number 2013-129.

I. Compliance with Environmental Laws

Southwest shall contractually require the Contractors to

(1) comply with all federal, state, and local statutes, ordinances, regulations, rules, policies, codes, or guidelines now or hereafter in effect, as they may be amended from time to time, that govern Hazardous Materials or relate to the protection of human health, safety, or the environment, including but not be limited to:

- (a) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.;
- (b) the Safe Drinking Water Act, 44 U.S.C. Section 300(f) et seq.;
- (c) the Oil Pollution Control Act of 1990, 33 U.S.C. Section 270 et seq.;
- (d) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq., and as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. Law No. 99-499, 100 Stat. 1613;
- (e) the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.;
- (f) the Clean Air Act as amended, 42 U.S.C. 7401 et seq.;
- (g) the Clean Water Act, 33 U.S.C., Section 1251, et seq.;
- (h) the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq.;
- (i) the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.;

and those substances defined as hazardous waste or as hazardous substances under the laws of Texas and/or the United States or in regulations promulgated under these laws (collectively, "Environmental Laws").

(2) Within 30 days of receipt of an invoice, Southwest shall reimburse the City for any fines or penalties that may be levied against the City by the Environmental Protection Agency, the Texas Commission on Environmental Quality, or any other governmental agency for Southwest's (or its Contractor's, agents' and employees') failure to comply with the Environmental Laws.

(3) Southwest shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Airport, or any other areas or facilities subject to this 2022 MOA, except in strict compliance with the Environmental Laws. "Hazardous Materials" include, but are not limited to:

- (a) all substances, materials, wastes, pollutants, oils, or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws,
- (b) asbestos and asbestos-containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or
- (c) any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed of, or released.

(4) The Airport is subject to the National Pollution Discharge Elimination System Program ("NPDES"), and the regulations, 40 CFR Part 122, relating to stormwater discharges, for operations at the Airport. Southwest is familiar with these NPDES stormwater regulations, and shall conduct operations under this 2022 MOA in accordance with 40 CFR Part 122, as amended from time to time. Southwest understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

(5) Close cooperation is necessary to ensure compliance with any NPDES stormwater discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Southwest shall implement "Best Management Practices" as defined in 40 CFR, Part 122.2, as amended from time to time, if necessary to minimize the exposure of stormwater to significant materials generated, stored, handled, or otherwise used by Southwest as defined in the federal stormwater regulations.

(6) The City's NPDES stormwater discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this 2022 MOA. Southwest shall be bound by all applicable portions of the permit.

(7) Southwest shall implement the NPDES requirements at its sole expense as part of the 2022 Project Costs, unless otherwise agreed to in writing between the City and Southwest. Southwest shall meet all deadlines that may be imposed or agreed to by the City and Southwest. Time is of the essence.

(8) If either Party asks, the other Party shall provide any non-privileged information submitted to a government entity(ies) under applicable NPDES stormwater regulations.

(9) Southwest appoints the City as its agent to negotiate with the appropriate governmental entity(ies) any modifications to the City's permit.

(10) Southwest shall participate in any City organized task force or other work group established to coordinate stormwater activities at the Airport.

(11) The City may enter upon the 2022 Project premises at any time for purposes of inspection to ensure that Southwest is complying with this Section and any other provisions in this 2022 MOA without committing a trespass.

(12) The City's remedies with regard to Environmental Requirements are cumulative and survive termination of this 2022 MOA.

(13) WITH NO INTENT TO LIMIT SOUTHWEST'S INDEMNIFICATION TO THE CITY SET FORTH IN SECTION II(B), SOUTHWEST SHALL PROTECT, DEFEND AND INDEMNIFY THE CITY AND ITS OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY LOSS, COST, CLAIM, DEMAND, PENALTY, FINE, SETTLEMENT, LIABILITY, OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEYS' AND CONSULTANTS' FEES, COURT COSTS, AND LITIGATION EXPENSES) RELATED TO:

- (a) ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO SOUTHWEST, ITS CONTRACTOR'S, EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE AIRPORT PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS 2022 MOA;
- (b) ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE AIRPORT PREMISES BY SOUTHWEST, ITS CONTRACTOR, EMPLOYEES, OR AGENTS;
- (c) THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY SOUTHWEST, ITS CONTRACTOR, EMPLOYEES, OR AGENTS AT THE AIRPORT THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;

- (d) ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS MATERIALS USE BY SOUTHWEST, ITS CONTRACTOR, EMPLOYEES, OR AGENTS AT THE AIRPORT; OR
- (e) ANY VIOLATION BY SOUTHWEST, ITS CONTRACTOR, EMPLOYEES, OR AGENTS OF ANY ENVIRONMENTAL LAWS.

PROVIDED HOWEVER, THAT, EXCEPT TO THE EXTENT (AND ONLY TO THAT EXTENT) CAUSED OR CONTRIBUTED TO BY SOUTHWEST, ITS CONTRACTORS, AND THEIR EMPLOYEES, NONE OF THE FOREGOING INDEMNITIES SHALL REQUIRE SOUTHWEST TO INDEMNIFY THE CITY FOR LOSSES, COSTS, EXPENSES, CLAIMS, DEMANDS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES AND EXPENSES THAT ARISE OUT OF OR RESULT FROM (A) THE NEGLIGENCE (WHETHER SOLE, CONCURRENT, OR GROSS NEGLIGENCE) OR WILLFUL MISCONDUCT OF THE CITY OR ITS AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS OR (B) THE IMPROPER ACTIONS OR NEGLIGENCE OF OTHER PARTIES. THIS INDEMNITY IS NOT APPLICABLE TO LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES, AND EXPENSES THAT RESULT FROM CONDITIONS EXISTING ON THE EFFECTIVE DATE OF THIS 2022 MOA.

J. Tax Exempt Status

The City hereby acknowledges that the work performed by Southwest under this 2022 MOA, including the Work, is being performed by Southwest on behalf of the City of Houston and shall be exempt from sales and other similar taxes, to the extent allowed by law.

K. Airport Security

Southwest understands and agrees that fines and/or penalties may be assessed by the TSA for Southwest's noncompliance with the provisions of 49 CFR 1520, 1540 and 1542 (or successor regulations) or by other agencies for noncompliance with the regulations applicable to the Work. Southwest shall promptly reimburse the City for fines or penalties assessed against the City because of Southwest's non-compliance with 49 CFR 1520, 1540 and 1542 (or successor regulations) while conducting the Work on the 2022 Project, as may be amended from time to time, or other applicable laws or regulations.

L. Minority and Women Business Enterprises. The provision of this Section is only applicable to the design and construction of those portions of the Project reimbursed by City.

- (a) It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. In connection with Southwest's design and construction of the reimbursed portions of the Project, the objectives set forth in Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide Percentage Goals for contracting with MWBEs, are incorporated in this 2022 MOA.

- (b) Best Efforts shall be used to cause Southwest's contractors hereunder to meet the following MWBE participation goals: twenty-five percent (25%) for design, five point three percent (5.3%) for the baggage handling system construction and thirty percent (30%) for construction other than the baggage handling system construction to be further categorized after consultation with the City's Office of Business Opportunity ("OBO").

As part of using Best Efforts under this Section only, Southwest, at a minimum, agrees to:

- (i) If requested by OBO, coordinate with the City of Houston an outreach program (if and as applicable) to target the local certified small, minority and women businesses to participate in contracting opportunities, which outreach program will include outreach to organizations and trade associations that serve small, minority and women as it pertains to the relevant scope of work.
 - (ii) If requested by OBO, provide to the City, for posting on the City and HAS websites, and additionally work with the City to notify pertinent organizations that serve small, minority and women-owned businesses, its request for proposals for construction, along with the requirements of the Project.
 - (iii) Develop a strategy to create bid packages in size and scope that will encourage maximum opportunity for MWBE participations.
 - (iv) Designate an MWBE liaison officer who will coordinate any MWBE efforts and maintenance of records, as required herein, with the City.
 - (v) Report the MWBE utilization as provided in this Section.
 - (vi) If requested by OBO, meet no less than once a month with the City's Office of Business Opportunity to discuss MWBE performance and participation.
- (c) Southwest shall require written subcontracts with all MWBE for construction/consulting services be in writing and shall submit all disputes with MWBE subcontractors and consultants to binding arbitration in Houston, Texas, if directed to do so by the Office of Business Opportunity Director. All agreements covered by the requirements of this Section must contain the terms set out in Attachment 1. If MWBE is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is \$50,000.00 or less, then the subcontract must also be signed by the attorneys of such contractor.

III. DUTIES OF CITY

A. Cooperation by City

The City shall cooperate with Southwest in connection with the 2022 Project and shall provide to Southwest timely access to the 2022 Project site, reasonable construction staging and construction employee parking, any and all records related to the 2022 Project site, and all information reasonably requested by Southwest for performance of the Work at the 2022 Project. The City acknowledges that this 2022 MOA is to support the efficient design and construction of the 2022 Project.

B. Payment and Reimbursement

1. The City shall reimburse and pay to Southwest all 2022 Project Costs incurred by Southwest, in accordance with the terms and conditions of this 2022 MOA, subject to Section 6.2 of the 2022 MOA herein, relating to appropriations made by the City.

If Southwest receives payment from the City for Work performed by any Contractor or for materials provided by any Contractor, and Southwest withholds payment to the Contractor or supplier on account of a deficiency in the quality or quantity of the Work or materials, the City may withhold a corresponding amount from any pending or future payments to Southwest until the next regular payment to Southwest occurring after the City receives reasonable documentation that the deficiency has been remedied. However, nothing contained in this Section III(B)(1) shall be construed as a waiver of any rights of Southwest under Tex. Gov't. Code § 2251 *et seq.*

2. (a) The City and Southwest acknowledge and agree that they will jointly prepare a schedule to be approved by the HAS Director (such approval not to be unreasonably withheld, delayed or conditioned) setting forth the scope of the 2022 Project and anticipated 2022 Project Costs.

(b) The City shall pay to Southwest all 2022 Project Costs incurred by Southwest on a monthly basis, within thirty (30) days of the City's receipt of a monthly invoice submitted by Southwest and approved by the HAS Director, which approval of the HAS Director and payment by the City, notwithstanding anything contained herein to the contrary, shall not be unreasonably withheld, delayed or conditioned. The invoices submitted by Southwest to the City's address noted herein must show the following: (i) a summary of the services performed, or materials furnished or fabricated by Southwest, its Contractors, and the Subcontractors during the period covered by the invoice on an itemized basis; (ii) the total amount due for the services being invoiced, (iii) any other back-up information reasonably required by HAS Director. Southwest shall submit the invoice for reimbursement on a pass-through cost basis, without Southwest markup, Southwest shall submit invoices in the form approved by the HAS Director and Southwest, and (iv) a copy of the updated schedule, a monthly status report,

and a list of the planned activities for the following month.

(c) Each invoice submitted by Southwest to the City shall also include the following:

- Each invoice for services rendered and charged on an hourly basis must include a detailed description of the work performed and the billing rate and number of hours worked for each of Southwest's and the Contractors' employees who worked during the invoice period, if applicable. Documentation submitted in support of such invoices must include the name of the individual performing services, billing rate, and hours expended.
- Each invoice for services rendered and charged on a lump sum basis must include schedule of values for services provided.
- Further, at the HAS Director's sole discretion, supporting documentation including copies of original time sheets that Southwest certifies are true and accurate copies may be requested.
- Itemized list of reimbursable expenses not included in one of the categories listed in this subsection (c).
- Contractor(s) Costs, including a copy of each Contractor's actual invoice and supporting documentation for itemized reimbursable expenses in amounts not to exceed the cost schedule described in subsection (a) above. If requested by the HAS Director, additional supporting documentation will be provided by the Contractors.

Upon completion of the 2022 Project in accordance with the Construction Documents, any amounts that remain unpaid by the City to Southwest, including all 2022 Project Costs, shall be paid by the City to Southwest within thirty (30) days of the 2022 Project subject to invoicing and documentation in accordance with this 2022 MOA.

(d) All invoices submitted by Southwest and approved by the Director shall be paid by check or wire transfer within 30 days of receipt by the City of each such invoice from Southwest. Checks will be payable to Southwest at the following Southwest address: Southwest Airlines, 2702 Love Field Drive, Attn: Denise McElroy HDQ – 4PF Dallas, TX 75235. If paid by wire transfer, payments should include a contact name or department and shall be made to the following account:

Southwest Airlines
JP Morgan Chase Bank
2200 Ross Ave.
Dallas, TX 75201

ABA # 021000021
SWIFT: CHASU33
A/C # 98120109

The HAS Director shall approve or disapprove Southwest's invoices within twenty (20) days after receiving them; provided, however, that with respect to any invoice approved in part, the HAS Director shall cause to be paid that portion of any invoice as is approved by the HAS Director within thirty (30) days of City's receipt of such invoice from Southwest. Any portion of the invoice that is not approved shall be set forth in a prompt written response to Southwest detailing the reasons why any portion of the invoice has been rejected and requesting clarification or remedial action. Southwest shall promptly resolve the dispute, provide clarification and/or remedial action, and resubmit the invoice. The City shall promptly pay the revised invoice as approved by the HAS Director, in accordance with this 2022 MOA. The Parties hereto agree that neither partial payments made, nor approval of invoices or services by the HAS Director, constitute final acceptance or approval of the services to which the partial payment or approval relates. Invoices (and any documentation as required herein) to be submitted by Southwest may be submitted by Southwest to the City via email, with receipt confirmed by the recipient, to the following address: philip.marlowe@houstontx.gov with a copy to: Brendan.Fullem@houstontx.gov or, by mail, to the following address (or to such other email address or mailing address that the HAS Director may designate in writing):

Houston Airport System
Attn: Philip Marlowe, Infrastructure
P.O. Box 60106
Houston, TX 77205-0106

IV. TERMINATION AND SUSPENSION

A. Termination for Cause by City

If Southwest defaults under this 2022 MOA, the Director may either terminate this 2022 MOA or allow Southwest to cure the default as provided below. The City's right to terminate this 2022 MOA for Southwest's default is cumulative of all rights and remedies which exist now or in the future. Default by Southwest occurs if:

- (1) Southwest fails to perform any of its duties under this 2022 MOA;
- (2) Southwest becomes insolvent;
- (3) all or a substantial part of Southwest's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Southwest.

If a default occurs, and the Director desires to terminate this MOA, the Director shall deliver a written notice to Southwest describing the default and the termination date, which in all cases shall provide a cure period of not less than thirty (30) days for Southwest to

cure such default. The Director, at his or her sole option, may extend the termination date to a later date. If the Director allows Southwest to cure the default and Southwest does so to the Director's satisfaction before the termination date, then the termination is ineffective. If Southwest does not cure the default before the termination date, then the Director may terminate this 2022 MOA on the termination date, at no further obligation of the City.

To effect final termination, the Director must notify Southwest in writing with a copy of the notice to the CPO. After receiving the notice, Southwest shall, unless the notice directs otherwise, immediately discontinue all services under this 2022 MOA, and promptly cancel all orders or subcontracts chargeable to this 2022 MOA.

B. Termination by Southwest.

- (1) Southwest may terminate its performance under this 2022 MOA only if the City defaults and fails to cure the default after receiving written notice of it. Default by the City occurs if the City fails to perform one or more of its material duties under this 2022 MOA. If a default occurs and Southwest wishes to terminate the 2022 MOA, then Southwest must deliver a written notice to the Director describing the default and the proposed termination date. The date must be at least 30 days after the Director receives the notice. Southwest, at its sole option, may extend the proposed termination date to a later date. If the City cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Southwest may terminate its performance under this 2022 MOA on the termination date and seek recovery of all damages to which it may be entitled under Texas law.
- (2) Upon the occurrence of (i) a Force Majeure event; or (ii) a material City default (including but not limited to non-payment of funds due to Southwest hereunder, after City has already appropriated the funds for the 2022 Project) and failure to cure the default after receiving written notice of it; or (iii) a City failure to pass a U&L Amendment with necessary Allocation, Southwest may, upon ten (10) days' written notice to the City, suspend or delay Southwest's performance, in whole or in part, under this MOA for such period of time as Southwest may reasonably determine. In the event Southwest is required to suspend performance, Southwest shall have no liability to the City for delay or damage due to such suspension. Before resuming services, the City shall pay Southwest all sums due prior to suspension hereunder. Any time schedules set forth in Section 3.3 of this MOA shall be equitably adjusted to accommodate the period of suspension.

V. MISCELLANEOUS

A. Independent Contractor and Responsibility for Work

The City has no control or supervisory powers over the manner or method of Southwest's employees or Southwest's Contractors performing under this 2022 MOA. All personnel

Southwest uses or provides are its employees or Contractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Southwest is solely responsible for the compensation of its employees, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

B. Force Majeure

1. Timely performance by both parties is essential to this 2022 MOA. However, neither party is liable for reasonable delays in performing its obligations under this 2022 MOA to the extent the delay is caused by Force Majeure that directly impacts the City or Southwest. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this 2022 MOA. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Southwest, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Southwest to extra Reimbursable Expenses or payment.
2. This relief is not applicable unless the affected party does the following:
 - (a) uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - (b) provides the other party with prompt written notice of the cause and its anticipated effect.
3. The Director will review claims that a Force Majeure that directly impacting the City or Southwest has occurred and render a written decision within 14 days. The decision of the Director is final. Notwithstanding the foregoing, Southwest and the City agree that the COVID-19 pandemic shall not be deemed a Force Majeure Event, provided that Southwest shall have the right (without being deemed a breach of this 2022 MOA) to extend the time for performance of any Work on the Project, modify the schedule to be established under Section III(B)(2)(a) above, modify the Project Costs, and/or adopt other health-related protocols affecting the design and construction of the Project or any portion thereof Southwest decides to construct, including, but not limited to the Enabling Work, based upon the requirements of applicable law or public health recommendations concerning the COVID-19 pandemic.
4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this 2022 MOA

by the City.

5. If the Force Majeure continues for more than 30 days from the date performance is affected, either party may terminate this 2022 MOA by giving 7 days' written notice to the other. This termination is not a default or breach of this 2022 MOA. SOUTHWEST WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE 2022 MOA UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.
6. Southwest is not relieved from performing its obligations under this 2022 MOA due to a strike or work slowdown of its employees. Southwest shall employ only fully trained and qualified personnel during a strike.

C. Non-Waiver

If either Party fails to require the other to perform a term of this 2022 MOA, that failure does not prevent the Party from later enforcing that term and all other terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this 2022 MOA. Approval by the HAS Director, or by any other employee or agent of the City, of any part of Southwest's performance does not waive compliance with this 2022 MOA or establish a standard of performance other than that required by this 2022 MOA and by law. The HAS Director is not authorized to vary the terms of this 2022 MOA.

D. Enforcement

The City Attorney or his or her designee may enforce all legal rights and obligations under this 2022 MOA without further authorization. Southwest shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Southwest's compliance with this 2022 MOA, with the exception of those documents made confidential by federal or State law or regulation.

E. Ambiguities

If any term of this 2022 MOA is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

F. Survival

Southwest, its legal successors and permitted assigns, shall remain obligated to the City under all clauses of this 2022 MOA that expressly or by their nature extend beyond the expiration or termination of this 2022 MOA.

G. Parties In Interest

This 2022 MOA does not bestow any rights upon any third party but binds and benefits the City and Southwest only. There are no third-party beneficiaries of this 2022 MOA and no third party may rely upon the obligation herein. This 2022 MOA does not create or confer any legal claim or cause of action in favor of any party not a signatory to this 2022 MOA, and the obligation and legal duties imposed on any party by this 2022 MOA are owed exclusively to the other party or parties and are not owed to any party not a

signatory to this 2022 MOA.

H. Successors and Assigns

This 2022 MOA binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph. This 2022 MOA does not create any personal liability on the part of any officer or agent of the City.

I. Business Structure and Assignments

Southwest shall not assign this 2022 MOA without the HAS Director's prior written consent. Nothing herein shall prohibit the assignment of this 2022 MOA to any successor to Southwest by merger or other consolidation or assignment to any purchaser of all or substantially all of Southwest's assets. Southwest may enter into contracts with Contractors for the performance of the work in connection with the 2022 Project or portions thereof designated for construction by Southwest.

J. Notice of Consent

Any notice, approval or consent required herein to be obtained from or given by the City (or the HAS Director) may be given by the HAS Director unless otherwise provided. Consent or approval of the City or HAS Director or Southwest when required herein shall not be unreasonably withheld, delayed or conditioned.

K. Remedies Cumulative

Unless otherwise specified elsewhere in this 2022 MOA, the rights and remedies contained in this 2022 MOA are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this 2022 MOA except in accordance with its provisions.

L. Southwest's Debt

If Southwest, at any time during the term of this 2022 MOA, incurs a "debt," as the word is defined in Section 15-122 of the City of Houston, Texas Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Southwest has incurred a debt, it shall immediately notify Southwest in writing. If Southwest does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Southwest under this 2022 MOA, and Southwest waives any recourse therefor.

M. Publicity

Except as required under open records requests, neither Southwest nor the City shall make any announcement or release of information that is intended for dissemination to the general public concerning this 2022 MOA unless the release has been approved, in advance, by the HAS Director and Southwest.

N. Inspections and Audits

City representatives may perform, or have performed, (1) audits of Southwest's, and Southwest's Contractors' books and records relating to 2022 Project Costs, and (2)

inspections of the 2022 Project site. Southwest and all Contractors shall keep their books and records available for this purpose for at least four (4) years after the expiration or earlier termination of this 2022 MOA. This provision does not affect the applicable statute of limitations. Such inspections and audits shall not create any liability on the City for the professional or technical accuracy of the Work or services performed under this 2022 MOA.

O. Drug Abuse Detection and Deterrence

(1) It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Southwest shall comply and shall require all of its Contractors to comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this 2022 MOA and is on file in the City Secretary's Office.

(2) Before the City signs this 2022 MOA, Southwest shall file with the Contract Compliance Officer for Drug Testing ("CCODT"):

- (a) a copy of its drug-free workplace policy
- (b) the Drug Policy Compliance Agreement substantially in the form set forth in Exhibit "D," together with a written designation of all safety impact positions and,
- (c) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit "F."

If Southwest files a written designation of safety impact positions with its Drug Policy Compliance 2022 MOA, it also shall file every 6 months during the performance of this 2022 MOA or on completion of this 2022 MOA if performance is less than 6 months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "E." Southwest shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each 6-month period of performance and within 30 days of completion of this 2022 MOA. The first 6-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Southwest begins work under this 2022 MOA.

(3) Southwest also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Southwest's employee work force.

(4) Southwest shall require that its subcontractors comply with the Executive Order, and Southwest shall secure and maintain the required documents for City inspection.

P. Preservation of Contracting Information

The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this 2022

MOA and Southwest agrees that this 2022 MOA can be terminated if Southwest knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this 2022 MOA, then for the duration of this 2022 MOA (including the initial term, any renewal terms, and any extensions), Southwest shall preserve all Contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this 2022 MOA as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Southwest shall provide any Contracting Information related to this 2022 MOA that is in the custody or possession of Southwest. Upon the expiration or termination of this 2022 MOA, Southwest shall, at the Director's election, either (a) provide, at no cost to the City, all Contracting Information related to this 2022 MOA that is in the custody or possession of Southwest, or (b) preserve the Contracting Information related to this 2022 MOA as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or City policy.

If Southwest fails to comply with any one or more of the requirements of this Section, Preservation of Contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Southwest and may terminate this 2022 MOA. To effect final termination, the Director must notify Southwest in writing with a copy of the notice to the CPO. After receiving the notice, Southwest shall, unless the notice directs otherwise, immediately discontinue all services under this 2022 MOA, and promptly cancel all orders or subcontracts chargeable to this 2022 MOA.

EXHIBIT "D"

DRUG POLICY COMPLIANCE AGREEMENT

I, _____ as an officer or officer of
 (Name) (Print/Type) (Title)
 _____ (Contractor)
 (Name of Company)

Have authority to bind Engineer with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Engineer that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Engineers (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Engineer that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

 Date

 Engineer Name

 Signature

 Title

EXHIBIT "E"
DRUG POLICY COMPLIANCE DECLARATION

I, _____ as an owner or
(Name) (Print/Type) (Title)
officer of _____ (Contractor) (Name of Company), have personal knowledge and full
authority to make the following declarations:

This reporting period covers the preceding 6 months from _____ to _____.

_____ A written Drug Free Workplace Policy has been implemented and employees notified. The
Initials Policy meets the criteria established by the Mayor's Amended Policy on Drug Detection
and Deterrence (Mayor's Policy).

_____ Written drug testing procedures have been implemented in conformity with the Mayor's
Initials Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31.
Employees have been notified of such procedures.

_____ Collection/testing has been conducted in compliance with federal Health and Human
Initials Services (HHS) guidelines.

_____ Appropriate safety impact positions have been designated for employee positions
Initials performing on the City of Houston contract. The number of employees in safety impact
positions during this reporting period is ____.

_____ From _____ [Start date] to _____ [End date] the following test has occurred:
Initials

	<u>Random</u>	<u>Reasonable Suspicion</u>	<u>Post Accident</u>	<u>Total</u>
Number Employees Tested	_____	_____	_____	_____
Number Employees Positive	_____	_____	_____	_____
Percent Employees Positive	_____	_____	_____	_____

_____ Any employee who tested positive was immediately removed from the City worksite
Initials consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ I affirm that falsification or failure to submit this declaration timely in accordance with
Initials established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this
declaration are within my personal knowledge and are true and correct.

_____ (Date)	_____ (Typed or Printed Name)
	_____ (Signature)
	_____ (Title)

EXHIBIT "F"

**CONTRACTOR'S CERTIFICATION OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT**

I, _____,
(Name) (Title)

as an owner or officer of _____ (Contractor)
(Name of Company)

have authority to bind the Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in §5.18 of Executive Order No. 1-31, that will be involved in performing _____.
(Project)

Contractor agrees and covenants that it shall immediately notify the City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

(Date)

(Typed or Printed Name)

(Signature)

(Title)



Attachment H
HOU MOA 2022
Summary for Council



CITY OF HOUSTON - CITY COUNCIL

Meeting Date: 3/1/2022

District I

Item Creation Date: 1/21/2022

HAS – Memorandum of Agreement (MOA) for a Gate Expansion Project at William P. Hobby Airport (HOU) with Southwest Airlines Co.

Agenda Item#: 17.

Summary:

ORDINANCE appropriating \$20,000,000.00 out of Airport System Consolidated 2011 Construction Fund and approving and authorizing Memorandum of Agreement between City of Houston and **SOUTHWEST AIRLINES CO** for Gate Expansion Project on the West Concourse at William P. Hobby Airport - **DISTRICT I - GALLEGOS**

Background:

RECOMMENDATION:

Enact an ordinance appropriating \$20,000,000.00 from the Airport System Consolidated 2011 Construction Fund (8206) and approving and authorizing a Memorandum of Agreement between Southwest Airlines Co. (Southwest) and the City of Houston through the Houston Airport System (HAS) for a gate expansion project on the west concourse at William P. Hobby Airport (HOU).

SPECIFIC EXPLANATION:

On May 30, 2012, the City entered into a Memorandum of Agreement (2012 MOA) with Southwest Airlines Co. (Southwest) which provided for the development of gates and support facilities at William P. Hobby Airport (HOU) to allow for international operations. Subsequently, the City entered into an airport Use and Lease Agreement (U&L) with Southwest, pursuant to Ordinance No. 2013-129, concerning the use of facilities at HOU for both the Central Concourse and future West Concourse and other facilities at HOU. Under the 2013 project, Southwest constructed a West Concourse comprised of five international gates which was completed in 2015. Southwest preferentially leases four of the five international gates, and the fifth gate is a City common-use gate available for use by any airline, as assigned by HAS.

Southwest has now expressed an interest in constructing seven more gates in the West Concourse, of which six will be used by Southwest as domestic gates, and one additional gate will be a City common-use international gate. In order to support this expansion, additional infrastructure renovations will be made to HOU. The City will appropriate \$20 Million under this 2022 Memorandum of Agreement (2022 MOA) in order to allow Southwest to begin planning and design efforts, to prepare a project definition manual for the expansion, and to begin construction planning efforts. The parties expect to return to City Council by the end of 2022 with an amendment to the U&L (U&L Amendment) to appropriate additional funds to reimburse Southwest for the construction of the 2022 Project. Amounts reimbursed to Southwest for the 2022 Project, in

additional to any other terminal or infrastructure renovation projects deemed necessary by Houston Airport System (HAS), to support the expansion or growth in passengers, will be recovered by the City and charged back to the airlines under rates and charges methodology.

The pertinent terms of this 2022 MOA are as follows:

1. Project Scope: Southwest will plan, design, and construct 7 new gates (including holdrooms, passenger loading bridges and aircraft parking position) in the West Concourse (comprised of 1 new common-use international gate, to be assigned by HAS to any airline, and 6 new preferential-use domestic gates) capable of handling Aircraft Design Group III (narrow-body such as Boeing 737 series and Airbus 320 series) (the “Additional Gates”), to be architecturally similar to the initially-constructed West Concourse gates. Other infrastructure improvements will be made as necessary for the gate expansion.

2. Project Planning and Management: Southwest will take the lead in planning and designing the 2022 Project, which shall be accomplished in coordination with HAS, all in accordance with the mutually-agreed-upon Project Definition Manual.

3. Payment to Southwest: The budget is currently estimated to be, in a rough order of magnitude, approximately \$250 Million. The City shall appropriate \$20 Million in conjunction with this 2022 MOA for Southwest to commence planning and design efforts, including the Project Definition Manual. The 2022 Project budget will be refined pursuant to the Project Definition Manual. The parties will return to City Council with the U&L Amendment and an appropriation of the balance of the 2022 Project Costs to pay for the construction of the gate expansion project.

4. Rates & Charges: The U&L Amendment will provide that costs for the West Concourse gates will be recovered based on cost per square foot rather than cost per international deplaned passengers, and the U&L Amendment will reflect such methodology.

5. Revenue-Sharing: The parties intend to have the U&L Amendment replace the incremental inside concession revenue credit currently applicable only to long-term signatory carriers with a new global revenue sharing program with all HOU signatory carriers. If HAS’s debt service coverage ratio exceeds 1.50 at the end of any Fiscal Year immediately following completion of the 2022 Project, one half of the Net Revenues (as defined in HAS’s Master Bond Ordinance, adjusted for any expenditures and/or debt service funded by the Airport Improvement Fund, that cause the debt service coverage ratio to exceed 1.50) will be shared with all signatory commercial airlines during such Fiscal Year based on each airline’s percentage of the aggregate landed weight.

6. MOA Term: This 2022 MOA will be effective on the date of countersignature by the City Controller and shall expire (i) upon the effective date of the U&L Amendment; or (ii) upon the earlier termination by Southwest pursuant to terms of the 2022 MOA, provided however, any unexpended amount under the 2022 MOA shall be available to pay invoices from Southwest for any part of the 2022 Project. The Term of the U&L Agreement will expire on June 30, 2040 and will govern the terms of construction of the 2022 Project.

7. MWBE Goals: 25% for design, 5.3% for baggage handling system construction, and 30% for construction other than the baggage handling system construction to be further categorized after consultation with the City’s Office of Business Opportunity.

8. Other: Southwest’s planning, design and construction of the 2022 Project will be subject to, and

performed in compliance with, all applicable local, state, and federal laws, City MWBE good faith goal requirements, Hire Houston First, Pay or Play, Drug Free Workplace Policy, Civic Art Program, Living Wage, and Prevailing Wages ordinances/executive orders.

Fiscal Note:

No significant Fiscal Operating impact is anticipated as a result of this project.

Director's Signature:

Mario C. Diaz
Houston Airport System

Andy Icken
Chief Development Officer

Prior Council Action:

5/30/12 (O) 2012-477

2/13/13 (O) 2013-129

Amount and Source of Funding:

\$20,000,000.00

Airport System Consolidated 2011 Construction Fund
Fund 8206

Contact Information:

Todd Curry 281/233-1896

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ATTACHMENTS:

Description

Signed RCA Coversheet

Type

Signed Cover sheet



CITY OF HOUSTON - CITY COUNCIL

Meeting Date:

District I

Item Creation Date: 1/21/2022

HAS – Memorandum of Agreement (MOA) for a Gate Expansion Project at William P. Hobby Airport (HOU) with Southwest Airlines Co.

Agenda Item#:

Background:

RECOMMENDATION:

Enact an ordinance appropriating \$20,000,000.00 from the Airport System Consolidated 2011 Construction Fund (8206) and approving and authorizing a Memorandum of Agreement between Southwest Airlines Co. (Southwest) and the City of Houston through the Houston Airport System (HAS) for a gate expansion project on the west concourse at William P. Hobby Airport (HOU).

SPECIFIC EXPLANATION:

On May 30, 2012, the City entered into a Memorandum of Agreement (2012 MOA) with Southwest Airlines Co. (Southwest) which provided for the development of gates and support facilities at William P. Hobby Airport (HOU) to allow for international operations. Subsequently, the City entered into an airport Use and Lease Agreement (U&L) with Southwest, pursuant to Ordinance No. 2013-129, concerning the use of facilities at HOU for both the Central Concourse and future West Concourse and other facilities at HOU. Under the 2013 project, Southwest constructed a West Concourse comprised of five international gates which was completed in 2015. Southwest preferentially leases four of the five international gates, and the fifth gate is a City common-use gate available for use by any airline, as assigned by HAS.

Southwest has now expressed an interest in constructing seven more gates in the West Concourse, of which six will be used by Southwest as domestic gates, and one additional gate will be a City common-use international gate. In order to support this expansion, additional infrastructure renovations will be made to HOU. The City will appropriate \$20 Million under this 2022 Memorandum of Agreement (2022 MOA) in order to allow Southwest to begin planning and design efforts, to prepare a project definition manual for the expansion, and to begin construction planning efforts. The parties expect to return to City Council by the end of 2022 with an amendment to the U&L (U&L Amendment) to appropriate additional funds to reimburse Southwest for the construction of the 2022 Project. Amounts reimbursed to Southwest for the 2022 Project, in addition to any other terminal or infrastructure renovation projects deemed necessary by Houston Airport System (HAS), to support the expansion or growth in passengers, will be recovered by the City and charged back to the airlines under rates and charges methodology.

The pertinent terms of this 2022 MOA are as follows:

1. Project Scope: Southwest will plan, design, and construct 7 new gates (including holdrooms, passenger loading bridges and aircraft parking position) in the West Concourse (comprised of 1 new common-use international gate, to be assigned by HAS to any airline, and 6 new preferential-use domestic gates) capable of handling Aircraft Design Group III (narrow-body such as Boeing 737 series and Airbus 320 series) (the "Additional Gates"), to be architecturally similar to the initially-constructed West Concourse gates. Other infrastructure improvements will be made as necessary for the gate expansion.

2. Project Planning and Management: Southwest will take the lead in planning and designing the 2022 Project, which shall be accomplished in coordination with HAS, all in accordance with the mutually-agreed-upon Project Definition Manual.

3. Payment to Southwest: The budget is currently estimated to be, in a rough order of magnitude, approximately \$250 Million. The City shall appropriate \$20 Million in conjunction with this 2022 MOA for Southwest to commence planning and design efforts, including the Project Definition Manual. The 2022 Project budget will be refined pursuant to the Project Definition Manual. The parties will return to City Council with the U&L Amendment and an appropriation of the balance of the 2022 Project Costs to pay for the construction of the gate expansion project.

4. Rates & Charges: The U&L Amendment will provide that costs for the West Concourse gates will be recovered based on cost per square foot rather than cost per international deplaned passengers, and the U&L Amendment will reflect such methodology.

5. Revenue-Sharing: The parties intend to have the U&L Amendment replace the incremental inside concession revenue credit currently applicable only to long-term signatory carriers with a new global revenue sharing program with all HOU signatory carriers. If HAS's debt service coverage ratio exceeds 1.50 at the end of any Fiscal Year immediately following completion of the 2022 Project, one half of the Net Revenues (as defined in HAS's Master Bond Ordinance, adjusted for any expenditures and/or debt service funded by the Airport Improvement Fund, that cause the debt service coverage ratio to exceed 1.50) will be shared with all signatory commercial airlines during such Fiscal Year based on each airline's percentage of the aggregate landed weight.

6. MOA Term: This 2022 MOA will be effective on the date of countersignature by the City Controller and shall expire (i) upon the effective date of the U&L Amendment; or (ii) upon the earlier termination by Southwest pursuant to terms of the 2022 MOA, provided however, any unexpended amount under the 2022 MOA shall be available to pay invoices from Southwest for any part of the 2022 Project. The Term of the U&L Agreement will expire on June 30, 2040 and will govern the terms of construction of the 2022 Project.

7. MWBE Goals: 25% for design, 5.3% for baggage handling system construction, and 30% for construction other than the baggage handling system construction to be further categorized after consultation with the City's Office of Business Opportunity.

8. Other: Southwest's planning, design and construction of the 2022 Project will be subject to, and performed in compliance with, all applicable local, state, and federal laws, City MWBE good faith goal requirements, Hire Houston First, Pay or Play, Drug Free Workplace Policy, Civic Art Program, Living Wage, and Prevailing Wages ordinances/executive orders.

Fiscal Note:

No significant Fiscal Operating impact is anticipated as a result of this project.

Director's Signature:

DS
CR

DocuSigned by:
Mario Diaz
9C60F3A4A7CB4BB...

Mario C. Diaz
Houston Airport System

Andy Icken
Chief Development Officer

Prior Council Action:

5/30/12 (O) 2012-477
2/13/13 (O) 2013-129

Amount and Source of Funding:

\$20,000,000.00
Airport System Consolidated 2011 Construction Fund
Fund 8206

Contact Information:

Todd Curry 281/233-1896
Charlene Reynolds 281/233-1682



Attachment I
HAS Press Release,
United, Houston Airports invest more than
\$2B in Terminal B Transformation,
Nov 7 2023

United, Houston Airports invest more than \$2B in Terminal B Transformation

IAH Terminal B Transformation Program to accommodate a projected 36 million future passengers with brand new gates and amenities for travelers.

November 7, 2023



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HOUSTON – United Airlines and the Houston Airport System (HAS) announced today a landmark investment in United’s hub at George Bush Intercontinental Airport (IAH) with United’s Terminal B Transformation Program. This ambitious project is set to redefine the air travel experience and cater to the future needs of an estimated 36 million passengers. The program encompasses the construction of 40 new gates for both domestic and international travel, ensuring a cutting-edge experience for travelers.

“This investment further supports United’s position as Houston’s carrier of choice,” said Phil Griffith, United’s Vice President of IAH. “On behalf of our more than 14,000 employees who call Houston home, I can’t wait to continue to do all we can to serve our customers flying to, from and through our hub on more than 400 flights each day.”

Travelers will find new conveniences and amenities throughout their airport experience. The Terminal B transformation includes expanding curbside and roadway capacity, along with expanding the ticketing lobby, offering passengers convenience through dynamic signage, intuitive wayfinding systems and a ground-level check-in area. The third floor is expected to house a streamlined security processing area.

Once through security, the New Terminal B North expansion comprises two new passenger concourses, replacing the 1969-era Flight Stations. The Terminal B North Concourse, spanning approximately 765,000 square feet over three levels, will house 22 narrow-body gates. Additionally, a large United Club at the mezzanine level will offer unobstructed views of the airfield, set to become the largest club in the United system.

The Terminal B South Concourse project involves converting 30 gates that currently house smaller, 50-seat regional jets to accommodate larger, two-class regional jets. Unlike in the current terminal, all flights will be boarded via a jet bridge.

The concourse design caters to a multitude of travelers and is expected to feature amenities like a sensory room, a multimedia interactive United-branded “park,” and comfort zones for passengers with disabilities that provide a quiet space for those needing to decompress between TSA and boarding processing. The project will also include two major concessions hubs, offering 115,000 square feet of state-of-the-art food and retail space including unique dining and shopping experiences.

The baggage claim hall will be expanded, and a new baggage handling system, equipped with advanced baggage tracking technology, will support increased capacity.

“The expansion of Terminal B underscores the shared commitment between United Airlines and the City of Houston to enhance Bush Airport and Houston’s economy,” said Houston Mayor Sylvester Turner. “This redevelopment program will bring nearly 3,000 new jobs to Houston. The bigger and more modern domestic terminal will amplify Houston’s reputation as a premier destination and cultivate even more opportunities for future economic development. As a global city and a sought-after destination, larger and more efficient aircraft flying to Houston will improve the passenger experience and support our promise to advance sustainable practices.”

United Airlines expects to invest more than \$1.9 billion in the Terminal B Transformation Program and the City of Houston expects to fund \$624 million in enabling projects required for the program. On Wednesday, November 15, 2023, Houston City Council approved and authorized a Memorandum of Agreement between the City of Houston and United Airlines. The City of Houston intends to submit, for City Council approval, requests for the appropriation of funds in several tranches over the course of the project.

The enabling project costs assumed by the City of Houston are fully recoverable over time and after the project's completion through rates and charges payable by airlines and other operators at IAH with whom the City has agreements. The funding to be provided by the Houston Airport System enterprise fund is consistent with federal law as an appropriate use of airport revenues.

"The redevelopment of one of Bush Airport's oldest terminals is a symbol of the crucial role air service plays in the economic vitality of Houston. Our long-standing partnership with United Airlines has led to this historic growth and revitalization opportunity for Houston Airports," said Mario Diaz, Aviation Director for the City of Houston. "As we make significant progress on the new international terminal at Bush Airport to meet the growing demand for international travel, United Airlines' Terminal B transformation will help Houston meet the growing demand for domestic travel. Today's decision underscores our strategy to gain passengers' trust by providing safe, clean, world-class facilities with outstanding 5-Star customer service."

CONSTRUCTION AND DESIGN

The IAH Terminal B Transformation Program, spearheaded by the seasoned Program Management team at AvAirPros and STV, comprises three pivotal components:

- The Terminal B arrivals and departures hall is designed by Page, a full-service design, architecture and engineering firm based in Houston; and Grimshaw Architects, a London-based architectural firm and will be constructed by Clark Construction.
- The Terminal B Concourses were designed by PGAL, a Houston-based international design firm specializing in architecture, interiors, and engineering, and to be built by Manhattan Construction, a Houston-based company.
- The Baggage Handling System will be designed by Siemens, employing their expertise in the design and construction of these highly technical systems.

"At Clark Construction, we pride ourselves on building projects that matter to the communities where we live and work," said Cara Lanigan, CEO of Clark Construction's Central Group. "We're humbled by the opportunity to work alongside United Airlines and the entire IAH Terminal B Transformation Team to enhance the traveler experience while creating job opportunities for the local Houston community."

"Manhattan Construction Company is extremely proud of the successful and award-winning projects that we have constructed alongside United at IAH over the past 25 years," says Jason Fuller, Vice President of Manhattan Construction Company. "We look forward to continuing this legacy on the Terminal B Transformation program. This is a milestone project that will provide great economic opportunities for local Houston businesses, as together we build an expanded and innovative concourse complex that will benefit our entire community. Manhattan's core team for this project are Houstonians who have spent the bulk of their careers constructing aviation projects here at IAH, and we truly appreciate the opportunity to partner with United Airlines, the Houston Airport System, and all of our local trade contractors to deliver this landmark program."

SUSTAINABILITY

Sustainability will be a cornerstone of the Terminal B Transformation project, with the aim of achieving LEED Silver certification for the new buildings. LEED certification is a globally recognized symbol of sustainability achievement and represents a commitment to environmental responsibility in building design and construction. The redevelopment project will seamlessly blend technology, passenger-centric design, and sustainable practices to create a world-class airport experience.

FORWARD-LOOKING STATEMENTS | This press release contains certain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. All statements that are not statements of historical facts are, or may be deemed to be, forward-looking statements. Such forward-looking statements are based on historical performance and current expectations, estimates, forecasts and projections about our future financial results, goals, plans, commitments, strategies and objectives and involve inherent risks, assumptions and uncertainties, known or unknown, including internal or external factors that could delay, divert or change any of them, that are difficult to predict, may be beyond our control and could cause our future financial results, goals, plans and objectives to differ materially from those expressed in, or implied by, the statements. These risks, assumptions, uncertainties and other factors include, among others, any delay or inability of United Airlines to realize the expected benefits of the proposed project and that the proposed project will close on the terms or within the time frame described in this document. No forward-looking statement can be guaranteed. Forward-looking statements in this press release should be evaluated together with the many risks and uncertainties that affect United's business and market, particularly those identified in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors" sections in United's Annual Report on Form 10-K for the year

ended December 31, 2022, as updated by our subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the Securities and Exchange Commission. The forward-looking statements included in this document are made only as of the date of this document and except as otherwise required by applicable law or regulation, United undertakes no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events, changed circumstances or otherwise. The use of words such as "partnered," "partnering," "partner" and variations of such words in this press release is not intended to and shall not be construed to imply that a legal partnership relationship exists between United and any other company.

ABOUT UNITED AIRLINES | At United, [Good Leads The Way](#). With U.S. hubs in Chicago, Denver, Houston, Los Angeles, New York/Newark, San Francisco and Washington, D.C., United operates the most comprehensive global route network among North American carriers and is now the largest airline in the world as measured by available seat miles. For more about how to join the United team, please visit www.united.com/careers and more information about the company is at www.united.com. United Airlines Holdings, Inc., the parent company of United Airlines, Inc., is traded on the Nasdaq under the symbol "UAL".

ABOUT HOUSTON AIRPORTS | Houston Airports is the City of Houston's Department of Aviation. Comprised of George Bush Intercontinental Airport, IAH, William P. Hobby Airport, HOU, and Ellington Airport/Houston Spaceport, EFD, Houston Airports served 54 million passengers in 2022 and nearly 60 million in 2019. Houston Airports positions Houston as the international passenger and cargo gateway to the South-Central United States and as a primary gateway to Latin America.



Attachment J
HAS Summary of New Carriers and
New Air Service
Jan 2015 – Mar 2024

2015 Start of Service:

SIX (6) NEW INTERNATIONAL AIRLINES IN 2015, AND A TOTAL OF SIX (6) NEW INTERNATIONAL MARKETS IN 2015.

NEW INTERNATIONAL PASSENGER MARKETS @ IAH:

1. Spirit Airlines to Toluca, Mexico - TLC (May 2015)
2. Vacation Express to Freeport, Grand Bahama - FPO (May 2015)
3. EVA Air to Taipei, Taiwan – TPE (June 2015)
4. United Airlines to St. Thomas, Virgin Islands – STT (seasonal, June 2015)
5. United Airlines to Providenciales, Turks & Caicos - PLS (seasonal, began June 2015)
6. Air New Zealand to Auckland, New Zealand – ANZ (December 2015)

NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON INTERNATIONAL MARKETS ALREADY SERVED:

1. Volaris to Guadalajara, Mexico – GDL (March 2015) @ IAH
2. Spirit Airlines to 7 international markets (May 2015) @ IAH
 - 1) Managua, Nicaragua – MGA
 - 2) San Jose, Costa Rica - SJO
 - 3) San Pedro Sula, Honduras - SAP
 - 4) San Salvador, El Salvador - SAL
 - 5) Cancun, Mexico - CUN
 - 6) Los Cabos, Mexico -SJD
 - 7) Toluca, Mexico - TLC
3. All Nippon Airways to Tokyo - NRT (June 2015) @ IAH
4. WestJet to Calgary - YYC (September 2015) @ IAH
5. Southwest Airlines to 9 international markets @ HOU
 - 1) Aruba - AUA (March 2015)
 - 2) Puerto Vallarta, Mexico - PVR (October 2015)
 - 3) Cancun, Mexico - CUN (October 2015)
 - 4) Mexico City, Mexico - MEX (October 2015)
 - 5) Los Cabos, Mexico - SJD (October 2015)
 - 6) San Jose, Costa Rica - SJO (October 2015)
 - 7) Belize City, Belize – BZE (October 2015)
 - 8) Montego Bay, Jamaica – MBJ (November 2015)
 - 9) Liberia, Costa Rica – LIR (November 2015)
6. Interjet to Mexico City - MEX (May 2015) @ IAH

DOMESTIC:

• NEW ROUTES:

1. United airlines to Panama City, FL – ECP (March 2015) @ IAH
2. United Airlines to Peoria, IL - PIA (March 2015) @ IAH
3. Southwest to Fort Myers, Florida – RSW (April 2015) @ HOU

• ADDITIONAL COMPETITION:

Spirit Airlines @ IAH:

- 1) Tampa, FL – TPA (March 2015)
- 2) Baltimore, MD – BWI (March 2015)
- 3) Oakland, CA – OAK (April 2015)

Frontier Airlines @ IAH

- 1) Philadelphia, PA - PHL (April 2015)

- 2) Las Vegas, NV – LAS (October 2015)
- 3) Orlando, FL - MCO (December 2015)

2016 Start of Service:

ONE NEW INTERNATIONAL DESTINATION IS SERVED IN 2016 WITH THE ADDITION OF MANCHESTER SERVICE (NOTE THAT THIS WAS A MARKET CHANGE FROM MOSCOW TO MANCHESTER).

NEW INTERNATIONAL PASSENGER MARKETS:

- 1) Singapore Airlines changes DME to now serve Manchester, England MAN nonstop with continuation to Singapore SIN (announced Aug. 2016, launch October 30, 2016) @ IAH

NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON INTERNATIONAL MARKETS ALREADY SERVED:

- 1) Air Canada to Montreal, Canada – YUL (June 2016) @ IAH
- 2) Vacation Express to Punta Cana, Dominican Republic – PUJ (June 2016, seasonal) @ IAH

DOMESTIC:

- **NEW ROUTES:**

- 1) Texas Sky Air to Victoria, TX - VCT (January 2016)

One (1) new international cargo airline began service in 2016, and one (1) new market was introduced.

- 1) **AirBridge Cargo** to Luxembourg, Abu Dhabi, and Moscow Sheremetyevo (May 2016) @ IAH

2017 Start of Service:

ONE NEW INTERNATIONAL AIRLINE AND ONE NEW INTERNATIONAL DESTINATION IS SERVED IN 2017.

NEW INTERNATIONAL PASSENGER MARKETS:

- 1) United Airlines to Mazatlán, Mexico - MZT (December 2017) @ IAH

NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON INTERNATIONAL MARKETS ALREADY SERVED:

- 1) Volaris to Mexico City, Mexico - MEX (March 2017) @ IAH
- 2) Bahamas Air to Nassau, Bahamas - NAS (November 2017) @ IAH

DOMESTIC:

- **NEW ROUTES:**

- 1) United Airlines to Springfield, MO - SGF (June 2017) @ IAH

- **ADDITIONAL COMPETITION:**

- 1) Southwest Airlines to Omaha, NE – OMA (March 2017) @ HOU
- 2) Spirit Airlines to Newark, NJ – EWR (April 2017) @ IAH
- 3) Frontier to Cleveland, OH – CLE (May 2017) @ IAH

One new international cargo carrier entered the Houston market in 2017 @ IAH

1. **CargoLogicAir** to Frankfurt, Germany (FRA), Abu Dhabi, UAE (AUH), and Mexico City (MEX) (August 2017)@ IAH

2018 Start of Service:

NEW INTERNATIONAL PASSENGER MARKETS:

- 1) United Airlines to Sydney, Australia - SYD (January 2018) @ IAH

NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON INTERNATIONAL MARKETS ALREADY SERVED:

- 1) Southwest Airlines to San Jose, CA - SJC (April 2018) @ HOU
- 2) Southwest Airlines to Grand Cayman Cayman Islands – GCM (June 2018) @ HOU

2019 Start of Service

NEW INTERNATIONAL AIRLINE AND TWO PASSENGER MARKETS:

- 1) Ethiopian – Addis Ababa, Ethiopia - ADD via Lome, Togo LFW (December 2019) @ IAH

NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON DOMESTIC MARKETS ALREADY SERVED:

- 1) Delta New York, NY- JFK (October 2019) @ IAH
- 2) Boutique Air – Victoria, TX - VCT (November 2019) @ IAH

CARGO:

- 1) CAL Cargo – Liege, Belgium (LGG) - Tel Aviv, Israel TLV (July 2019) @ IAH

2020 Start of Service

ONE NEW DOMESTIC AIRLINE AND NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON DOMESTIC AND INTERNATIONAL MARKETS ALREADY SERVED: 3 INTERNATIONAL AND 22 DOMESTIC DESTINATIONS.

VivaAerobus @ IAH:

- 1) Mexico City, Mexico – MEX (Jul 2020)
- 2) Cancun, Mexico – CUN (Nov 2020)

American @ IAH:

- 1) New York, NY LGA (November 2021)

Allegiant, 5 domestic routes (from June 2020) @ HOU:

- 1) Asheville, NC - AVL
- 2) Savannah, GA - SAV
- 3) Knoxville, TN - TYS
- 4) Destin, FL – VPS
- 5) Punt Gorda, FL (October 2020) - PGD

United/SkyWest, 8 domestic routes (from July 2020) @ IAH:

- 1) Palm Beach, FL - PBI
- 2) Meridian, MS - MEI
- 3) Chattanooga, TN - CHA
- 4) Abilene, TX - ABI

- 5) Victoria, TX - VCT
- 6) Tallahassee, FL - TLH
- 7) San Angelo, TX - SJT
- 8) Joplin, MO - JNL

United/Mesa @ IAH:

- 1) Key West FL - EYW (December 2020)

Southwest @ HOU:

- 1) Cincinnati, KY - CVG (November 2020)
- 2) Greenville/Greer, South Carolina - GSP (November 2020)
- 3) Miami, FL - MIA (November 2020)
- 4) Ontario, CA - ONT (November 2020)
- 5) Santa Ana, CA - SNA (November 2020)
- 6) Tucson, AZ - TUS (November 2020)
- 7) Fort Myers, FL - RSV (December 2020)

Volaris @ IAH:

- 1) Mexico City, Mexico – MEX (November 2020)

2021 Start of Service

NEW SERVICE BY PASSENGER AIRLINES INCREASING COMPETITION ON DOMESTIC AND INTERNATIONAL MARKETS ALREADY SERVED: 3 INTERNATIONAL AND 18 DOMESTIC.

Allegiant @ HOU:

- 1) Mesquite, AZ - AZA (February 2021)
- 2) Phoenix, AZ – PHX (February 2021)
- 3) Springfield, MO – SGF (May 2021)
- 4) Lexington, KY – LEX (June 2021)
- 5) Des Moines, IA – DSM (July 2021)
- 6) Fayetteville, AR - XNA (November 2021)
- 7) Provo, UT- PVU (November 2021)

Delta @ IAH:

- 1) Los Angeles LAX (April 2021)

United Airlines @ IAH:

- 1) Sarasota, FL SQR (February 2021)

Southwest @ HOU:

- 1) Cozumel, Mexico - CZM (March 2021)
- 2) Long Beach, CA - LGB (March 2021)
- 3) Palm Beach, FL - PBI (March 2021)
- 4) Reno, NV - RNO (March 2021)
- 5) Savannah, GA - SAV (March 2021)
- 6) Sarasota, FL - SRQ (March 2021)
- 7) Minneapolis – Saint Paul, MN - MSP (March 2021)
- 8) Detroit, MI - DTW (March 2021)

Sun Country @ IAH:

- 1) Minneapolis - St. Paul, MN - MST (May 2021)

- 2) **Cancun**, Mexico CUN (May 2021)
- 3) Las Vegas, NV - LAS (September 2021)

VivaAerobus @ IAH:

- 1) Leon/Bajio, Mexico BJX (May 2021)

2022 Start of Service

One airline began new international and domestic services to HOU to destinations already served at IAH. New Markets: 1 international, 2 domestic. Additional services to existing markets increases competition.

Frontier @ HOU:

- 1) Cancun – CUN (May 2022)
- 2) Denver, CO – DEN (Sep 2022)
- 3) Las Vegas, NV – LAS (May 2022)
- 4) Orlando, FL – MCO (May 2022)

Air Canada @ IAH:

- 1) Vancouver – YVR (Dec 2022)

Spirit Airlines @ IAH:

- 1) Monterrey, MX – MTY (Oct 2022)
- 2) New York La Guardia, NY – LGA (Nov 2022)
- 3) Philadelphia, PA – PHL (May 2022)

United Airlines @ IAH:

- 1) Lincoln, NE – LNK (Sep 2022)
- 2) Texarkana, AR – TXK (Feb 2022)

2023 Start of Service

One new passenger airline entered the Houston market in 2023. Three other airlines added service on markets competing with other carriers.

Volaris El Salvador:

- 1) San Salvador, El Salvador SAL @ IAH (March 2023)

Aeromexico:

- 1) Mexico City New Airport - Felipe Angeles NLU @ IAH (May 2023)

Frontier:

- 1) Phoenix, AZ PHX @ IAH (Jun 2023)

VivaAerobus:

- 1) Queretaro, Mexico QRO @ IAH (December 2023)

Three new international cargo carriers entered the Houston market in 2023 and one other carrier added a new cargo markets. All from IAH.

- 1) **LATAM Cargo** - Manaus (MAO) - Viracopos Sao Paulo, Brazil VCP (March 2023)
- 2) **Silk Way West** - Baku, Azerbaijan GYD (April 2023)
- 3) **National Airlines** – scheduled charter to Liege (LGG) - Dammam, Saudi Arabia (DAM)
- 4) **Emirates SkyCargo** – new market Brussels, Belgium (BRU) - Dubai, UAE (DXB)

2024 Start of Service

- 1) **United** - Tulum International Airport (TQO) @ IAH – April, 2024 (2xd or 14xw) B737-900)
- 2) **United** – Georgetown, Guyana @ IAH – April 1, 2024 (4xw B737-MAX 8)