

**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:**

Resolution to authorize the City Manager to sign a First Amendment to the Air Cargo Center Agreement by and between the City of El Paso (Lessor) and Mesa Airlines, Inc. (Lessee) regarding Lessee's use of that certain office, warehouse, aircraft parking apron and ground service equipment parking apron, and vehicle parking area located at 301 George Perry Blvd., Suite B, El Paso, Texas, to allow for up to four additional extension options, to allow for a rental adjustment and to update the U.S. Federal Aviation Administration required language.

This amendment adds options as the initial term of the lease, 5 years, has since passed. The options provide the opportunity for 3 years and 3 months of additional term to be exercised on an annual basis. The space rental is as follows:

	Sq. Ft.	Annual Rate	Annual Rent
Office/Warehouse	6,292	\$ 7.0106	\$ 44,110.70
GSE Parking	25,000	\$ 0.7260	\$ 18,150.00
<b>Total</b>	<b>31,292</b>		<b>\$ 62,260.70</b>

This represents an increase of \$3,149.81.

**BACKGROUND / DISCUSSION:**

The Department of Aviation requests approval of this item to allow Mesa Airlines to continue occupying and operating from Suite B in the Airport's Air Cargo Center. Mesa Airlines provides service and aircraft maintenance to American Airlines. The additional options will allow Mesa to continue to provide needed mechanical support for American Airlines through the end of their current contract, which terminates on November 15, 2022.

**PRIOR COUNCIL ACTION:**

10/28/2014 – Approval of Air Cargo Center Agreement

**AMOUNT AND SOURCE OF FUNDING:**

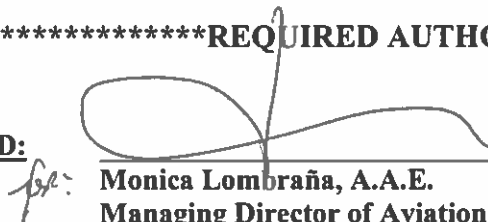
N/A: This is a revenue-generating item

**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 Center Agreement by and between the City of El Paso ("Lessor") and Mesa Airlines, Inc. ("Lessee") regarding Lessee's use of that certain office, warehouse, aircraft parking apron and ground service equipment parking apron, and vehicle parking area located at 301 George Perry Blvd., Suite B, El Paso, Texas to allow for up to four additional extension options, to allow for a rental adjustment 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 Center Agreement**

This First Amendment (“**Amendment**”) to the Building Lease Agreement (the “**Lease**”) is entered on October \_\_, 2019 (“**Effective Date**”) between the **CITY OF EL PASO** (“**Lessor**”), a home-rule municipality existing under the laws of the State of Texas, and **MESA AIRLINES, INC.**, a Nevada corporation (“**Lessee**”).

**WHEREAS**, Lessor and Lessee entered into the Lease on October 28, 2014, to meet Lessee’s office and warehouse space requirements as well as the use of the aircraft parking apron and the ground service equipment parking apron for Lessee’s operations at the El Paso International Airport; and

**WHEREAS**, the parties wish to amend the Lease to add additional options allowing the lease term to end up to February 13, 2023, and to allow for a rental adjustment; and

**WHEREAS**, the parties also wish to update the language required by the U.S. Federal Aviation Administration (“**FAA**”).

**NOW THEREFORE**, the parties agree as follows:

1. **Section 4.02, Opportunity to Extend**, of the Lease is amended to revise the initial paragraph and to add additional paragraphs at the end of the section allowing for additional options to extend as follows:

**Section 4.02 Opportunity to Extend**. In the event that Lessee is not in default of any the terms of this Lease, Lessee will have an opportunity to extend this Lease for four (4) additional terms of six (6) months each if the additional term is mutually acceptable to both Lessor and Lessee. Once the original four extensions have been exercised by Lessee, Lessee will have an opportunity to extend this Lease for two (2) additional extension terms which shall end on December 31 in each of 2020 and 2021, a subsequent option to extend this Lease through November 15, 2022, and a final option to extend this Lease through February 13, 2023.

*Additional paragraphs to be added to the end of the section:*

In the event that Lessee is not in default of any terms of this Lease, the parties’ signature to this Amendment shall indicate the Director’s and the parties’ agreement with Lessee’s exercise of the fifth option to extend, without further notice to Lessor by Lessee being necessary (“**Fifth Extension Period**”), and Lessee may exercise the sixth option to extend by Lessee notifying the Director in writing of its request to extend the term of the Lease (“**Sixth Extension Period**”) at least ninety (90) days prior to the expiration of the Fifth Extension Period. Lessee’s request to extend the term of the Lease for the Sixth Extension Period will be reviewed by the Director. The Director will review the request within thirty (30) days of the receipt of the request and evaluate the request in consideration of the

Airport's need for use of the Premises. If Lessee's request to extend the Lease is approved by the Director within the time allotted in this paragraph, the Lease shall be extended for the requested time period on the same terms and conditions as the Lease, except that the Rental for the Fifth Extension Period and the Sixth Extension Period shall be an adjusted amount as set forth in this Amendment. If Lessee's request to extend the Lease for the Sixth Extension Period is not approved by the Director within the time allotted in this paragraph, in her sole discretion, the term of the Lease will not be extended for the requested time period and the Lease will expire at the end of the Fifth Extension Period.

In the event that Lessee is not in default of any terms of this Lease, Lessee may exercise the seventh and eighth options to extend by Lessee notifying the Director in writing of its request to extend the term of the Lease ("Seventh Extension Period" and "Eighth Extension Period") at least ninety (90) days prior to the expiration of the Sixth Extension Period and the Seventh Extension Period, respectively. Lessee's request to extend the term of the Lease for the Sixth Extension Period and the Eighth Extension Period will be reviewed by the Director. The Director will review the request within thirty (30) days of the receipt of the request and evaluate the request in consideration of the Airport's need for use of the Premises. If Lessee's request to extend the Lease is approved by the Director within the time allotted in this paragraph, the Lease shall be extended for the requested time period on the same terms and conditions as the Lease, except that the Rental for the Seventh Extension Period and the Eighth Extension Period shall be an adjusted amount as set forth in this Amendment. If Lessee's request to extend the Lease for the Seventh Extension Period or the Eighth Extension Period is not approved by the Director within the timeframe allotted in this paragraph, in her sole discretion, the term of the Lease will not be extended for the requested time period and the Lease will expire at the end of the Sixth Extension Period or the Seventh Extension Period, respectively.

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

**5.01 Rental.**

**Rental Adjustment for Fifth Option Term.** In the event that Lessee exercises the fifth option to extend the term of this Lease, Lessor and Lessee agree that percentage increases in the Consumer Price Index for all Urban Consumers (CPI-U) shall govern the rent adjustment for the fifth and sixth option periods. For the purposes of computing such percentage increase during the fifth and sixth option periods, 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 (5<sup>th</sup>) anniversary date of the Effective Date). The rental adjustment shall be effective as of the fifth (5<sup>th</sup>) 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. The adjusted rent for the fifth option period shall also be the rent for the sixth option period through the eighth option period.

3. **Section 11.06, Non-Discrimination Covenant** is amended in its entirety to be called **Compliance with Nondiscrimination Requirements** and to update the FAA required language as follows:

**11.06 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 11.06 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 11.19, General Civil Rights Provision** is added in its entirety to include the FAA required language as follows:

**11.19 General Civil Rights Provision.**

Lessee 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 Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

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

5. **Section 11.20, FAA Order 1400.11** is added in its entirety to include the FAA required language as follows:

**11.20 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, Lessor for itself, its assignees, and successors in interest, as a part of the consideration hereof, agrees to comply with the following nondiscrimination 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]

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.

*(Signature begin on the following page)*



EXECUTED, this \_\_\_\_ day of \_\_\_\_\_ 2019.


**LESSOR: 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.**

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

My Commission Expires:

\_\_\_\_\_

*(Signatures continue on the following page)*

LESSEE: MESA AIRLINES, INC.



PAMELA S. JENNESS  
Notary Public - State of Arizona  
MARICOPA COUNTY  
Commission # 658651  
Expires August 23, 2023

By: [Signature]  
Printed Name: JONATHAN DORFSTEIN  
Title: CEO

### ACKNOWLEDGMENT

THE STATE OF ARIZONA  
COUNTY OF MARICOPA }

This instrument was acknowledged before me on this 16 day of OCTOBER 2019,  
by JONATHAN DORFSTEIN, CEO of MESA AIRLINES, INC., ("Lessee") on behalf of said  
company.

[Signature]  
Notary Public, State of ARIZONA

My Commission Expires:

AUGUST 23, 2023