

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

DEPARTMENT: Aviation

AGENDA DATE: July 7, 2020

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

DISTRICT(S) AFFECTED: 3

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

SUBJECT:

This Resolution is to authorize the City Manager to sign a First Amendment to the lease between the City of El Paso ("Lessor") and Region 19 Education Service Center ("Lessee") to update the legal description due to the replat of a proportion of the property and to sign the Memorandum of Lease to be filed in the County of El Paso Official Records now described as:

Tract 1:

Lots 1, 2, 3 and 4, Block 20, EL PASO INTERNATIONAL AIRPORT TRACTS UNIT TWELVE, a subdivision in the City of El Paso, El Paso County, Texas.

Tract 2:

Lots 9 and 10, Block 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT THREE, a subdivision in the City of El Paso, El Paso County, Texas.

Commonly known as 6611 Boeing Dr. and 6632 Continental Dr., El Paso, Texas.

BACKGROUND / DISCUSSION:

The update of the legal description is due to the replat of Tract 1 of the property. Tract 2 remains the same.

PRIOR COUNCIL ACTION:

Council approved the initial lease on August 7, 2018.

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.
Aviation Director

(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 sign a First Amendment to the Southern Industrial Site Lease by and between the City of El Paso ("Lessor") and Region 19 Education Service Center ("Lessee") entered on August 7, 2018 to update the legal description due to lessee's replat of a portion of the property, and to sign the Memorandum of Lease to be filed in the County of El Paso Official Records, now described as:

Tract 1:

Lots 1, 2, 3 and 4, Block 20, EL PASO INTERNATIONAL AIRPORT TRACTS UNIT TWELVE, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof, filed in Clerks File No.20200013751, Real Property Records, El Paso County, Texas.

Tract 2:

Lots 9 and 10, Block 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT THREE, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof, filed in Volume 28, Page 46, Real Property Records, El Paso County, Texas.

Commonly known as 6611 Boeing Dr. and 6632 Continental Dr., El Paso, Texas.

ADOPTED this ____ day of _____ 2020.

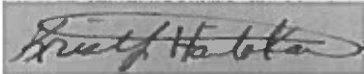
THE CITY OF EL PASO

Dee Margo
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Kristen Lynn Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**FIRST AMENDMENT TO
SOUTHERN INDUSTRIAL SITE LEASE**

THIS FIRST AMENDMENT TO SOUTHERN INDUSTRIAL SITE LEASE (this "**Amendment**") is executed as of _____, 2020 (the "**Effective Date**"), by and between CITY OF EL PASO ("**Lessor**") and REGION 19 EDUCATION SERVICE CENTER (the "**Lessee**"). Sometimes Lessor and Lessee are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, on February 1, 1972, Lessor leased certain real property to the El Paso Independent School District ("EPISD"), and EPISD assigned its interest in the Lease to Lessee, which was approved by Lessor by Lessor's Approval of Assignment entered on July 21, 1998, for the property described as:

All of Lots 9, 10, and 11, and the South 78' of Lot 12, Block 3, El Paso International Airport, El Paso County, El Paso, Texas.

WHEREAS, on September 1, 1972, Lessor leased certain real property to the El Paso Independent School District ("EPISD"), which was subsequently assigned to Teachers Federal Credit Union in 1976, and Sub-Leased to El Paso Teachers Association in 1976;

WHEREAS, in 2005, the Sublease was assigned to from El Paso Teachers Association to Lessee for a portion of Lots 12, 13 and 14 in Block 3 of the EL PASO INTERNATIONAL AIRPORT TRACTS, an Addition to the City of El Paso, El Paso County, Texas, containing 52,423 square feet;

WHEREAS, on August 7, 2018, the Parties terminated the previous leases with EPISD as assigned and sub-leased and entered into a new lease for at term of 40 years with a 10 year option to renew for the two parcels of property previously assigned to and sublet to Lessee described as:

Lots 9 through 13, and the South ½ of Lot 14, Block 3, El Paso International Airport Tracts, Unit 3, City of El Paso, El Paso County, Texas, containing 209,729.33 square feet of land more or less, commonly known and numbered as 6611 Boeing Dr. and 6632 Continental Dr., El Paso, El Paso County, Texas, as depicted on EXHIBIT "A", which is attached hereto and fully incorporated herein by reference (hereinafter described as "Original Property Description").

(the "Lease");

WHEREAS, Lessee replatted a portion of the land contained in the Premises and wishes to amend the Lease to update the legal description as noted on the replat, filed and recorded in the Office of the County Clerk of El Paso County, Texas on February 18, 2020 as in File Number 20200013751;

WHEREAS, it is in the best interest of the Parties, to (i) update the description of the Premises; (ii) acknowledge and agree that as of the Effective Date all of Lessee's monetary and nonmonetary obligations accrued under the Lease have been satisfied; (iii) Lessee is not in default under the Lease; and (iv) there are no existing Leases between the Lessor and a third party that affect this Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby amend the Lease and agree as follows:

1. **Defined Terms.** All capitalized terms not otherwise defined or amended herein shall have the same meaning given such terms in the Lease.

2. **That the legal description contained in Section 2.01 as Premises is hereby amended to read as follows:**

Tract 1:

Lots 1, 2, 3 and 4, Block 20, EL PASO INTERNATIONAL AIRPORT TRACTS UNIT TWELVE, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof, filed in Clerks File No.20200013751, Real Property Records, El Paso County, Texas.

Tract 2:

Lots 9 and 10, Block 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT THREE, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof, filed in Volume 28, Page 46, Real Property Records, El Paso County, Texas

containing 209,729.33 square feet of land more or less, commonly known and numbered as 6611 Boeing Dr. and 6632 Continental Dr., El Paso, El Paso County, Texas. ("Revised Property Description" or "Premises")

3 For the avoidance of doubt, other than the changes contemplated in the preceding sentence, no modifications or amendments to the Rental obligations and other monetary and nonmonetary obligations or rights of Lessee under the Lease shall be modified or affected by this First Amendment.

4. **Lessee's Obligations.** Lessor acknowledges and agrees that, as of the Effective Date, Lessee is not in default of any provision of the Lease, and Lessor knows of no failure by Lessee to satisfy all requirements pertaining to the construction of a parking garage and conference center on the Premises as described by both the Original Property Description and the Revised Property Description.

5. Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (for purposes of this Section 5 hereinafter referred to as the "Contractor"), agrees as follows:

1. **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.
2. **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.
3. **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.
4. **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 Lessor (for purposes of this Section 5 hereinafter referred to as the "sponsor") 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 sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor 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.
6. **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 sponsor 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 sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

6 Affirmative Action.

Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Lessee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Lessor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

7 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 Nondiscrimination Acts and Regulations listed in Pertinent List of Nondiscrimination Authorities (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 instrument 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 listed acts and authorities appearing in 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 instrument had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Lessee for itself, its assignees, and successors in interest, 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 USC § 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 USC § 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 USC § 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 USC § 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 USC §§ 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 USC § 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 USC 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].

8 Ratification and Incorporation of Lease. Except as amended by this First Amendment, all terms and provisions of the Lease, which are fully incorporated herein, remain unchanged and in full force and effect. The Lease as modified by this First Amendment is hereby ratified and confirmed in all respects.

9 Effect of First Amendment. The provisions of this First Amendment will control over all inconsistent provisions of the Lease.

10 Entire Agreement. This First Amendment and the Lease contain all of the agreements of the Parties with respect to the Premises, and no prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose. The terms and conditions of the Lease, as amended hereby, may not be amended or otherwise affected except by instrument in writing executed by each party to be bound thereby.

11 Paragraph Headings. The paragraph headings in this First Amendment are for convenience only and shall in no way enlarge, limit or alter the meaning of the provisions hereof.

12 Severability. A determination that any provision of this First Amendment is unenforceable or invalid shall not affect the enforceability or validity of any other provision hereof, and any determination that the application of any provision of this First Amendment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

13 Counterparts. This First Amendment may be executed in multiple counterparts which, when taken together, shall constitute one agreement.

14 Representations of Lessee. Lessee and the person signing this First Amendment on behalf of Lessee represent to Lessor as follows: (a) the execution and delivery of and performance under this First Amendment are within Lessee's power and authority without the joinder or consent of any party and have been duly authorized by all requisite action and are not in contravention of law or the powers of Lessee's corporate documents; (b) the person signing this First Amendment on behalf of Lessee was and continues to be authorized to do so without the joinder of any other person; and (c) this First Amendment constitutes the legal, valid and binding obligations of Lessee enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment as of the Effective Date.

Executed on this the ____ day of _____, 2020.

LESSOR:

City of El Paso

By: _____

Name: Tomás González

Title: City Manager

APPROVED AS TO FORM:



By: _____

Name: Kristen Lynn Hamilton-Karam

Title: Assistant City Attorney

APPROVED AS TO CONTENT:

By: Samuel Rodriguez

Name: Samuel Rodriguez, P.E.

Title: Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on the day of _____, 2020 by _____, as City Manager of City of El Paso, on behalf of said entity.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary)

My commission expires: _____

LESSEE:

Region 19 Education Service Center

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§

COUNTY OF EL PASO §

This instrument was acknowledged before me on the day of _____,
2020 by _____, as _____ of Region
19 Education Service Center, on behalf of said entity.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary)

My commission expires: _____

When Recorded, Return To:
Region 19 Education Service Center
6611 Boeing Drive
El Paso, Texas 79925

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

MEMORANDUM OF LEASE

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF EL PASO §

This Memorandum of Lease executed by and between CITY OF EL PASO (the "**Lessor**"), and REGION 19 EDUCATION SERVICE CENTER (the "**Lessee**"), WITNESSETH:

I

Lessor and Lessee on August 7, 2018 entered into a Southern Industrial Site Lease, as amended by that certain First Amendment to Southern Industrial Site Lease dated _____, 2020 and evidenced by this Memorandum of Lease (as amended, the "**Lease**").

II

The term of such Lease is for a period of forty (40) years with an option to extend for an additional ten (10) years.

III

The Lease covers the real property more particularly described in Exhibit "A" attached hereto.

IV

Upon its execution by the Lessor and Lessee, the Lease terminated other leases more particularly described in Exhibit "B" attached hereto, including, without limitation, any modifications, amendments, assignments, subleases or transfers thereto (the "**Terminated Leases**"). Such Terminated Leases are not in full force and effect and have no validity.

V

Reference is hereby made to such Lease for all detailed provisions thereof.

Executed on this the ____ day of _____, 2020.

LESSOR:

City of El Paso

By: _____

Name: Tomás González

Title: City Manager

APPROVED AS TO FORM:



By: _____
Name: Kristen Lynn Hamilton-Karam
Title: Assistant City Attorney

APPROVED AS TO CONTENT:

By: Samuel Rodriguez

Name: Samuel Rodriguez, P.E.

Title: Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the day of _____,
2020 by _____, as City Manager of City of El Paso, on
behalf of said entity.

(SEAL)

Notary Public in and for the State of Texas

(Printed Name of Notary)

My commission expires: _____

LESSEE:

Region 19 Education Service Center

By: [Signature]

Name: Armando Aguirre

Title: Executive Director

ACKNOWLEDGMENT

THE STATE OF TEXAS

§

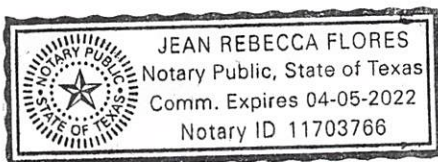
§

COUNTY OF EL PASO

§

This instrument was acknowledged before me on the day of July 1st, 2020 by Armando Aguirre, as Executive Director of Region 19 Education Service Center, on behalf of said entity.

(SEAL)



[Signature]
Notary Public in and for the State of Texas

Jean Rebecca Flores
(Printed Name of Notary)

My commission expires: 04-05-2022

**EXHIBIT A
TO
MEMORANDUM OF LEASE**

Premises

Tract 1:

Lots 1, 2, 3 and 4, Block 20, EL PASO INTERNATIONAL AIRPORT TRACTS UNIT TWELVE, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof, filed in Clerks File No.20200013751, Real Property Records, El Paso County, Texas.

Tract 2:

Lots 9 and 10, Block 3, EL PASO INTERNATIONAL AIRPORT TRACTS REPLAT OF UNIT THREE, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof, filed in Volume 28, Page 46, Real Property Records, El Paso County, Texas.

**EXHIBIT B
TO
MEMORANDUM OF LEASE**

Terminated Leases

1. Industrial Site Lease effective February 1, 1972 by and between the City of El Paso, lessor, and the Board of Trustees of the El Paso Independent School District, lessee, as evidenced by the Memorandum of Lease recorded in Volume 381, Page 1099, Real Property Records, El Paso County, Texas
2. Industrial Site Lease effective September 1, 1972 by and between the City of El Paso, lessor, and the Board of Trustees of the El Paso Independent School District, lessee, as recorded in Volume 493, Page 168, Real Property Records, El Paso County, Texas.