

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

DEPARTMENT: El Paso International Airport
AGENDA DATE: November 28, 2017
CONTACT PERSON/PHONE: Monica Lombraña, A.A.E., Managing Director of Aviation and International Bridges Director of Aviation, (915) 212-7301

DISTRICT(S) AFFECTED: 3

STRATEGIC GOAL: NO. #1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBJECT:

That the City Manager be authorized to sign a Fourth Amendment to the Industrial Site Lease by and between the City of El Paso ("Lessor") and the El Paso Independent School District ("Lessee") which will extend the lease term to Dec. 31, 2019 for the following identified property thereby allowing the Lessee additional time to finalize its transition to a newly acquired site for its central offices:

A 686,218 square foot parcel, more or less, being Lots 4-8, Block 3 and Lots 6 and 7, Block 2C and a portion of Bonanza Street vacated by Ordinance No. 2947, El Paso International Airport Tracts Replat of Unit 3; a portion of Lot 10, Block 2C, El Paso International Airport Tracts Replat of Unit 4, and Lots 3 and 4, Block 3, El Paso International Airport Tracts Replat of Unit 5, El Paso, El Paso County, Texas, and municipally known as 6531 Boeing Dr., El Paso, Texas.

Terms:
Lease extended from June 1, 2019 to December 31, 2019 or earlier if Lessee provides ninety (90) days written notice
Annual rental rate \$309,982.07(no change)
\$0.4517/sf

BACKGROUND / DISCUSSION:

EPISD occupies the land at 6531 Boeing for their Education Service Center. The 4th amendment will extend the Lease term to December 31, 2019. This will allow for additional time EPISD to vacate to the premise and relocate from the current site. EPISD has submitted an implementation plan identifying the phases and actions Lessee will take to vacate the premises by December 31, 2019.

PRIOR COUNCIL ACTION:

February 11, 1965- First amendment correct lease description
April 29, 2014- Second amendment extend term of lease to May 31, 2019
November 18, 2014- Third amendment to allow for time to submit implementation plan

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



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

RESOLUTION

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

That the City Manager be authorized to sign a Fourth Amendment to the Industrial Site Lease by and between the City of El Paso ("Lessor") and the El Paso Independent School District ("Lessee") which will extend the lease term to Dec. 31, 2019 for the following identified property thereby allowing the Lessee additional time to finalize its transition to a newly acquired site for its central offices:

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APPROVED this ____ day of _____, 2017.

CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:



Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

STATE OF TEXAS)
)
COUNTY OF EL PASO) **FOURTH AMENDMENT TO
INDUSTRIAL SITE LEASE**

This Fourth Amendment to the Industrial Site Lease by and between the City of El Paso (“Lessor”) and the El Paso Independent School District (“Lessee”) is entered into this ____ day of _____, 2017.

WHEREAS, effective June 1, 1963 the Lessor entered into an Industrial Site Lease (“Lease”) with Lessee covering the following described property:

Lots 3 through 8, Block 3; and Lots 6, 7 and 10, Block 2-C, El Paso International Airport Tracts, El Paso International Airport, El Paso, Texas (“Premises”).

WHEREAS, on February 11, 1965, the Lease was amended to correct the description of the Premises so that all references to Lot 10, Block 2-C in the Lease would read the south 2.007 acres of Lot 10, Block 2-C;

WHEREAS, on April 29, 2014, a Second Amendment to the Industrial Site Lease was approved to extend the term of the Lease subject to Lessee submitting an Implementation Plan which identified the phases and action Lessee will take to vacate the Premises by May 31, 2017;

WHEREAS, on November 18, 2014, a Third Amendment to Industrial Site Lease was approved to allow additional time to Lessee to submit its Implementation Plan to vacate the Premises because it has hired a consultant to conduct community meetings and to prepare a facilities assessment and capital plan to address facility construction, renovation, consolidation, and plans to address the future potential for student redistribution and transition strategies, including the relocation of the Lessee’s Education Center located on the Premises; and

WHEREAS, the Lessee has requested an extension of its lease term to allow additional time to finalize its transition to a newly acquired site for its central offices.

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 as follows:

1. Article IV, Term of Leasehold is amended to add a new paragraph to Subparagraph C which will read as follows:

(new paragraph)

C. OPPORTUNITY TO EXTEND.

The term of the Lease is hereby extended until December 31, 2019 (“Fourth Extension”), or earlier if Lessee provides ninety (90) days written notice to Lessor.

2. Article V, Rentals, paragraph D, Readjustment of Ground Rental for Opportunity to Extend, of the Lease is amended to add a new paragraph to Subparagraph D which will read as follows:

(new paragraph)

D. READJUSTMENT OF GROUND RENTAL FOR OPPORTUNITY TO EXTEND.

The Ground Rental for the Fourth Extension shall be an annual payment of \$309,982.07/\$25,831.84 per month.

3. That Article IX, Rights Upon Termination, is deleted in its entirety and replaced with the following:

ARTICLE IX
RIGHTS UPON EXPIRATION

Upon the expiration, termination or cessation of this Lease for any reason (“expiration”), Lessee, at its own cost and expense, shall be responsible for the removal of all improvements from the Premises. In furtherance of the same, and within ninety (90) days prior to the expiration of the Lease, Lessee shall cause to be made, executed, and delivered to Lessor an instrument to guarantee the removal of all improvements from the Premises. Such instrument may be in the form of a performance bond, letter of credit or such other instrument that is acceptable to Director and shall be in place until removal of all improvements.

The removal of all improvements, including the submittal of an environmental assessment and any required remediation of the Premises, as described below, shall be completed within one hundred eighty (180) days from the expiration of this Lease.

No later than thirty (30) days after the complete removal of improvements, Lessee, at its own cost and expense, shall submit to Lessor a written copy of a current environmental site assessment of the Premises. The environmental assessment must be acceptable to Lessor; and if, in the sole opinion of Lessor, the Premises shall require environmental remediation, Lessee shall perform any work as is necessary to cause the Premises to be in compliance with applicable Environmental Laws or to return the Premises into a

condition reasonably equivalent to the condition of the Premises as of the Effective Date of the Lease, reasonable wear and tear excepted.

Any occupancy by Lessee for the purposes of removing the improvements, completing the environmental assessment and any required remediation the Premises shall be subject to the Ground Rental due hereunder, not any rental as identified in Paragraph Article IV, D, Holding Over, and provided further that Lessee shall continue to be bound by the terms and conditions of this Lease. Lessee and Lessor agree that this continued tenancy will not be continued as an extension or renewal of the lease term for other than the aforementioned one hundred eighty (180) days. If Lessee should occupy the Premises beyond the identified one hundred eighty (180) days for purposes of removing the improvements, completing the environmental assessment and any required remediation of the Premises or if Lessee should occupy the Premises beyond the identified one hundred eighty (180) days for purposes other than removing the improvements, completing the environmental assessment and any required remediation of the Premises, Lessee shall be subject to the paragraph Article IV, D, Holding Over.

If Lessee fails to provide the environmental assessment and any required remediation of the Premises, Lessor may provide at Lessee's expense.

4. Article X, General Provisions, is hereby amended to add a new Subparagraph I which will read as follows:

(new paragraph)

I. 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 Acts and Regulations set out in 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 easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. 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 (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 Lessee will use the premises in compliance with all other requirements imposed by or pursuant to 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 easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Lessee for itself, its successors in interest, and assigns, 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 non-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 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].

5. Except as expressly modified herein, all other terms and conditions of the Industrial Site Lease effective June 1, 1963, as amended by Amendment to Agreement dated February 11, 1965, as amended by the April 29, 2014 Second Amendment to Industrial Site Lease, and as amended by the November 18, 2014 Third Amendment shall remain in full force and effect and shall remain as written.

6. Regardless of the date executed, the Effective Date of this Fourth Amendment to the Industrial Site Lease shall be _____, 2017.

