

**FIRST AMENDMENT TO
LEASE OF TERMINAL SPACE AT
SOUTHWEST FLORIDA INTERNATIONAL AIRPORT**

THIS AMENDMENT is made and entered into this ____ day of _____, 2024, by and between **LEE COUNTY PORT AUTHORITY**, a political subdivision of the State of Florida (herein referred to as "Authority") with offices at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913 and **ABM AVIATION, INC.**, (f.k.a Air Serv Corporation) a Georgia corporation (herein referred to as "Lessee"), with offices at 14141 Southwest Freeway, Suite 400, Sugar Land, TX 77478.

Background

The Authority operates Southwest Florida International Airport, located in Lee County, Florida (the "Airport"). Lessee operates a ground service and skycap service business at the airport pursuant to an agreement with the Authority entitled, "Permit Agreement for Ground Service and Skycap Service at Southwest Florida International Airport" dated November 12, 2014, at which time Lessee was a Georgia corporation named Air Serv Corporation. In January of 2017, Air Serv Corporation underwent a name change to ABM Aviation, Inc. Lessee and Authority are also parties to a "Lease of Terminal Space at Southwest Florida International Airport" dated November 12, 2014 (the "Lease"). Lessee desires to lease additional space within the Airport's terminal building. The Authority is willing to lease such additional space upon the terms and conditions provided below.

NOW THEREFORE, in consideration of the mutual promises herein, the parties hereby mutually agree to amend the Lease as follows:

Effective December 1, 2023, the Lease shall be amended such that:

1. Description of Leased Premises. The description of the leased premises in Article 1 of the Lease is amended to read as follows:

Room #1067, containing approximately 160 square feet, located in the bag claim area on the first floor, shown as "Leased Premises" on Exhibit A attached hereto, and

Curbside Storage Space, containing approximately 48 square feet, located behind the curbside check-in counters on the second floor, shown as "Curbside Storage Space" on Exhibit B attached hereto.

2. Exhibits. The attached "Exhibit B" shall be added to the Lease.

3. Rent. The monthly rent set forth in the first sentence of Article 4 ("Rent") of the Agreement is increased to \$2,446.77 per month.

4. Security Deposit. Article 12 entitled "Security Deposit" shall be deleted and replaced with the following:

ARTICLE 12
SECURITY DEPOSIT

Lessee shall post and keep with the Authority a security deposit, in the form of cash or an irrevocable letter of credit, in a format satisfactory to the Authority, in the initial amount of seven thousand (\$7,000.00) dollars, to serve as security for Lessee's performance hereunder. Said amount may be adjusted

upward or downward by the Authority, with thirty (30) days notice to Lessee, based on Lessee's actual payment performance, and, if adjusted upward, such additional cash or letter of credit will be posted by Lessee and retained by Authority as security for the faithful performance of Lessee's obligations hereunder. If the security is posted in the form of a letter of credit, Lessee shall provide extensions or other updated documents to the Authority annually, or as otherwise needed, such that there is, through the entire term of this agreement, such a letter of credit, that is in full force and effect, so as to serve as adequate security to the Authority's satisfaction.

If Lessee is a party to any other agreement with the Authority and has provided the Authority with security (whether in the form of a cash security deposit, a bond, or a letter of credit) for its performance thereunder, such security shall also serve as security for Lessee's performance of Lessee's obligations to Authority under this Lease.

Authority shall have the right, but not the obligation, to apply said security deposit to the payment of any sum due to Authority which has not been paid, including, but not limited to, reimbursement of any expenses incurred by Authority in curing any default of Lessee, or to the cost of restoring the leased premises to its original condition, reasonable use and wear excepted. In the event that all or any portion of the security deposit is so applied, Lessee shall promptly upon demand by Authority remit to Authority the amount of cash required to restore the security deposit to its original sum, and Lessee's failure to do so within ten (10) days after its receipt of such demand shall constitute a default under this Lease. If said deposit shall not have been applied for any of the foregoing purposes, it shall be returned to Lessee, without interest, as soon after the end of the term of this Lease as it can be reasonably determined that all obligations for which Lessee may be liable to Authority have been paid.

5. Administration of lease. The following shall be added to the Lease as Section 16.7:

Section 16.7 Administration of Agreement.

Unless and until Authority gives Lessee written notice to the contrary, Authority designates its Executive

Director, and his or her designees, as its authorized representatives in dealing with Lessee pursuant to this lease, including but not limited to exercising any of the Authority's rights or options herein to terminate, suspend, continue, or extend this lease, giving or withholding approvals to Lessee, consulting with, giving notice to, receiving notice from, or otherwise dealing with Lessee.

6. Civil Rights and Title VI. The Following shall be added as Article 17 of the Lease:

ARTICLE 17
CIVIL RIGHTS and Title VI

Section 17.1 General Civil Rights Provisions. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefitting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee. This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Section 17.2 Compliance with Nondiscrimination Requirements. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- A. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly

or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

- C. Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- D. Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Port Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Port Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- F. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Port Authority or the Federal Aviation Administration may direct as a means of

enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Port Authority to enter into any litigation to protect the interests of the Port Authority. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Section 17.3 Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

- A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination 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.

- B. In the event of breach of any of the above Nondiscrimination covenants, Authority will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon.

Section 17.4 Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

- A. Lessee, for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national

origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

- B. In the event of breach of any of the above nondiscrimination covenants, Authority will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon.

Section 17.5 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether

such programs or activities are Federally funded or not);

8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 - 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

7. All other provisions of the Lease remain unchanged and in full force.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this agreement on the date first above written.

[signature page to follow]

ABM AVIATION, INC.

(Lessee)

By: 

Print Name: Scott J. Flynn

As Its: SUP, Deputy General Counsel & Asst. Secretary

Date: 1-29-24

LEE COUNTY PORT AUTHORITY

ATTEST:

KEVIN KARNES, CLERK

By: _____
Chair or Vice Chair,
Board of Port Commissioners

By: _____
Deputy Clerk

Date: _____

Approved As To Form for the
Reliance of the Lee County
Port Authority only:

By: _____
Port Authority Attorney

