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

DEPARTMENT: Economic Development

AGENDA DATE: December 8, 2015

CONTACT PERSON/ PHONE: Memo Sotomayor 915-212-1572 Jay Banasiak, Mass Transit 915-212-3301

DISTRICT(S) AFFECTED: 8

STRATEGIC GOAL 7: Enhance and Sustain El Paso's Infrastructure Network

SUBJECT:

That the City Manager be authorized to sign a Lease Agreement by and between the CITY OF EL PASO and the NATIONAL RAILROAD PASSENGER CORPORATION, d/b/a AMTRAK for the lease of certain premises and facilities in Union Depot, for use in operating its rail passenger service in El Paso, Texas. Monthly rent will commence at **\$2,906.46 monthly or \$34,877.50 annually** for the initial two years. Rent will increase in future years as outlined in rental agreement.

BACKGROUND / DISCUSSION:

Amtrak has been a tenant of the City's for over 36 years. This latest agreement continues the relationship and reestablishes a market rate for the rental price. Amtrak provides a valuable service to City of El Paso residents, and their presence in the Union Pacific Depot helps to provide a consistent and safe travel option. Initial agreement for what is their current first floor location at Union Depot including platform area was signed in 1978 for \$1,500/mo. Subsequent lease amendments for 2nd floor offices were signed in 1995 and 2008 which resulted in the current monthly rate of \$2,722.50.

PRIOR COUNCIL ACTION:

January 24, 1995 May 9, 1989 November 21, 1978

AMOUNT AND SOURCE OF FUNDING:

N/A - This is an income producing agreement for the Mass Transit Department.

BOARD / COMMISSION ACTION:

N/A

DEPARTMENT HEAD:

(If Department Mead Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, by agreement dated July 5, 1978, the City leased to the National Railroad Passenger Corporation ("AMTRAK"), certain office and other space located in the Union Depot building located at 700 San Francisco Street, El Paso, Texas (hereinafter "Union Depot"), for use by AMTRAK in operating its rail passenger service in El Paso, Texas ("July 5, 1978 Agreement"); and

WHEREAS, by agreement dated May 9, 1989, the City leased to AMTRAK, additional office space located in Union Depot, for use by AMTRAK in operating its rail passenger service in El Paso, Texas ("May 9, 1989 Agreement"); and

WHEREAS, by agreement dated January 24, 1995, the rental amount for the office space leased pursuant to the May 9, 1989 Agreement ("January 24, 1995 Agreement"), was readjusted; and

WHEREAS, the City desires to lease certain space to AMTRAK and City and AMTRAK desire to consolidate the July 5, 1978 Agreement, the May 9, 1989 Agreement and the January 24, 1995 Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE MASS TRANSIT DEPARTMENT BOARD OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lease Agreement by and between the CITY OF EL PASO and the NATIONAL RAILROAD PASSENGER CORPORATION, d/b/a AMTRAK for the lease of identified premises and facilities in Union Depot, for use in operating its rail passenger service in El Paso, Texas for a ten year term and two five year options to renew.

ADOPTED this day of _____, 2015.

____, 2015.

THE CITY OF EL PASO

Oscar Leeser Mayor

ATTEST:

Richarda Duffy Momsen City Clerk

APPROVED AS TO FORM:

menosa aillen

Theresa Cullen Deputy City Attorney

APPROVED AS TO CONTENT:

Jay Banasiak Mass Transit Department

Cary Westin, Managing Director Economic & International Development

12-1050-123/473658/TC AMTRAK Lease Agreement

STATE OF TEXAS))LEASE AGREEMENTCOUNTY OF EL PASO)

THIS Lease Agreement ("Agreement"), is entered into this _____ day of _____, 2015, by and between the CITY OF EL PASO, by and through its Mass Transit Department Board, also known as Sun Metro, hereinafter referred to as the "City", and the NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, hereinafter referred to as "AMTRAK".

WITNESSETH:

WHEREAS, by agreement dated July 5, 1978, the City leased to AMTRAK, certain office and other space located in the Union Depot building located at 700 San Francisco Street, El Paso, Texas (hereinafter "Union Depot"), for use by AMTRAK in operating its rail passenger service in El Paso, Texas ("July 5, 1978 Agreement"); and

WHEREAS, by agreement dated May 9, 1989, the City leased to AMTRAK, additional office space located in Union Depot, for use by AMTRAK in operating its rail passenger service in El Paso, Texas ("May 9, 1989 Agreement"); and

WHEREAS, by agreement dated January 24, 1995, the rental amount for the office space leased pursuant to the May 9, 1989 Agreement ("January 24, 1995 Agreement"), was readjusted; and

WHEREAS, the City desires to lease certain space to AMTRAK and City and AMTRAK desire to consolidate the July 5, 1978 Agreement, the May 9, 1989 Agreement and the January 24, 1995 Agreement; and

WHEREAS, this Agreement consolidates and supersedes all previous agreements by and between the City and AMTRAK.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the City agrees to lease to AMTRAK certain facilities and premises more fully described below upon the terms and conditions hereinafter set forth.

The parties hereto acknowledge and agree that this Agreement consolidates, supersedes, terminates and replaces the July 5, 1978 Agreement, the May 9, 1989 Agreement, and the January 24, 1995 Agreement, by and between the City and AMTRAK.

1. **PREMISES.** The City hereby leases to AMTRAK and AMTRAK leases from the City, for AMTRAK'S exclusive use:

- a. The two first floor spaces one containing, 1,187 square feet, more or less, and the other containing 384 square feet, more or less, in Union Depot, as more particularly described in Exhibit "A", which is attached hereto and made a part hereof, together with all improvements located therein and attached thereto.
- b. The two second floor spaces containing two connected office spaces totaling 422 square feet, more or less, in the Union Depot, and more particularly described in Exhibit "A", which is attached hereto and made a part hereof, together with all improvements located therein and attached thereto.

Exhibits "A" shall hereinafter referred to collectively as the "Premises".

In addition to the foregoing Premises, AMTRAK shall have the right to use for itself, its agents, employees and invitees, in common with the City and others admitted to the use thereof by the City, all those areas needed by AMTRAK for access to, from, and between the aforesaid Premises, which include supporting areas, facilities and the appurtenances of the Premises, the parking area and access to the train passenger platforms. The parties acknowledge that the City does not own the passenger platforms. Furthermore, AMTRAK shall have the right to use for itself, its agents, employees and invitees, in common with the City and others admitted to the use thereof by the City, all the common areas including, but not limited to, the restroom facilities and waiting room, together with all improvements thereto (hereinafter "Common Areas").

2. TERM. This agreement shall become effective on the date approved by the City Council of the City of El Paso ("Effective Date"). The term ("Term") of this Agreement shall be for a period of ten (10) years, commencing on the Effective Date. In the event that no Event of Default as defined in Section 5 herein in which AMTRAK has not commenced and is diligently proceeding to cure such default or failure within thirty (30) days from notice by the City to terminate this Agreement (all as provided in Section 5 below) has occurred, AMTRAK shall have the option to extend the Agreement for two (2) additional terms of five (5) years each. AMTRAK may exercise the first five (5) year option by notifying the City in writing at least one hundred twenty (120) days prior to the expiration of the initial term. AMTRAK may exercise the second five (5) year option by notifying the City in writing at least one hundred twenty (120) days prior to the first option period. AMTRAK has the right to terminate this Agreement by giving the City ninety (90) days prior notice if Amtrak's passenger rail service to El Paso, Texas will cease or be relocated.

3. FEE. AMTRAK shall pay to the City under this Agreement, a fee ("Fee") in the amount of \$17.50 per square foot, the total of which is 1,993 square feet, for the first two years, from the Effective Date of this Agreement, for the Premises, in Exhibits "A" to be paid on a monthly basis in accordance with the payment schedule attached hereto as Exhibit "B."

The total annual Fee payment for use of the Premises, paid in monthly installments, shall be Thirty-Four Thousand Eight Hundred Seventy-Seven and 50/100 Dollars (\$34,877.50) for the first two years of the term and will be increased by 2.5% at the end of each subsequent two year period throughout the entire Term and any extensions, as set forth in paragraph number 4.

Payments of the Fee shall be made monthly, in advance, on the first day of each and every month during the term of this Agreement. The Fee hereunder shall include use of utilities necessary for AMTRAK's use and occupancy of the Premises, including electric, HVAC, water, sewer and gas, all of which shall be paid by the City. The Fee shall also include general repairs and maintenance of the common areas and the Premises, such as pest control services. AMTRAK shall be responsible for janitorial services for the Premises.

4. FEE ESCALATION SCHEDULE FOR INITIAL TERM a. Years One and Two: \$34,877.50 Annual;

- a. Years One and Two:b. Years Three and Four:
- b. Years Inree and Four
- c. Years Five and Six:
- d. Years Seven and Eight:
- e. Years Nine and Ten:f. Years Eleven and Twelve
- I. Years Eleven and I weive
- g. Years Thirteen and Fourteen
- h. Years Fifteen and Sixteen
- i. Years Seventeen and Eighteen
- j. Years Nineteen and Twenty

\$35,749.44 Annual; \$36,643.18 Annual; \$37,559.26 Annual;

- \$38,498.24 Annual;
- \$39,460.70 Annual;
- \$40,447.22 Annual;
- \$41,458.40 Annual;
- \$42,494.86 Annual; and
- \$43,557.23 Annual.

5. TERMINATION.

- a. In the event of failure by AMTRAK to substantially perform any of the terms and conditions of this Agreement which it is obligated to perform, the City will give AMTRAK written notice of such default or failure. AMTRAK shall have thirty (30) days from the date of receipt of said notice to commence to cure the default or failure ("Event of Default"). The City may terminate this Agreement by written notice to AMTRAK unless AMTRAK has commenced and is diligently proceeding to cure such default or failure within thirty (30) days from said notice. Such termination shall be effective upon receipt by AMTRAK of the termination notice.
- b. In the event circumstances arise concerning the operation of a mass transportation system in El Paso which, in the City's sole discretion, requires the use of the Premises for operations directly related to such mass transportation, the City shall have the right to terminate this Agreement upon four months written notice to AMTRAK, and the City shall provide AMTRAK with comparable space acceptable to both parties adjacent to the train tracks at no extra charge, and shall pay the cost of relocation. The City Manager is hereby authorized to exercise the City's obligations to AMTRAK contained in this paragraph.

6. **PURPOSE.** AMTRAK shall use and occupy the Premises solely in connection with its operation of rail passenger service including but not limited to offices, tracks, mail, baggage and any other operations incidental to its passenger rail service and for all purposes necessary or desirable for the comfort and convenience of its passengers.

7. CARE OF PREMISES. Except as otherwise provided herein, AMTRAK's responsibilities, at its own expense, shall be the routine, non-capital minor repairs and cleaning of the Premises.

8. CITY'S OBLIGATION FOR PREMISES. AMTRAK accepts the premises "AS IS" and without representation or warranties for a particular purpose. The City, at its expense, shall make any repairs required to keep the Premises useable by AMTRAK for the purposes of this Agreement, to include the structure, major systems and outside walls. In the event any repairs to the Premises are required solely due to the sole negligence by AMTRAK or any of its employees, agents or independent contractors, such repairs shall be made by AMTRAK at its expense.

9. RETURN OF PREMISES.

- a. Upon the expiration or other termination of this Agreement or any extension thereof, AMTRAK shall deliver to the City the Premises in like condition as received, normal wear and tear, fire or casualty excepted.
- b. In the event of termination by the City of this Agreement, or any extension thereof, for any reason other than an Event of Default pursuant to Section 5 herein, and if the Fee shall have been paid by AMTRAK to the City, under this Agreement, in advance, the City shall refund to AMTRAK a <u>pro rata</u> amount of such Fee.

10. CASUALTY LOSSES. In the event any part of the Premises shall be destroyed or be so damaged by fire, explosion, windstorm, or other casualty as to be untenable for the purpose of this Agreement, this Agreement shall be terminated, and the City will provide alternate comparable facilities acceptable to both parties. In the event such casualty does not interfere with AMTRAK's reasonable requirements or create an undesirable environment for AMTRAK's use and occupancy, then the Agreement shall be modified so as to exclude from the Premises the part destroyed or damaged and an appropriate reduction in fee shall be made for the remaining portion of the Premises which may be restored at the City's option.

11. INSURANCE AND INDEMNIFICATION.

- a. Self-Insurance. AMTRAK shall cover its insurance and indemnity obligations hereto under its corporate-wide self-insurance program. AMTRAK shall provide proof of self-insurance.
- b. Subcontractors of AMTRAK. AMTRAK shall cause all its subcontractors who perform work at the Premises to add the City and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.
- c. Subcontractors of City. The City shall cause all its subcontractors who perform work at the Union Depot to add the City and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

SIGNS. AMTRAK shall have the right to place in or on the Premises signs related to the 13. rail passenger service of AMTRAK under this Agreement, upon prior written approval of the City. Such approval shall not be unreasonably conditioned, withheld or delayed. Except for "Business Signs" as defined herein, all signage shall comply with applicable Federal, State and Local laws rules and ordinances, including but not limited to the El Paso City Code Sign Regulations. AMTRAK's signs that are required for compliance with any laws, statutes, regulations or government requirements, or are needed for security, passenger information display system ("PIDS") or ADA compliance ("Business Signs") that were in existence on July 14, 2015 ("Inspection Date") shall be deemed approved. Any new signs or changes to signs, which existed on or prior to the Inspection Date, shall be reviewed by the City and approval shall be expedited and not unreasonably conditioned, withheld or denied. City shall not deny any changes or new signs to the extent that they are required by law. However, to the extent that the law does not require a specific size, location or similar item for the above, City shall have the right to review and approve those items, which approval shall be expedited and not unreasonably conditioned, withheld or denied, as to the aspects of the signs that are not legally required. AMTRAK may keep and maintain Business Signs on the Property throughout the Term of this Agreement. The parties recognize that the Union Depot is a historic building, and nothing herein will compromise the requirements of the rules for historic preservation.

14. COMPLIANCE WITH LAWS. AMTRAK shall comply with and obey all Federal laws, ordinances, rules and regulations and requirements of all Federal authorities applicable to AMTRAK in the use and occupancy of the Premises, including but not limited to, any laws, ordinances or rules regarding historic preservation, unless such compliance is the responsibility of the City. City shall comply with and obey all laws, ordinances, rules, regulations and requirements of Federal, State, county or other governmental authorities and various departments now existing or hereinafter created regarding City's ownership and maintenance of the Premises and Union depot, including compliance with the American with Disabilities Act, as amended. Nothing in this Agreement shall be interpreted as making AMTRAK a responsible party under the Americans with Disabilities Act, as amended.

15. **PROPERTY IMPROVEMENTS.** AMTRAK shall have the right, with the prior written consent of the City, not to be unreasonably withheld or delayed, to make improvements to the Premises at AMTRAK's sole cost and expense. Any such improvements that are fixtures shall remain as part of the Premises at the expiration of this Agreement, or any extension thereof, and become the property of the City of El Paso, with the exception of fixtures that are encumbered by a federal interest, which may be removed by AMTRAK with the prior authorization of the City and provided that all damage is repaired to the satisfaction of the City.

16. ASSIGNMENT OR ENCUMBRANCE. AMTRAK shall not assign, mortgage, pledge, or in any way encumber this lease, in whole or in part, nor sublet the Premises or any part thereof without the prior written consent of the City. This provision shall not apply and AMTRAK shall be permitted to assign or sublet to any entity whose management and operation is directly controlled by or under common control with AMTRAK or if due to any judicial or legislative action or mandate.

17. ACCESS TO PREMISES. Providing that the City is accompanied by Amtrak or its designated representative, the City shall at all reasonable times have the right to enter the premises for the purpose of examining the condition of the Premises, the manner in which the Premises are being used, to make repairs or respond to emergency situations. Except for emergency situations, the City shall notify AMTRAK at least 48 hours prior to entry, and if AMTRAK objects to such, it shall notify the City of such no later than 24 hours prior to the entry. The City is required to have an employee of AMTRAK accompany the City's employee(s) during such entry for any reason connected with the purpose of this Agreement or the operations of the property.

18. NOTICES. Any notice, demand, request, consent or approval that either party hereto may be or is required to give the other shall be in writing and shall be sent by registered or certified mail or overnight delivery service as follows:

To the City:	City of El Paso Attn: City Manager 300 N. Campbell, 2 nd Floor El Paso, Texas 79901
With copy mailed to:	City of El Paso Mass Transit Department Director, Mass Transit Department P.O. Box 2037 El Paso, Texas 79950-2037
	and
	City of El Paso Economic & International Development Department Attn: Real Estate Manager P.O. Box 1890 El Paso, Texas 79950-1890
To AMTRAK:	National Railroad Passenger Corporation 30 th Street Station; 5 th Floor S Philadelphia, PA 19104 Attn: Senior Director, Real Estate Development

Either party hereto shall have the right, by giving fifteen (15) days advance notice to the other, to change the address at which it will receive such communications hereunder. All communications under this paragraph shall be deemed received upon delivery.

19. ENTIRE AGREEMENT. This Agreement contains the entire agreement and understanding between the parties. No changes or modifications hereto shall be valid unless made in writing and signed by the parties hereto.

20. FORCE MAJEURE. The obligations of the parties hereto shall terminate and the parties be released from further duties and obligations hereunder except for liability previously incurred, in the event of force majeure, act of God, or similar events, including, but not necessarily limited to, labor disputes, which prevent the parties from performing their respective duties and obligations under this Agreement.

21. APPLICABLE LAW. The rights, duties and obligations of the parties hereunder shall be determined by Federal law and the provisions of the Rail Passenger Services Act (45 U.S.C. Section 501 <u>et. seq</u>. and shall be adjudicated in Federal Court. To the extent Federal law is not applicable, the rights, duties and obligations of the parties hereunder shall be determined by the laws of the State of Texas.

22. STATUTORY RIGHTS. Nothing herein shall waive any statutory rights, deed rights or other legal rights of AMTRAK.

22. WAIVERS. One or more waivers of any term or condition of this Agreement by either party shall not be construed as a waiver of any subsequent breach of violation of the same or any other term or condition prior to or thereafter. The consent or approval of either party to or of any act by the other party, shall not be deemed a waiver of any requirement for consent to, or approval of, any subsequent similar act.

23. JOINT VENTURE. It is understood and agreed that neither this Agreement, nor the method set forth for computing fees to be paid by AMTRAK hereunder, nor any one or more of the agreements herein contained is intended, nor shall ever be construed, so as to create any kind of partnership between the City and AMTRAK, nor to make the City and AMTRAK part of a joint venture, nor to make either party in any way liable or responsible for the debts or losses of the other. It is further understood and agreed that this Agreement does not create any employer-employee relationship between the City and AMTRAK and that the relationship between the City and AMTRAK and that the relationship between the City and AMTRAK and Trenant.

24. SUCCESSORS AND ASSIGNS. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit, not only of the parties, but to their successors and assigns.

25. HEADINGS. Headings used herein are placed solely for reading convenience and shall not have any meaning, implication, or purpose, legal or otherwise.

26. QUIET ENJOYMENT. If and so long as AMTRAK shall keep all the covenants and agreements required by it to be kept under this Agreement, the City covenants and agrees that it and anyone claiming by through or under the City shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by AMTRAK.

27. SEVERABILITY. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected. All other terms and conditions shall remain in full force and effect.

28. EFFECTIVE DATE. The effective date ("Effective Date") of this Agreement shall be the date approved by the City Council for the City of El Paso, Texas.

29. AUDIT RIGHTS. AMTRAK, its office of Inspector General or the Federal Railroad Administration, their respective agents, designees and accountants shall have the right at any time or from time to time for up to five (5) years after this Agreement is terminated and final payments of all sums due hereunder are made, and after advance notice to the City, to make any examination, inspection or audit of City's books and records which relate in any way to the Union Depot, the Premises, this Agreement, or to any payments of any sums of money due or paid pursuant to this Agreement or the Premises or the Union Depot. If it is determined that any charges paid by AMTRAK are in error, then City shall pay any overpayment to AMTRAK and AMTRAK shall pay any underpayment to the City. Nothing in this Lease Agreement shall be construed to limit the rights, obligations, authority or responsibilities of AMTRAK's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

30. TAXES, PURSUANT TO 49 U.S.C. §24301(L), AMTRAK IS EXEMPT FROM ALL STATE AND LOCAL TAXES, SURCHARGES, OR FEES. IN WITNESS whereof, the parties hereto, acting through their duly authorized representatives and intending to be legally bound, have caused this Agreement to be executed on the dates so indicated:

EXECUTED on the _____ day of _____, 2015.

CITY OF EL PASO

Tomás González City Manager

APPROVED AS TO FORM:

Theresa Cullen Deputy City Attorney

APPROVED AS TO CONTENT:

Jay Banasiak, Director Mass Transit Department

Cary Westin, Managing Director Economic & International Development

ACKNOWLEDGMENT

THE STATE OF TEXAS)

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COUNTY OF EL PASO

This instrument was acknowledged before me on this _____ day of _____, 2015, by Tomás González as the City Manager of the City of El Paso.

Notary Public, State of Texas

(Signatures Continue of following page)

EXECUTED on the le day of November, 2015.

NATIONAL RAILROAD PASSENGER CORPORATION, d/b/a AMTRAK

Printed Name: BRUCE LOOLOIAN Title: SE DIRECTOR

ACKNOWLEDGMENT

THE STATE OF P()COUNTY OF Philadelphia)

This instrument was acknowledged before me on this <u>/le ^{tt}</u> day of <u>Norumber</u>, 2015 by <u>Druce Looloian</u> as the <u>Sr. Director</u>, 2014, of AMTRAK.

Nachlee M. Bower Notary Public, State of Ph

My Commission Expires: June 25, 2016

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NOTARIAL SEAL KATHLEEN M BOWEN Notary Public PHILADELPHIA CITY, PHILADELPHIA CNTY My Commission Expires Jun 25, 2016

Exhibit A



Second Floor



422 square feet

Exhibit B

Office		
Description	Square Feet	
Ticket Station	1,187	
Crew Office	384	
Private Office - B and C	422	
Total	1,993	

Initial Term	Years	Years	Years	Years	Years
	1 and 2	3 and 4	5 and 6	7 and 8	9 and 10
Total Annual Rent	34,877.50	35,749.44	36,643.18	37,559.26	38,498.24
Option Periods	Years	Years	Years	Years	Years
option renous	11 and 12	13 and 14	15 and 16	17 and 19	19 and 20
Total Annual Rent	39,460.70	40,447.22	41,458.40	42,494.86	43,557.23

	Rent		Rent
Month(s)	Payment	Month(s)	Payment
1-11	2,906.46	121-131	3,288.39
12	2,906.44	132	3,288.41
13-23	2,906.46	133-143	3,288.39
24	2,906.44	144	3,288.41
25-35	2,979.12	145-155	3,370.60
36	2,979.12	156	3,370.62
37-47	2,979.12	157-167	3,370.60
48	2,979.12	168	3,370.62
49-59	3,053.60	169-179	3,454.87
60	3,053.58	180	3,454.83
61-71	3,053.60	181-191	3,454.87
72	3,053.58	192	3,454.83
73-83	3,129.94	193-203	3,541.24
84	3,129.92	204	3,541.22
85-95	3,129.94	205-215	3,541.24
96	3,129.92	216	3,541.22
97-107	3,208.19	217-227	3,629.77
108	3,208.15	228	3,629.76
109-119	3,208.19	229-239	3,629.77
120	3,208.15	240	3,629.76