

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

DEPARTMENT: Aviation

AGENDA DATE: September 10, 2013

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

DISTRICT(S) AFFECTED: All Districts

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

This is a Resolution to authorize the City Manager to sign a Second Amendment to the Industrial Site Lease between the City of El Paso and Budget Rent a Car of El Paso, Inc., to allow for an option to extend the lease through December 31, 2015, and to allow additional options to extend the lease term for the following described property:

Lot 2, Block 1-B, El Paso International Airport Tracts, City of El Paso, El Paso County, Texas,
municipally known as 6510 De Havilland Dr., El Paso, Texas.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Budget Rent A Car of El Paso, Inc. operates the Budget brand vehicle rental concession at the El Paso International Airport. As part of their concession, they maintain a service facility adjacent to the Airport where they wash, vacuum, fuel, and service their fleet. The Department of Aviation is requesting to amend the lease for the service facility, which expires on September 14, 2013, to provide an option to extend through December 31, 2015, to allow Budget to continue to occupy the property from where it operates its administrative and rental vehicle service functions of its airport rental car concession during the time it takes to complete the design and construct the consolidated rental car agency complex (ConRAC).

The ConRAC is scheduled to be completed at the end of 2015. To accommodate for any delays in the construction schedule, the lease amendment also provides for additional options to extend the lease until such time that the new facility will be ready to be occupied by the Lessee.

As this extension is being requested to accommodate the Concessionaire until such time that the ConRAC has been constructed and available for move in, the rental rate will remain as follows:

- 33,114 square feet of land @ \$0.0878 per square foot/year = \$2,910.40 per annum.

It is beneficial to both the Lessor and the Lessee that the Lessee remains at the Airport during the construction of the ConRAC so that the Lessee can continue to provide uninterrupted service to the travelling public using the airport rental car concessions. Under the current concession agreement, the Concessionaire pays the Airport a minimum concession fee of \$301,051.00 per year.

Additionally, the proposed amendment to the lease requires that the Lessee pay the possessory interest taxes on the leasehold effective September 15, 2013. In years 2012, 2011, and 2010, the Airport paid \$812.02, \$1,103.07, and, \$1,363.43, respectively, in possessory interest taxes on behalf of the Lessee per settlement agreement.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

- 10/25/2011 - Award of Vehicle Rental Concession Agreement under Solicitation 2011-239R to Budget Rent A Car of El Paso, Inc.
- 11/13/1979 - First Amendment to Industrial Site lease identified the lease term is forty (40) commencing on September 15, 1973
- 9/15/1973 – Approval of Industrial Site Lease between City of El Paso and Budget Rent A Car of El Paso, Inc. for construction of a service facility to operate a rental car business at the El Paso International Airport

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A – this is a revenue generating item

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

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 Second Amendment to the Industrial Site Lease between the City of El Paso and Budget Rent A Car of El Paso, Inc., to allow for an option to extend the lease through December 31, 2015, and to allow additional options to extend the lease term for the following described property:

Lot 2, Block 1-B, El Paso International Airport Tracts, City of El Paso, El Paso County, Texas, municipally known as 6510 DeHavilland Dr., El Paso, Texas.

APPROVED the ____ day of _____ 2013.

CITY OF EL PASO

Oscar Leeser
Mayor

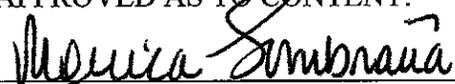
ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



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

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

This Second Amendment to the Industrial Site Lease is made and entered into this ___ day of _____ 2013 by and between the City of El Paso (“Lessor”) and Budget Rent-A-Car of El Paso, Inc. (“Lessee”).

WHEREAS, effective September 15, 1973, Lessor entered into an Industrial Site Lease applicable to the construction of service facilities for conducting an auto rental business (“Lease”) with Lessee for the property described as a portion of Lot 2, Block 1-B, El Paso International Airport Tracts, City of El Paso, El Paso County, Texas, municipally known and numbered as 6510 DeHavilland Dr., El Paso, Texas (the “Premises”);

WHEREAS, on November 13, 1979, the Lease was amended to identify that the lease term is forty (40) years commencing on September 15, 1973 (the “Addendum to Lease”);

WHEREAS, Lessor anticipates that it will construct a consolidated rental agency complex (“ConRAC”) at the El Paso International Airport, which will be occupied and used by all on-Airport rental car concessionaires, and eliminate each on-Airport rental car concessionaire’s need for its own maintenance facility;

WHEREAS, Lessor anticipates that the projected construction for the ConRAC will be completed and on-Airport rental car concessionaires will be occupying the facility by December 1, 2015; and

WHEREAS, because it is beneficial for Lessee to remain at the Airport until the construction of the ConRAC is completed, Lessor and Lessee desire to amend the Lease to extend the term of the Lease.

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 *two new paragraphs which reflect adding* additional options to extend the Lease under Paragraph C as follows:

C. OPTION TO EXTEND
(*new paragraphs*)

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 one (1) additional term through December 31,

2015 ("First Option"). In the event Lessee exercises this first option, the Lease shall be extended on the same terms and conditions. Lessor and Lessee acknowledge that Lessee is exercising the First Option Period by the complete execution of this Second Amendment, and the Lease will be extended on the same terms and conditions.

In addition, after December 31, 2015, Lessor shall have the option, exercisable in its sole and absolute discretion, to extend the term of this Agreement for four (4) three (3) month options under the same Lease terms and conditions. To exercise any of these additional options, the Director of Aviation ("Director") will give written notice to Lessee of Lessor's intent not less than thirty (30) days prior to the expiration of then current option period of this Agreement. If Lessee is not willing to renew for an extension period, Lessee will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent within fifteen (15) days from the receipt of notification of Lessor's intent to exercise the option.

2. Article VIII, A., Termination, of the Lease is amended in its entirety to read as follows:

A. TERMINATION. This Lease shall expire at the end of the term or any extension thereof and Lessee shall have no further right or interest in any of the lands or Lessor-constructed improvements. After December 31, 2015, should Lessor exercise an option to extend the lease for a three (3) month option, Lessee may cancel the lease upon thirty (30) days written notice to Lessor.

3. Article X, D, Taxes, of the Lease is amended in its entirety to read as follows:

D. TAXES AND OTHER CHARGES. Lessee shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against Lessee or Lessor, with respect to the Premises, any improvements, equipment, personal property or inventory thereon or Lessee's use and/or occupancy of the Premises, during the Term of this Lease including any extensions granted thereto. By March 1 of each year of this Lease and at no charge to Lessor, Lessee will provide written proof satisfactory to the Director that all taxes and governmental charges of any kind as described herein have been paid in full.

Lessor is a tax-exempt governmental entity and shall not be responsible for any taxes or assessments arising from Lessee's use of the property or possession of the Premises.

Lessee in good faith may contest any tax or governmental charge, provided that Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless, in the opinion of counsel satisfactory to Lessor, such action will not adversely affect any right or interest of Lessor.

LESSEE:
BUDGET RENT-A-CAR OF EL PASO,
INC.



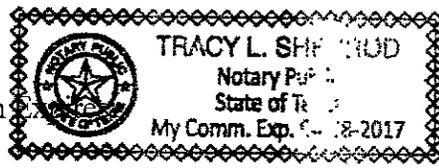
Printed Name: MICHAEL MALONEY
Title: PRESIDENT

ACKNOWLEDGEMENT

THE STATE OF Texas)
COUNTY OF Bexar)

This instrument was acknowledged before me on this 21 day of AUGUST
2013, by MICHAEL MALONEY as PRESIDENT of
Budget Rent-A-Car of El Paso, Inc. (Lessee).

My Commission



Nancy L. Sherrod
Notary Public, State of New Jersey TEXAS