

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Airport Sublease Agreement – Airport Rental & Leasing
DATE: August 5, 2003

NEEDS: For the City Council to consider approving a sublease agreement between B. Kim Lilly (doing business as Airport Rental & Leasing) and Marguerite Nunn for hangar spaces # 102 and # 104 located on Parcel 27 of Parcel Map PRAL 88-207 on the Municipal Airport, currently leased by Lilly.

FACTS:

1. The City of Paso Robles is currently engaged in a long-term property lease with Airport Rental & Leasing on the Municipal Airport at 4720 Wing Way.
2. The lease remains in good standing and compliance.
3. The lease allows the lessee to enter into sublease agreements on the site with the approval of the City.
4. The City is requested to approve the attached sublease agreement for the construction/occupancy of a commercial aircraft hangar on the subject site.
5. The proposed sublease agreement has been reviewed by the City Attorney and approved as to form and content.

**ANALYSIS
AND**

CONCLUSION: The Lessee is permitted under the City lease terms and conditions to request and enter into sublease agreements. The lease explicitly provides the City the right to review the proposed sublease, and the conditions of development. The City's sublease approval shall not be unreasonably withheld. The provisions of the lease appear to have been met by the Lessee, and the requested sublease agreement is consistent with the provisions of the lease agreement with the City.

POLICY

REFERENCE: Municipal Airport Property Lease; FAA Lease Guidelines

FISCAL

IMPACT: None

OPTIONS:

- a. Adopt Resolution No. 03-xx approving a sublease agreement between B. Kim Lilly (doing business as Airport Rental & Leasing) and Marguerite Nunn for hangar spaces # 102 and # 104 located on Parcel 27 on the Municipal Airport
- b. Amend, modify, or reject the above option.

Attachments: (2)

- 1) Sublease Agreement
- 2) Resolution

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A SUBLEASE AGREEMENT BY AND BETWEEN
B. KIM LILLY (AIRPORT RENTAL & LEASING), AND MARGUERITE NUNN
FOR PROPERTY ON THE MUNICIPAL AIRPORT

WHEREAS, the City of Paso Robles continues to operate the Municipal Airport for the aid and benefit of the public and their air transportation needs; and

WHEREAS, the City is requested by current Lessee, B. Kim Lilly (doing business as Airport Rental & Leasing), to approve a sublease agreement on the subject property, as provided within the master lease agreement, and

WHEREAS, the lease agreement is found to be in full effect and compliance, and

WHEREAS, the requested sublease is found to be consistent with the provisions of the lease agreement.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1 The City Council of the City of El Paso de Robles does hereby approve a sublease agreement between B. Kim Lilly and Marguerite Nunn for hangar spaces #102 and #104 on Parcel 27 located at the Municipal Airport.

PASSED AND ADOPTED by the City Council of the City of El Paso de Robles this 5th day of August 2003, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

Airport Rental & Leasing Company

Hangar Space Lease

Preamble - Parties and Leasing

1. B. Kim Lilly dba Airport Rental & Leasing Co., herein called "Lessor" hereby leases to ~~Thomas Nunn and Marguerite Nunn~~ ^{Marguerite}, herein called "Lessee", the land for said hangar site space, herein called "said premises", in the County of San Luis Obispo, State of California, described as follows: 4720 Wing Way, Space #102 and #104, Paso Robles Airport.

Purpose

2. Paso Robles Municipal Airport, owned by the City of Paso Robles, and Airport Rental & Leasing Co. have agreed that it would be advantageous to enter into an agreement whereby Airport Rental & Leasing Co. shall maintain and operate hangar sites. Airport Rental & Leasing Co. shall have exclusive right to lease said hangar sites to the general public. Said lease to the general public shall conform to all provisions and be subordinated to the agreement between the City of Paso Robles and Airport Rental & Leasing Co. lease agreement.

Leased Premises

3. For and in consideration of rent and faithful performance by Lessee of the terms and conditions and mutual covenants hereof Airport Rental & Leasing Co. does hereby lease for use as described herein the following hangar site:

Term

4. This lease is for a term of 31____ years beginning on _____ and ending on May 31, 2033.

Holding Over

5. In the event Lessee shall remain in possession of the premises herein leased after expiration of this Agreement, such holding over shall not be deemed to operate as renewal of extension of this lease, but shall only create a tenancy from month to month which may be terminated at any time by the Lessor. Said holding over shall be for a period not to exceed ninety (90) days and rental payments shall continue for said period of holding over.

Rent

6. Lessee agrees to pay, and Lessor agrees to accept as rent for the use and occupation of said premises, the sum of \$ 590.00 per month, payable in advance on

the first day of each and every month adjusted proportionately to option term. Lessee shall pay said rent of Airport Rental & Leasing Co., P.O. Box 1885, Paso Robles, CA 93447. Airport Rental and Leasing will give a \$100.00 per month discount on ground rent for each month the hangar and office is used for non-commercial use.

Automatic Escalation

7. The monthly base rental as hereinabove set forth shall be adjusted each year in accordance with the following:

- A. For the purpose of this Agreement the Basic Index shall be the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, San Francisco-Oakland, CA, all Items-Series A (1976-100) published by the U.S. Department of Labor, Bureau of Labor Statistics for the month of or nearest January first of each year.
- B. Effective each January first during the term of this lease, the monthly rental rate shall be increased in accordance with the then Current Basic Index (CPI) as defined in paragraph (a) above. At no time, however, shall said increase exceed 8% for any given year.
- C. In the event the Basic Index (CPI) decreases to the point of reflecting a negative figure for that year, then the rental rate shall remain constant at the previous year's rate for the subsequent year or years.
- D. If the foregoing Index is at any time no longer available, then the comparable economic indicator shall be used to determine the Escalation Basic Index.

Late Rental Payments

8. In the event that the Lessee shall become delinquent in paying to Airport Rental & Leasing Co. any payments due for a period of fifteen (15) day or more, Lessee shall pay Lessor Twenty-five dollars (\$25.00) late handling fee plus interest on said unpaid balance at the rate of 5% over prime or 10% maximum annual percentage rate calculated daily, from the date the payment was due and payable until paid.

Maintenance

9. Lessee shall, at its sole cost and expense throughout the term of this lease, maintain the leased premises and the hangar and appurtenances thereto. All painted exterior surfaces and surfaces requiring treatment of any kind shall be maintained in first class condition and shall be repainted or treated as often as required in order to preserve the structure and maintain high standards of appearance at the site. Any changes in exterior paint colors shall be subject to prior written approval of Lessor which shall be sole judge of the quality of maintenance.

Upon written notice by Lessor, Lessee shall be required to perform whatever reasonable maintenance Lessor deems necessary. If maintenance is not undertaken by lessee within fifteen (15) days after receipt of written notice, Lessor shall have the right to enter upon the leases premises and perform the necessary maintenance, the cost of which shall be borne by Lessee.

Use of Premises

10. Lessee shall only use said Hangar site for the installation of hangars for the housing of aircraft, ramp equipment and vehicles in regular use or such other use as is acceptable under the Master Lease between Lessor and the Airport and any other appropriate authority having jurisdiction over Paso Robles Municipal Airport during the term of this Lease.

Utilities

11. Lessee shall pay for all utilities used or consumed on the leased premises and installation, including, but not limited to, gas, water, electricity, garbage disposal, storm and sanitary sewer services, janitorial services, and telephone services.

Rules and Regulations

12. Lessee agrees to observe and obey all policies, rules, and regulations promulgated and enforced by Airport and any other appropriate authority having jurisdiction over Paso Robles Municipal Airport during the term of this lease.

Hold Harmless and Indemnification

13. Lessee shall defend, hold harmless, and indemnify the Lessor from the liabilities as defined in this section:

- a. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation of whether or not such liability, claim or damage was unforeseeable at any time before execution of said lease, and including the defenses of any suit(s) or action(s) at law or equity concerning these.
- b. The actions causing liability are any act or omission (negligent or non-negligent) in connection with the matters covered by this lease and attributable to Lessee, guest, or Lessee's passengers, or one or more Lessor has insurance or other indemnifications covering any of these matters, or that the alleged damage resulted partly from any negligent or willful misconduct of Lessor.

Insurance

14. Lessee shall procure and maintain, at its own cost and expense, at all times

during the term of this lease, the following policies issued by an insurance company authorized to do business in California, with a financial rating of at least an A+3A status as rated in most recent edition of Bert's Insurance reports:

A. Public Liability and Property Damage Insurance:

Lessee shall obtain and maintain owner, landlord's and tenant's public liability insurance covering and insuring all parties hereto (including the City of Paso Robles as a named insured under policy) with a minimum combined single limit coverage of \$1,000,000.00 for all damages due to bodily injury or death to any person and damage to property, including the loss of use thereof, arising out of each accident or occurrence arising out of ownership, maintenance, or use of the leased site and all operations necessary or incidental thereto.

- B. Fire Insurance: Lessee shall insure for fire and extended coverage risks all personal property, improvements, and alterations in, on, or about the leased premises. Such insurance shall be in an amount equal to eighty percent (80%) of insurable, full replacement value of such improvements, and shall include vandalism and malicious mischief endorsements. Said fire insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder. The Lessor shall be named as additional insured in such policy or policies. In the event of extensive damage or total destruction of any buildings or facilities on the leased premises, Lessor and Lessee shall mutually determine if said building or facility should be replaced or repaired. If it is determined to replace or repair said building or facility, the proceeds of any insurance paid on account of the damage or destruction thereof shall be used to defray the cost of repairing, restoring, or reconstructing said improvements as necessary. If it is determined not to replace said building or facility, the proceeds of any such insurance shall be used to restore the ground to its original condition. Said insurance shall be factored periodically to maintain adequate coverage.

All fire and extended coverage insurance policies upon the leased premises may have a loss payable clause in favor of any mortgages of lessee, as its interest may appear.

- C. All policies of insurance required by this Section 14 shall be in such standard form and written by such qualified insurance companies as shall be satisfactory to Airport and Lessor. Evidence of such insurance shall be provided by Lessee by filing with Lessor a copy of the policy and policies, together with a duly executed certificate to the effect that the insurance required by this lease is extended in favor of and consistent with the terms set forth herein. Said policy or policies or certifications shall contain a provision that written notice of cancellation or any material change shall be delivered to Lessor thirty (30) days in advance of the effective date thereof.

D. Notice:

Each party hereto shall give to the other prompt and timely notice of any claim made or suit instituted coming to its knowledge which in any way directly, contingently or otherwise, affects or might affect either and both shall have the right to participate in the defense of the same to the extent of its own interest.

Taxes

15. In addition to the rents required to be paid under this lease, Lessee shall pay, and Lessee hereby agrees to pay, any and all taxes, assessments, and other charges of any description levied or assessed during the term of this lease by any governmental agency or entity on or against said premises, any portion of said premises, any interest in said premises, or any improvements or other property in or said premises, including any possessory interest tax or Lessee's proportionate share.

Payment before Delinquency of Taxes

16. Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this lease shall be paid Lessee at least ten (10) days before each such tax, assessment, or official and original receipt for the payments of such tax, assessment or installment be given to Lessor.

Surrender of Premises

17. On expiration or sooner termination of this lease, Lessee shall surrender said premises and all facilities in any way appertaining to said premises, to Lessor in as good, safe, and clean condition as practical, reasonable wear and tear expected.

Lessee shall have the right to remove his relocatable metal hangar and other personal property provided that upon such removal, Lessee shall repair, at it's own expense, any damages resulting therefrom.

If Lessee fails to surrender leased premises to Lessor on expiration or thirty (30) days after termination or cancellation of the lease as required by this section, Lessee shall hold Lessor harmless from all damages resulting from Lessee's failure to surrender the leased premises, including, without limitation, claims made by succeeding Lessee resulting from the Lessee's failure to surrender the leased premises.

Default

18. A. The occurrence of any of the following shall constitute a default by Lessee:

1. Failure to pay rent when due, if the failure continues for thirty (30) days after notice has been given to Lessee.

2. Abandonment and vacation of the premises. Failure to occupy and operate the premises for thirty (30) consecutive days shall be deemed an abandonment and vacation.
3. Failure to undertake reasonable maintenance which Lessor deems necessary, if failure continues for fifteen (15) days after notice has been given to Lessee.
4. Insolvency, adjudication of Lessee as bankrupt or the loss of possession of the leased premises, or any portion thereof, by virtue of any attachment, execution or receivership, if the bankruptcy proceedings are not terminated in Lessee's favor within, or the insolvency or the loss of possession continues for sixty (60) days thereafter.
5. Assignment for the benefit of creditors.
6. Any act, condition, event or failure or performance constituting a default under any other provision of this lease.
7. Failure to perform any other provisions of this lease if the failure to perform is not cured within thirty (30) days after notice has been given to Lessee. If, in Lessor's sole judgment, the default cannot reasonably be cured within thirty (30) days, Lessee shall not be in default within the thirty (30) day period and diligently and in good faith continues to cure the default.

B. Notices given under this Section shall specify the alleged default and the applicable lease provisions, and shall demand that Lessee perform the provisions of this lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the premises. No such notices shall be deemed a forfeiture or a termination of this lease unless Lessor so elects in the Notice.

Non-Discrimination

19. The Lessee will not discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any of the facilities provided for the public on the Airport.

Right of First Refusal to Purchase Lessee's Hangar

20. Should Lessee, during the lease term or any extension thereof, or termination or cancellation of said lease, elect to sell said Hangar, Lessor shall have the right of first refusal to meet any bonafide offers of sale on the same terms and conditions of such offer, and on failure to meet such bonafide offer within fifteen (15) days after written notice thereof from Lessee, Lessee shall be free to sell said hangar to such third party in accordance with the terms and conditions of his offer.

Cancellation

21. During the time of war or national emergency, the City of Paso Robles shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the Airport. If any such agreement is executed, the provisions of this lease insofar as they are inconsistent with the provisions of the agreement with the government shall be suspended.

Notices

22. Any and all notices to be given under this lease, or otherwise, may be served by enclosing same in a sealed envelope addressed to the party intended to receive the same, at its address and deposited in the United States Post Office as certified mail with postage paid. When so given, such notice shall be effective from the date of the mailing of the same. For the purposes thereof, unless otherwise provided in writing by the parties hereto, the address of Lessor and the Lessee, and the party to receive any such notices on its behalf is:

Lessor: B. Kim Lilly
Airport Rental & Leasing Co.
P.O. Box 1885
Paso Robles, Ca 93447

Lessee: Thomas & Marguerite Nunn
P.O. Box 2133
Paso Robles, CA 93447

23. Time is of the essence of each provision of this lease.

Binding on Successors

24. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto.

Invalid Provisions - Severability

25. It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition, or provision contained herein is held to be invalid by a court of competent jurisdiction, such invalidity shall not invalidate any other covenant, conditions and provisions of this lease.

Provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Lessor or Lessee in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Provisions

26. All provisions, whether covenants or conditions, on the part of Lessee shall be deemed to be both covenants and conditions.

Integrated Agreement - Modification

27. This lease contains all the agreements of the parties and cannot be amended or modified, except by a written agreement.

Binding Arbitration of Disputes.

28. Except with regard to any claim, counterclaim, dispute, and other matter relating to the payment of rent or any other sum owing from Sublessee to Sublessor under this lease any disagreement between the parties with respect to the interpretation or application of this lease or the obligations of the parties hereunder shall be determined by binding arbitration. Such arbitration shall be conducted on request of either the Sublessor or Sublessee. The arbitration shall be in conformity with and subject to the provision of the California Code of Civil Procedure relating to arbitration. The expense of arbitration proceedings conducted hereunder shall be borne equally by the parties. All arbitration proceedings hereunder shall be conducted in the city of Paso Robles, California. The provision shall not apply to the City in the event of termination and attornment.

Notice: By initialing in the space below you are agreeing to have any dispute arising out of the matters included in the "Binding Arbitration of Disputes" provision decided by neutral arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below you are giving up your judicial rights to discovery and appeal, unless those rights are specifically included in the "Binding Arbitration of Disputes" provision. If you refuse to submit to arbitration after agreeing to this provision, you may be compelled to arbitrate under the authority of the California code of civil procedure. Your agreement to this arbitration provision is voluntary. We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the "Binding Arbitration of Disputes" provision to neutral arbitration. This provision shall not apply to the City in the event of termination and attornment.

Initials:


B. Kim Lilly

Airport Rental and Leasing


Thomas Nunn

Marguerite

Legal proceeding

29. Should it become necessary for Sublessor or City to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this lease, Sublessee agrees to pay all legal costs in connection therewith, including a reasonable sum as attorney's fees.

Assigning or Subleasing

30. Sublessee shall not assign this sublease or sublet the Premises or any part thereof without the prior consent of Sublessor and the City of Paso Robles. An assignment by

operation of law shall automatically terminate this Sublease. The consent of Sublessor to any assignment of Sublessee's interest in this Sublease, or the subletting by Sublessee of the premises or part of the Premises shall not be unreasonably withheld.

B. Kim Lilly dba
Airport Rental & Leasing Co.

by [Signature]
date 12/19/02

Lessee:

Name: Marguerite NUNN

by [Signature]

date 12/19/02

address PO Box 2133

Paso Robles, CA 93447

phone 227-5660

Condemnation

31. A. If the premises are totally taken by condemnation, this Lease shall terminate on the date of the taking.

B. If any portion of the premises is taken by condemnation, the Lease shall remain in effect, except the Lessee can elect to terminate this Lease if the remaining portion of the building or other improvements or the surrounding parking lot that are usable for access to the premises is rendered unsuitable for the continued use as a unit for the normal conduct of Lessee's business. Notice of such termination shall be given to Lessor within thirty (30) days after the nature of the taking has been finally determined. The date of termination shall be no later than sixty (60) days after Lessee has notified Lessor of its election to terminate. If Lessee does not terminate, this Lease shall continue in full force and effect, except that the minimum monthly rent shall be reduced pursuant to paragraph 31 (C).

C. If any portion of the premises is taken by condemnation and this Lease remains in full force and effect, on the date of taking, the minimum monthly rent shall be reduced by an amount which is the same ratio to minimum monthly rent as the value of the area to the portion of the premises taken bears to the total value of the premises immediately before the date of taking.

D. Any condemnation award shall be the sole property of and be paid to Lessee; provided, however, that Lessor may retain so much of the condemnation award as is specifically allocated to Lessor by the court and attributable to Lessor's rights under the Master Lease.

Memorandum of Agreement

32. The parties shall execute a Memorandum of Agreement reciting the general terms of the Agreement which Memorandum will be recorded in the County Record for San Luis Obispo County.

