

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

DEPARTMENT: Aviation

AGENDA DATE: October 29, 2019

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, (915) 212-7301

DISTRICT(S) AFFECTED: 2

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

SUBJECT:

This item is a Resolution to authorize the City Manager to sign a First Amendment to the Air Cargo Building Lease Agreement by and between the City of El Paso (Landlord) and Global Aviation Services, LLC (Tenant) regarding Tenant's use of that certain office and warehouse space, loading dock space, vehicular parking space and ground service equipment parking space located at the Air Cargo Building #2, 6411 Convair Road, El Paso, Texas, to increase the term and add three options to extend the initial term by one year each, to include a rental adjustment for the first option exercised and to update the U.S. Federal Aviation Administration required language.

This amendment adds three years and one month to the initial term of three years for a total term of six years and one month. The options would be exercised annually. The space rental is as follows:

	Sq. Ft.	Annual Rate	Annual Rent
Office/Warehouse	1,500	\$ 7.0000	\$ 10,500.00
Utilities & Common Area Maintenance	1,500	\$ 1.0000	\$ 1,500.00
GSE & Vehicle Parking	2,100	\$ 0.7250	\$ 1,522.50
Total	5,100		\$ 13,522.50

There is no rental increase at this point as these are the standard cargo rental rates.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this amendment to allow Global Aviation Services, LLC to continue occupying and operating from the space it leases in Air Cargo Building #2. Global Aviation provide ground service equipment maintenance for Delta Air Lines. The Tenant requested to amend the lease to add additional term to allow them to continue operating through the end of the current contract with Delta.

PRIOR COUNCIL ACTION:

11/29/2019 – Approval of Air Cargo Building Lease Agreement

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:


Monica Lombraña, A.A.E.
Managing Director of Aviation and International Bridges

RESOLUTION

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

That the City Manager is authorized to sign a First Amendment to the Air Cargo Building Lease Agreement by and between the City of El Paso ("Landlord") and Global Aviation Services, LLC ("Tenant") regarding Tenant's use of that certain office and warehouse space, loading dock space, vehicular parking space and ground service equipment parking space located at the Air Cargo Building #2, 6411 Convair Road, El Paso, Texas, to increase the term and add three options to extend the initial term by one year each, to include a rental adjustment for the first option exercised and to update the U.S. Federal Aviation Administration required language.

Dated this ____ day of _____ 2019.

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:



Monica Lombraña, A.A.E.
Managing Director of Aviation and
International Bridges

STATE OF TEXAS)
)
COUNTY OF EL PASO) **FIRST AMENDMENT TO AIR CARGO
BUILDING LEASE AGREEMENT -
EL PASO INTERNATIONAL AIRPORT**

This First Amendment to the Air Cargo Building Lease Agreement (the "Amendment") is made and entered into this _____ day _____, 2019, by and between the **CITY OF EL PASO, TEXAS**, a municipal corporation existing under the laws of the State of Texas (the "Landlord"), and **GLOBAL AVIATION SERVICES, LLC**, a corporation organized and existing under the laws of the State of North Carolina ("Tenant").

WHEREAS, Landlord and Tenant entered into an Air Cargo Building Lease Agreement (the "Lease"), with an effective date of December 1, 2016, to lease office and warehouse space, loading dock space, vehicular parking space and ground service equipment parking space located at the property known as the Air Cargo Building #2, 6411 Convair Road, El Paso, El Paso County, Texas; and

WHEREAS, the parties wish to increase the term and add three options to extend the initial term by one year each with appropriate notice; and

WHEREAS, the parties seek to include a rental adjustment for the first option exercised; and

WHEREAS, the parties desire to update the U.S. Federal Aviation Administration ("FAA") language.

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 Lease as follows:

1. **Section 4.01, Term**, of the Lease is amended to read "Term and Option to Extend", and is amended to increase the initial term and to add an additional paragraph to allow for options to extend as follows:

Section 4.01 Term and Option to Extend. The initial term of this Agreement shall be five (5) years plus one (1) month commencing on the Effective Date, which is first noted on the title page, so that the initial term ends on December 31, 2021.

In the event Tenant is not in default of any terms of this Lease, Tenant shall have the option to extend this Lease for three (3) additional terms of one (1) year each by notifying Landlord in writing of Tenant's election at least ninety (90) days prior to the expiration of the initial term or prior to the expiration of the first two options.

2. **Section 5.01, Rental**, is amended to include an additional paragraph, which will be identified as **Rental Adjustment for First Option Term**, and will read as follows:

Rental Adjustment for First Option Term. In the event that Tenant exercises the first option to extend the term of this Lease, Landlord and Tenant agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent adjustment for the option period. For the purposes of computing such percentage increase during the option period, the Base Year CPI-U shall be established as that rate in place ninety (90) calendar days prior to the Effective Date of this Lease. Rent shall be adjusted pursuant to the percentage increase in the CPI-U from the Base Year CPI-U to the rate in place ninety (90) days prior to the applicable date of adjustment (i.e. the fifth (5th) anniversary date of the Effective Date). The rental adjustment shall be effective as of the fifth (5th) anniversary date, without regard to the date the actual adjustment is made; provided, however, that in no event shall the adjusted rent be less than the rate in place immediately prior to such adjustment nor more than twenty percent (20%) more than the rent established at the beginning of the immediately preceding five-year period.

3. **Section 10.06, Nondiscrimination Covenant,** is amended in its entirety to update the FAA required language to read as follows:

10.06 Compliance with Nondiscrimination Requirements.

During the performance of this contract, the Tenant, for itself, its assignees, and successors in interest (for purposes of this Section 10.06 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 12.08 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.

4. Section 10.18, FAA Order 1400.11, shall be amended to read as follows:

Section 10.18 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. Tenant 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, Tenant 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, Landlord 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 Tenant 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 Tenant 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, Landlord 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, Tenant 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 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 paragraph 3, Landlord 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].

5. **Section 10.20, General Civil Rights Provision**, required by the FAA, shall be added as follows:

10.20 General Civil Rights Provision.

Tenant 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 benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant 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.

6. **Ratification**. Except as herein amended, all other terms and conditions of the Lease not specifically modified by this Amendment shall remain unchanged and in full force and effect.

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

EXECUTED this ____ day of _____, 2019.

LANDLORD: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E., Managing
Director of Aviation and International
Bridges

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2019, by Tomás González as City Manager of the City of El Paso, Texas (Landlord).

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ATTEST:

TENANT: Global Aviation Services, LLC

Barbara Swenson
Name: 10-14-19

BC Osborn
Name: Bradley C. Osborn
Title: President/CEO

ACKNOWLEDGMENT

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA)

This instrument was acknowledged before me on this 14 day of October, 2019
by Bradley C. Osborn, as President/CEO, of Global Aviation Services, LLC (Tenant).

Notary Public, State of Minnesota

My Commission Expires:
1-31-2023

