

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

DEPARTMENT: Aviation

AGENDA DATE: June 23, 2020

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, P.E. (915) 212-7301

DISTRICT(S) AFFECTED: 3

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

Resolution to authorize the City Manager to administratively sign, on behalf of the City of El Paso, the following for each airline: 1) a Second Amendment to Airline Operating Agreement and Terminal Building Lease, and 2) a Second Amendment to Operating Agreement, in substantially the formats attached to this Resolution, to add two one-year extensions to each existing contract, upon review and approval "As to Form" by the City Attorney prior to execution.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to add two additional one-year options to the current Airline Operating Agreement and Terminal Building Lease and the existing First Amendment to Operating Agreement, respectively. This additional extension is required as the effects of the COVID-19 pandemic's drastic impact to the aviation industry renders this not the optimal time to enter into a new agreement.

The addition of this extension will allow for the continued operation of the fourteen passenger and cargo airlines that currently have agreements in place with El Paso International Airport through August 31, 2022. During this time, Department of Aviation management will be working with the airlines to negotiate and execute new agreements with a target start date of September 1, 2022.

PRIOR COUNCIL ACTION:

- June 11, 2019 – Approval as to form of First Amendment to Airline Operating Agreement and Terminal Building Lease and the First Amendment to Operating Agreement.
- October 9, 2012 – Approval of the current Airline Operating Agreement and Terminal Building Lease and a First Amendment to Operating Agreement as to form.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Sam Rodriguez, P.E.
Chief Operations & Transportation Officer/Director of Aviation

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to administratively sign, on behalf of the City of El Paso, the following for each airline: 1) a Second Amendment to Airline Operating Agreement and Terminal Building Lease, and 2) a Second Amendment to Operating Agreement, in substantially the formats attached to this Resolution, to add two one-year extensions to each existing contract, upon review and approval "As to Form" by the City Attorney prior to execution.

ADOPTED this ____ day of _____ 2020.


THE CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

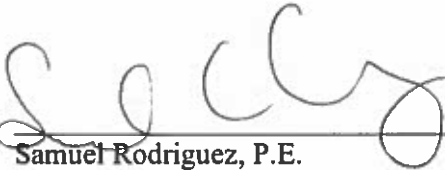
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**SECOND AMENDMENT TO
AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE**

This First Amendment to the Airline Operating Agreement and Terminal Building Lease (“**Second Amendment**”) is by and between the City of El Paso (“**Lessor**”) and _____ (“**Lessee**”), a _____. For purposes of this Second Amendment, all defined terms appear in boldface print when first defined.

WHEREAS, on _____, _____, the Lessor and Lessee entered into an Airline Operating Agreement and Terminal Building Lease (“**Lease**”) for that certain property located inside or adjacent to the Terminal Building at the El Paso International Airport at 6701 Convair Road, El Paso, Texas (“**Leased Premises**”), as described in detail in the Lease; and

WHEREAS, pursuant to Section 2.04 of the Lease, the City timely exercised its allowable one-year renewal periods to extend the Lease through August 31, 2020; and

WHEREAS, on _____, the parties entered into a First Amendment to allow time for the parties to review and negotiate a new Airline Operating Agreement and Terminal Building Lease, and now require two additional one-year extensions in order to fully negotiate the new agreement without having a lapse in the contractual relationship; and

WHEREAS, on March 27, 2020, the Centers for Disease Control and Prevention issued a Global COVID-19 Pandemic Notice, entitled Level 3, Avoid Nonessential Travel, which involves a virus that has caused worldwide travel restrictions and has resulted in a significant reduction in air travel, which has made entering into a new agreement untimely; and

WHEREAS, the parties agree to enter into this Second Amendment to add two one-year extensions.

NOW, THEREFORE, the parties agree as follows:

Section 1. ARTICLE 2 “TERM”, Section 2.04 Extension of the Lease is amended in its entirety to read as follows:

In the event Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for five (5) one-year renewal periods, through the mutual written agreement of Airline and the City. To extend the term of this Agreement for the first two renewal periods, the Director shall give written notice to Airline of City’s intent to extend the Agreement no less than three (3) months prior to the expiration of the term of the Agreement or any extension. To extend the term of this Agreement for the renewal periods ending August 31, 2020 and August

31, 2021, the parties' signature to this Second Amendment shall indicate their agreement, without additional notice to Airline by City being necessary. To extend the term of this Agreement for the renewal period ending August 31, 2022, the Director shall give written notice to Airline of City's intent to extend the Agreement no less than three (3) months prior to the expiration of the renewal period ending August 31, 2021. If Airline is not willing to renew for the extension period, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent within thirty (30) days from the notification of the City's intent to extend the term, except that the Airline shall not have this thirty (30) day refusal option for the third and fourth renewal periods. During any extension period, the Agreement shall be extended on the same terms and conditions, except as provided herein, and except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

Section 2. Except as amended in this Second Amendment the terms of the Lease between the Lessor and Lessee shall remain in full force and effect.

(City Signatures on the Following Page)

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Second Amendment as of the date it is signed by the Lessor.

CITY OF EL PASO:

Tomás González, City Manager

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Senior Assistant City Attorney

Sam Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2020, by Tomás González, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of _____

My Commission Expires:

(Lessee Signature Page Follows)

LESSEE(S):

By: _____

Its: _____

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2020, by _____, [title: _____], [company: _____], on behalf of said entities.

Notary Public, State of _____

My Commission Expires:

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**SECOND AMENDMENT TO
OPERATING AGREEMENT**

This Second Amendment to the Airline Operating Agreement (“**Second Amendment**”) is by and between the City of El Paso (“**City**”) and _____ (“**Airline**”), a _____. For purposes of this Second Amendment, all defined terms appear in boldface print when first defined.

WHEREAS, on _____, ____, the City and Airline entered into an Operating Agreement (“**Operating Agreement**”) for that certain property located inside or adjacent to the Terminal Building at the El Paso International Airport at 6701 Convair Road, El Paso, Texas (“**Leased Premises**”), as described in detail in the Operating Agreement; and

WHEREAS, pursuant to Section 2.01 of the Operating Agreement, the Operating Agreement runs through August 31, 2019; and

WHEREAS, on _____, the parties entered into a First Amendment to review and negotiate a new Operating Agreement, and now require two additional one-year extensions in order to fully negotiate the new agreement without having a lapse in the contractual relationship; and

WHEREAS, on March 27, 2020, the Centers for Disease Control and Prevention issued a Global COVID-19 Pandemic Notice, entitled Level 3, Avoid Essential Travel, which involves a virus that has caused worldwide travel restrictions and has resulted in a significant reduction in air travel, which has made entering into a new agreement untimely; and

WHEREAS, the parties agree to enter into this Second Amendment to add two one-year extensions.

NOW, THEREFORE, the parties agree as follows:

Section 1. ARTICLE 2 “TERM”, Section 2.01 Term of the Operating Agreement is amended to add a second paragraph as follows:

In the event Airline is not in default of any terms of this Agreement, the Term of this Operating Agreement may be extended for two separate one-year renewal periods terminating on August 31, 2021 and August 31, 2022, respectively, through the mutual written agreement of Airline and the City. The parties’ signature to this Second Amendment shall indicate their agreement to same, without additional notice to Airline by City being necessary for the renewal period ending August 31, 2021. To extend the term of this Agreement for the renewal

period ending August 31, 2022, the Director shall give written notice to Airline of City's intent to extend the Agreement no less than three (3) months prior to the expiration of the renewal period ending August 31, 2021. During the renewal period, the Agreement shall be extended on the same terms and conditions, except as provided herein, and except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

Section 2. Except as amended in this Second Amendment the terms of the Operating Agreement between the City and Airline shall remain in full force and effect.

(City Signatures on the following page)

IN WITNESS WHEREOF, the City and Airline have executed this Second Amendment as of the date it is signed by the City.

CITY OF EL PASO:

Tomás González, City Manager

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Josette Flores
Senior Assistant City Attorney

Sam Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 2020, by Tomás González, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of _____

My Commission Expires:

(Airline Signature Page Follows)

AIRLINE(S):

By: _____

Its: _____

ACKNOWLEDGMENT

STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2020, by _____, [title:_____], [company:_____], on behalf of said entities.

Notary Public, State of _____

My Commission Expires:
