

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

DEPARTMENT: Aviation

AGENDA DATE: October 24, 2023

PUBLIC HEARING DATE: N/A

CONTACT PERSON NAME AND PHONE NUMBER: Sam Rodriguez, (915) 212-7301

DISTRICT(S) AFFECTED: District 3

STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: N/A

SUBJECT:

That the City Manager, or designee, is authorized to sign the attached Third Amendment to Air Cargo Building Lease Agreement (the "Relocation Agreement") which amends the Air Cargo Center Agreement lease dated October 28, 2014 (as amended, the "Lease"), by and between the City of El Paso, Texas, a Texas municipal corporation (the "Lessor"), and Mesa Airlines, Inc., a Nevada corporation ("Lessee"), for the purpose of, inter alia, setting forth Lessor's and Lessee's agreements arising from or related to relocating Lessee from the current premises under the Lease at the El Paso International Airport in and around Suite B in the Air Cargo Center building located at 301 George Perry Blvd., El Paso, Texas to new premises in around Suite K in said Air Cargo Center building, all as further described in the attached Relocation Agreement; and the City Manager is further authorized to execute for and on behalf of Lessor any and all other instruments and documents contemplated by or related to the Relocation Agreement, provided that there is no modification to rental due under the Lease, or the term of the Lease, as amended by the Relocation Agreement.

BACKGROUND / DISCUSSION:

Mesa Airlines is a tenant of the City of El Paso International Airport (Airport) and is currently leasing Suite B located at the Air Cargo Center building located at 301 George Perry Blvd. Mesa Airlines will be relocating to Suite K in the same Air Cargo Center building. The move is in benefit of the Airport as it allows the Airport to maximize the use of the Airport's Air Cargo Facilities allowing the Airport to bring more tenants in realization of the Airport's development plans.

PRIOR COUNCIL ACTION: N/A

AMOUNT AND SOURCE OF FUNDING: N/A

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

DEPARTMENT HEAD:



Sam Rodriguez, Aviation Director

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That the City Manager, or designee, is authorized to sign the attached Third Amendment to Air Cargo Building Lease Agreement (the "Relocation Agreement") which amends the Air Cargo Center Agreement lease dated October 28, 2014 (as amended, the "Lease"), by and between the City of El Paso, Texas, a Texas municipal corporation (the "Lessor"), and Mesa Airlines, Inc., a Nevada corporation ("Lessee"), for the purpose of, inter alia, setting forth Lessor's and Lessee's agreements arising from or related to relocating Lessee from the current premises under the Lease at the El Paso International Airport in and around Suite B in the Air Cargo Center building located at 301 George Perry Blvd., El Paso, Texas to new premises in around Suite K in said Air Cargo Center building, all as further described in the attached Relocation Agreement; and the City Manager is further authorized to execute for and on behalf of Lessor any and all other instruments and documents contemplated by or related to the Relocation Agreement, provided that there is no modification to rental due under the Lease, or the term of the Lease, as amended by the Relocation Agreement.

Approved this ____ day of _____, 2023

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM

Larry Phifer

Larry Phifer
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez

Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

Third Amendment to
Air Cargo Building Lease Agreement
(Premises Relocation Agreement)

This Third Amendment to Air Cargo Building Lease Agreement (this “**Agreement**”) is by and between the **CITY OF EL PASO, TEXAS**, a Texas municipal corporation (“**Lessor**”), and **MESA AIRLINES, INC.**, a Nevada corporation (“**Lessee**”).

WITNESSETH:

WHEREAS, pursuant to the Air Cargo Center Agreement lease dated October 28, 2014 (as amended by the First Amendment to Air Cargo Center Agreement dated October 29, 2019 and the Second Amendment to Air Cargo Center Agreement dated December 10, 2022, the “**Lease**”) Lessor is leasing to Lessee premises at the El Paso International Airport (all as shown on EXHIBIT A attached hereto) located at: (1) 301 George Perry Blvd., Suite B (collectively, the following contiguous premises: the “**Current Office Premises**” and the “**Current Warehouse Premises**”), which is a part of the Air Cargo Building located at 301 George Perry Blvd. (the “**Air Cargo Building**”), (2) the vehicle parking premises (“**Current Vehicle Parking Premises**”), (3) the GSE parking premises (the “**Current GSE Parking Premises**”), and (4) the aircraft and GSE parking area (the “**Aircraft and GSE Parking Area**”, as also shown on EXHIBIT A-1 attached hereto); and

WHEREAS, Lessor and Lessee have agreed to relocate and substitute the Current Office Premises, the Current Warehouse Premises, the Current Vehicle Parking Premises, and the Current GSE Parking Premises with other premises in and adjacent to the Air Cargo Building, and to amend other provisions of the Lease pursuant to such relocation, as provided in this Agreement;

WHEREAS, this relocation benefits the airport by allowing the airport to realize the overall development plan for the Air Cargo Building.

NOW THEREFORE, the parties agree as follows:

1. **Incorporation**. The recitals set forth above are incorporated into this Agreement.
2. **Warehouse Relocation**. Before November 1, 2023, Lessee will vacate and remove Lessee’s property from the Current Warehouse Premises and surrender the same to Lessor, without any structural damage, and will relocate its warehousing to the new warehouse premises area in the Air Cargo Building shown on EXHIBIT B attached hereto (the “**New Warehouse Premises**”). As of the Effective Date of this Agreement, Lessee shall have the right to possession of the New Warehouse Premises and as of the date Lessee takes possession of the New Warehouse Premises, the definition of Premises in the Lease shall also include the New Warehouse Premises. As of the date Lessee surrenders possession of the Current Warehouse Premises to Lessor in the condition required by this Agreement, the definition of Premises in the Lease shall exclude the Current Warehouse Premises.

Lessor warrants and represents to Lessee that as of the Effective Date of this Agreement and prior to move in, Lessor has installed security fencing between the New Warehouse Premises and the adjacent suite premises.

3. **Office Relocation.** Lessor, at its sole cost, shall construct in the Air Cargo Building the new office premises in the location shown on EXHIBIT B attached hereto and in accordance with the plans attached as EXHIBIT C hereto (the “New Office Premises”), which work shall be performed in a good and workmanlike manner and in accordance with applicable law.

Lessor will provide Lessee temporary offices (“Temporary Offices”) next to the New Warehouse Premises to accommodate Lessee’s warehouse staff (the “Temporary Office Premises”) while the New Office Premises are completed and possession is delivered by the Lessor to the Lessee. The Temporary Office Premises shall not be considered part of the Premises for purposes of rent. The Lessor shall, at its sole cost, cause water, wastewater and electricity to be made available to the Temporary Offices until the New Office Premises are completed and possession is delivered to the Lessee. Lessee shall cause the Temporary Office Premises to be added to its commercial general liability policy required by Section 7.01 of the Lease for Lessee’s operations at such temporary offices, and (iv) **WITH RESPECT TO LESSEE’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7.03 OF THE LEASE, UNTIL LESSEE HAS VACATED THE TEMPORARY OFFICE PREMISES AND RELOCATED TO THE NEW OFFICE PREMISES, THE TERM “PREMISES” IN SECTION 7.03 OF THE LEASE SHALL MEAN “THE PREMISES AND THE TEMPORARY OFFICE PREMISES.”** Lessee may continue to occupy the Current Office Premises for use of its mechanics staff until the Lessor delivers possession of the New Office Premises to the Lessee (estimated delivery date of the New Office Premises is February 1, 2024). Lessee shall vacate and remove Lessee’s property from the Current Office Premises and the Temporary Office Premises, surrender the same to Lessor, without any structural damage, and relocate its offices and property to the New Office Premises within thirty (30) days after Lessor delivers possession of the New Office Premises to Lessee with the New Office Premises substantially complete (subject only to minor punch list items to be completed by Lessor as soon as reasonably practicable after delivery) (estimated delivery date of the New Office Premises is February 1, 2024).

As of the date Lessor tenders possession of the New Office Premises to Lessee with all construction substantially complete (subject only to minor punch list items to be completed by Lessor as soon as reasonably practicable after delivery), the definition of Premises in the Lease shall include the New Office Premises. As of the date Lessee surrenders possession of the Current Office Premises to Lessor in the condition required by this Agreement, the definition of Premises in the Lease shall exclude the Current Office Premises.

Lessor warrants to Lessee that the New Office Premises as delivered by Lessor to Lessee will not require any non-routine maintenance or repairs for a period of one (1) year after the date Lessor delivers possession of the New Office Premises to Lessee. Notwithstanding the foregoing, (i) Lessee's sole and exclusive remedy for a breach of the foregoing warranty shall be to require Lessor to make the applicable repairs within thirty (30) days after written demand (or within such additional time as may be required under the circumstances), provided, however, Lessor shall not be responsible for any such repair necessitated by the negligence or willful misconduct of Lessee, its agents, or contractors.

4. **Parking Relocation**. Until Lessee has completed relocation to the New Warehouse Premises and New Office Premises, Lessee shall have the right to use for parking the Current Vehicle Parking Premises, Current GSE Parking Premises, and the "New Vehicle Parking Premises" and "New GSE Parking Premises" shown on EXHIBIT B attached hereto. When Lessee commences using any of the new parking premises shown on EXHIBIT B attached hereto, the definition of Premises in the Lease shall thereafter include such new parking premises. As of the date Lessee surrenders possession of the Current Office Premises to Lessor in the condition required by this Agreement (the "Relocation Completion Date"), the definition of Premises in the Lease shall exclude the Current Vehicle Parking Premises and Current GSE Parking Premises and include the New Vehicle Parking Premises and New GSE Parking Premises (to the extent such premises are not already included in the definition due to Lessee's prior use of such parking areas).
5. **New Definition of Premises**. The parties acknowledge that, in accordance with the foregoing, as of the Relocation Completion Date, the complete definition of "Premises" in Section 1.01 of the Lease shall be:
 - A. The New Office Premises and New Warehouse Premises containing 10,648 square feet, more or less, as shown on EXHIBIT B attached hereto, and also known as Air Cargo Center, 301 George Perry Blvd., Suite K, for Lessee's exclusive use.
 - B. The New Vehicle Parking Premises, containing 1,300 square feet, more or less, as shown on EXHIBIT B attached hereto, for vehicle parking.
 - C. The exclusive use of the New GSE Parking Premises, containing 1,300 square feet, more or less, as shown on EXHIBIT B attached hereto, for ground service equipment parking.
 - D. The Aircraft and GSE Parking Area, containing 25,000 square feet, more or less, as shown on EXHIBIT B and EXHIBIT A-1 attached hereto, for Lessee's exclusive use.
6. **Aircraft and GSE Parking Area**. Subject to the terms of the Lease, as amended by this Agreement, Lessee shall continue to have the same rights and obligations with

respect to the Aircraft and GSE Parking Area, including, without limitation, the obligation, upon the expiration or earlier termination of the Lease, to remove all improvements as provided in Section 10.02 of the Lease.

7. **Term Extension; Termination of Options.** The current term of the Lease is extended through April 30, 2026 (the "Lease Expiration Date"). All of Lessee's options to extend or renew the term of the Lease are terminated, including, without limitation, all options to extend the term of the Lease pursuant to Section 4.02 of the Lease.

8. **Rental.** Until the Relocation Completion Date, Lessee shall not pay any rent on the Temporary Office Premises, the New Warehouse Premises, the Current Vehicle Parking Premises, the New Vehicle Parking Premises, the Current GSE Parking Premises, or the New GSE Parking Premises. Lessee shall continue to pay Lessor full rental on the Current Office Premises and Aircraft and GSE Parking Area, as provided in the Lease without regard to this Agreement or to any changes to square footage of Premises or Premises locations, until the first calendar month following the Relocation Completion Date. Except for the Aircraft and GSE Parking Area, for which full rental shall be paid and for which there shall be no rent abatement, for the first eight (8) calendar months following the month in which the Relocation Completion Date occurs (the "**Rent Abatement Period**"), rental due under Section 5.01 of the Lease shall be \$0.00.

Commencing after the Rent Abatement Period and continuing through the Lease Expiration Date, Lessee shall pay Lessor rental under Section 5.01 of the Lease as follows:

Rental Fee	Sq. Ft.	Annual Rate	Annual Rent	Monthly Rent
Office/ Warehouse	10,648	\$6.51	\$69,318.48	\$5,776.54
Vehicle Parking	1,300	\$0.73	\$943.80	\$78.65
GSE Parking	1,300	\$0.73	\$943.80	\$78.65
Aircraft & GSE Parking	25,000	\$0.73	\$18,150	\$1,512.50
Total			\$89,356.08	\$7,446.34

The foregoing rental will not be adjusted (i) due to any rental adjustment provisions in the Lease, including, without limitation, any CPI or other adjustment provisions in Section 5.01 of the Lease, or (ii) due to the difference, if any, between the stated square footage of the Premises in this Agreement and the actual square footage of the Premises.

9. **Proof of Insurance.** Prior to accessing, occupying, or using any new Premises location, as defined in Section 5 of this Agreement, Lessee shall deliver to Lessor

certificate(s) of insurance showing that Lessee's operations at such location are covered by the liability insurance required by Section 7.01 of the Lease.

10. **Memorandum**. After the Relocation Completion Date, upon the request of either party, Lessor and Lessee agree to execute a mutually acceptable memorandum regarding this Agreement in the form attached hereto as EXHIBIT D.
11. **Automatic Amendment**. Any provision in the Lease that is inconsistent with this Agreement, including any exhibits thereto, shall automatically be amended, to the extent necessary, to be consistent with this Agreement.
12. **Ratification**. Except as herein amended, all other terms and conditions of the Lease not specifically modified by this Agreement shall remain unchanged and in full force and effect.
13. **Effective Date**. This Agreement shall be effective upon the date it is approved by the El Paso City Council.

[signature page(s) follow]

LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day
of _____, 20 .

LESSOR: CITY OF EL PASO:

Cary S. Westin, Interim City Manager

APPROVED AS TO FORM:

Larry Phifer

Larry Phifer
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez

Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This Instrument was acknowledged before me on the ____ day of _____, 2023 by Cary S. Westin, Interim City Manager of the City of El Paso, a Texas municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's Commission Expires:
Notary's Name (printed)

(Signatures continue on the following page)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

ATTEST:

LESSEE: MESA AIRLINES, INC.
a Nevada corporation

Janice Efflandt
Name: Janice Efflandt

Michael Letz
Name: Michael Letz
Title: PRESIDENT

ACKNOWLEDGMENT

THE STATE OF ARIZONA)
COUNTY OF MARICOPA)

This Instrument was acknowledged before me on the 17 day of OCTOBER, 2023
by MICHAEL LETZ of Mesa Airlines, Inc., a Nevada
corporation, on behalf of said corporation.

[Signature]
Notary Public, State of

My Commission Expires:
Aug. 23, 2027

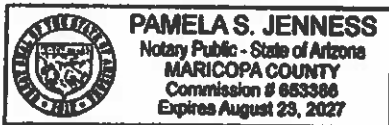


EXHIBIT A
Current Premises



EXHIBIT A-1
Aircraft and GSE Parking Area

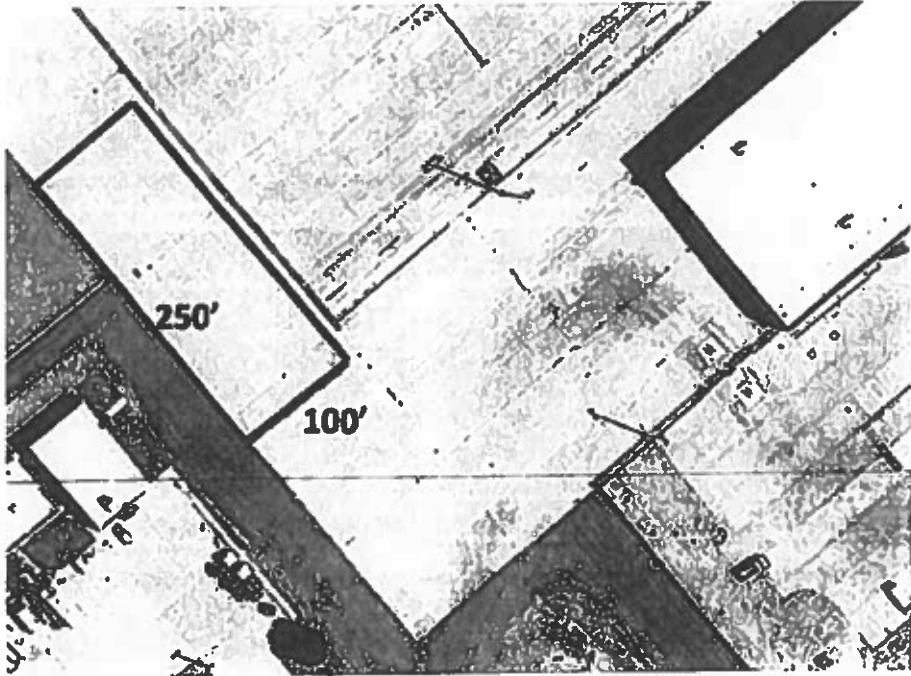


EXHIBIT B
New Premises

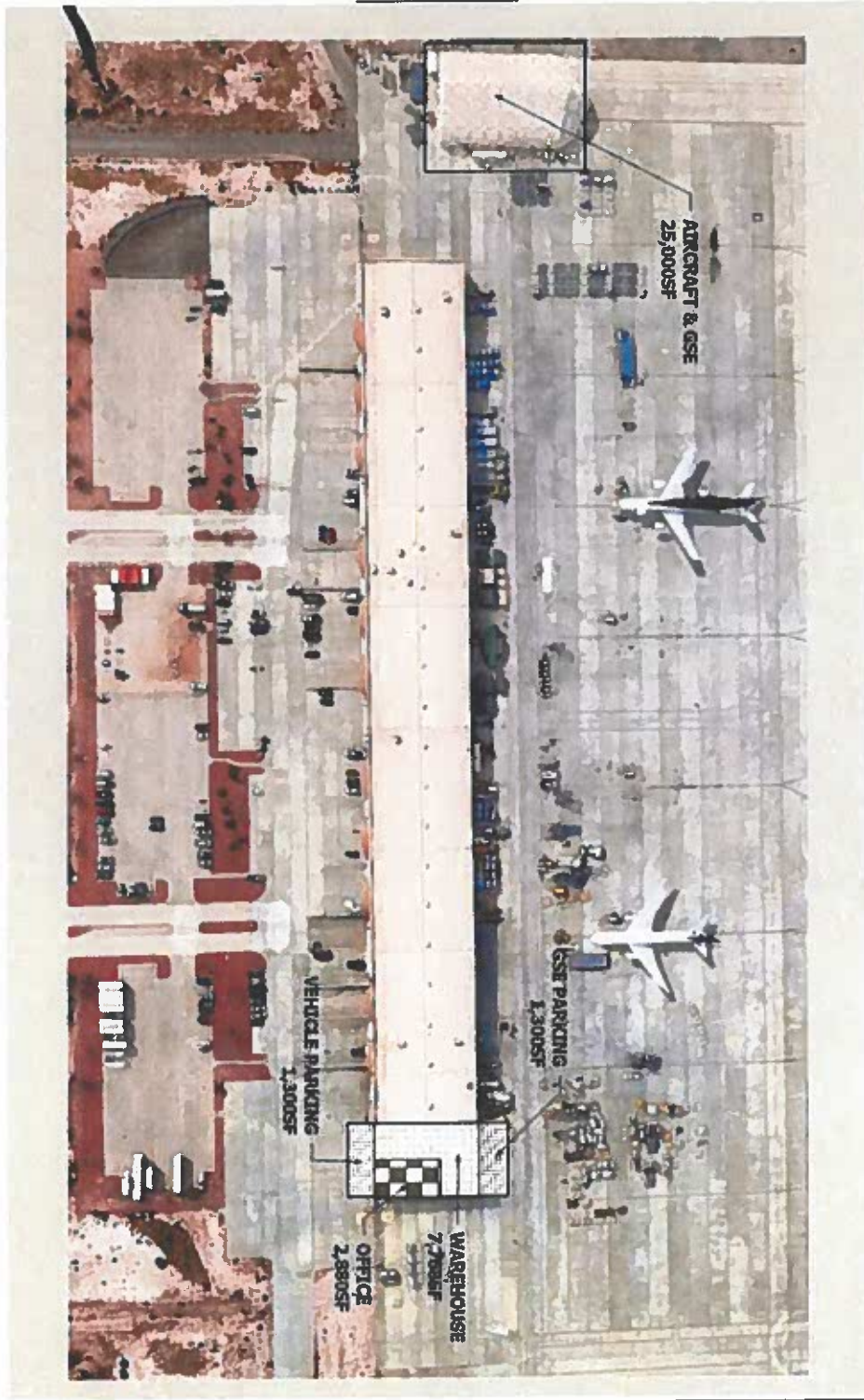


EXHIBIT C
New Office Premises Plans

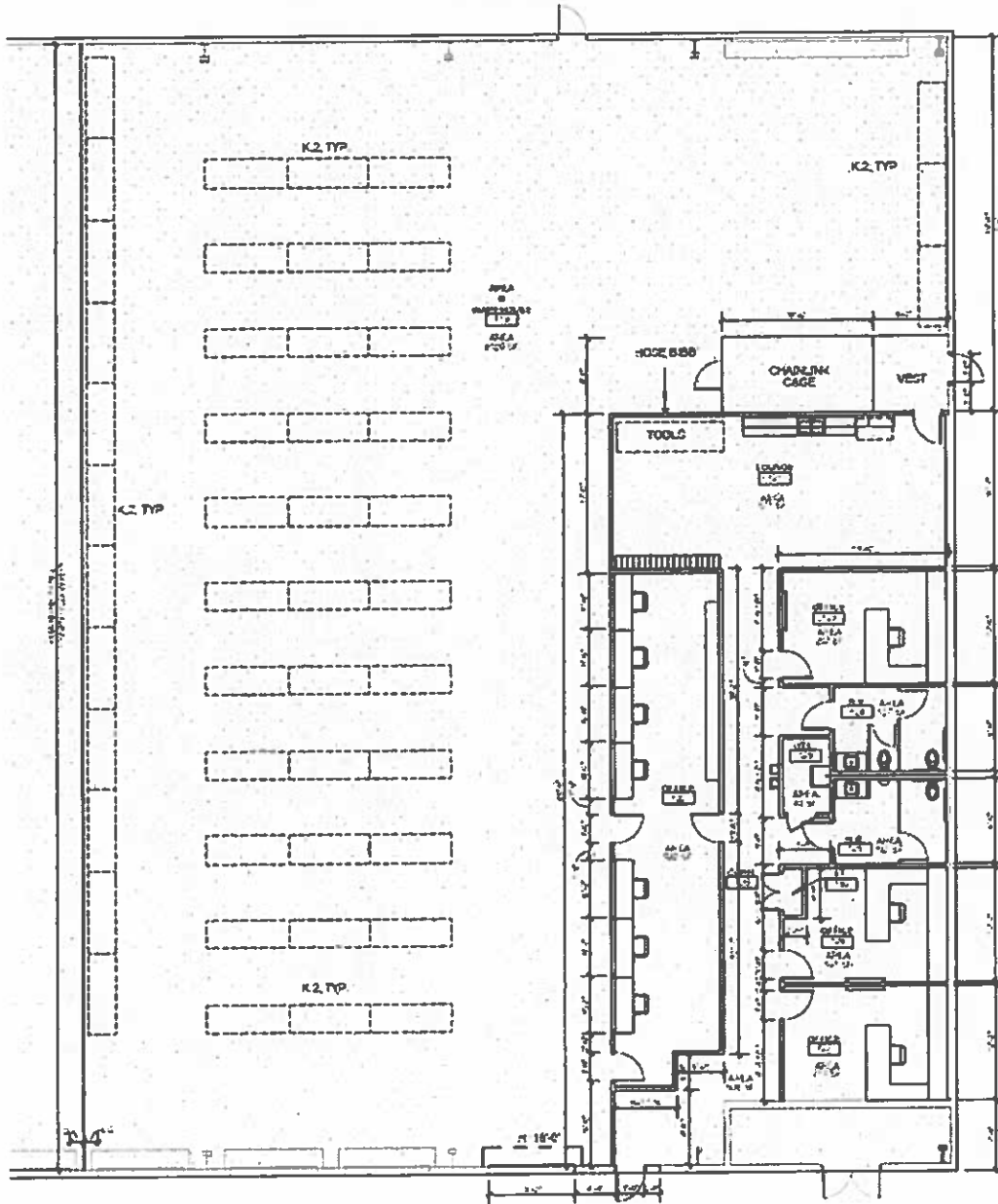


EXHIBIT D

MEMORANDUM OF AGREEMENT
Regarding Premises Relocation Agreement

This Memorandum of Agreement (this "**Agreement**") is being executed pursuant to the Third Amendment to Air Cargo Building Lease Agreement (the "**Relocation Agreement**") dated _____ by and between the **CITY OF EL PASO, TEXAS**, a Texas municipal corporation ("**Lessor**"), and **MESA AIRLINES, INC.**, a Nevada corporation ("**Lessee**"), for premises at the El Paso International Airport in and around the Air Cargo Building located at 301 George Perry Blvd.

With respect to the Relocation Agreement, the parties agree as follows:

1. Lessor delivered possession of the New Warehouse Premises to Lessee on:

2. Lessee surrendered possession of the Current Warehouse Premises to Lessor on:

3. Lessor delivered possession of the New Office Premises to Lessee on:

4. The Relocation Completion Date and the date Lessee surrendered possession of the Current Office Premises to Lessor is: _____
5. The Rent Abatement Period is from _____ to _____

[signature page(s) follow]

Effective as of the date fully signed and acknowledged.

LESSOR'S SIGNATURE AND ACKNOWLEDGMENT
to Memorandum of Agreement

LESSOR: CITY OF EL PASO:

Cary S. Westin, Interim City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Larry Phifer
Assistant City Attorney

Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This Instrument was acknowledged before me on the ____ day of _____, 2023 by Cary S. Westin, Interim City Manager of the **City of El Paso**, a Texas municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's Commission Expires:
Notary's Name (printed)

(Signatures continue on the following page)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT
to Memorandum of Agreement

ATTEST:

LESSEE: MESA AIRLINES, INC.
a Nevada corporation

Name: _____

Name: _____
Title: _____

ACKNOWLEDGMENT

THE STATE OF _____)
))
COUNTY OF _____)

This Instrument was acknowledged before me on the _____ day of _____, 2023
by _____ of **Mesa Airlines, Inc.**, a Nevada
corporation, on behalf of said corporation.

Notary Public, State of _____

My Commission Expires:
