

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

DEPARTMENT: Aviation

AGENDA DATE: November 7, 2023

PUBLIC HEARING DATE: N/A

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

DISTRICT(S) AFFECTED: 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 a First Amendment to the Ground Lease Agreement by and between the City of El Paso, Texas, a municipal corporation existing under the laws of the State of Texas (the "Lessor"), and ELP Land Holdings I, LLC, a Delaware Limited Liability Company ("Lessee") to exclude 242,932.80 square feet of land to the property leased under the Ground Lease entered by the parties on March 28, 2023 and adjust the due diligence and rent commencement periods in the lease.

BACKGROUND / DISCUSSION:

This first amendment amends the legal description of the property to exclude from the leased premises a well house lot and extends the due diligence period and rent commencement period by 90 days to accommodate for delays in the platting process of the subject property.

PRIOR COUNCIL ACTION:

March 28, 2023 – Approval of ground lease

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:



Sam Rodriguez, Aviation Director

RESOLUTION

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

That the City Manager, or designee, is authorized to sign a First Amendment to the Ground Lease Agreement by and between the City of El Paso, Texas, a municipal corporation existing under the laws of the State of Texas (the “Lessor”), and ELP Land Holdings I, LLC, a Delaware Limited Liability Company (“Lessee”) to exclude 242,932.80 square feet of land to the property leased under the Ground Lease entered by the parties on March 28, 2023 and adjust the due diligence and rent commencement periods in the lease.

APPROVED THIS _____ DAY OF _____, 2023

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM

Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS) FIRST AMENDMENT TO GROUND LEASE

) AGREEMENT

COUNTY OF EL PASO)

This First Amendment to Ground Lease Agreement (the “**Amendment**”) is made and entered into this ____ day _____, 2023, by and between the City of El Paso, Texas, a municipal corporation existing under the laws of the State of Texas (the “**Lessor**”), and ELP Land Holdings I, LLC, a Delaware limited liability company, (“**Lessee**”).

WHEREAS, Lessor and Lessee entered into a Ground Lease Agreement (the “**Lease**”), with an effective date of March 28, 2023 to lease 8,994,892.7 square feet of land within portions of Section 21 and 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys; and

WHEREAS, the parties excluded the proposed well house site totaling 37,474.5 square feet; and

WHEREAS, the parties had intended to exclude the proposed future well house lot 2, the correct size of the well house site should have been listed as 242,932.80 square feet; and

WHEREAS, the parties wish to correct the error; and

WHEREAS, the parties are going through the platting process of the property under the lease; and

WHEREAS, the parties wish to extend the due diligence period and the rent commencement period in order to allow the parties to complete the platting of the lease property.

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 to amend the Lease as follows:

1. Section 1.01 Description of Premises Demised, Parcel 1, of the Lease is amended to read as follows:

Parcel 1: A 49.6116 acre (2,161,080.8 square feet) parcel of land situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Section 21 and 22, Block 80, Township 2 Texas and Pacific Railway Company Surveys and being more particularly described by metes and bounds in Exhibit A-1, **provided however that the proposed future well house lot 2 totaling 242,932.80 square feet depicted in Exhibit A-1 is not part of the leased property.**

2. All other parcel descriptions in Section 1.01 of the Lease except Parcel 1 as noted above remain the same.
3. Section 3.01 Rent, of the Lease is amended to read as follows:

3.01 Rent.

For the purpose of computing the rent payments ("Rent"), Lessor and Lessee agree that the Premises comprise 8,789,434.4 square feet of land. The initial Rent for the Premises will be calculated on the basis of 8,789,434.4 square feet at \$0.1969 per square foot per annum. The initial annual Rent for the first five (5) years of the Initial Term shall be \$1,730,639.63 or \$144,219.97 monthly. The Lessee will pay the Rent in twelve (12) equal monthly installments of \$144,219.97. Rent payments shall be paid in advance on or before the first day of each and every month during the term of this Lease. The Rent is subject to readjustment of Rent as addressed in Section 3.04 below and subject to the commencement of Rent pertaining to the phased Parcels as provided in Section 3.02 below.

4. Section 3.01.01 Initial Rent in the Event of Partial Termination of the Lease, of the Lease is amended to read as follows:

3.01.01 Initial Rent in the Event of a Partial Termination of the Lease.

If the Lease is partially terminated as provided in Section 10.06 below, then the initial Rent for the Premises will be calculated as follows:

Only Parcel 1 remains under the Lease: 1,918,148.00 square feet at \$0.3000 per square foot per annum.

Only Parcels 1 and 2 remain under the Lease: 3,983,971.5 square feet at \$0.2625 per square foot per annum.

Only Parcels 1, 2, and 3 remain under the Lease: 6,129,695.9 square feet at \$0.2250 per square foot per annum.

If the Lease is partially terminated, as provided in Section 10.06 below, after the fifth (5th) anniversary of the Rent Commencement Date, then the rental amounts identified in this Section above will be adjusted in accordance to Section 3.04 below.

5. Section 3.02 Commencement of Rent and Time of Payment, of the Lease is amended to read as follows:

3.02 Commencement of Rent and Time of Payment.

For purposes of this Section, the initial Rent, as identified in Section 3.01, can be broken down by parcel as follows:

Parcel "1" (1,918,148.00 square feet @ \$0.1969) - \$377,683.34 annual, \$31,473.61 monthly

Parcel "2" (2,065,823.5 square feet @ \$0.1969) = \$406,760.65 annual, \$33,896.72 monthly

Parcel "3" (2,145,724.4 square feet @ \$0.1969) = \$422,493.13 annual, \$35,207.76 monthly

Parcel "4" (2,659,738.5 square feet @ \$0.1969) = \$523,702.51 annual, \$43,641.88 monthly

Total (8,789,434.4 square feet @ \$0.1969) = \$1,730,639.63 annual, \$144,219.97 monthly)

Payment of Rent by Lessee to Lessor as aforesaid shall commence as follows: Payment of Rent for the area marked as Parcel "1" on Exhibit "D" will commence July 5, 2025 or on the date of the issuance of the first certificate of occupancy, whichever occurs first (the "Rent Commencement Date"). Payment of Rent for the area marked as Parcel "2" on Exhibit "D" will commence May 26, 2027 or on the date of the issuance of the first certificate of occupancy, whichever occurs first. Payment of Rent for the area marked as Parcel "3" on Exhibit "D" will commence June 4, 2029 or on the date of the issuance of the first certificate of occupancy, whichever occurs first. Payment of Rent for the area marked as Parcel "4" on Exhibit "D" will commence June 14, 2031, or on the date of the issuance of the first certificate of occupancy, whichever occurs first.

6. Section 5.11 Due Diligence, of the Lease is amended to read as follows:

5.11 Due Diligence.

The Lessee may conduct due diligence on the property for 270 calendar days starting on the Effective Date of this Lease (the "Due Diligence Period"). The Lessee may terminate the Lease during the Due Diligence Period for any or no reason following notice to the Lessor as provided below. If the Lessee elects to terminate the Lease during the Due Diligence Period, then the Lessee will send written notification to the Lessor. The Lease will be considered terminated as of the date of the receipt of the termination notice and there will be no need for any other action. The Lessor may file any documents in the Official Records of El Paso County to evidence the termination of the Lease. Unless otherwise provided in this Lease, the Lessee may not terminate the Lease following the expiration of the Due Diligence Period. No refund of payments will be made if the rent payments commenced on the Effective Date of the Lease and Lessee terminates during the Due Diligence Period.

7. **Ratification.** Except as herein amended, all other terms and conditions of the Lease not specifically modified by this Amendment shall remain unchanged and in full force and effect.
8. **Effective Date.** This Amendment shall be effective upon the date it is approved by the El Paso City Council.

(Signatures begin on the following page)

LESSOR'S SIGNATURE AND ACKNOWLEDGMENT

IN WITNESS WHEREOF, the parties have hereunto set their hands as of this ____ day of _____, 2023.

LESSOR:

CITY OF EL PASO

Cary Westin
Interim City Manager

APPROVED AS TO FORM:

Leslie Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONTENT:

Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2023, by Cary Westin as Interim City Manager of the City of El Paso, Texas.

Notary Public, State of Texas

My Commission Expires:

(Signatures continue on the following page)

LESSEE'S SIGNATURE AND ACKNOWLEDGMENT

LESSEE:

By:

Print Name: DAVID KARR

Title: MANAGER

ACKNOWLEDGMENT

THE STATE OF TEXAS)

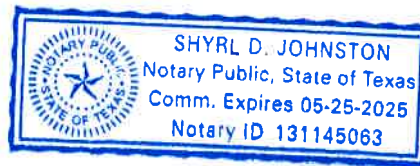
COUNTY OF DALLAS)

This instrument was acknowledged before me on this 23rd day of October, 2023, by David Karr as Manager for Lessee.


Notary Public, State of Texas

My Commission Expires:

05/25/25





First Amendment to Ground Lease — El Paso Landholdings I LLC.

November 7, 2023

First Amendment

- Amend description to exclude the well house lot instead of the well house site
- Extend due diligence period and rent commencement period by 90 days to allow for platting process to be completed.

MISSION



Deliver exceptional services to support a high quality of life and place for our community.

VISION



Develop a vibrant regional economy, safe and beautiful neighborhoods and exceptional recreational, cultural and educational opportunities powered by a high performing government.



VALUES

Integrity, **R**espect, **E**xcellence,
Accountability, **P**eople