

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

DEPARTMENT: AIRPORT

AGENDA DATE: JUNE 12, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña/780-4724

DISTRICT(S) AFFECTED: 3

**SUBJECT:**

That the City Manager be authorized to sign a Fourth Amendment to Industrial Site Lease by and between the City of El Paso ("Lessor") and 8201 Lockheed, L.P. ("Lessee") to add two options to extend the term of the lease; to amend the permitted uses allowed under the lease, and to revise the provisions to allow for a readjustment of ground rental if an option to extend the lease term is exercised and to include updated indemnification language for the following described property: All of Lots 7, 12, 13, 14, 15 and 16, Block 9, El Paso International Airport Tracts Unit 7, an addition to the City of El Paso, El Paso County, Texas, consisting of approximately 198,037 square feet of land and municipally known and numbered as 8201 Lockheed, El Paso, Texas.

**BACKGROUND / DISCUSSION:**

This property is located in the Southern Industrial Park and is the site of the Spectrum Building. The Master Plan for the Southern Industrial Park anticipates rezoning of this portion of the Montana corridor along Lockheed to SD4 (Airport T5.2) which allows office, retail and industrial uses. The usage of this property is consistent.

The current lease expires June 30, 2012, with no options to extend. The annual rental effective July 1, 2012, on this 198,037 ft<sup>2</sup> parcel is \$71,200 (\$0.3595/ft<sup>2</sup>). This also amends Permitted Uses for the premises, and revises the indemnification language.

**PRIOR COUNCIL ACTION:**

1. Industrial Site Lease effective July 1, 1972, for an initial 50 year term
2. Amended April 12, 1973, to add additional land
3. Approval of Assignment on September 30, 1980, to Jay T. Luther
4. Second Amendment dated November 3, 1981, which included an assignment to Albert B. Lum
5. Lessor's Approval of Assignment on January 21, 1986, to KS&L Service Corporation
6. Amended on September 14, 1993, to change the original term so that the Lease expires June 30, 2012
7. Lessor's Approval of Assignment on September 14, 1993, to the Federal Deposit Insurance Corporation
8. Lessor's Approval of Assignment effective on January 1, 1995, to 8201 Lockheed, L.P.

**AMOUNT AND SOURCE OF FUNDING:**

This is a revenue generating lease.

**BOARD / COMMISSION ACTION: N/A**

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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

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

*Information copy to appropriate Deputy City Manager*

**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 Industrial Site Lease by and between the City of El Paso ("Lessor") and 8201 Lockheed, L.P. ("Lessee") to add two options to extend the term of the lease; to amend the permitted uses allowed under the lease; to revise the provisions to allow for a readjustment of ground rental if an option to extend the lease term is exercised, and to include updated indemnification language for the following described property:

All of Lots 7, 12, 13, 14, 15 and 16, Block 9, El Paso International Airport Tracts Unit 7, an addition to the City of El Paso, El Paso County, Texas, consisting of approximately 198,037 square feet of land and municipally known and numbered as 8201 Lockheed, El Paso, Texas.

APPROVED this \_\_\_\_ day of June 2012.

**CITY OF EL PASO:**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

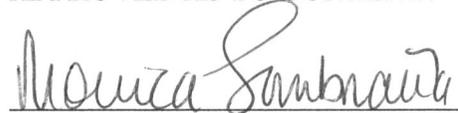
\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**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    )

**FOURTH AMENDMENT TO  
INDUSTRIAL SITE LEASE**

This Fourth Amendment to the Industrial Site Lease by and between the City of El Paso (“Lessor”) and 8201 Lockheed, L.P. (“Lessee”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 2012.

**WHEREAS**, Lessor entered into an Industrial Site Lease (“Lease”), with an effective date of July 1, 1972 by and between Lessor and Luther Industries, Inc., covering the following described leased premises:

Lots 12, 13, 14, 15 and the East 40 feet of Lots 7 and 16, Block 9, El Paso International Airport Tracts Unit 7, an addition to the City of El Paso, El Paso County, Texas, consisting of approximately 144,607.71 square feet of land and municipally known and numbered as 8201 Lockheed, El Paso, Texas (“Premises”).

**WHEREAS**, on April 12, 1973, the Lease was amended by that Addendum to Lease which added additional land to the Lease, being described as the westerly 110 feet of Lots 7 and 16, Block 9, El Paso International Airport Tracts, El Paso, El Paso County, Texas;

**WHEREAS**, on September 30, 1980 the Lease was assigned to Jay T. Luther by an Approval of Assignment;

**WHEREAS**, on November 3, 1981, the Lease was amended by a Second Addendum to the Industrial Site Lease, which also included an assignment to Albert B. Lum and consent to assignment of said lease, a memorandum of lease, and letter of assurances pertaining to the Lease;

**WHEREAS**, on January 21, 1986, the Lease was assigned to KS&L Service Corporation by a Lessor’s Approval of Assignment;

**WHEREAS**, the Lease was amended by an Amendment to Lease dated September 14, 1993, which changed the original term of the Lease so that the Lease expires June 30, 2012;

**WHEREAS**, the Lease was assigned to Federal Deposit Insurance Corporation, as Manager of the FSLIC Resolution Fund, by a Lessor’s Approval of Assignment dated September 14, 1993;

**WHEREAS**, the Lease was subsequently assigned to 8201 Lockheed, L.P., by a Lessor’s Approval of Assignment effective January 1, 1995; and

**WHEREAS**, Lessor and Lessee now desire to amend the Lease to add two (2) options to renew; one for an additional twenty (20) years and the second for an additional ten (10) years; to amend the permitted uses for the premises; the Readjustment of Ground Rental; and revise the indemnification 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 as follows:

1. **Description of Premises.** Lessor and Lessee agree that the Premises is described as follows:

All of Lots 7, 12, 13, 14, 15 and 16, Block 9, El Paso International Airport Tracts Unit 7, an addition to the City of El Paso, El Paso County, Texas, consisting of approximately 198,037 square feet of land and municipally known and numbered as 8201 Lockheed, El Paso, Texas ("Premises").

2. **Net Lease.** Article III, Obligations of Lessee, Section A, Net Lease, is amended to add the following:

Lessee shall pay all ad valorem taxes and similar taxes assessed against Lessee's interest in the Premises and improvements, and all of Lessee's personal property located on the Premises. On or before March 1 of each year during the term of this Lease and at no cost to Lessor, Lessee will provide any information deemed necessary by the Director of Aviation to verify that taxes and governmental charges of any kind as described herein have been paid in full.

3. **Permitted Uses.** Article III, Section C. Permitted Uses, is amended to add the following:

Lessee further acknowledges and accepts that entertainment venues such as ballrooms or dance halls (which are defined to mean any place the principal purpose of which is the furnishing of facilities for dancing), entertainment venues (which are defined to mean entertainment or recreation for participants or spectators such as meeting halls, bingo parlors, motion picture theaters, bowling alleys, billiard halls, dance studios, skating rinks, indoor tennis and racquetball courts, and health and physical fitness studios) or other like commercial uses including concerts, or retail stores are not a permitted business activity on the Premises. Lessee will not enter into any business activity on the Premises other than those permitted in the Declarations.

4. **Option to Extend.** Article IV, Term of Leasehold, is amended to add the following:

C. **OPTION TO EXTEND.** In the event that Lessee is not in default of any terms of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms. The first option to extend shall be for a period of twenty (20) years and the second shall

be for a period of ten (10) years. Lessee may exercise the first twenty (20) year option ("First Option Period") by notifying Lessor in writing at least one hundred twenty (120) days prior to the expiration of the Initial Term. In the event Lessee exercises its first option, the Lease shall be extended for an additional twenty (20) years on the same terms and conditions, except that Ground Rentals shall be adjusted as noted below.

Lessor and Lessee acknowledge that the First Option Period is being exercised by the complete execution of this Fourth Amendment to the Industrial Site Lease.

In the event that Lessee is not in default of any terms of this Lease, Lessee may exercise the second ten (10) year option ("Second Option Period") by notifying Lessor in writing at least one hundred twenty (120) days prior to the expiration of the First Option Period. In the event Lessee exercises its second option, the Lease shall be extended for an additional ten (10) years on the same terms and conditions, except that Ground Rentals for this Second Option Period shall be readjusted as noted below.

5. **Annual Rent.** As additional consideration for this Fourth Amendment to the Industrial Site Lease, the Annual Rent for the First Option Period will be Seventy-One Thousand Two Hundred and No/100 Dollars (\$71,200.00).

6. **Readjustment of Ground Rental.** Article V, Rentals, Section B, Readjustment of Ground Rental, is amended to add the following:

(5) Rentals shall be adjusted on each fifth (5<sup>th</sup>) anniversary of the Effective Date of this Lease Amendment during the First Option Period and the Second Option Period, if exercised. Lessor and Lessee agree that the percentage increases in the Consumer Price Index for All Urban Consumers (CPI-U), shall govern the Rental readjustment for these anniversary dates. The parties further agree that for purposes of computing such percentage increase for the First Option Period, the Base Year CPI-U shall be that rate in effect for the month of April 2012. The Rental readjustment shall be that amount equal to the percentage increase of the Consumer Price Index for all Urban Consumers from the Base Year CPI-U to that CPI-U in effect ninety (90) calendar days prior to the fifth (5<sup>th</sup>) anniversary of the Effective Date or any option period properly exercised by Lessee. In no event shall the adjusted rent at each of these anniversaries be less than the rent established at the beginning of the immediately preceding period, nor twenty percent (20%) more than the rent established at the beginning of the immediately preceding five-year period.

7. **Indemnification.** Article VI, Insurance and Indemnification, Section B. Indemnification is deleted in its entirety and is replaced with the following:

B. **Indemnification.** Lessee agrees to indemnify and hold Lessor and its officers, directors, agents, and employees harmless against any and all claims, demands, damages, costs, and expenses, including investigation expenses and reasonable

attorney's fees for the defense of such claims and demands, arising out of or attributed directly, or indirectly to the operation, conduct or management of Lessee's business on the Premises, its use of the Premises, or from any breach on the part of Lessee of any terms of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, sublessees, concessionaires, or licensees in or about the Premises including claims and damages arising in whole, or in part, from the negligence of Lessor. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, agrees to defend the action or proceeding by counsel acceptable to Lessor.

8. **Lease.** Except as expressly modified herein, all other terms and conditions of the Lease, as amended by that Addendum to Lease dated April 12, 1973, Second Addendum to Industrial Site Lease dated November 3, 1981 and Amendment to Lease dated September 14, 1993, shall remain in full force and effect and shall remain as written unless expressly modified herein.

9. **Effective Date.** Regardless of the date signed, this Fourth Amendment to the Industrial Site Lease will be effective July 1, 2012.

**IN WITNESS WHEREOF**, this Fourth Amendment to the Industrial Site 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 \_\_\_\_\_, 2012 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]

