

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

DEPARTMENT: Aviation

AGENDA DATE: February 15, 2022

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

DISTRICT(S) AFFECTED: 3

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

SUBJECT:

Resolution to authorize the City Manager to sign a "Third Amendment to Operating Agreement," or a "Third Amendment to Airline Operating Agreement and Terminal Building Lease" in substantially the forms attached hereto, providing two additional one-year extensions to airlines having either an existing "Operating Agreement" or an existing "Airline Operating Agreement and Terminal Building Lease" with the City of El Paso, provided that the subject airline is not in default of any of the terms of its existing agreement.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval of this item to add two additional one-year options to the current Airline Operating Agreement and Terminal Building Lease and the existing First Amendment to Operating Agreement, respectively. This additional extension is required as the effects of the COVID-19 pandemic's drastic impact to the aviation industry renders this not the optimal time to enter into a new agreement.

The addition of this extension will allow for the continued operation of the thirteen passenger and cargo airlines that currently have agreements in place with El Paso International Airport through August 31, 2024. During this time, Department of Aviation management will be working with the airlines to negotiate and execute new agreements with a target start date of September 1, 2024.

PRIOR COUNCIL ACTION:

- June 23, 2020 – Approval as to form of Second Amendment to Airline Operating Agreement and Terminal Building Lease and the Second Amendment to Operating Agreement.
- June 11, 2019 – Approval as to form of First Amendment to Airline Operating Agreement and Terminal Building Lease and the First Amendment to Operating Agreement.
- October 9, 2012 – Approval of the current Airline Operating Agreement and Terminal Building Lease and a First Amendment to Operating Agreement as to form.

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Sam Rodriguez, P.E.
Chief Operations & Transportation Officer/Director of Aviation

RESOLUTION

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

That the City Manager be authorized to sign a "Third Amendment to Operating Agreement," or a "Third Amendment to Airline Operating Agreement and Terminal Building Lease" in substantially the forms attached hereto, providing two additional one-year extensions to airlines having either an existing "Operating Agreement" or an existing "Airline Operating Agreement and Terminal Building Lease" with the City of El Paso, provided that the subject airline is not in default of any of the terms of its existing agreement.

ADOPTED this ____ day of _____ 2022.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Roberta A. Brito
Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**THIRD AMENDMENT TO
OPERATING AGREEMENT**

This Third Amendment to the Operating Agreement (“**Third Amendment**”) is by and between the City of El Paso (“**City**”) and _____ (“**Airline**”), a _____. For purposes of this Third Amendment, all defined terms appear in boldface print when first defined.

WHEREAS, on _____, the City and Airline entered into an Operating Agreement (“**Operating Agreement**”) for that certain property located inside or adjacent to the Terminal Building at the El Paso International Airport at 6701 Convair Road, El Paso, Texas (“**Leased Premises**”), as described in detail in the Operating Agreement; and

WHEREAS, the initial term of the Operating Agreement was September 1, 2012 through August 31, 2019; and

WHEREAS, on _____, the parties entered into a First Amendment to provide an additional one-year renewal period, expiring August 31, 2020, to allow the parties to negotiate a new Operating Agreement; and

WHEREAS, on March 27, 2020, the Centers for Disease Control and Prevention issued a Global COVID-19 Pandemic Notice, entitled Level 3, Avoid Nonessential Travel, which resulted in a significant reduction in air travel and made entering into a new agreement untimely; and

WHEREAS, on _____, the parties entered into a Second Amendment to provide two additional one-year renewal periods, with expiration dates of August 31, 2021 and August 31, 2022, respectively, to allow time for the parties to review and negotiate a new Operating Agreement; and

WHEREAS, the COVID-19 pandemic is still affecting the aviation industry and may affect the industry for many months to come; and

WHEREAS, the parties wish to enter into this Third Amendment to add two additional one-year renewal periods.

NOW, THEREFORE, the parties agree as follows:

Section 1. **ARTICLE 2 - TERM, Section 2.01 of the Operating Agreement is deleted in its entirety and replaced as follows:**

SECTION 2.01 **TERM**

A. This Operating Agreement shall commence on September 1, 2012, (Effective Date) and terminate at midnight on August 31, 2019, unless

anceled sooner or extended as provided herein and subject to the provisions set forth in this Section 2.01.

- B. The parties hereby agree and acknowledge that the Agreement was extended through the following renewal periods:
Renewal Period No. 1 (which expired August 31, 2020);
Renewal Period No. 2 (which expired August 31, 2021);
- C. The parties hereby agree and acknowledge that the parties have extended the Agreement through Renewal Period No. 3, which shall expire on August 31, 2022.
- D. The parties hereby agree and acknowledge that, so long as Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for two (2) additional one-year renewal periods upon expiration of Renewal Period No. 3 on August 31, 2022. The two (2) additional renewal periods available after Renewal Period No. 3 shall be referred to as “Renewal Period No. 4” and “Renewal Period No. 5.”
- D. To enter into Renewal Period 4, which would be a term of September 1, 2022 through August 31, 2023, the Director shall give written notice to Airline of City’s intent to extend the Agreement no less than three (3) months prior to the expiration of Renewal Period No. 3. If Airline is unwilling to renew for Renewal Period No. 4, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent not to renew within thirty (30) days from the notification of the City’s intent to extend the term.
- E. To enter into Renewal Period No.5, which would be a term of September 1, 2023 through August 31, 2024, the Director shall give written notice to Airline of City’s intent to extend the Agreement no less than three (3) months prior to the expiration of Renewal Period No. 4. If Airline is unwilling to renew for Renewal Period No. 5, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent not to renew within thirty (30) days from the notification of the City’s intent to extend the term.
- F. During any renewal period, the Agreement shall be extended on the same terms and conditions, except as provided herein, and except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

Section 2. Except as amended in this Third Amendment the terms of the Operating Agreement between the City and the Airline shall remain in full force and effect.

(City Signatures on the following page)

IN WITNESS WHEREOF, the City and Airline have executed this Third Amendment as of the date it is signed by the City.

CITY OF EL PASO:

Tomás González, City Manager

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodríguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 202__, by Tomás González, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of _____

My Commission Expires:

(Airline Signature Page Follows)

AIRLINE(S):

By: _____
Its: _____

ACKNOWLEDGMENT

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____,
202__, by _____, [title: _____], [company: _____], on behalf of said
entities.

Notary Public, State of _____

My Commission Expires:

STATE OF TEXAS)
)
)
)
COUNTY OF EL PASO)

**THIRD AMENDMENT TO
AIRLINE OPERATING AGREEMENT AND
TERMINAL BUILDING LEASE**

This Third Amendment to the Airline Operating Agreement and Terminal Building Lease (“**Third Amendment**”) is by and between the City of El Paso (“**Lessor**”) and _____ (“**Lessee**”), a _____. For purposes of this Third Amendment, all defined terms appear in boldface print when first defined.

WHEREAS, on _____, _____, the Lessor and Lessee entered into an Airline Operating Agreement and Terminal Building Lease (“**Lease**”) for that certain property located inside or adjacent to the Terminal Building at the El Paso International Airport at 6701 Convair Road, El Paso, Texas (“**Leased Premises**”), as described in detail in the Lease; and

WHEREAS, pursuant to Section 2.04 of the Lease, the City timely exercised its two one-year renewal periods to extend the Lease through August 31, 2019; and

WHEREAS, on June 1, 2019, the parties entered into a First Amendment to provide an additional one-year renewal period, expiring August 31, 2020, to allow the parties to negotiate a new Airline Operating Agreement and Terminal Building Lease; and

WHEREAS, on March 27, 2020, the Centers for Disease Control and Prevention issued a Global COVID-19 Pandemic Notice, entitled Level 3, Avoid Nonessential Travel, which resulted in a significant reduction in air travel and made entering into a new agreement untimely; and

WHEREAS, on June 23, 2020, the parties entered into a Second Amendment to provide two additional one-year renewal periods, with expiration dates of August 31, 2021 and August 31, 2022, respectively, to allow time for the parties to review and negotiate a new Airline Operating Agreement and Terminal Building Lease; and

WHEREAS, the COVID-19 pandemic is still affecting the aviation industry and may affect the industry for many months to come; and

WHEREAS, the parties wish to enter into this Third Amendment to add two additional one-year renewal periods.

NOW, THEREFORE, the parties agree as follows:

Section 1. ARTICLE 2 “TERM”, Section 2.04 Extension of the Lease is deleted in its entirety and replaced as follows:

- A. The parties hereby agree and acknowledge that the Agreement was extended through the following renewal periods: Renewal Period No. 1 (which expired August 31, 2018); Renewal Period No. 2 (which expired August 31, 2019); Renewal Period No. 3 (which expired August 31, 2020); and Renewal Period No. 4 (which expired August 31, 2021).
- B. The parties hereby agree and acknowledge that the parties have extended the Agreement through Renewal Period No. 5, which expires August 31, 2022.
- C. The parties hereby agree and acknowledge that, so long as Airline is not in default of any terms of this Agreement, the Term of this Agreement may be extended for two (2) additional one-year renewal periods upon expiration of Renewal Period No. 5 on August 31, 2022. The two (2) additional renewal periods available after Renewal Period No. 5 shall be referred to as “Renewal Period No. 6” and “Renewal Period No. 7.”
- D. To enter into Renewal Period 6, which would be a Term of August 31, 2022 through August 31, 2023, the Director shall give written notice to Airline of City’s intent to extend the Agreement no less than three (3) months prior to the expiration of Renewal Period No. 5. If Airline is unwilling to renew for Renewal Period No. 6, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent not to renew within thirty (30) days from the notification of the City’s intent to extend the term.
- E. To enter into Renewal Period No. 7, which would be a Term of August 31, 2023 through August 31, 2024, the Director shall give written notice to Airline of City’s intent to extend the Agreement no less than three (3) months prior to the expiration of Renewal Period No. 6. If Airline is unwilling to renew for Renewal Period No. 7, Airline will be released from its obligation to extend the Agreement term, provided it gives the Director written notice of its intent not to renew within thirty (30) days from the notification of the City’s intent to extend the term.
- F. During any renewal period, the Agreement shall be extended on the same terms and conditions, except as provided herein, and except Airline shall pay all rates, charges and provisions as set forth herein and in Title 14 and any applicable City Annual Budget Resolution.

Section 2. Except as amended in this Third Amendment the terms of the Lease between the Lessor and Lessee shall remain in full force and effect.

(City Signatures on the Following Page)

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Second Amendment as of the date it is signed by the Lessor.

CITY OF EL PASO:

Tomás González, City Manager

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on the ____ day of _____, 202__, by Tomás González, as City Manager of the City of El Paso, Texas, on behalf of the City of El Paso, Texas.

Notary Public, State of _____

My Commission Expires:

(Lessee Signature Page Follows)

LESSEE(S):

By: _____

Its: _____

ACKNOWLEDGMENT

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 202__, by _____, [title: _____], [company: _____], on behalf of said entities.

Notary Public, State of _____

My Commission Expires:
