



Council Agenda Report

From: Dick McKinley, Public Works Director

Subject: Airport Lease Amendment – Del Rio 5052 Wing Way

Date: August 1, 2017

Facts

1. On May 1, 1996, the City entered into a Non-Subordinated Airport Ground Lease on Lot 9 of Parcel 16 (commonly known as 5052 Wing Way) which contained a previously constructed aircraft storage hangar, owned by others. The lease site has been continually maintained as required. The original termination date of the agreement was July 30, 2016.
2. At the termination of the original lease, the Lessee requested to continue occupancy of the premises under the same terms and conditions as the original agreement.
3. Absent an adopted lease policy that adequately addressed such increases in lease term, the City entered into short-term (six-month) lease agreements to extend the current occupancy until a new policy document could be adopted. The second 6-month extension expires on July 31, 2017.
4. The City Council approved the Airport Leasing Policy on June 6, 2017. Its provisions have been applied to the current lease and a Third Amendment to Lease has been drafted.
5. The proposed Third Amendment to Lease includes a 10-year extension with the Option to Extend for two additional 5-year periods under the same terms and conditions as the original agreement. The available alternatives for future ownership and disposition of the hangar are also defined in the agreement.

Options

1. Take no action.
2. Approve the Third Amendment to Lease agreement as presented;
3. Approve the proposed lease amendment with modifications;

Analysis and Conclusions

The City retains an obligation to function as landlord of those public properties under its charge, and protect the public's interests in this regard. The lessee has continuously demonstrated his viability as a responsible and beneficial airport tenant.

The new Airport Leasing Policy provides significantly greater flexibility and options for tenants who wish to retain ownership of their building at the end of their lease term. Existing leases like this one call for the owner of the building to either tear down the building prior to the end of the lease, or revert ownership of the building to the Airport (the City). Under the new policy the owner will be allowed to retain ownership for at least ten more years.

Fiscal Impact

Continued rental revenues to the Airport with annual escalations in accordance with established policy.

Recommendation

Approve the Third Amendment to Lease with Arnold Del Rio.

Attachment

Third Amendment to Lease

**THIRD AMENDMENT TO MUNICIPAL AIRPORT PROPERTY
LEASE**

**ARNOLD DEL RIO
[5052 Wing Way]**

This Third Amendment to Municipal Airport Property Lease ("Third Amendment") is made and entered into this 1st day of August 2017, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation, (hereinafter called "City" or "Lessor") and ARNOLD DEL RIO ("Tenant"), with reference to the following recitals:

RECITALS

- A. City and Tenant entered into that certain Non-Subordinated Airport Ground Lease dated August 1, 1996 (the "Original Lease"), on Lot 9 of Parcel 16, Parcel Map PR 96-025, of the Airport Industrial Park.
- B. The City and Tenant executed a First Amendment to Airport Property Lease on July 19, 2016 (the "First Amendment") extending the term of said agreement on a month-to-month basis, not to exceed six (6) months. The City and Tenant executed a Second Amendment to Airport Property Lease to expire July 31, 2017. The Original Lease and the First and Second Amendments are referred to collectively herein as the "Lease."
- C. Tenant has continued to operate and maintain the leased Premises in accordance with all terms and conditions of the Lease.
- D. On June 6, 2017, The City approved an Airport Leasing Policy to define lease procedures and provisions affecting all airport leases, particularly as said leases reach the termination of the agreement as initially written.
- E. The City and Tenant now desire to enter into this Third Amendment and its provisions to allow a further extension of the existing agreement in accordance with the Airport Leasing Policy.

Therefore, City and Lessee agree as follows:

AGREEMENTS

1. Section 2.1 –Term is hereby amended to read as follows:

Section 2.1 Term - The Term of this Lease, as extended by the First and Second Amendments, shall now be extended for a period of Ten Years, commencing on August 1, 2017, and expiring on July 31, 2027.

2. Section 17-A is hereby added to the lease agreement as follows:

17-A. OWNERSHIP OF IMPROVEMENTS – ALTERNATIVES

Notwithstanding the provisions of Section 17, above, the tenant may elect to request an extension of the lease term and the ownership of the building improvements according to the following provisions.

- a.) Lessee may request an extension of the expiring lease (one time) for a period of not to exceed ten years. The ownership of all building improvements would be retained by the tenant for this time. Existing lease terms and conditions would apply and rent would continue for land only.
- b.) Lessee may sell his building improvements. So long as the buyer is qualified by the City to become a new lessee, City agrees to enter into a new lease agreement with the buyer for a term not to exceed ten years. The new lease would be under the new Leasing Policy and new terms and conditions in effect at the time, and rent would be charged for land only.
- c.) As indicated above, the Lessee may remove the building improvements for his own purposes and return the lease site to its undeveloped condition. The lease is then terminated as provided therein.
- d.) As the lease is terminated, Lessee may allow ownership of the building improvements to revert to the City. Lessee may then request a new lease agreement on the premises, which would include rental of the land and the building together. The lease term would not exceed ten years. The Lessee agrees that all building improvements and the property associated thereto, shall, without compensation from the City, become the property of the City. Under no circumstances shall the party to such a Lease be entitled to any payment by reason of the value of its business, franchise, or improvements.
3. In accordance with Section 17-A above, Tenant elects to exercise the right provided in Paragraph a.) of that section and extend the term of this lease ten additional years to now expire July 31, 2027, as is stated in the amended section 2.1 above. City and Tenant acknowledge that Tenant retains the right to the additional alternatives b.), c.), & d.) afforded in Section 17-A above, at the time of lease expiration or as provided therein.
4. Except as specifically amended by this Second Amendment, all of the terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to be duly executed on this _____ day of _____, 2017.

LANDLORD:
CITY OF EL PASO DE ROBLES

TENANT:
ARNOLD DEL RIO

Thomas Frutchey, City Manager

Arnold Del Rio

Approved as to Form:

Iris Yang, City Attorney