

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

DEPARTMENT: Aviation

AGENDA DATE: February 23, 2016

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

DISTRICT(S) AFFECTED: All

SUBJECT:

Resolution authorizing the City Manager to sign a Third Amendment to the Lease and Concession Agreement (Agreement) for the Development and Operation of Food & Beverage Concessions at El Paso International Airport by and between the City of El Paso (City) and Host International, Inc (Host).

BACKGROUND / DISCUSSION:

The City and Host International entered in to a Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions effective November 22, 2006 (Expires June 30, 2021) to provide food and beverage concession services at El Paso International Airport. The recent merger between American Airlines and U.S. Airways has resulted in approximately 7% of airport passenger traffic shifting from Concourse B to Concourse A. Host desires to expand its offerings in Concourse A to accommodate this shift.

The agreement requires a mid-term refurbishment of \$470,855 on or before June 30, 2017 which will be increased by \$339,145 for a total of \$810,000 to refurbish existing facilities and accommodate the cost for new facilities in Concourse A. Host is requesting an extension of the term (5 years) to June 30, 2026 to allow for a return on investment for these improvements. With the extension, Host will invest \$450,000 for a second mid-term refurbishment on or about December 31, 2022.

The Airport believes the provisions of this amendment adequately address concerns with the passenger shift to Concourse A due to the merger and provide airport passengers with the desired level of customer service.

PRIOR COUNCIL ACTION:

- Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions awarded to Host International, Inc. on October 31, 2006.
- First Amendment approved by City Council on December 8, 2009
- Second Amendment approved by City Council on February 28, 2012

AMOUNT AND SOURCE OF FUNDING:

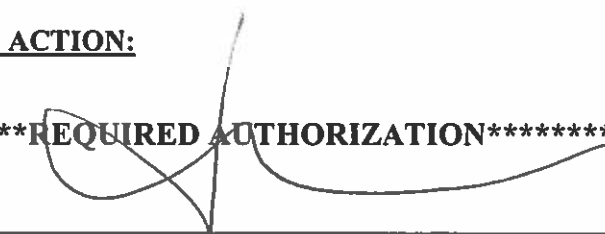
N/A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



for: Monica Lombraña, A.A.E., Director of Aviation

RESOLUTION

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

That the City Manager be authorized to sign the Third Amendment to Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions at El Paso International Airport ("Concession Agreement") by and between the City of El Paso ("Lessor") and Host International, Inc. ("Concessionaire") to extend the Primary Term of the agreement an additional five (5) years; increase the Concessionaire's refurbishment obligation; and revise the Leased Premises.

ADOPTED THIS ____ DAY OF _____ 2016.

THE CITY OF EL PASO

Oscar Leoser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:



for: _____
Monica Lombraña, A.A.E.
Director of Aviation

Additional information:

Space Changes

- Delete storage and support space lower level behind BK and C&M – Approximately 5,000 sf at \$15.86 = \$79,300. This space can be utilized by another tenant (potentially TSA) at the terminal rate amount of \$43.85.
- Build out of old restrooms in Concourse A to expand seating area for Home Team Sports - Approximately 511 sf

Refurbishments:

- Upgrade of Temporary Starbucks in Concourse A
- Re-concepting of 12th Fairway to PGA Tour Restaurant (Home Team Sports will feature Mesa Street menu)
- Refurbishment of existing facilities.
- Revenue to EPIA FY2015 - \$773,627.00
- Decline in passenger traffic since RFP issued and contract award in 2006:

Calendar Year	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 (through November)
ENPLANED	1,714,552	1,713,868	1,662,855	1,540,195	1,544,488	1,480,032	1,455,382	1,389,428	1,395,138	1,261,160
DEPLANED	1,687,778	1,688,832	1,639,909	1,522,993	1,520,905	1,467,604	1,438,494	1,375,285	1,383,110	1,259,809
TOTAL	3,402,330	3,402,700	3,302,764	3,063,188	3,065,393	2,947,636	2,893,876	2,764,713	2,778,248	2,520,969

From Host's website:

- HMSHost's development team has created customized food and beverage programs at more than 110 airports worldwide.
- Host has invested \$6,116,865 in capital improvements since the beginning of the agreement

STATE OF TEXAS)
)
COUNTY OF EL PASO) **THIRD AMENDMENT TO THE LEASE AND
CONCESSION AGREEMENT FOR THE
DEVELOPMENT AND OPERATION OF
FOOD & BEVERAGE CONCESSIONS AT
EL PASO INTERNATIONAL AIRPORT**

This Third Amendment to the Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions (the “Third Amendment”) is made and entered into this ___day _____of 2015, by and between the City of El Paso, a municipal corporation existing under the laws of the State of Texas (the “Lessor”), and Host International, Inc., a corporation organized under the laws of the State of Delaware (the “Concessionaire”).

WHEREAS, Lessor and Concessionaire entered into a Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions (the “Concession Agreement”), with an effective date of November 22, 2006, to provide food and beverage concession services at the El Paso International Airport (the “Airport”) on a non-exclusive basis;

WHEREAS, effective December 8, 2009 the Concession Agreement was amended by the First Amendment to Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions at El Paso International Airport, which amended the description of the Leased Premises and allowed for reconcepting of concessions and reallocation of square footage based upon new uses;

WHEREAS, effective February 28, 2012 the Concession Agreement was amended by the Second Amendment to Lease and Concession Agreement for the Development and Operation of Food & Beverage Concessions at El Paso International Airport, which delegated authority to the Director of Aviation to fulfill the Lessor’s obligations required and allowed by the Concession Agreement;

WHEREAS, the merger between American Airlines and U.S. Airways has resulted in the consolidation of the airlines in Concourse A, transferring approximately 7% of the total airport passengers from Concourse B to Concourse A;

WHEREAS, Concessionaire desires to expand its concession offerings in Concourse A given the airlines movement and is requesting a five (5) year extension to the Primary Term to realize a return on the investment;

WHEREAS, Concessionaire is contractually obligated to invest \$470,855 for a Midterm Refurbishment of existing Facilities prior to June 30, 2017 and the parties wish to amend the Agreement with respect to the refurbishment obligation such that Concessionaire will now invest \$470,855 plus an additional \$339,145 for a total of \$810,000 for the Midterm Refurbishment; and

WHEREAS, in partial consideration for this Third Amendment, Concessionaire is willing to invest \$450,000 on or about December 31, 2022 for an additional refurbishment of Facilities for the five (5) year extension; and

WHEREAS, the Concession Agreement expressly provides for the addition and deletion of space as well as reconcepting of concessions due to changes in Airport usage; and

WHEREAS, the parties are desirous that Concessionaire will add a Starbucks coffee shop in Concourse A, re-brand the existing concession known as “12th Fairway” restaurant as “PGA” restaurant, and relinquish use of approximately 5,000 square feet of Storage and Support Space located to the east of the concessions now known as Carlos and Mickey’s restaurant and Burger King restaurant on the ground floor of the Terminal Building and to build out the area in Concourse A next to Home Team Sports for additional seating, containing approximately 511 square feet.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to amend the Concession Agreement as follows:

1. Section 3.1 B is amended to read as follows:

B. The Primary Term shall commence on the termination of the Interim Term and continue until June 30, 2026.

2. Section 7.3 is amended to read as follows:

In addition to the ongoing, routine maintenance described in Section 9.2 herein, Concessionaire shall budget for and expend such funds as necessary, but not less than EIGHT HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$810,000.00) to maintain a First Class standard of quality of the Facilities (hereinafter referred to as the “Mid-Term Refurbishment”). The scope and extent of necessary renovation, remodeling, upgrade, redecorating and/or reconcepting for each Facility shall be jointly determined by Director and Concessionaire. The Mid-Term Refurbishment costs shall not include financing costs, interest, inventory, or intra-company charges related to construction and shall be spent without additional consideration or privileges and without extension of the Term. If Concessionaire and Director cannot jointly agree upon the necessary scope and extent of refurbishment for any particular Facility, the Director may determine the refurbishment required and Concessionaire agrees to be bound by such decision.

Concessionaire shall complete the Mid-Term Refurbishment of the Facilities prior to June 30, 2017. All plans and specifications for the Mid-Term Refurbishment are subject to the approval of the Director in accordance with the provisions of ARTICLE 8 herein.

In addition to the ongoing, routine maintenance described in Section 9.2 herein and the Mid-Term Refurbishment, Concessionaire shall budget for and expend such funds as necessary, but not less than FOUR HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$450,000.00) to maintain a First Class standard of quality of the Facilities (hereinafter referred to as the “Extended-Term Refurbishment”). The scope and extent of necessary renovation, remodeling, upgrade, redecorating and/or reconcepting for each Facility shall be jointly determined by Director and Concessionaire. The Extended-Term Refurbishment costs shall not include financing costs, interest, inventory, or intra-company charges related to construction and shall be spent without additional consideration or privileges and without extension of the Term. If Concessionaire and Director cannot jointly agree upon the necessary scope and extent of refurbishment for any particular Facility, the Director may determine the refurbishment required and Concessionaire agrees to be bound by such decision.

Concessionaire shall complete the Extended-Term Refurbishment of the Facilities prior to December 31, 2022. All plans and specifications for the Extended-Term Refurbishment are subject to the approval of the Director in accordance with the provisions of ARTICLE 8 herein.

3. Section 7.4 is amended to read as follows:

All plans, specifications, and documents necessary for the Transition Plan, the Mid-Term Refurbishment, and the Second Mid-Term Refurbishment shall be submitted in accordance with the provisions of Article 8 herein.

4. In accordance with Section 2.2, the parties agree that Concessionaire will (a) add an additional Starbucks coffee shop to the Leased Premises in Concourse A, (b) delete from the Leased Premises approximately 5,000 square feet of Storage and Support Space behind and to the east of the current Carlos and Mickey’s restaurant and Burger King restaurant on the ground floor of the Terminal building, and (c) Concessionaire will build out the area in Concourse A next to Home Team Sports for additional seating, containing approximately 511 square feet. The details of the addition and deletion shall be handled in the manner envisioned by Section 2.2 and related sections of the Concession Agreement as amended. Concessionaire shall continue to pay rent for all of the Storage and Support Space until Concessionaire shall have completed the construction of the Space to the satisfaction of the Director.

5. In accordance with Section 2.2, the parties agree that Concessionaire will reconceive and change the format, design, name, and trade dress of the 12th Fairway Grill in Concourse B to the PGA Tour Grill. The details of the changes shall be handled in the manner envisioned by Section 2.2 and related sections of the Concession Agreement as amended.

6. Section 15.38 is added to read as follows:

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

1. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that 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, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the “Acts and Regulations”) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

 B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

 B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, 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. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination 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). Grantee shall 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. 1681 et seq).

B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

7. **Ratification.** Except as herein amended, all other terms and conditions of the Concession Agreement, as amended by that First Amendment and Second Amendment, not specifically modified by this Third Amendment shall remain unchanged and in full force and effect.

8. **Effective Date.** This Third Amendment shall be effective upon the date it is approved by the El Paso City Council.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

EXECUTED this ____ day of _____, 2015.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Marvin Foust
Assistant City Attorney

APPROVED AS TO CONTENT:



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

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2015, by Tomás González as City Manager of the City of El Paso, Texas (Lessor).

Notary Public, State of Texas

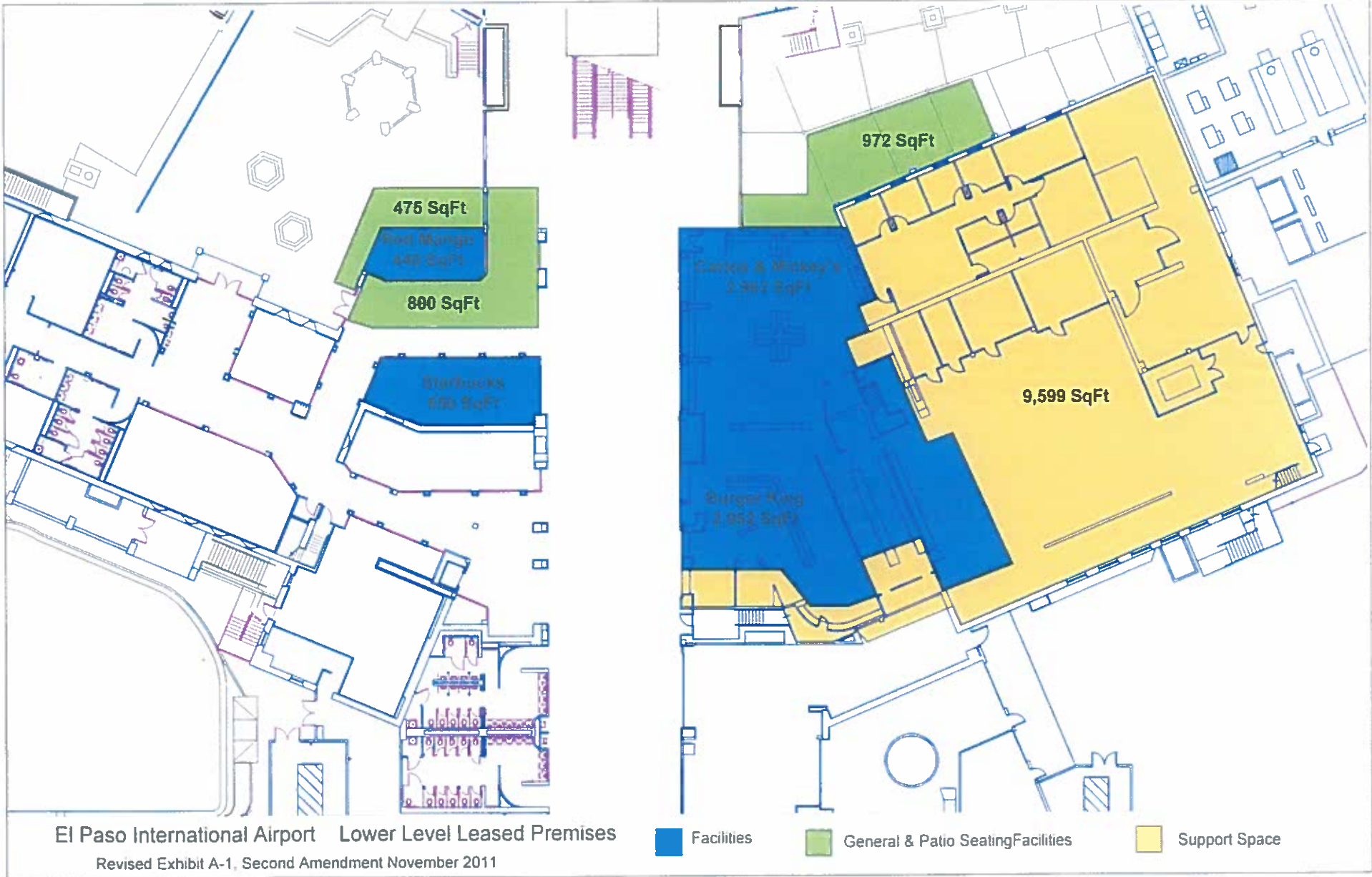
[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

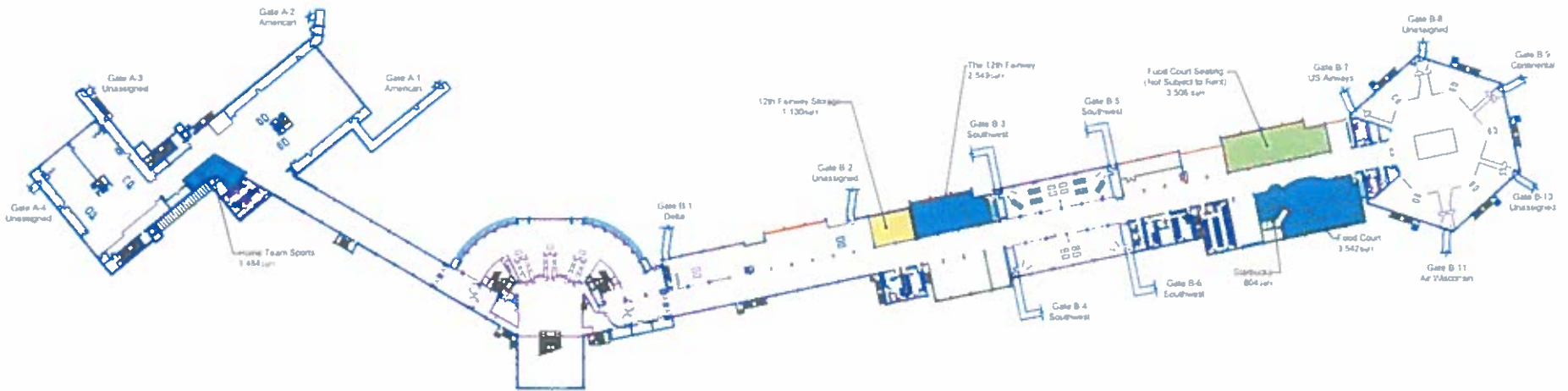
Exhibit A-3**El Paso International Airport - Food & Beverage Concessions Distribution**

	<u>Space Allocation (square feet)</u>
<u>Storage & Support (Yellow on Exhibits)</u>	
Lower Level and Upper Level	
Food & Beverage Support ^{1/}	10,729
Total Storage & Support	10,729
<u>General / Patio Seating (Green on Exhibits)</u>	
Lower Level	
Food & Beverage Seating (El Paso Vineyards)	800
Food & Beverage Patio (El Paso Vineyards)	475
Food & Beverage Patio (Carlos & Mickey's)	972
Total General / Patio Seating	2,247
<u>Facilities (Blue on Exhibits)</u>	
Upper Level (Concourse B)	
Starbucks	804
Food Court (south side of concourse)	3,542
12th Fairway	2,549
Upper Level (Concourse A)	
Varsity Grill	1,484
Lower Level	
Starbucks	650
El Paso Vineyards	440
Carlos & Mickey's	2,962
Burger King	2,052
Total Facilities	14,483
Total Food & Beverage Concession Space	27,459

Notes:

1/ Includes administrative, storage and support area for Concessionaire and Carlos & Mickey's.





- Color Key**
- Support Space
 - General Seating
 - Facilities

El Paso International Airport Upper Level Leased Premises

Revised Exhibit A-2, Second Amendment November 2011