

City of Houston, Texas, Ordinance No. 2020 - 895

AN ORDINANCE APPROVING AND AUTHORIZING A LEASE AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AS LANDLORD, AND SOUTHWEST AIRLINES CO., AS TENANT, FOR APPROXIMATELY 28.47 ACRES OF LAND AT 7901 BRANIFF AVENUE AT WILLIAM P. HOBBY AIRPORT FOR A NEW MAINTENANCE HANGAR COMPLEX; 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 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 that is attached hereto as "EXHIBIT A" 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 2.** The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such contract, agreement or other undertaking described in the title of this Ordinance, in the event of changed circumstances.

**Section 3.** 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 4.** 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 the 21st day of October, 2020.

APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 27 2020.

*Art J. Haniel*  
 City Secretary

(Prepared by Legal Dept. *Mary Brown*)  
 (MC:mc October 8, 2020) Senior Assistant City Attorney  
 (Requested by Mario C. Diaz, Director, Houston Airport System)

LD# 0041600176004

AYE	NO	
✓		<b>MAYOR TURNER</b>
....	....	<b>COUNCIL MEMBERS</b>
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT  
 REVIEW  
 DATE: **OCT 27 2020**

**EXHIBIT A**  
**Lease Agreement**



**WHEREAS**, by authority of Ordinance No. 2016-945, passed and adopted on December 7, 2016, the City and Southwest entered into Memorandum of Agreement No. 4600014143, countersigned on December 19, 2016, (the "MOA"), with respect to the construction and development of Southwest's Maintenance Hangar Development Project ("Project"); and

**WHEREAS**, Southwest and the City agreed that Southwest shall have the nonexclusive right to use the on-Airport perimeter road in common with others; and

**WHEREAS**, pursuant to rights conveyed in the MOA, Southwest commenced construction on the Project at 7901 Braniff Ave; and

**WHEREAS**, Southwest received a certificate of occupancy for the Project on July 15, 2020, which triggered full rent to be paid by Southwest; and

**WHEREAS**, Southwest has completed the City Project Components Managed by Southwest, subject to final invoicing by Southwest;

**NOW, THEREFORE**, for and in consideration of the benefits, promises and mutual covenants contained herein and in consideration of the rents to be paid to the City, the City and Southwest do hereby agree as follows:

**ARTICLE I.  
DEFINITIONS**

1.1 **Definitions.** In this Lease, the following terms have the following meanings, respectively, unless the context clearly indicates otherwise:

"Affiliate" means any scheduled air carrier that (a) is a parent or subsidiary of Southwest; or (b) otherwise operates under essentially the same trade name as Southwest at the Airport and uses essentially the same livery as Southwest.

"Airfield Area" means the runways, taxiways, taxilanes, and apron areas (other than the Terminal Apron Area and other leased apron areas), 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, avigation easements, land utilized in connection therewith or acquired for such purpose, and facilities, the acquisition, construction or installation cost of which is wholly or partially paid by the City.

"Airport" or "HOU" means William P. Hobby Airport.

"City" is defined in the preamble hereof and includes its successors and assigns.

"City Controller" shall mean the City's City Controller or his designee, as authorized in writing.

"City Project Components" means collectively the City Project Components Managed by the City and the City Project Components Managed by Southwest as more fully described in the MOA.

"City Project Components Managed by the City" are components of the Project for which the City is responsible, which are managed by the City, and funded by the City and which are further described in the MOA.

"City Project Components Managed by Southwest" are components of the Project for which the City is responsible, which are managed by Southwest on behalf of the City and funded by the City and which are further described in the MOA.

"Director" shall mean the City's Director of the Houston Airport System or his designee, as authorized in writing.

"Effective Date" is defined in the preamble hereof.

"Environmental Laws" shall mean all federal, state and local statutes, ordinances, regulations, rules, policies, codes or guidelines now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Materials (as herein defined) or relate to the protection of human health, safety or the environment and which are applicable to the conduct of Southwest's operations at the Airport, including but not 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 as amended, 42 U.S.C. Section 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.; Common Law; and similar statutes and regulations promulgated under the laws of Texas.

"HAS" means the Houston Airport System.

"Hazardous Materials" shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils, or governmental 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, or any other substance regulated under any of the Environmental Laws 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 or released. Hazardous Materials shall also mean any and all hazardous materials, hazardous wastes, toxic substances, or regulated substances under any Environmental Laws.

"Lease" means this document and any amendments thereto, duly passed and adopted by Ordinance of the City Council of the City of Houston.

"Lease Year" means any twelve-month period beginning on the Effective Date, as defined herein.

"Leased Premises" is defined in Section 2.1 hereof.

"Party" or "Parties" means the City and Southwest.

"Regulations" shall mean all applicable laws, statutes, codes, (including the City's Building Code, Fire Code, HAS electrical standards, and any current HAS Tenant Improvement Program ("TIP"), judicial decisions, ordinances, regulations (including federal grant assurances governing the Airport), rulings, zoning ordinances, restrictive covenants, airport rules and operating instructions, certificates, permits, requirements or orders enforceable by all federal, state and local government authorities, including, but not limited to the Federal Aviation Administration ("FAA"), the Transportation Security Administration ("TSA"), and the Texas Commission on Environmental Quality ("TCEQ") having jurisdiction over the Airport and the Leased Premises.

"Sign(s)" is defined in Section 5.4 hereof.

"Southwest" is defined in the preamble hereof and includes its successors and assigns.

"Southwest Project Components" means the various components of the Project depicted on Exhibit "C" attached hereto and by this reference made a part hereof, together with any modifications, additions or reductions thereto approved by the Director, the design, construction and improvement of which is funded by Southwest; it being acknowledged that the square footage provided in the aforementioned exhibits are approximations and may vary from the final square footage of the ultimately completed Southwest Project Components.

"Term" is defined in Section 2.2 hereof.

"TIP" means the HAS Tenant Improvement Program, as referenced at [www.fly2houston.com/TIP](http://www.fly2houston.com/TIP), or as reasonably requested by the Director.

"Trade Fixtures" mean all furnishings, fixtures and equipment that are not permanently affixed to or within any wall, floor, ceiling or section of ground on the Leased Premises.

**ARTICLE II.**  
**LEASED PREMISES AND TERM**

- 2.1 Leased Premises. Subject to the terms and conditions of this Lease and in accordance with plans and specifications approved by the Director and FAA, the City hereby leases to Southwest the following premises:
- a. For Southwest's exclusive use, initially being approximately 1,239,965 square feet (approximately 28.47 acres) of unimproved ground located at 7901 Braniff Avenue, at the Airport (the "Leased Premises"), as shown and on Exhibit "B" and further described on Exhibit "B-1", attached hereto and made a part hereof for all purposes.
  - b. For Southwest's non-exclusive use, Southwest shall have the right of reasonable ingress to and egress from the Leased Premises over the portions of the Airport, which includes the Airfield Area, necessary for conducting its authorized operations in accordance with the terms hereof.
  - c. Southwest's use of the Leased Premises and authorized areas of the Airport shall be in accordance with all applicable Regulations and Airport rules and regulations, in common with other authorized users, subject to the right of the City and public utility companies to use said area for the installation, operation, maintenance, repair, replacement and removal of underground utility lines and facilities; provided however, any damaged surfaces shall be restored to a condition substantially the same as it was prior to such use, and provided that Southwest shall always be provided with a means of ingress to and egress from the Leased Premises and the airfield.
  - d. Subsequent to the completion of the construction of the Project, the Director shall have a final land survey conducted, including legal description, to memorialize the official boundary of the Leased Premises, and the replacement Exhibit B and Exhibit B-1 will be made and sent to Southwest, along with a notice stating the revised rental amount reflecting the final square footage of the Leased Premises. Such revisions shall be made under the authority of the Director and shall not require an amendment of this Lease.
  - e. Southwest will occupy and possess the Leased Premises and easements, if any, for the purposes and upon the terms and conditions set forth herein; it will carry out, or cause to be carried out, its obligations hereunder with respect to the construction, installation and equipping of Southwest Project Components and City Project Components Managed by Southwest.

- f. The City hereby reserves the right to grant utility or aviation easements, as may be reasonably required, over, under, across, above and through the Leased Premises; provided however, the City shall not unreasonably interfere with Southwest's operations hereunder.

2.2 Term. This Lease shall become effective on the Effective Date and continue thereafter for forty (40) consecutive years. The City hereby acknowledges that, pursuant to the MOA, City granted Southwest the right to: use the Leased Premises and commence construction thereon; initiate due diligence with respect to the Leased Premises; commence the City Project Components Managed by Southwest that are listed and described in the MOA; and prepare the Leased Premises for its construction of the Project.

2.3 Condition of Leased Premises:

- a. The City makes no representations or warranties, either express or implied, as to the condition of the Leased Premises or the suitability of the Leased Premises for the use intended by Southwest. Southwest has made an inspection of the Leased Premises and takes the Leased Premises in an "as is" condition, subject to the City fulfilling its obligations under this Lease with respect to the abatement of environmental conditions and admits the suitability and sufficiency of the Leased Premises for Southwest's intended use.
- b. Southwest hereby acknowledges its responsibility to make any improvements, modifications, restorations, or repairs upon or to the Leased Premises that may be required under any applicable Regulations or terms of this Lease.
- c. The City shall not be required to make any improvements, modifications, restorations, or repairs upon or to the Leased Premises or to any of the improvements to be placed on the Leased Premises by Southwest, its successors or assigns.
- d. Southwest shall follow the requirements of the TIP, as may be amended, before initiating any improvements on the Leased Premises.
- e. Southwest acknowledges and agrees that due to increased airport security the Airport may elect or be required to make changes to Airport fencing and gates. Southwest agrees that it will willingly cooperate, in good faith, with Airport management to address to FAA's and TSA's satisfaction any fencing and or gate concerns pertaining to the Leased Premises.

**ARTICLE III.**  
**USE OF LEASED PREMISES**

- 3.1 Permitted Use. During the Term of this Lease, Southwest shall have the right to construct, use and maintain the Leased Premises only for aircraft maintenance, shop space, offices, break-room, aircraft parking, vehicular parking, wash-racks, aircraft stores, training and other activities related to its operations at the Airport. Southwest shall have the right to conduct such activities or have such activities conducted by or through or in cooperation with an independent contractor, sublessee, or other third parties, provided that, as between the City and Southwest, Southwest shall not thereby be relieved of any of its obligations or liabilities hereunder. The privileges granted hereby, which shall also apply to any Affiliate and to other air carriers authorized by Southwest and certificated under 14 CFR 121 and 129, shall include, but not be limited to, the following:
- a. The maintenance of aircraft and other equipment owned, leased or otherwise operated by or on behalf of Southwest and by or on behalf of other air carriers certified under 14 CFR 121 and 129 in air transportation business, which includes repairing, fueling, modifying, maintaining, engine testing, conditioning, washing, basing, storing, overhauling, servicing, parking and storage of such aircraft or other equipment owned, leased or otherwise operated by or on behalf of Southwest or such other air carriers, including heavy maintenance such as the "C", "D" and more extensive checks, as those terms are used in the aviation industry;
  - b. The storage of equipment and materials associated with the maintenance of aircraft and equipment owned, leased or otherwise operated by or on behalf of Southwest or such other air carriers;
  - c. The operations of storage tank systems which includes the tanks, piping and all other equipment or devices that are used in the systems' operations, for the purpose of fueling and deicing of aircraft at the maintenance hangar complex;
  - d. The sale, purchase, storage, rental, disposal and exchange of aircraft, aircraft engines, electronic equipment, accessories and other aircraft parts, equipment and supplies;
  - e. The purchase, sale, exchange, use, storage, management, treatment or disposal of gasoline, oil, grease, lubricants, fuels, or propellants or other materials or wastes in connection with the conduct of air transportation business and in the exercise of the rights and privileges herein granted, including the maintenance of aircraft and other equipment, in compliance with existing laws and any applicable agreement therefor;
  - f. The operation of shops, stores, engineering shops, office space and employee parking related thereto;
  - g. The operation of a café, snack or coffee bar for employees and contractors, and one or more crew lounges;

- h. The conduct of training of employees, agents, or contractors including, but not limited to, pilots, flight attendants and mechanics and the giving of instruction in the operation and maintenance of aircraft of all types;
- i. The installation of signs advertising the business and facilities of Southwest at the Airport; provided however, the type, size, design, number, location, subject matter and elevation of such signs shall be subject to and in accordance with the prior approval of the Director and in compliance with Regulations;
- j. The installation, maintenance and operation, at Southwest's expense, by Southwest alone, or through a nominee, of radio, telephone, and data communications equipment and meteorological and aerial navigation equipment and facilities in or on the Project leased exclusively to Southwest for use by Southwest in the conduct of its air transportation business; provided, however, that any exterior installations or modifications affecting City equipment shall be subject to the prior written approval of the Director and shall not interfere with operations conducted or equipment operated by the FAA.
- k. The parking of automobiles of Southwest's employees and its contractors working at or around the Project (not the general public);
- l. Subject to the written approval of the Director, in his reasonable discretion, any other use consistent with the activities enumerated herein or necessary to the purpose of the Project.

3.2 Prohibited Use. Southwest shall not use the Leased Premises for any other purpose not expressly allowed in Section 3.1 or as approved by the Director in Section 3.1(l) above, Southwest is strictly prohibited from performing any services of a "Fixed Base Operator" as that term is hereinafter defined in connection with general aviation activities. Only those lessees on the Airport whose lease agreements specifically authorize the operation of a Fixed Base Operator business may perform such services.

A "Fixed Base Operator" is a lessee or sublessee or assignee of such lessee of the City that has specifically been granted the right to conduct business with itinerants on the Airport as a Fixed Base Operator. Such rights include, but may not be limited to, the following retail activities, services and sales:

- a. Retail sales, cleaning, maintenance and servicing of aircraft and related equipment, accessories and parts, including fuels, oil and lubricants;
- b. Aircraft storage, tie-down, itinerant aircraft parking, and ramp assistance, energizers, starters, loading stairs or ramps, tow-bar, tow tractors, fire extinguishers, and other appropriate equipment normally required by aviation users of the Airport;
- c. Complimentary ground transportation for crews and passengers of itinerant general aviation aircraft between its leasehold and the scheduled airline terminal buildings and hotel on the Airport and locations off the Airport.

- d. Pilot training, pilot supplies, flight planning and clearance filing.

Notwithstanding the foregoing and for the avoidance of doubt, Southwest and its independent contractors, sublessees or third parties may perform any activities listed in this Section 3.2 for Southwest, its Affiliates or airlines certificated under 14 CFR 121 and 129.

3.3 Prohibition Against Commercial Activities. Additionally, during the Term of this Lease, Southwest shall not conduct any business on any or all of the Leased Premises, that is open to the public generally, and that is in direct competition with tenants, lessees or concessionaires of the City, except with consent of Director. By way of example but not by way of limitation, there shall not be conducted on the Lease Premises:

- a. Commercial or rental activities including but not limited to, a restaurant, cafe or dining business or facility (other than snack or coffee bar for the sole use of Southwest's employees, pilots, mechanics or business invitees using the Leased Premises) that is open to the public generally;
- b. The renting or leasing of any automobiles in connection with the operation of an automobile rental business;
- c. The providing of any fee-paid or free public parking facilities other than for Southwest's employees, contractors, vendors or service providers (parking in areas other than those designated on the Leased Premises by Southwest for such purpose is strictly prohibited);
- d. The use of any portion of the Leased Premises for residential purposes, except for temporary sleeping quarters for aircraft personnel (e.g., pilot or mechanic) using the Leased Premises;
- e. Other than temporary trailers and structures in connection with construction of the Project, Southwest shall not place other temporary or mobile-type structures on the Leased Premises or Airport without the Director's advance written consent and in accordance with the TIP; and
- f. Activities, other than activities authorized in Section 3.1 above and with respect to Southwest's Affiliates and air carriers certificated under 14 CFR 121 and 129, that are reasonably determined by the Director, in his sole discretion, to be activities that would be in direct competition with the business performed at the Airport by other tenants, lessees or concessionaires of the City who have the right to perform such business pursuant to an agreement between the City and such tenant, lessee or concessionaire.

**ARTICLE IV.  
RENTALS AND OTHER CHARGES**

4.1 Rental Rate. The ground rents payable by Southwest to the City shall be:

Due Diligence and Construction Phase	\$100/month	
Certificate of Occupancy issuance (July 15, 2020) – Effective Date	1,896,249 sq. ft. under MOA	\$0.32 per square foot per annum
Lease Years 1-10	1,239,965 sq. ft. under Lease	\$0.32 per square foot per annum

The City will reappraise the Leased Premises in accordance with its standard procedures (ground only, as cleared of all facilities and applicable FAA navigational aids noted in the MOA, and excluding Southwest Project Components) on the 10th anniversary of the Effective Date and every ten years thereafter, and the Director shall notify Southwest of the new rental rates resulting from the respective appraisal, which Southwest agrees to pay.

4.2 Additional Consideration. Southwest and the City acknowledge that in furtherance of the William P. Hobby Airport Master Plan, Southwest agreed, following the completion of the Project, to discuss, in good faith, plans and project schedules for the possible conversion of Southwest's existing maintenance hangar at 8110 W Monroe Road at the Airport, being known as HOU.E320, for Southwest's replacement cargo/provisioning facility. Upon successful negotiation, lease, and construction of this replacement facility, Southwest would agree to vacate and return the current cargo/provisioning facility site to the City for City's use, as indicated in the William P. Hobby Airport Master Plan.

4.3 Due Date. Beginning on the Effective Date, rental payments, as specified in Section 4.1, are due and payable on or before the first day of each calendar month, in advance, and shall be paid without demand to City as follows or by any other means as the Director may direct in writing:

a. Form of Payment. All electronic payments by wire transfer to City shall be sent to the following, unless later changed by written notice from HAS Finance:

BANK NAME:	JP Morgan Chase
BANK ADDRESS:	707 Travis Street, 9 North Houston, TX 77002 Mail Code: TX2-N026
ABA ROUTING NUMBER:	111000614 - ACH 021000021 - Wire.
SWIFT CODE:	CHASUS33

ACCOUNT NUMBER: 001-03333978  
ACCOUNT NAME: City of Houston Aviation System Deposits  
ADDRESS: 16930 John F. Kennedy 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 Southwest.  
d. Any monies not paid on or before the fifth day following that due date may bear interest at the rate of 1.5% per month from the due date until paid.

4.4 Other Charges.

- a. Municipal Drainage Fee. Southwest shall additionally pay City-imposed municipal drainage utility fees which may be payable either to the City or HAS for the impervious surface contained on the Leased Premises.
- b. Other Costs. Southwest will pay for all operation and maintenance costs of the Southwest Project Components, and all utilities, water, stormwater and wastewater impact fees and telecommunication fees charged to the Leased Premises.
- c. Southwest shall pay for all utilities or services related to the Leased Premises, including hookups, which are furnished, provided or otherwise made available to Southwest by the City or any utility company providing direct service to Southwest. This will include installation fees, connection fees, stormwater, water and wastewater impact fees, and any other charges assessed by the City, Harris County, or any utility company for services provided to the Leased Premises. It is expressly agreed that the City is under no obligation to furnish any utilities except as presently exist at or near the Leased Premises. Southwest may install, only upon the Director's prior written approval (which shall not be unreasonably

withheld or delayed), additional meters for any or all of the utilities provided to it. Southwest shall bear the full cost of any utility modifications or additional installations (including meter installations) that Southwest may require. Southwest shall submit detailed plans of any intended modifications or installations (including all signage and graphics) to the Director. All such modifications or installations shall have the prior written approval of the Director (which shall not be unreasonably withheld or delayed) before being undertaken. If Southwest elects to install any separate meters, the City will use the information retrieved therefrom to compute utilities charges. All other utilities related to the Leased Premises shall also be Southwest's sole responsibility to pay.

- d. Southwest shall pay any other nondiscriminatory rentals, charges or fees in connection with its use of the Airport and its facilities as it relates to this Lease.
- e. Southwest understands and acknowledges that fines and/or penalties may be assessed as a result of Southwest's non-compliance with all federal, state and local statutes, ordinances, regulations, rules, policies, codes or guidelines now or hereafter in effect, as same may be amended from time to time. Any fines or penalties assessed against the City because of Southwest's non-compliance related to this Lease shall be reimbursed to the City by Southwest within ten (10) days of receipt of written notice from the Director setting forth the amount of such fine or penalty.
- f. All on-site personnel of Southwest, including subcontractors, who perform services under the Lease, are required to undergo a fingerprint-based criminal history records check. Fingerprints are collected at the Airport badging office and submitted electronically for investigation. Costs for the fingerprint-based criminal history records check are reflected in the cost of the badge. Southwest shall also provide at its sole cost any special clearances that may be required by the FAA or TSA.
- g. Southwest shall obtain HAS security badges for its personnel performing services on-site, including subcontractors. On-site personnel shall wear identification badges at all times while on Airport property. The cost of the badges, which is subject to change without notice, is the responsibility of Southwest, including replacements thereof. Southwest personnel losing badges will be charged for replacement badges at the then current rate.

**ARTICLE V.**  
**CONDITIONS AND OBLIGATIONS**

- 5.1 Southwest's Operations on Leased Premises. Southwest shall conduct its operations on the Leased Premises in an orderly and proper manner, considering the nature of such operation so as not to unreasonably annoy, disturb, endanger or be offensive to others at the Airport. Additionally, without limiting the generality of the foregoing, Southwest shall:
- a. Take all reasonable measures (i) to reduce to a minimum vibrations tending to damage any equipment, structure, building or portion of building which is located elsewhere on the Airport; (ii) to keep the sound level of its operations as low as possible recognizing that there is noise inherent in a maintenance hangar operation; and (iii) not to produce on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbance that interferes with the operation by the City, the FAA or other users of the Airport, of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communication.
  - b. Commit no nuisances, waste or injury on the Leased Premises, and not do, or permit to be done, anything which may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.
  - c. Collect all garbage, debris and waste material (whether solid or liquid) arising out of its occupancy of the Leased Premises, store same pending disposal in covered metal or other rigidly and sturdily constructed receptacles and dispose of same off the Airport at regular intervals, except for sewage which may be disposed of in the City's sewer system, all at Southwest's expense, in the manner required by the Director.
- 5.2 Maintenance of Leased Premises at Southwest's Expense. Southwest shall, throughout the Term of this Lease assume the entire responsibility, cost and expense, for all repair and maintenance whatsoever of the Leased Premises, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, without limiting the generality of the foregoing but subject to the provisions of Section 5.15 below, Southwest shall:
- a. Maintain at all times the Leased Premises in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair. Southwest shall follow all procedures established by HAS, now or after the Effective Date, to verify that it is maintaining the Leased Premises (including improvements and systems) in a good state of repair and preservation. HAS or its representatives may enter the Leased Premises in accordance with this Lease to conduct annual inspections after providing 48 hours' notice for the purpose of ensuring Southwest is properly maintaining the Leased Premises.

- b. Observe all Regulations and requirements of insurance on the Leased Premises concerning the use and condition thereof, for the purpose of reducing fire hazards and insurance rates on the Airport.
- c. Repair any damage caused by Southwest, or its Affiliates or others authorized by Southwest, to paving or other surfaces of the Leased Premises caused by any oil, gasoline, grease, lubricants or other flammable liquids and substances having a corrosive or detrimental effect thereon.
- d. Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, and in particular, plant, maintain and replant any landscaped areas on the Leased Premises, consistent with Southwest's construction and operations. Southwest shall mow the grass along the fence lines on both sides, as well as mowing all other grassy areas on the Leased Premises.

5.3 Right of Quiet Enjoyment. Subject to the other terms and conditions hereof, Southwest shall be entitled to and shall have possession and quiet enjoyment of the Leased Premises; provided however, Southwest acknowledges that there is noise inherent in the operation of the Airport.

5.4 Signs. Southwest shall not erect, maintain or display Sign(s) on the Leased Premises or on the grounds surrounding the Leased Premises or the Airport, unless Southwest obtains the prior written approval of the Director, which shall not be unreasonably withheld or delayed. For purposes of this Section, the term "Sign" means billboards, identification symbols, posters or any other similar devices which must conform to the requirements stated herein. Southwest shall be exempt from requirements to obtain a permit for any on-premise Sign(s) as set out in Section 4605(b)3 of the City of Houston Sign Code (the "Sign Code"); provided, however, Southwest shall comply with all requirements of Section 4611 of the Sign Code only to such extent that those requirements are not inconsistent with federal or state rules, regulations or laws, which shall control. If Southwest wishes to construct, erect or display a Sign(s) advertising the business and facilities of Southwest on the Airport, in an area requiring the Director's approval (as specified above), Southwest shall submit to the Director all drawings, sketches, designs, dimensions and intended location of such Sign(s). The Director shall then review the submitted information to determine if the location and design of the Sign(s) complies with all applicable Airport rules, regulations or laws. The Director shall not approve a Sign(s) that, in his opinion, fails to comply with applicable Airport rules, regulations or laws or that will cause confusion to aircraft pilots, automobile drivers or other members of the traveling public. The City shall have the right to remove, or have removed, any Sign(s) that are erected without approval. Southwest agrees to maintain any Sign(s), or other manner of identification, existing now or in the future, as may be approved by the Director, in good condition and repair at all times.

5.5 Right of Ingress and Egress. Subject to the rules and regulations of the City and the federal government governing operation and use of the Airport and its facilities and the

activities thereon (including but not limited to, the provisions regarding security at the Airport),

- a. Southwest shall be granted a right of entry to construct or install beautification landscaping outside of Southwest's Leased Premises, subject to approval of the Director.
- b. Southwest shall have the right to use such facilities at the Airport that are provided for common use by the public, and Southwest may operate necessary equipment in connection with its authorized business upon both the Leased Premises and such common-use areas at the Airport, necessary for the conduct of its business as defined in Section 3.1, subject to the rates and charges, if any, prevailing at the time of such use.
  - i. The right of ingress and egress to the Leased Premises shall not pertain to a specific route that may exist on the Effective Date of this Lease, but instead, merely refers to suitable access via a roadway across the Airport which leads to the Leased Premises.
  - ii. Southwest shall have suitable ingress and egress to the airfield to and from the Leased Premises. The right of ingress and egress to the airfield shall not pertain to a specific route to the Leased Premises that may exist on the Effective Date of this Lease, but instead, merely refers to access via the airfield which leads to the Leased Premises.
- c. The ingress and egress provided for above shall not be used, enjoyed or extended to any person or vehicle engaging in any activity or performing any act or furnishing any service for or on behalf of Southwest that Southwest is not authorized to engage in or perform under the provisions of this Lease unless expressly authorized in writing by the Director.

5.6 Right and Obligation to Make Improvements and Alterations.

- a. Aircraft Maintenance Hangar Facility. In addition to Southwest's obligation to repair and maintain the Leased Premises under Section 5.2, Southwest hereby agrees that it has expended not less than \$60,000,000.00 in capital improvement costs ("Minimum Improvement Expenditure"), to improve the Leased Premises for the design and construction of the Project within the first five (5) years following the execution date of the MOA. Notwithstanding the foregoing, upon request of Southwest, the Director shall have the right to extend the construction period due to delays not caused by Southwest or its contractors. Southwest acknowledges that it has requested a smaller acreage for the Leased Premises than originally anticipated under the MOA. As a result, an AOA fence north of Southwest's development will need to be constructed along the boundary line of its Leased Premises, and Southwest agrees to construct such fence at its own cost and

expense within six months of the Effective Date, unless an extension is granted by the Director.

- b. The costs allocable to the required Minimum Improvement Expenditure were the actual costs associated with the proposed capital investment/improvements and shall include architectural and engineering fees but shall exclude the cost of any and all furniture, furnishing, removable furniture-like partitions, special lighting fixtures.
- c. Southwest understands and agrees that it is not the City's intent to grant Southwest any additional term because Southwest's total capital investment exceed the Minimum Improvement Expenditure specified above.
- d. All modification, painting, sign installation, construction, or improvement work undertaken by Southwest on the Leased Premises shall be done at Southwest's sole cost and expense and shall be done in accordance with all applicable Regulations, including TIP requirements, and with the exception of routine maintenance and repair, shall have the prior written approval of the Director, which shall not be unreasonably withheld or delayed. The Director and his respective designees may inspect same in order to ensure that all construction work, workmanship, materials, and installations involved therein or incident thereto are performed in compliance with the approved plans and specifications. Additions, modifications and improvements, excluding Trade Fixtures, made by Southwest on the Leased Premises shall be and become a part of the Leased Premises vesting immediately in the City at the expiration or earlier termination of the Lease, subject to Southwest's obligations in Section 5.2. The City intends to accept all tangible personal property and materials used to improve the real property upon which the Project is constructed. All such construction or installation shall be designed and carried out in accordance with the TIP, permitting, and subject to inspection and approval. Southwest shall provide the Director with record drawings in AutoCAD, or other format required by the Director, reflecting improvements that are made to the Leased Premises within 90 days of certificate of occupancy or completion of improvements, as applicable.
- e. With respect to any construction work undertaken by Southwest on the Leased Premises, the construction contract or contracts shall require that the construction contractor provide payment and performance bonds in the amount of the applicable construction contract naming Southwest and the City as co-obliges on such bonds. It is a requirement of this Lease that Southwest confirms the existence of such bonds by the construction contractor and that Southwest ensures such bonds are in full force and effect throughout the duration of the construction of the improvement which is the subject of that construction contract. The construction contract shall provide that the construction contractor shall release and hold the City harmless from all liability arising out of the construction of the improvements to the Leased Premises. Southwest shall require the

construction contractor to carry insurance in an amount satisfactory to the Director (which shall not exceed Southwest's required coverage under this Lease), and Southwest shall keep a copy of the certificate of insurance on file. The City shall be an additional insured on each of the policies, and the Director shall receive at least thirty (30) days' notice of cancellation of any of the contractor's insurance policies. The requirements of this Paragraph (b) shall also apply to demolition, removal and remediation contracts and contractors, if any.

- 5.7 Rights to Remove Certain Property. Southwest shall be entitled during the Term of this Lease to remove from the Leased Premises any equipment or Trade Fixtures installed or placed on the Leased Premises by Southwest (or by others pursuant to agreements with Southwest), which are being replaced or which are not required in the operation of its business or in order to comply with any provision of this Lease, and which can be removed without structural damage to the Leased Premises and which by law have not become a part of the realty, subject, however, to any valid lien City may have for unpaid rentals or amounts payable by Southwest to City hereunder (and Southwest hereby grants such lien to City), and provided that Southwest shall have repaired all damage resulting from such removal of the equipment or Trade Fixtures to the reasonable satisfaction of the Director.
- 5.8 Antenna. Subject to the prior written approval of the Director, Southwest may install, maintain and operate antenna and such electronic, communications, meteorological and aerial navigational equipment and facilities as may be necessary or convenient solely for the operation of the Project, provided (i) the location, elevation, installation, maintenance or operation of such antenna, equipment or facilities does not interfere with operations conducted or equipment operated by the FAA; (ii) they meet any and all requirements of all governmental authorities; and (iii) they are used by Southwest solely in connection with operations as permitted in Section 3.1 and shall not be used or operated in any way for any other commercial activity.
- 5.9 Taxes, Charges and Liens.
- a. Southwest shall pay all taxes, if any, that may be levied, assessed or charged upon Southwest's leasehold estate or Southwest's leasehold improvements in the Leased Premises 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 to operate on the Leased Premises. However, Southwest shall have the right to contest, in good faith, the validity or application of any tax, license or permit and shall not be considered in default hereunder as long as the contest is in progress. Further, Southwest agrees to diligently prosecute the contest.
  - b. Southwest shall neither cause nor permit any laborers, mechanics, builders, carpenters, material men, contractors, or other liens or encumbrances (including judgment and tax liens) against the Leased Premises; provided, however, that Southwest may, at its own expense and in good faith, contest the validity of any alleged or asserted lien. Southwest may permit any contested lien to remain

unsatisfied and undischarged during the period of such contest, and any appeal therefrom, unless by such action any part of the Leased Premises may be subject to loss or forfeiture, in any of which events such liens shall be promptly satisfied and released in full.

- c. If the City and Southwest disagree with respect to Southwest's obligations to make a payment of any type under this Lease, Southwest may make the payment under protest, and such payment shall not prejudice Southwest's right to recover the disputed amount, together with interest if required by law, if it is determined that such payment was not due.

5.10 Restoration of Airport Property. In the event it shall be necessary for Southwest to disturb any paved area or any other property on the Leased Premises or at any other place on the Airport by excavation or otherwise, after first obtaining prior written approval of the Director, in his sole discretion and which shall not be unreasonably withheld or delayed, for the purpose of making repairs, replacements or alterations to the Leased Premises, Southwest shall obtain from City all required permits, and Southwest shall restore all such properties and paved areas excavated or otherwise disturbed to a condition at least as good as that in which they were prior to such work, and Southwest shall post any bonds required by general ordinance of City to guarantee that such property will be restored in the manner and to the condition required.

5.11 Airport Rules.

- a. From time to time the Director, TSA or the FAA may adopt and enforce rules, regulations or laws with respect to the occupancy and use of the Airport, its services or facilities, by persons, vehicles, aircraft and equipment that in the Director's, TSA's or FAA's opinion will:
  - i. facilitate the safe, efficient and economically practicable operation thereof;
  - ii. provide for the safety and convenience of those using the Airport; or
  - iii. protect the Airport and its facilities and the public from damage or injury resulting from operations on, into and from the Airport.
- b. Airport Rules. Southwest agrees to observe and obey the Regulations to require its officers, agents, employees, contractors and sublessees to observe and obey the same. The Director 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 Regulations. A current copy of the City's rules and regulations and any amendments thereto shall be available to Southwest upon request.
- c. Southwest shall conduct its operations in compliance with all Regulations, as defined herein, as same may be amended from time to time, including but not limited to the following:

- i. all environmental, health and safety laws and requirements of all federal, State and local governmental authorities having jurisdiction over the Airport, including without limitation, 49 CFR 1520, 1540 and 1542 (as same may be amended from time to time),
  - ii. all police, fire, sanitary and other laws and requirements of the City and all other governmental authorities having jurisdiction over operations at the Airport, and
  - iii. all applicable laws and requirements of all governmental authorities from which Southwest has obtained licenses, franchises, certificates, permits or other authorization which may be necessary to the conduct of Southwest's operations at the Airport.
- d. Additionally, Southwest shall comply with all requirements of insurers of the Leased Premises concerning the use and condition thereof for the purpose of reducing fires, hazards and other casualties, and not do, nor permit to be done, any act or thing that would invalidate or conflict with any fire insurance policies covering the Leased Premises or any hazardous condition so as to increase the risks normally attendant upon the operations permitted by this Lease.

5.12 Certain Federal Requirements.

- a. 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.
- b. During the performance of this Lease, Southwest, for itself, its assignees, and successors in interest (hereinafter referred to as "Southwest"), agrees as follows:
  - i. Compliance with Regulations. Southwest (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities set forth in Paragraph F 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 Lease.
  - ii. Nondiscrimination. Southwest, with regard to the work performed by it during this Lease will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Southwest will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices

when its Agreements covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

- iii. Solicitations for Subcontracts, 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 subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Southwest of the subcontractor's or supplier's obligations under its Agreements and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 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 its Agreements, the Director will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - (i) Withholding payments to Southwest or its contractor under its Agreements or Southwest's contract with such contractor until Southwest or its contractor complies; and/or
  - (ii) Cancelling, terminating, or suspending its Agreements or Southwest's contract with such contractor, in whole or in part.
- vi. Incorporation of Provisions. Southwest will include the provisions of paragraphs (1) through (6) in every subcontract, 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 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 Southwest becomes involved in, or is threatened with litigation by a subcontractor, 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.

- c. 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 its Agreements 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.
- d. 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 Airports; (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 Airports 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, Southwest shall include the provisions of 49 C.F.R. Part 21 and 49 C.F.R. Part 21, Appendix C(a)(1) as amended from time to time, in subcontracts it enters into pursuant to its Agreements.
- f. During the performance of its Agreements, 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); 28 C.F.R. Parts 35 and 36; 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.}.
- f. Southwest acknowledges and agrees that the provisions of all Federal-Aid Airport Program Grant agreements with the City that are applicable to the Airports are by reference made a part hereof to the same extent as though copied herein at length.
- g. 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.
- h. This Lease 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.).

5.13 Environmental. Southwest shall comply with Environmental Laws.

- a. Within 21 days of receipt of an invoice, Southwest shall reimburse the City for any fines or penalties that may be levied against the City by any governmental agency for Southwest's (or its agents' and employees') failure to comply with Environmental Laws.
- b. 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 Lease, except in strict compliance with Environmental Laws. The Airport is subject to various permits issued pursuant to Environmental Laws by federal and state agencies ("Environmental Permits") for operations at the Airport. Southwest is familiar with these Environmental Laws and Environmental Permits and shall conduct operations in accordance with them. Southwest understands that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.
- c. Close cooperation with City staff is necessary to ensure compliance with Environmental Permit terms and conditions, as well as to ensure safety and to minimize costs.
- d. The City's TPDES storm water discharge permit and any subsequent amendments, extensions, or renewals are incorporated into this Lease. Southwest shall be bound by all applicable portions of the permit.
- e. Southwest shall implement the TPDES requirements at its sole expense, 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.

- f. If either party asks, the other party shall provide any non-privileged information submitted to a government entity(ies) under applicable Environmental Laws.
- g. Southwest shall be invited to participate in any City organized task force or other work group established to coordinate permit compliance activities at the Airport.
- h. The City may enter upon Southwest's Facilities at any time upon reasonable advance notice for purposes of inspection to ensure that Southwest is complying with this Section and any other provisions in this Lease without committing a trespass.
- i. The City's remedies with regard to Southwest's environmental obligations hereunder are cumulative and survive termination of this Lease.

**j. WITH NO INTENT TO LIMIT SOUTHWEST'S INDEMNIFICATION TO THE CITY SET FORTH IN ELSEWHERE IN THIS LEASE, 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:**

- i. ANY INVESTIGATION, MONITORING, CLEANUP, CONTAINMENT, REMOVAL, STORAGE, OR RESTORATION WORK PERFORMED BY THE CITY OR A THIRD PARTY DUE TO SOUTHWEST'S, ITS EMPLOYEES', OR AGENTS' USE OR PLACEMENT OF HAZARDOUS MATERIALS (OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN) ON THE LEASED PREMISES, OR ANY OTHER AREAS IMPACTED BY THIS LEASE;**
- ii. ANY ACTUAL, THREATENED, OR ALLEGED HAZARDOUS MATERIALS CONTAMINATION OF THE LEASED PREMISES BY SOUTHWEST, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS OR AGENTS;**
- iii. THE DISPOSAL, RELEASE, OR THREATENED RELEASE OF HAZARDOUS MATERIALS BY SOUTHWEST, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS OR AGENTS AT THE LEASED PREMISES THAT AFFECTS THE SOIL, AIR, WATER, VEGETATION, BUILDINGS, PERSONAL PROPERTY, OR PERSONS;**
- iv. ANY PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE (REAL OR PERSONAL) ARISING OUT OF OR RELATED TO HAZARDOUS**

**MATERIALS USE BY SOUTHWEST, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS OR AGENTS AT THE LEASED PREMISES; OR**

- v. **ANY VIOLATION BY SOUTHWEST, ITS EMPLOYEES, SUBCONTRACTORS, JOINT VENTURE PARTNERS, OR AGENTS OF ANY ENVIRONMENTAL LAWS.**
  
  - k. **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 LEASE OR TO THE EXTENT CITY, ITS EMPLOYEES, SUBCONTRACTORS, AGENTS OR CONTRACTED THIRD PARTIES HAVE CAUSED SUCH LOSSES, CLAIMS, PENALTIES, FINES, SETTLEMENTS, LIABILITIES OR EXPENSES. THIS INDEMNITY DOES SURVIVE TERMINATION.**
- 5.14 Right of Flight. Southwest understands that the City reserves the right of flight for the passage of aircraft above the surface of the Leased Premises in accordance with the criteria of the FAA and that the grant and demise of the Leased Premises is subject to this reserved right of flight, which right shall include the right to cause in that airspace the noise that may be inherent to the operation of aircraft now known or hereafter used for the navigation of or flight in the air. Further, Southwest understands and agrees that City reserves the right to use said airspace for landing at, taking off from, and operating aircraft on and over the Airport and that the grant and demise hereof is subject to this reserved right. In the event that the FAA at any time requires, as a condition precedent to the granting of funds for the improvement of public airport facilities at the Airport, any modifications of or changes to this Lease, Southwest will consent to those modifications and changes to the extent that may be reasonably required to enable City to obtain said funds; provided, however, that Southwest shall not be required to consent to any modification or change that would result in a substantial alteration of the Leased Premises or materially and significantly reduce either the rental area or the rental value of the Leased Premises or any part thereof or materially and significantly interfere with Southwest's operations hereunder or materially and significantly increase Southwest's financial obligations or legal liabilities under this Lease.
- 5.15 City's Rights of Entry to Leased Premises and/or Maintain Premises.
- a. The City, through its representatives, shall have the right, after providing Southwest with 48 hours' notice (or immediately upon exigent circumstances), to enter upon the Leased Premises for the purpose of inspecting the same, for ensuring Southwest's compliance with the terms of this Lease and observing the performance by Southwest of its obligations hereunder and for the doing of any act which the City may be obligated or have the right to do under this Lease or otherwise. Without limiting the generality of the foregoing, the City shall have the right, at its own cost and expense, whether for its own benefit, or for the benefit of other parties at the Airport, to maintain existing and future utility, mechanical,

electrical, or other systems. The City shall also have the right, following advance notice to and consultation with Southwest, to enter upon the Leased Premises at all reasonable times to make repairs, replacements or alterations thereto that may, in the opinion of the City, be deemed necessary or advisable, and from time to time to construct or install over, in, or under the Leased Premises systems or parts thereof and, in connection with the maintenance, use the Leased Premises for access to other parts of the Airport otherwise not conveniently accessible, and City shall return the Leased Premises to their prior condition without expense to Southwest. It is specifically understood and agreed that the reservation of the aforesaid right by the City shall not impose or be construed to impose upon the City any obligation to repair, replace, or alter any utility service lines now or hereafter located on the Leased Premises for the purposes of providing utility services to the Leased Premises. Moreover, in the exercise of its rights under this Section 5.15, the City shall not unreasonably interfere with the actual use or occupancy of the Leased Premises by the Southwest or its tenants.

- b. Southwest shall meet the requirements of Section 5.2; provided, however, if in the reasonable opinion of the Director or the City, Southwest's failure to perform a repair or maintenance endangers the safety of the public, the employees or property of the City, or other tenants at the Airport, and the Director or the City indicates this opinion in a prior written notice to Southwest after having given Southwest the ability to cure within a reasonable time and Southwest not having cured or be in the process of curing, the Director may cause the maintenance to be performed at any time after the giving of the notice, and Southwest agrees to pay to City the reasonable cost and expense of the performance actually paid by the City on demand. Furthermore, should the Director, the City, its officers, employees, agents, or contractors undertake any work hereunder as permitted by this Lease, Southwest hereby waives any claim for damages, consequential or otherwise, as a result therefrom except for claims arising from those parties' gross negligence or willful misconduct. The foregoing shall in no way affect or alter the primary obligations of Southwest as set forth in this Lease and shall not impose or be construed to impose upon the Director or the City any obligation to maintain the Leased Premises, unless specifically stated otherwise herein.

#### 5.16 Surrender and Holding Over.

- a. Upon the expiration of the Term or earlier termination of this Lease pursuant to any terms hereof, Southwest shall surrender the Leased Premises to the City in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair. All equipment and Trade Fixtures, including Signs, installed or placed by Southwest on the Leased Premises shall be removed by Southwest prior to, or in conjunction with, the expiration or termination of this Lease, unless Director allows Southwest a reasonable period of time to remove such property, in exchange for payment of rental for such time. Any such property not timely removed shall be deemed to be abandoned by Southwest and the City shall have the right to dispose of such property in accordance with State law and

charge Southwest the cost paid for its removal and any repair for any resulting damage unless caused by City's gross negligence or willful misconduct. Any damage to the Leased Premises occasioned by the removal of Southwest's property shall be restored at Southwest's expense to at least the same condition that existed prior to such damage.

- b. Any holding over of the Leased Premises or any part thereof by Southwest after the expiration or termination of this Lease shall be on a month to month basis at the then-current appraised rates on ground and improvements based on an independent appraisal.

**ARTICLE VI**  
**RELEASE AND INDEMNIFICATION OF THE CITY**

**6.1 RELEASE AND INDEMNIFICATION OF THE CITY.**

- a. **WITH NO INTENT TO LIMIT SOUTHWEST'S INDEMNITY OBLIGATION TO THE CITY AS SET OUT IN THE LEASE WITH RESPECT TO THE MATTERS SET FORTH HEREIN, 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, REASONABLE 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 LEASE THAT IS CAUSED BY:**
  - i. **THE ACTUAL OR ALLEGED NEGLIGENCE, OR WILLFUL MISCONDUCT OF SOUTHWEST OR THE 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 THE PORTION OF THE CLAIM THAT RESULTS FROM THE FAULT OF AN INDEMNITEE); AND**
  - ii. **THE STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY OF SOUTHWEST OR ANY CONTRACTOR ENGAGED BY SOUTHWEST.**
- b. **SOUTHWEST SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS AS PROVIDED HEREIN DURING THE TERM OF THIS LEASE AND FOR FOUR YEARS AFTER THE LEASE 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 OR DEMAND RESULTS FROM THE NEGLIGENCE OF ANY PARTY OTHER THAN SOUTHWEST, ANY CONTRACTOR ENGAGED BY SOUTHWEST OR THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS OR DIRECTORS (IT BEING ACKNOWLEDGED THAT SOUTHWEST SHALL NOT BE LIABLE FOR 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 5 ABOVE SHALL BE APPLICABLE).

6.2 Indemnification Procedures-In General.

a. Notice of Claims.

- i. If the City or Southwest receives notice of any claim of an indemnified loss, the receiving Party shall give written notice to the other Party within 30 days. The notice must include the following: a description of the indemnification event in reasonable detail; the basis on which indemnification may be due; and the anticipated amount of the indemnified loss.
- ii. This notice does not stop 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 should it receive a revised notice of claim or circumstance. 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.

b. Defense of Claims.

- i. Assumption of Defense. Southwest may assume the defense of the claim at its own expense with counsel chosen by Southwest 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 will assume and control the defense, and all defense expenses constitute an indemnification loss.
- ii. 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.

6.3 Insurance. With no intent to limit Southwest's liability under the indemnification provisions set forth above, Southwest covenants to provide and maintain in full force and effect during the Term of the Lease, and all extensions and amendments thereto, at least the following insurance. If any of the following insurance is written as "claims made" coverage and the City is required to be carried as an additional insured, then Southwest agrees to purchase policy period extensions so as to provide coverage to the City for a period of at least two (2) years after the expiration or termination of the Lease.

a. Risks and Limits of Liability. Southwest shall provide and maintain in effect at a minimum the following insurance coverage and limits of liability throughout the Term of the Lease:

**Workers' Compensation including Broad Form All States endorsement:**  
As set by statute

**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)

**Excess/Umbrella Liability:**

Bodily Injury and Property Damage	\$5,000,000 combined single limit per occurrence
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**Aviation/Airport Liability Insurance:** \$10,000,000 combined single limit per occurrence

**Environmental Impairment/Pollution:** \$5,000,000 combined single limit per occurrence  
Including coverage for receiving, dispensing, transporting, removal and handling of aviation fuels or any other pollutants, as well as any other operations involving pollutants.

Southwest may self-insure Environmental Impairment/Pollution coverage.

**All Risk Property Insurance:** Replacement Value  
For Leased Premises including any new improvements, including fire, lighting, vandalism, and extended coverage perils

**Automobile Liability Insurance:**  
For automobiles used by Southwest in the course of its performance under the Lease, including Southwest's non-owned \$1,000,000 combined single limit

and hired autos: per occurrence

For vehicles used off the Leased Premises, \$10,000,000 combined single limit  
but on the airfield: per occurrence  
(Aggregate limits are per 12-month period unless otherwise indicated.)

- b. Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Director. It is agreed, however, that nothing the Director does or fails to do with regard to the insurance policies shall relieve Southwest from its duties to provide the required coverage hereunder.
- c. Issuers of Policies. The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall 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 edition of Best's Key Rating Guide.
- d. Insured Parties. Each policy, except for Workers' Compensation and Employer's Liability, must name the City (and its officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements.
- e. Deductibles. Southwest shall be responsible for and pay 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.
- f. Cancellation. SOUTHWEST SHALL GIVE AT LEAST THIRTY (30) DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELLED, MATERIALLY CHANGED OR NON-RENEWED. WITHIN THE 30-DAY PERIOD, SOUTHWEST SHALL PROVIDE OTHER SUITABLE POLICIES IN LIEU OF THOSE ABOUT TO BE CANCELLED, MATERIALLY CHANGED, OR NON-RENEWED SO AS TO MAINTAIN IN EFFECT THE REQUIRED COVERAGE. Southwest shall give written notice to the Director within five (5) days of the date on which total claims by any party against Southwest reduce the aggregate amount of coverage below the amounts required by the Lease. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to the Lease. Southwest shall obtain in its commercial general coverage, an automatic reinstatement clause restoring such policy to its original aggregate limits at any time total claims by any party against Southwest reduce the aggregate amount of coverage below the amounts required by the Lease.
- g. Subrogation. Each policy must contain an endorsement or equivalent policy language to the effect that the issuer waives any claim or right of subrogation to recover against the City, its officers, agents or employees.

- h. Endorsement of Primary Insurance. Each policy, except Workers' Compensation, must contain an endorsement or equivalent policy language that such policy is primary to any other insurance available to the Additional Insured with respect to claims arising under the Lease.
- i. Liability for Premium. Southwest shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.
- j. Proof of Insurance.
  - i. On the Effective Date and during the Term of the Lease, Southwest shall furnish the Director with Certificates of Insurance, along with an Affidavit from Southwest confirming that the Certificates accurately reflect the insurance coverage maintained.
  - ii. Southwest shall continuously and without interruption, maintain in force the required insurance coverages specified in this Section. If Southwest does not comply with this requirement, the Director, at his or her discretion, may:
    - (a) immediately suspend Southwest from any further performance under the Lease and begin procedures to terminate for default, or
    - (b) purchase the required insurance with City funds and invoice the cost of the premiums to Southwest which Southwest agrees to pay within ten (10) days of receipt of any such invoice.
  - iii. The City shall never waive or be estopped to assert its right to terminate the Lease because of its acts or omissions regarding its review of insurance documents.
- k. Contractors and Subcontractors.
  - i. Southwest shall require all contractors and subcontractors to carry insurance naming City as an additional insured and meeting all of the requirements except coverage amount. The coverage amount shall be commensurate with the amount of the particular contract, but in no case less than \$1,000,000 per occurrence. Southwest shall provide copies of all insurance certificates to the Director upon request.
  - ii. In connection with the design and construction of any Southwest improvements to the Leased Premises, Southwest shall require:
    - (a) The construction contractor and its subcontractors to secure builder's risk coverage equal to the replacement value of the improvements; and

- (b) The construction contractor and its subcontractors to secure asbestos abatement liability coverage if the project includes work with asbestos. Such asbestos abatement 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.
  - I. Other Insurance. Southwest will, upon request, furnish to the City adequate evidence of provisions for Social Security and Unemployment Compensation Insurance, to the extent such provisions are applicable to Southwest's operations hereunder.
  - m. Self-Insurance. Southwest shall have the right to self-insure Environmental Impairment/Pollution coverage. If Southwest chooses to self-insure such coverage, it shall demonstrate the financial ability to meet the coverage amount.
  - o. City Right to Review and Adjust Coverage Limits. The Director reserves the right at reasonable intervals during the Term of the Lease to cause the insurance requirements of this Article VI 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 industry as well as that of Southwest, and, based on the written recommendations of such consultant, and in consultation with Southwest, to reasonably adjust the insurance coverage and limits required herein, but not more often than every twelve (12) months.
  - p. SOUTHWEST SHALL GIVE 30 DAYS' WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELLED, MATERIALLY CHANGED OR NON-RENEWED. WITHIN THE 30-DAY PERIOD, SOUTHWEST SHALL PROVIDE OTHER SUITABLE POLICIES IN LIEU OF THOSE ABOUT TO BE CANCELLED, MATERIALLY CHANGED, OR NON-RENEWED SO AS TO MAINTAIN IN EFFECT THE REQUIRED COVERAGE. If Southwest does not comply with this requirement, the Director, at his reasonable discretion, may:
    - i. immediately suspend Southwest from any further performance hereunder and begin procedures to terminate this Lease for default; or
    - ii. purchase the required insurance with City funds and bill the cost of the premiums as additional rent/charge pursuant to Section 4.5(a).
- 6.4 Condemnation. If the Leased Premises, or any part thereof, is taken under the exercise of the power of eminent domain by any governmental authority or person, firm or corporation acting under governmental authority, or by agreement in lieu thereof, the proceeds, including any that may be recoverable by either the City or Southwest, shall be used as follows:

- a. Taking of all or substantially all the Leased Premises (i.e., where the remainder is insufficient in Southwest's reasonable judgment for the operations contemplated under this Lease). If all or substantially all of the Leased Premises are taken by eminent domain proceedings, this Lease shall be deemed terminated by such proceedings as of the date of taking (subject to the provisions of this Section 6.5). The proceeds allocable to the Leased Premises (exclusive of improvements constructed by Southwest and not yet wholly vested in City, as applicable) shall be paid to the City, and the balance of the condemnation proceeds divided between the City and Southwest, with Southwest's portion thereof being the fractional part, the numerator of which is the total number of months from the date of the taking until the scheduled expiration of this Lease and the denominator of which is the total number of months from the date of execution of this Lease until the scheduled expiration of this Lease.
- b. Taking of less than substantially all of the Leased Premises (i.e., where the remainder is sufficient in Southwest's reasonable judgment for the operations contemplated by this Lease). If less than substantially all of the Leased Premises are taken by eminent domain proceedings, this Lease shall continue in full force and effect and the proceeds shall be applied as follows:
  - i. First, to the repair, rebuilding and restoration of the improvements so as to make them suitable for the uses permitted hereunder.
  - ii. The balance, if any, shall be divided by allowing the City the market value of the Leased Premises taken (exclusive of improvements constructed by Southwest and not yet wholly vested in City, as applicable). The remainder shall be prorated between City and Southwest, the Southwest's pro-rata part being the fraction thereof the numerator of which is the number of months from the date of the taking until the scheduled expiration of this Lease and the denominator of which is the total number of months from the date of execution of this Lease until the scheduled expiration of this Lease.
- c. Condemnation of Right to Use of Leased Premises for Limited Period. If the use, for a limited period, of all or part of the Leased Premises is taken by eminent domain proceedings, or by agreement in lieu thereof, this Lease shall, nevertheless, continue in full force and effect, and the proceeds shall be paid to Southwest. If the temporary taking continues for an extended period of time or if the proceeds paid to Southwest are insufficient to cover its rental and financial obligations under the Lease, Southwest may request to terminate this Lease under Section 8.7 and the Parties shall not unreasonably withhold their consent to mutual termination.
- d. Right to Appeal. It is understood that the foregoing provisions do not, in any way, restrict the right of Southwest or the City to appeal the award made by commissioners or any court in any condemnation proceedings. The City shall

cooperate fully with the Southwest in the handling and conduct of any prospective or pending condemnation proceeding with respect to the Leased Premises or any part thereof. In no event will the City voluntarily settle, or consent to the settlement of, any prospective or pending condemnation proceeding with respect to the Leased Premises or any part thereof without the written consent of Southwest.

**6.5 Damage or Destruction of Leased Premises.**

- a. In the event, any improvements on the Leased Premises are destroyed or damaged to the extent that they are unusable, Southwest shall have the election of repairing or reconstructing the improvements substantially as they were immediately prior to such casualty, or in a new or modified design, or not to construct the improvements. Southwest's election is subject to the Director's written approval. Southwest shall give the Director written notice of its election within sixty (60) days after the occurrence of such casualty. If Southwest elects not to repair or reconstruct the damaged improvements within the sixty (60) day election period, this Lease shall terminate at once and Southwest shall abandon the Leased Premises. If no repairs are made, the insurance proceeds covering the improvement shall be paid to the owner of the improvements as of such date of damage or destruction, pursuant to Section 5.6(a), less clean-up costs and the unamortized value of the improvements. In the event of damage or destruction to any of the improvements upon the Leased Premises, the City shall have no obligation to repair or rebuild the improvements or any fixtures, equipment or other personal property installed by Southwest on the Leased Premises.
- b. If Southwest elects to repair or reconstruct the improvements, Southwest shall use its insurance proceeds from the policy covering the destroyed improvements. If the insurance proceeds are not sufficient, Southwest agrees to pay the deficiency. If Southwest elects to repair or reconstruct, Southwest shall, at its expense, replace and repair any and all fixtures, equipment and other personal property necessary to properly and adequately continue its authorized activities on the Leased Premises. In no event shall Southwest be obligated to provide equipment and fixtures in excess of those existing prior to the damage or destruction. Southwest agrees that such work will be commenced and completed with due diligence.
- c. Prior to any repair or reconstruction described above, Southwest shall submit plans and specifications to the Director for his written approval. Such repair or reconstruction shall be in accordance therewith. Any changes must be approved in writing by the Director.
- d. With respect to this Section 6.5, all approvals and rulings by the Director shall be promptly made and not unreasonably withheld to the detriment of Southwest.

**ARTICLE VII.  
MODIFICATION, ASSIGNMENT AND SUBLEASE**

- 7.1 Modification. No officer or employee of the City shall have the right to extend, modify, or change the terms hereof without Southwest's prior written consent and authority of an ordinance of the City Council.
- 7.2 Assignments and Subleases.
- a. Southwest shall not sell, convey, sublease, transfer or assign, in law or otherwise, this Lease or any part hereof, or any rights created hereby, without the prior written consent of the Director, which consent shall not be unreasonably withheld.
  - b. Southwest, upon the prior written consent of the Director, may sublet a portion or portions of the Leased Premises to a Subsidiary or Affiliate of Southwest, which consent will be granted unless, if in the reasonable opinion of the Director, such sublease is in conflict with the permitted uses as stated in Article III hereof. Any assignment or sublease of this Lease permitted under the terms hereof, shall be on the condition that the assignee or sublessee accepts and agrees to all of the terms, conditions, and provisions of this Lease, and agrees to accept and discharge all of the covenants and obligations of Southwest hereunder pertaining to the subleased area, including but not limited to, the payment of all sums due and to become due by Southwest under the terms hereof.
  - c. Southwest shall provide the City with a copy of any assignment or sublease of this Lease to which Southwest is a party (including an assumption that occurs pursuant to the provisions of Section 9.1) within thirty (30) days of the effective date of the assignment or sublease.

**ARTICLE VIII.**  
**DEFAULT, TERMINATION**

- 8.1 Events of Default. The following shall be events of default as to the Southwest under this Lease.
- a. Failure by Southwest to pay any rentals pursuant to Section 4.1 within thirty (30) days of the date it receives written notice from the City that such rent is past due.
  - b. Failure by Southwest to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a), for a period of thirty (30) days after receipt of written notice, specifying such failure and requesting that it be remedied, by Southwest from the Director (except where fulfillment of its obligation requires activity over a period of time and the Southwest shall commence to perform whatever may be required for fulfillment within thirty (30) days after the receipt of notice and shall diligently continue such performance to successful completion, except for causes beyond its control).

- c. Abandonment, desertion or vacation of the Leased Premises by Southwest, or the filing of any lien against the Leased Premises or Southwest's interest therein or any part thereof in violation of this Lease which remains unreleased for a period of sixty (60) days from the date of such filing unless within said period the Southwest is contesting in good faith the validity of such lien and while such lien is appropriately bonded.
- d. The insolvency of Southwest, or the assignment of all or a substantial part of Southwest's assets for the benefit of its creditors, or the appointment of a receiver or trustee for Southwest.

8.2 Remedies on Default. Whenever any event of default referred to in Section 8.1 hereof shall have happened and continue to exist and after thirty (30) days written notice to Southwest specifying the default and Southwest's failure to cure same within such thirty (30) day period, or other period permitted under this Lease, the City may take any one or more of the following remedial steps as against Southwest:

- a. The City may re-enter and take possession of the Leased Premises without terminating this Lease and shall use its reasonable efforts to mitigate damages and sublease the Leased Premises for the account of Southwest, holding Southwest liable for the difference between the rentals and other amounts payable by Southwest hereunder and the rentals and other amounts payable by such sublessee in such subleasing.
- b. The Director may terminate this Lease and exclude Southwest from possession of the Leased Premises, and the City may use its best efforts to mitigate damages by leasing the same to another party for the account of Southwest, holding Southwest liable for all rents and other amounts due under this Lease and not paid by such other party.
- c. City may take whatever other action at law or in equity as may appear necessary or desirable to collect the rental then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Southwest under this Lease.

8.3 Additional Remedy. In addition to the other remedies herein provided, the City may, in the event of default under Section 8.1(b), enter the Leased Premises (without such entering causing or constituting a termination of this Lease or an interference with the possession of the Leased Premises by Southwest) and do all things reasonably necessary to cure such event of default, charging to Southwest the reasonable cost and expense thereof and Southwest agrees to pay City upon demand such charge in addition to all other amounts payable Southwest hereunder.

8.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under

this Lease or hereafter existing under law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, unless such notice is herein expressly required or is required by law.

- 8.5 Attorneys' Fees and Expenses. In the event, there should be a default under any of the provisions of this Lease and the City should determine that the services of an attorney are required or the City incurs other expenses for the collection of rent or the enforcement of performance or observance of any obligation or agreement on the part of Southwest, Southwest agrees that it will on demand therefor pay to the City the reasonable, just and necessary attorneys' fees and other reasonable expenses so incurred.
- 8.6 Failure to Exercise Rights. Failure by the City or Southwest to exercise any of its rights arising hereunder by reason of any default or act of the other party, including but not limited to acceptance by City of fees, charges and rental or other payments after a default by Southwest hereunder, shall not be deemed a waiver of any subsequent act or default, similar or dissimilar by the other party, its successors or assigns.
- 8.7 Mutual Termination. This Lease may be mutually terminated by written agreement of Southwest and the Director.
- 8.9 Unilateral Termination by Southwest; Conditions. Southwest shall have the right to terminate this Lease, without penalty, upon giving the Director no less than one hundred (180) days' advance written notice, with the termination being effective at any time after the thirtieth (30th) anniversary of the Effective Date of this Lease.
- 8.10 Unilateral Termination by City; Conditions. City shall have the right to terminate this Lease, upon giving Southwest no less than thirty-six (36) months' advance written notice, with the termination being effective at any time after the thirtieth (30th) anniversary of the Effective Date of this Lease, conditioned upon the approval and appropriation from City Council of the payment to Southwest the appraised value of Southwest's leasehold interest under this Lease.

#### **ARTICLE IX. MISCELLANEOUS PROVISIONS**

- 9.1 Change in Southwest's Corporate Existence. In the event of a change in Southwest's corporate existence, this Lease shall terminate unless the surviving, resulting or transferee corporation, as applicable, satisfies the following conditions; or is otherwise approved by the City:
- a. irrevocably and unconditionally assumes in writing all of the obligations of Southwest in connection with the Leased Premises;
  - b. has a net worth at least equal to that of Southwest immediately prior to the consolidation, merger, sale or transfer; and
  - c. is qualified to do business in Texas.

9.2 Notices. All notices or consents to either Party must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, or any other national overnight express delivery service. All notices or consents must be addressed to the Party to whom the notice is given at its address set out in the preamble hereof or other address the receiving Party has designated previously by proper notice to the sending Party and all payments shall be sent to those addresses. Postage or delivery charges must be paid by the Party sending the notice, consent or payment.

9.3 Consents and Approvals.

- a. With respect to the approvals herein required of Southwest, Southwest shall from time to time, upon request by the City, furnish to the Director appropriate certifications setting forth the officers or representatives of Southwest who are authorized to grant such approvals and to bind the Southwest thereto; and the City and all third parties affected by any such approvals may rely upon any writing purporting to grant such approvals signed by any officer or representative thus certified as being conclusively binding upon Southwest, and any such writing shall itself constitute conclusive evidence that any and all actions necessary to be taken with respect to the matter thus approved by such officer or representative shall be conclusively presumed to have been so taken by Southwest, and that the approval therein given has been authorized by Southwest.
- b. The Director may give any consent or approval herein required of the City unless otherwise provided; subject, however, to the provisions of Section 9.6.
- c. All consents and approvals required or permitted herein by either Party shall be given in writing. Whenever consent or approval is required under this Lease by either the City or Southwest, such consent or approval shall not be unreasonably withheld nor be delayed for an unreasonable period of time.

9.4 Operation and Maintenance of Airport by City. The City agrees to operate, maintain and keep in good repair the areas and facilities at the Airport for the public and Southwest in accordance with the practices of a reasonably prudent airport operator. The City agrees to use reasonable 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. The City agrees to maintain and operate the Airport in accordance with all applicable standards, rules, regulations or laws of the FAA.

9.5 Severability Clause. If any part of this Lease is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

9.6 Non-Waiver.

- a. If either Party fails to require the other to perform a term of this Lease, 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 Lease.

- b. An approval by the Director, or by any other employee or agent of the City, of any part of Southwest's performance does not waive compliance with this Lease or establish a standard of performance other than that required by this Lease and by law. The Director is not authorized to vary or modify the terms of this Lease.

9.7 Written Amendment. Unless otherwise specified elsewhere in this Lease, this Lease may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Southwest. The Director is only authorized to perform the functions specifically delegated to him in this Lease.

9.8 Force Majeure.

- a. Timely performance by the Parties is essential to this Lease. However, neither Party will be deemed to have committed an event of default for delays or other failures to perform its obligations under this Lease to the extent the delay or failure is directly caused by Force Majeure at the Airport and affecting the Leased Premises. Force Majeure shall not excuse Southwest from paying rent under this Lease. Force Majeure means fires, floods, explosions, hurricanes and other weather events, and other acts of God, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority.
- b. This relief is not applicable unless the affected Party does the following:
  - i. uses due diligence to remove the effects of the Force Majeure as quickly as practicable; and
  - ii. provides the other Party with prompt written notice of the cause and its anticipated effect.
- c. 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 Lease by the City.
- d. If in the reasonable judgment of the Director, Southwest fails to use due diligence to remedy the results of the Force Majeure, except as provided in Section 6.5, the Director may reasonably terminate this Lease by giving written notice to Southwest specifying a termination date at least thirty (30) days after such notice, and this Lease shall terminate on that termination date unless before then, Southwest commences and thereafter diligently continues in good faith efforts to remedy the results of the Force Majeure. This termination does not constitute a default or breach of this Lease. SOUTHWEST WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION OF THIS LEASE IN ACCORDANCE WITH THE TERMS OF THIS

SECTION 9.9(d) EXCEPT FOR AMOUNTS DUE SOUTHWEST UNDER THIS LEASE AT THE TIME OF THE TERMINATION, EXCEPT AS PROVIDED IN SECTION 6.5.

- e. Southwest is not relieved from performing its obligations under this Lease due to a strike or work slowdown of its employees. Southwest shall employ only fully trained and qualified personnel during a strike.
- 9.9 Parties in Interest. Except to the extent specifically granted herein, this Lease does not bestow any rights upon any third party but binds and benefits the City and Southwest only.
- 9.10 Entire Agreement. This Lease merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Lease.
- 9.11 Applicable Laws. This Lease is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States of America, and all rules, regulations or laws of any regulatory body or officer having jurisdiction. Venue for any litigation relating to this Lease is Harris County, Texas.
- 9.12 Enforcement. The City Attorney or his or her designee may enforce all legal rights and obligations hereunder 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 Lease, with the exception of those documents made confidential by federal or State law or regulation.
- 9.13 Survival. Southwest shall remain obligated to the City under all clauses of this Lease that expressly or by their nature extend beyond the expiration or termination of this Lease, including but not limited to, the indemnity provisions and environmental requirements. The City's remedies with regard to Environmental Requirements are cumulative and survive termination of the lease.
- 9.14 Successors and Assigns. This Lease binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment set out in Section 7.2 herein. This Lease does not create any personal liability on the part of any officer or agent of the City. This Lease shall remain binding and effective in the event that City should transfer, sell or assign ownership of the subject property to any third person or entity, except to the extent prohibited by any federal or state rule, regulation or law.
- 9.15 Time of the Essence. In all instances per the terms, conditions and provisions of this Lease, time shall be of the essence.

- 9.16 Captions. Captions contained in this Lease are for reference only, and, therefore, have no effect in construing this Lease. The captions are not restrictive of the subject matter.
- 9.17 Remedies Cumulative. All remedies provided in this Lease shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the City, or the Southwest, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnification shall not prevent the exercise of any other remedy.
- 9.18 Ambiguities. If any term of this Lease is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.
- 9.19 Authority to Execute. Southwest represents and warrants that Southwest has full and lawful authority to enter into and execute this Lease in its own capacity.
- 9.20 Audits. Upon reasonable written notice, representatives of the City may perform, or have performed, audits of the Southwest's records related to this Lease for the purposes of determining compliance with the terms of this Lease. Southwest shall be required to keep records related to this Lease available for this purpose for at least two years after this Lease terminates. This provision does not affect the applicable statute of limitations.
- 9.21 Interpretations. All terms defined herein and all pronouns used in this Lease are deemed to apply equally to singular and plural and to all genders. Titles and headings of the articles and sections of this Lease have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Lease and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein. In the event of any ambiguity contained herein, it shall not be construed for or against any party hereto on the basis that such party did or did not author same.
- 9.22 Lease to Federal Government. During a time of war or national emergency, the City shall have the obligation to lease the landing area or any part thereof to the United States government for military or naval use, and if any such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended, but such suspension shall not exceed the Term of this Lease.
- 9.23 Prohibition on Contracts with Companies Boycotting Israel. Southwest represents that, to the extent this Lease constitutes a contract for goods or services within the meaning of (and to the extent Southwest is required to make this representation under) Section 2270.002 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2270, Texas Government Code, and subject to applicable law, neither Southwest nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Southwest (i) currently boycotts Israel, and (ii) for the duration that Southwest is providing goods and services to the City under this Lease, Southwest will not boycott Israel. The terms "boycotts Israel" and "boycott Israel" as used in this

paragraph mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

- 9.24 Prohibition on Business with Iran, Sudan, or Any Foreign Terrorist Organization. Southwest represents that, to the extent this Lease constitutes a governmental contract within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252.152 of the Texas Government Code, and except to the extent otherwise required by applicable law, neither Southwest nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Southwest (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.
- 9.25 Human Trafficking. The requirements and terms of 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, are incorporated into this Lease for all purposes. Southwest has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Lease's countersignature date. Southwest shall notify the City's Chief Procurement Officer, City Attorney, and Director of any information regarding possible violation of which Southwest is aware by Southwest or its subcontractors providing services or goods under this Lease.
- 9.24 Living Wage. To the extent this Lease 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 and the requirement and terms of such Living Wage Executive Order are incorporated into this Lease 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 of 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 Lease 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 Lease.
- 9.25 Electronic Signatures. The Parties hereby agree that each Party may sign and deliver this Grantee 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.

**REMAINDER OF PAGE LEFT INTENTIONALLY BLANK**

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

ATTEST/SEAL:

By: [Signature]  
Name: Stephen F. Sisneros  
Title: Managing Director Airport Affairs

SOUTHWEST AIRLINES CO.

By: [Signature]  
Name: Mark R. Shaw  
Title: V.P. - Chief Legal Officer  
Federal Taxpayer ID No. 74-1569240

ATTEST/SEAL:

Pat Jefferson-Daniel  
Interim City Secretary

THE CITY OF HOUSTON, TEXAS

Sylvester Turner  
Mayor

APPROVED:

DocuSigned by:  
Mario Diaz  
Mario C. Diaz  
Director of Aviation

COUNTERSIGNED:

Chris Brown  
City Controller

APPROVED AS TO FORM:

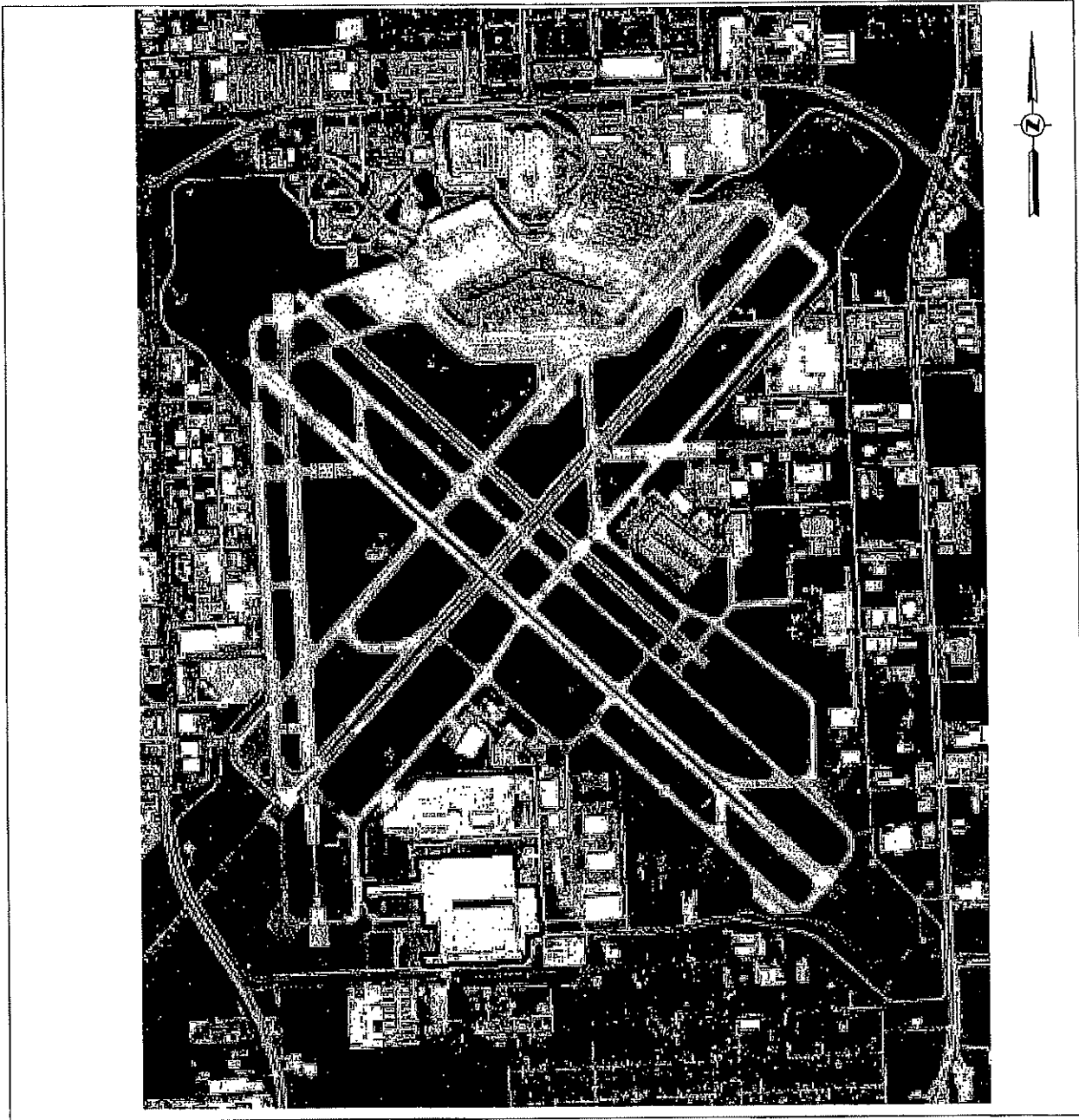
DocuSigned by:  
Mary Chang  
Senior Assistant City Attorney  
LN: 004600176004

DATE COUNTERSIGNED: \_\_\_\_\_

DS JS DS (W)

**EXHIBIT "A"**

**WILLIAM P. HOBBY AIRPORT (HOU)  
General Location of Leased Premises**



VICINITY MAP  
(NOT TO SCALE)



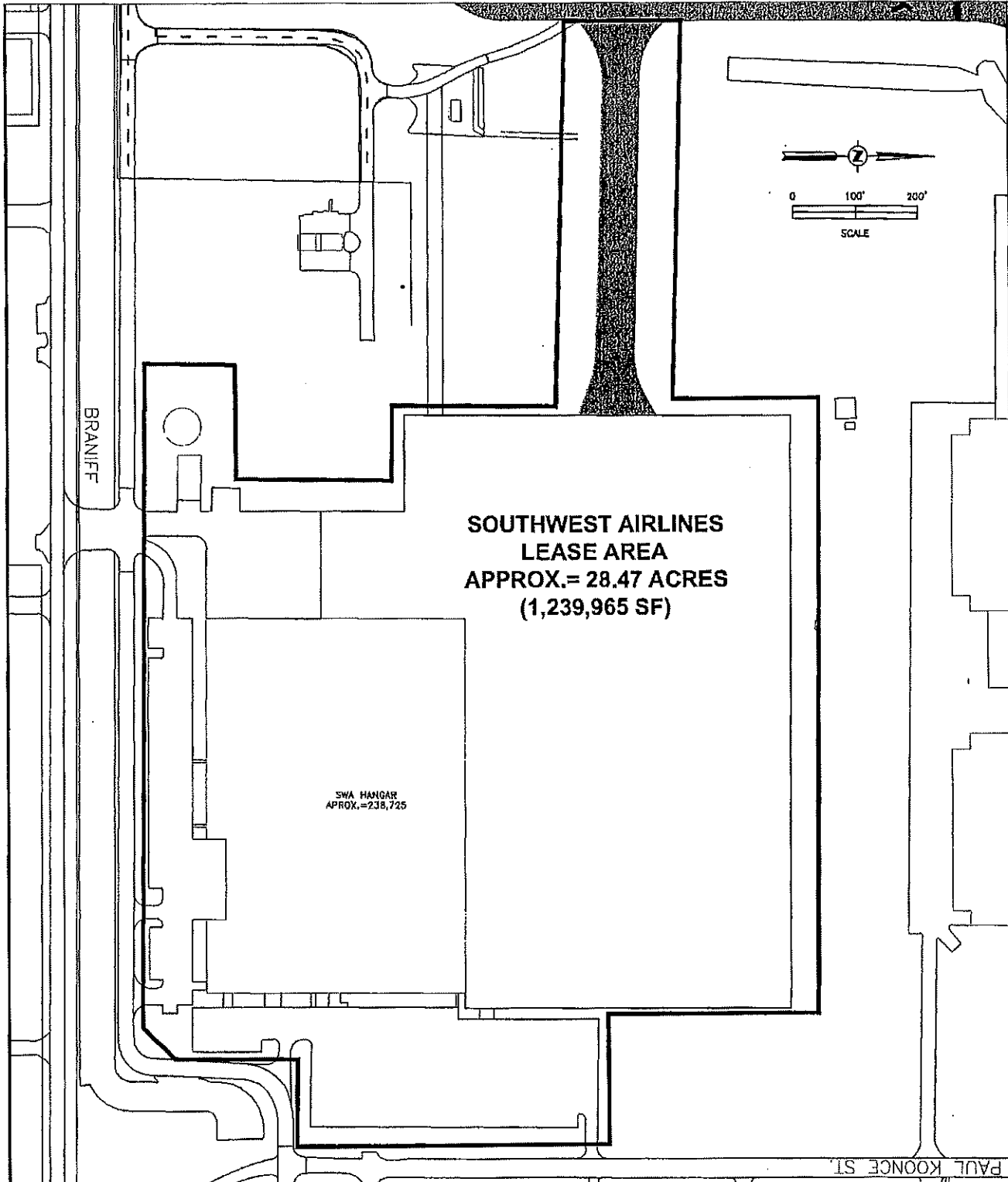
DRAWN BY:  
JDC  
CHECKED BY:  
BZ/RB  
DATE:  
07-29-2020  
SCALE:  
NTS  
DWG NAME:  
HPR-114-SWA

WILLIAM P. HOBBY

**SOUTHWEST AIRLINES**  
7901 BRANIFF  
VICINITY MAP

H.A.S. NO.	HPR-114
C.I.P. NO.	
PROJECT NO.	
SHEET NO.	1 OF 1

**EXHIBIT "B"**  
**LEASED PREMISES**



DRAWN BY:  
JDC

CHECKED BY:  
BZ/RB

DATE:  
09-15-2020

SCALE:  
AS SHOWN

DWG NAME:  
HPR-114-SWA

WILLIAM P. HOBBY

SOUTHWEST AIRLINES  
7901 BRANIFF  
LEASE SURVEY

H.A.S. NO.  
HPR-114

C.I.P. NO.

PROJECT NO.

SHEET NO.  
1 OF 1

**EXHIBIT "B-1"**

**LEASED PREMISES**

**Metes and Bounds Description**

*(To be attached)*

EXHIBIT "C"

DEPICTION OF SOUTHWEST PROJECT COMPONENTS

