

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

DEPARTMENT: Airport

AGENDA DATE: August 27, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña , A.A.E. -780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

Resolution authorizing the City Manager to sign a Mutual Lease Termination by and between the City of El Paso (City) and Southwest Airlines, Co. (Southwest Airlines) effective August 31, 2013.

BACKGROUND / DISCUSSION:

Southwest Airlines and the City entered into an Air Cargo Building Lease Agreement (Agreement) effective May 15, 2008 with an expiration date of August 31, 2014 for premises at El Paso International Airport's Cargo Building #2 located at 6413 Convair Road. Southwest Airlines' El Paso station will no longer be a provisioning station, therefore Southwest Airlines desires to terminate the Agreement. Southwest Airlines has also requested to add 456 square feet of space in the terminal building through the Airline Operating Agreement and Terminal Building Lease executed by the City and Southwest Airlines which expires August 31, 2017. This space will accommodate the reduced provisioning operation required by Southwest Airlines. The Airline Operating and Terminal Building Lease grants the Director of Aviation the authority to change Leased Premises so there is no council action required for the additional space in the terminal.

Annual Rent for the Agreement at Cargo 2:

| | | Annual | Monthly |
|----------------------------------|-----------------------|--------------------|-------------------|
| Office and Warehouse | 6,800 s.f. @ \$7.70 | \$52,360.00 | \$4,363.33 |
| Vehicle Parking and Loading Dock | 3,400 s.f. @ \$0.8712 | \$2,962.08 | \$246.84 |
| Ground Service Equipment Parking | 4,760 s.f. @ \$0.8712 | \$4,146.91 | \$345.58 |
| | | <u>\$59,468.99</u> | <u>\$4,955.75</u> |

\$59,468.99 - Revenue lost with the mutual termination.

Rent for Additional Terminal Space:

| | | Annual | Monthly |
|--------------|---------------------|-------------|------------|
| New Ice Room | 456 s.f. @ \$44.07* | \$20,095.92 | \$1,674.66 |

*Note that the rate of \$44.07 is based on FY2014 rates and charges. This rate will change in future fiscal years based on budgeted rates and charges calculations.

\$80,383.68 - Revenue gained over 4 years with the additional terminal space.

PRIOR COUNCIL ACTION:

No

AMOUNT AND SOURCE OF FUNDING:

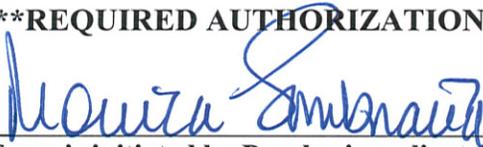
N/A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: _____



(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 Mutual Lease Termination covering the Air Cargo Building Lease Agreement by and between the City of El Paso ("Lessor") and Southwest Airlines Co. ("Lessee") for office and warehouse space; use of the loading dock; and ground service equipment parking apron at the Air Cargo Building (Air Cargo 2) located at 6413 Convair Road, City of El Paso, El Paso County, Texas.

APPROVED this the _____ day of _____ 2013.

THE CITY OF EL PASO

Oscar Leoser
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)

MUTUAL LEASE TERMINATION

This Mutual Agreement Termination (“Termination”) is made this ___ day of _____, 2013 by and between the **CITY OF EL PASO** (“Lessor”) and **SOUTHWEST AIRLINES CO.** (“Lessee”).

WHEREAS, Lessor and Lessee entered into an Air Cargo Building Lease Agreement (“Agreement”), effective May 15, 2008 covering the following described premises:

- A. That certain office and warehouse space containing **6,800** square feet, more or less, and also known as 6413 Convair Road (Air Cargo 2), El Paso, Texas, for Lessee’s exclusive use; and
- B. The exclusive right to use the loading dock and to use **3,400** square feet, more or less, of vehicle parking space directly in front of said Air Cargo Building; and
- C. The non-exclusive right to use **4,760** square feet, more or less, of the ground service equipment parking apron directly behind said Air Cargo Building; and
- D. The non-exclusive right to use a portion of the vehicle parking area, and the roadway, located in front of and adjacent to said Air Cargo Building, such portion to be commensurate with Lessee’s share of warehouse and office space leased to all Lessees that share common use of this vehicle parking area;

All of which will hereinafter be referred to as the “Premises”.

WHEREAS, the Agreement expires August 31, 2014, but Lessee desires to terminate the Agreement and all rights to possession of the Premises and to release the Premises to the Lessor because El Paso International Airport will no longer be a provisioning station for Lessee; and

WHEREAS, Lessor has evaluated the situation and determined that it will be beneficial for the Lessor to accept the Termination and to release Lessee from its obligations under the Agreement, except as otherwise specifically stated herein, because Lessee will be requesting additional space in the El Paso International Terminal Building to accommodate Lessee’s reduced provisioning operation.

IT IS THEREFORE AGREED:

In consideration of the mutual promises, covenants, conditions, and other consideration set forth in this Termination:

- 1. Lessee shall surrender the Agreement and vacate the Premises effective as of 11:59:59 PM on August 31, 2013 (“Effective Date”).

2. Lessor shall accept the surrender of the Premises.
3. Lessor and Lessee shall discharge and release each other from all obligations under the Agreement as of the Effective Date except as otherwise agreed to in this Mutual Lease Termination document.
4. Lessee agrees to indemnify and hold the Lessor harmless for any and all claims or causes of action arising out of the Agreement including, but not limited to, arising out of Lessee's use, occupancy, subleasing, assigning or mortgaging of the Premises; including but not limited to the payment of taxes which accrued during the Agreement term. Lessee agrees to defend Lessor against any such claims and to defend the Lessor in any legal actions which may be brought against Lessor, including attorney's fees and court costs, or fees or claims arising out of the Agreement. Lessee shall provide written confirmation to Lessor of payment for all taxes.
5. All provisions of the Agreement, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of the Lease hereunder shall survive such cessation, expiration or termination of the Lease, including without limitation, Paragraphs 3.05 and 6.03.
6. The person signing this Termination on behalf of Lessor and Lessee warrants that he or she has the authority to do so and to bind the party represented.

IN WITNESS WHEREOF, this Mutual Lease Termination has been executed by the parties hereto as of the date, month and year first hereinabove written.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

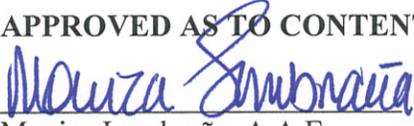
CITY OF EL PASO:

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

LESSOR'S ACKNOWLEDGMENT

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, Texas.

Notary Public, State of Texas
Notary's Printed Name: _____

My Commission Expires:

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

