

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

DEPARTMENT: AIRPORT

AGENDA DATE: February 11, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E./780-4724

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

That the City Manager be authorized to sign a First Amendment to the Butterfield Trail Industrial Park Lease by and between the City of El Paso ("Lessor") and Sealy SW Property, L.P. ("Lessee") to amend the description of the Premises to read as follows:

A portion of Lot 7, Block 7, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 130,000.8 square feet or 2.9844 acres of land, more or less, and municipally known and numbered as 19 Butterfield Trail Blvd., El Paso, Texas.

BACKGROUND / DISCUSSION:

Lessor has developed an improvement plan for Butterfield Trail Industrial Park ("BTIP"), which will upgrade public rights-of-way, reconstruct major thoroughfares, landscape medians, construct walkways and create roundabouts within BTIP.

Lessor and Lessee agree to amend the description of the Premises to delete an identified parcel measuring approximately 642.0 square feet, which fronts on a dedicated public street; the identified parcel does not interfere with Lessee's continued occupancy. Effective Date of July 1, 2012, the adjusted square footage remaining will be 130,000.8 square feet with the subsequent annual rent adjusted to \$24,778.15.

PRIOR COUNCIL ACTION:

9/1/91 Original Butterfield Trail Industrial Park Lease with Alamo Properties Joint Venture
9/1/91 Lessor's Approval of Assignment to Advent Realty Limited Partnership II
3/1/02 Lessor's Approval of Assignment to Sealy Butterfield, L.P.
11/29/05 Lessor's Approval of Assignment to Sealy SW Property, L.P.

AMOUNT AND SOURCE OF FUNDING:

Lease is revenue generating.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:

Monica Lombraña

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

2013 JAN 31 AM 8:18
CITY CLERK DEPT.

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 Butterfield Trail Industrial Park Lease by and between the City of El Paso and Sealy SW Property, L.P. to amend the description of the Premises to read as follows:

A portion of Lot 7, Block 7, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 130,000.8 square feet or 2.9844 acres of land, more or less, and municipally known and numbered as 19 Butterfield Trail Blvd., El Paso, Texas.

Dated this ____ day of _____ 2013.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
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) **FIRST AMENDMENT TO
 BUTTERFIELD TRAIL INDUSTRIAL PARK LEASE**

This First Amendment to Restated Butterfield Trail Industrial Park Lease by and between the City of El Paso (“Lessor”) and Sealy SW Property, L.P. (“Lessee”) is made this ____ day of _____, 2013.

WHEREAS, on September 1, 1991 the Lessor entered into a Butterfield Trail Industrial Park Lease (“Lease”) with Alamo Properties Joint Venture covering the following described property:

All of Lot 7, Block 7, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 130,645 square feet or 2.999 acres of land and municipally known and numbered as 19 Butterfield Trail, El Paso, Texas (“Premises”).

WHEREAS, the Lease was assigned to Advent Realty Limited Partnership II by that Lessor’s Approval of Assignment to Advent Realty Limited Partnership II, effective September 1, 1991;

WHEREAS, the Lease was assigned to Sealy Butterfield, L.P. by that Lessor’s Approval of Assignment effective March 1, 2002;

WHEREAS, the Lease was further assigned to Sealy SW Property, L.P. by that Lessor’s Approval of Assignment effective November 29, 2005;

WHEREAS, Lessor has developed an improvement plan for the Butterfield Trail Industrial Park which will upgrade the public rights-of-way within the Butterfield Trail Industrial Park, and the improvements include the reconstruction of major thoroughfares, landscaping of medians, the construction of walkways and the creation of roundabouts within the Butterfield Trail Industrial Park;

WHEREAS, Lessor and Lessee agree that identified upgrades are beneficial and positive because the traffic flow within the Butterfield Trail Industrial Park will be improved and the appearance of the Butterfield Trail Industrial Park will be improved with new landscaping, and these improvements specifically enhance the Lessee’s continued occupancy of the Premises; and

WHEREAS, the Lessor and Lessee agree to amend the description of the Premises to delete an identified parcel which fronts on a dedicated public street because the identified parcel does not interfere with Lessee’s continued occupancy for the uses and purposes for which the Premises are leased and the identified parcel can be used in the improvement of the Butterfield Trail Industrial Park.

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 I, Section 1.01, Description of Premises Demised, of the Lease is amended to read as follows:

A portion of Lot 7, Block 7, Butterfield Trail Industrial Park Unit Two, an Addition to the City of El Paso, El Paso County, Texas, containing 130,000.8 square feet or 2.9844 acres of land, more or less, and being more particularly described by metes and bounds in **EXHIBIT "A"** attached hereto and municipally known and numbered as 19 Butterfield Trail Blvd., El Paso, Texas ("Premises").

2. As of the Effective Date of this First Amendment, Lessor and Lessee agree the annual rental shall be **TWENTY FOUR THOUSAND SEVEN HUNDRED SEVENTY EIGHT AND 15/100 DOLLARS (\$24,778.15)**. Notwithstanding the foregoing, Lessor and Lessee acknowledge that the foregoing statement of the annual rental amount reflects a unilateral notification of a rental adjustment from Lessor to Lessee effective September 1, 2011. Lessee has contested the September 1, 2011 rental adjustment, and Lessor and Lessee are following the procedures identified in the Lease to determine the appropriate amount, if any, of such rental adjustment. The foregoing amount is included in this First Amendment for the sole purpose of illustrating the scope of the rental decrease which results from the reduction in the size of the Premises, and Lessee does not hereby waive its right to contest the underlying September 1, 2011 rental adjustment.

3. Regardless of the date executed, the Effective Date of this First Amendment to the Butterfield Trail Industrial Park Lease shall be July 1, 2012.

4. Except as expressly modified herein, all other terms and conditions of the September 1, 1991 Butterfield Trail Industrial Park Lease shall remain in full force and effect and shall remain as written.

IN WITNESS WHEREOF, this First Amendment to the Butterfield Trail Industrial Park Lease has been approved by the parties hereto as of the dated first noted above.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

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

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2013
by Joyce A. Wilson, as City Manager of the City of El Paso (Lessor).

Notary Public, State of Texas

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



METES AND BOUNDS DESCRIPTION

"REVISED LEASE AREA-19 BUTTERFIELD TRAIL BOULEVARD"

A 2.9844 acre lease area being a portion of Lot 7, Block 7, Butterfield Trail Industrial Park Unit 2, as recorded in Volume 57, Page 43, Plat Records, El Paso County, Texas, and being more particularly described by metes and bounds as follows.

COMMENCING for reference at an existing City Monument found at the centerline line intersection of Butterfield Trail Boulevard (R.O.W Varies) and Leigh Fisher Boulevard (90.00 feet wide); **WHENCE**, an existing City Monument found at the center line intersection of Leigh Fisher Boulevard and Spur Drive (90.00 feet wide), bears North 02°12'07" East (North 02°12'07" East~ record), a distance of 940.36 feet; **THENCE**, leaving the centerline of Butterfield Trail Boulevard and following the centerline of Leigh Fisher Boulevard, North 02°12'07" East, a distance of 95.36 feet; **THENCE**, leaving the centerline of Leigh Fisher Boulevard, North 87°47'53" West, a distance of 45.00 feet to the west right-of-way line of Leigh Fisher Boulevard and the beginning of a non-tangent curve to the left for the **POINT OF BEGINNING** of the lease area herein described;

THENCE, leaving the west right-of way line of Leigh Fisher Boulevard and following the arc of a curve to the left having a radius of 30.00 feet, a central angle of 89°53'45", an arc length of 47.07 feet and whose long chord bears South 47°09'00" West, a distance of 42.39 feet to a point of tangency;

THENCE, North 87°54'08" West, a distance of 67.79 feet to a point of curvature;

THENCE, following the arc of a curve to the left having a radius of 998.03 feet, a central angle of 01°05'29", an arc length of 19.01 feet and whose long chord bears North 88°26'52" West, a distance of 19.01 feet to a point of curvature;

THENCE, following the arc of a curve to the left having a radius of 30.00 feet, a central angle of 25°27'23", an arc length of 13.33 feet and whose long chord bears South 78°16'41" West, a distance of 13.22 feet to the beginning of a reverse curve to the right;

THENCE, following the arc of a curve to the right having a radius of 30.00 feet, a central angle of 24°00'40", an arc length of 12.57 feet and whose long chord bears South 77°33'20" West, a distance of 12.48 feet to the north right-of-way line of Butterfield Trail Boulevard and the beginning of a reverse curve to the left;

THENCE, following the north right-of-way line of Butterfield Trail Boulevard and following the arc of a curve to the left having a radius of 992.53 feet, a central angle of 16°25'00", an arc length of 284.38 feet and whose long chord bears South 81°21'10" West, a distance of 283.41

feet to the southwest corner of the lease area herein described, identical to the southwest corner of Lot 7, Block 7, Butterfield Trail Unit Two;

THENCE, leaving the north right-of-way line of Butterfield Trail Boulevard and following the westerly boundary line of said Lot 7, North 02°12'07" East, a distance of 31.19 feet to an angle point of the lease area herein described;

THENCE, continuing along the westerly boundary line of said Lot 7, North 08°33'42" East, a distance of 47.50 feet to a point of curvature;

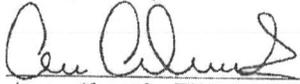
THENCE, following the arc of a curve to the right having a radius of 405.25 feet, a central angle of 83°32'10", an arc length of 590.85 feet and whose long chord bears North 50°19'47" East, a distance of 539.89 feet to a point of tangency, identical to the north boundary line of said Lot 7;

THENCE, following the north boundary line of said Lot 7, South 87°54'09" East, a distance of 12.72 feet to the west right-of-way line of Leigh Fisher Boulevard, identical to the northeast corner of said Lot 7, for the northeast corner of the lease area herein described;

THENCE, following the west right-of-way line of Leigh Fisher Boulevard, South 02°12'07" West, a distance of 347.18 feet to the **POINT OF BEGINNING**.

Said Lease Area contains 2.9844 acres (130,000.8 square feet) more or less and being subject to easements, restrictions or covenants of record.

Basis of Bearing is the Texas State Plane Coordinate System, Central Zone 4203, N.A.D. 83.


3-29-12
Aaron Alvarado, TX R.P.L.S. No. 6223
March 27, 2012
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