

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

**DEPARTMENT:** Aviation

**AGENDA DATE:** April 4, 2017

**CONTACT PERSON NAME AND PHONE NUMBER:** Monica Lombraña, A.A.E., 212-7301

**DISTRICT(S) AFFECTED:** 2 & 3

**CITY STRATEGIC GOAL #1:**

Create an Environment Conducive to Strong, Sustainable Economic Development.

**SUBJECT:**

That the City Manager be authorized to execute the First Right of Refusal Agreement between the City of El Paso and The Hamstra-Suitonu JV, LLC (HSJV) pertaining to property described as 174,240 square feet within Lots 5, 6, and 7, Block 13, El Paso International Airport Tracts, Unit 8, City of El Paso, El Paso County, Texas and commonly known and numbered as 1700 Hawkins Blvd., El Paso, Texas.

**BACKGROUND / DISCUSSION:**

The Department of Veterans Affairs has issued a solicitation for the construction/leasing of a community based outpatient clinic, to which HSJV has responded.

The right of first refusal will allow HSJV the opportunity to respond to the solicitation without entering into a long-term lease agreement with the Airport, and will prevent the Airport from entering into an agreement with another party while the Department of Veterans Affairs goes through the process.

The right of first refusal will expire on September 30, 2017 based on proposed award by Department of Veterans Affairs, with two additional, three- month options, same terms and conditions.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

## RESOLUTION

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

That the City Manager be authorized to execute the First Right of Refusal Agreement between the City of El Paso and The Hamstra-Suitonu JV, LLC pertaining to property described as 174,240 square feet within Lots 5, 6, and 7, Block 13, El Paso International Airport Tracts, Unit 8, City of El Paso, El Paso County, Texas and commonly known and numbered as 1700 Hawkins Blvd., El Paso, Texas.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2017.

CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor


ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Marvin Foust  
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

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

STATE OF TEXAS            )  
                                      )  
COUNTY OF EL PASO    )       **FIRST RIGHT OF REFUSAL AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between the CITY OF EL PASO ("City"), and The Hamstra-Suitonu JV, LLC, a Texas limited liability company ("Rightholder").

**WITNESSETH:**

**WHEREAS**, City is the owner of certain property within El Paso County, Texas, and

**WHEREAS**, Rightholder desires to obtain a First Right To Offer to lease certain property within El Paso County, Texas to construct and lease a 32,599 square foot building for the Department of Veteran Affairs.

**NOW, THEREFORE**, it is agreed as follows:

1. **GRANT OF FIRST RIGHT OF REFUSAL.** In consideration of One Thousand Four Hundred Fifty-Two and No/100 Dollars (\$1,452.00), receipt of which is hereby acknowledged, City hereby grants to Rightholder the exclusive right to offer to lease the following property:

A portion out of Lots 5, 6, and 7, Block 13, El Paso International Airport Tracts, Unit 8, City of El Paso, El Paso County, Texas, containing 174,240 square feet of land more or less, commonly known and numbered as 1700 Hawkins Blvd., El Paso, Texas (the "Premises"). The exact size of the Premises shall be determined by a survey at the time of exercise by Rightholder of its right hereunder according to the building plans then in effect and approved by the Director of Aviation at the time of exercise of the right.

as more particularly described in Exhibit A, which is attached to and by this reference made a part of this Agreement, at a price of \$.05 per square foot per annum for 174,240 square feet.

2. **AGREEMENT PERIOD.** This Agreement shall commence on the date of execution of this Agreement and continue until 5 p.m. on the 30<sup>th</sup> day of September, 2017. However, should the City receive an offer to lease on the subject property within this agreement period, Rightholder shall have 6 months from receipt of notice from City of such offer or until the expiration of the period of this Agreement, whichever is less, in which to exercise this right or the agreement period will expire. Should Rightholder fail to exercise this right in accordance with the terms of this agreement and within the time

limits set forth herein, this agreement will terminate, all sums received herewith or for any extension of the agreement period shall be retained by the City, and neither party shall have any further claims against the other.

3. **EXTENSION OF AGREEMENT PERIOD.** The Director of Aviation is authorized to grant two (2) additional extensions for three (3) months each to the Rightholder, provided the Rightholder remits to the City the sum of: One Thousand Four Hundred Fifty-Two and No/100 Dollars (\$1,452.00) on or before the expiration date of each then-existing agreement period. Failure of Rightholder to remit and deliver said extension payment on or before the due date will result in the loss of any extension rights and this Agreement will expire at the end of the existing Agreement Period, if not sooner terminated or called by notification from the City as provided for in Paragraph 2.
4. **EXERCISE OF RIGHT.** Rightholder may exercise this right, if not sooner terminated, on or before the expiration date of the agreement period, by execution and tender to City of a standard Southern Industrial Lease for a term of forty (40) years, and payment of the first three (3) months' rent in the amount of \$27,791.28 (annually \$111,165.12) in accordance with said Lease, provided however, that exercise of the right and the resulting lease shall not become binding on the City of El Paso unless and until approved by action of the City Council of El Paso. If the exercise of the right and the resulting Lease are not approved by the City, the consideration paid for the right and the payment of three (3) months' rent shall be refunded to the Rightholder, and neither party shall have any further claims against the other.

If an Option to extend under Section 3 above is exercised and Rightholder enters into a lease within that option period, any monies paid for that option period will be applied to the rent. All other payments under Section 3 shall be retained by Grantor.

5. **RETENTION OF CONSIDERATION.** If this right is not exercised or if Rightholder withdraws its offer to Lease, as evidenced by its execution of the Lease, prior to the time City Council acts on the Lease, all sums paid and services rendered to City by Rightholder shall be retained by City free of any rights and claims from Rightholder and neither party shall have any further claims against the other. If the offer to lease is accepted and executed by the City, all sums paid for the first right to offer to lease shall be retained by the City.
6. **NOTICES.** Unless otherwise provided herein, any notice, tender, or delivery to be given by either party to the other may be effected by personal delivery in writing or by registered or certified mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

TO CITY OF EL PASO:

Director of Aviation  
El Paso International Airport  
P.O. Box 971278  
El Paso, Texas 79925-1091

TO RIGHTHOLDER:

Hamstra-Suitonu JV, LLC  
12028 North 200 West 46392  
Wheatfield, IN 46932

Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt, or if by personal delivery, by the date shown as received by the Director of Aviation. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this paragraph.

7. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties relating to the First Right of Refusal herein granted. Any oral representations or modifications concerning this Agreement shall be of no force and effect, excepting a subsequent modification in writing, signed by both parties and supported by consideration.
8. **BINDING EFFECT.** This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto except as hereinabove expressly provided.
9. **SEVERABILITY.** If any provision of this agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this agreement will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.
10. **LAW GOVERNING CONTRACT.** The laws of the State of Texas shall govern the validity, interpretation, performance and enforcement of this agreement. Venue shall be in the courts in El Paso County, Texas.
11. **ATTORNEYS' FEES.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief awarded as determined by a court of competent jurisdiction.

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

IN WITNESS whereof, the parties have executed this First Right of Refusal Agreement as of the day and the year first above written.

CITY: CITY OF EL PASO

\_\_\_\_\_  
Tomás González  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Marvin Foust  
Senior 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 \_\_\_\_\_, 2017, by Tomás González as City Manager of the City of El Paso, Texas.

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

My Commission Expires:  
\_\_\_\_\_


(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

**ATTEST:**

  
Printed Name: Mitchell Van Kley

**RIGHTHOLDER:**

HAMSTRA-SUITONU JV, LLC

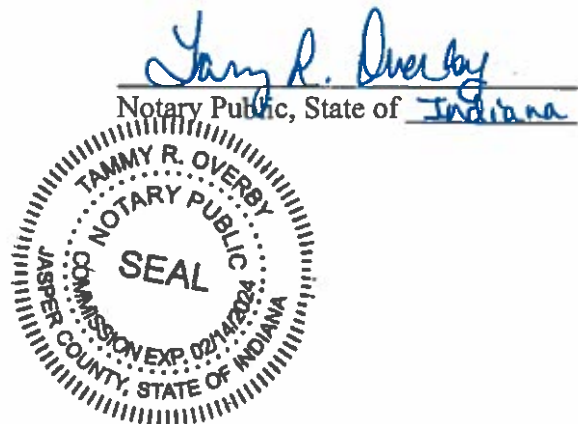
By:   
Printed Name: Eric Carlson  
Title: Project Manager

**ACKNOWLEDGMENT**

THE STATE OF Indiana )  
 )  
COUNTY OF Jasper )

This instrument was acknowledged before me on this 27<sup>th</sup> day of March, 2017, by Eric Carlson, Project mgr. of Hamstra-Suitonu JV, LLC, a Texas limited liability company, on behalf of said limited liability company.

My Commission Expires:  
2-14-24





# Proposed Site

