

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

AGENDA DATE: October 11, 2022

PUBLIC HEARING DATE: N/A

CONTACT PERSON: Samuel Rodriguez, P.E. Aviation Director (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 Lease Termination Agreement between the City of El Paso ("Lessor") and Airport Park-A-Lot El Paso LLC ("Lessee") for the following property:

All of Lots 2, 3 and 4, Block 1A, El Paso International Airport Tracts, Replat of Unit 4, City of El Paso, El Paso County, Texas, municipally known and numbered as 6440 Airport Road, El Paso, Texas,

and that the Director of Aviation, or designee, is authorized to exercise all rights and perform all obligations described in the Lease Termination Agreement, and that he be authorized to sign all documents related to the Lease Termination Agreement, including any amendments to the Lease Termination Agreement that do not involve changes to monetary settlement amounts.

BACKGROUND / DISCUSSION:

The Department of Aviation requests approval to terminate the Industrial Site Lease as of 11:59:59 p.m. on January 14, 2023, as the Lessee has defaulted due to nonpayment of rents due. In December 2020, the Lessee requested relief as the business has been direly impacted by the COVID-19 pandemic. Under the Delegation of Authority to provide relief to airport tenants affected by the decrease in passengers approved on April 14, 2020, ELP agreed to defer rental payments for April 2020 through December 2021 until January 1, 2022. The Lessee would then start making required rental payments plus the deferred amount over the remainder of the initial term of the lease. The monthly rental fee is \$9,885.01 and with the deferred amount is \$11,367.76. Lessee made one (1) payment in January 2022 and one (1) partial payment in April 2022. The balance as of October 1, 2022 is \$311,281.

PRIOR COUNCIL ACTION:

- 2/29/2012 – Approval of Industrial Site Lease
- 3/17/2015 – Approval of First Amendment to Industrial Site Lease to allow for a trial period for curbside valet service for one year
- 6/14/2016 – Approval of Second Amendment to Industrial site Lease to allow for a trial period for curbside valet service on a month-to-month basis

AMOUNT AND SOURCE OF FUNDING:

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

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Aviation

SECONDARY DEPARTMENT: N/A

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

DEPARTMENT HEAD: _____

A handwritten signature in blue ink, appearing to read 'Samuel Rodriguez', is written over a horizontal line.

Samuel Rodriguez, P.E., Director of Aviation

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 Lease Termination Agreement between the City of El Paso ("Lessor") and Airport Park-A-Lot El Paso LLC ("Lessee") for the following property:

All of Lots 2, 3 and 4, Block 1A, El Paso International Airport Tracts, Replat of Unit 4, City of El Paso, El Paso County, Texas, municipally known and numbered as 6440 Airport Road, El Paso, Texas,

and that the Director of Aviation, or designee, is authorized to exercise all rights and perform all obligations described in the Lease Termination Agreement, and that he be authorized to sign all documents related to the Lease Termination Agreement, including any amendments to the Lease Termination Agreement that do not involve changes to monetary settlement amounts.

APPROVED the ____ day of _____ 2022.

CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:


Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Josette Flores
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Samuel Rodriguez, P.E.
Director of Aviation

STATE OF TEXAS)
)
COUNTY OF EL PASO)

LEASE TERMINATION AGREEMENT

This Lease Termination Agreement (“**Agreement**”) is entered on _____, 2022 (“**Effective Date**”) between the City of El Paso, Texas a home rule municipality (“**Lessor**”) and Airport Park-A-Lot LLC DBA Fast Spot Valet Parking (“**Lessee**”) (collectively the Lessor and the Lessee are referred to as the “**Parties**”).

WHEREAS, Lessor owns and operates the El Paso International Airport, located in the County of El Paso, State of Texas, (“**Airport**”), which is managed by the Director of Aviation (“**Director**”); and

WHEREAS, effective February 29, 2012, Lessor and Lessee entered into an Industrial Site Lease (the “**Lease**”) for the following real property:

All of Lots 2, 3 and 4, Block 1A, El Paso International Airport Tracts, Replat of Unit 4, City of El Paso, El Paso County, Texas, municipally known and numbered as 6440 Airport Road, El Paso, Texas (the “**Premises**”); and

WHEREAS, effective April 1, 2015, Lessor and Lessee entered into a First Amendment to the Industrial Site Lease (“**First Amendment**”) providing for a trial period of valet parking service (the “**Service**”) at the Airport terminal; and

WHEREAS, Lessor and Lessee considered that the trial of the Service was sufficiently successful to warrant a continuation of the Service on a month-to-month basis for vehicular and parking services at the El Paso International Airport Terminal building; and

WHEREAS, the Lease expires February 28, 2042, but Lessee desires to terminate the Lease and all rights to possession of the Premises and to release the Premises to the Lessor; and

WHEREAS, Lessor has evaluated the situation and determined that it will be beneficial for the Lessor to accept the Lease termination and to release Lessee from its obligations under the Lease, except as otherwise specifically stated herein; and

WHEREAS, upon termination of the Lease, Lessee shall at its sole expense remove any and all personal property not considered improvements to the Premises, which, for clarification, shall not include the kiosk nor the billboard structure but shall include the signage panels containing the trademark log“ “Fast Spot”; however, all insurance and indemnification obligations arising out of, or relating to, the Service shall remain in force and Lessor will take over the

FB

5. Lessor and Lessee agree Lessor will take over the operation of the Service through Lessor's Parking Lot Manager, SP Plus Corporation. No later than October 15, 2022, Lessee will allow Lessor to place signage at the entrance and exit notifying customers that the ownership change will occur on January 15, 2023. The Parties may agree that additional pre-transfer signage locations may be used by Lessor on the Premises, without the need to amend this Agreement.
6. Lessor and Lessee agree that Lessor will take possession of the improvements contemplated in the Lease on the Premises, on January 15, 2023.
7. Ownership of Improvements on the Premises. The Parties acknowledge that the Lease and First Amendment allowed the Lessee to construct improvements on the Premises in addition to any improvements that may have already been located on the Premises prior to the Parties entering into the Lease. The Lessee agrees that as of January 15, 2023, the Lessor will take title and possession of all improvements on the Premises. To evidence the transfer of title of such improvements, the Lessee will execute a Deed without Warranty as attached to this Agreement as Attachment "A". The Parties agree that as of January 15, 2023, the Lessor has the right to exercise all ownership rights over all improvements on the Premises including the right to use and dispose of the improvements in the Lessor's sole discretion.
8. Lessor and Lessee agree that Lessor will accept the improvements listed in Attachment "A" in lieu of the balance due on the Lessee's delinquent account.
9. Employee Transfer. In order to effectuate a smooth and orderly transition of operations from Lessee to Lessor, Lessee's employees currently working on the Premises and who are engaged in daily Service operations (the "Employees") will be notified by Lessee on or before October 15, 2022, of the pending lease termination and change in Service. In addition, on or before December 1, 2022 the Employees will be given an opportunity to interview for similar positions under the Lessor's Parking Lot Manager, but are in no way obligated to take the job if offered. Lessee shall communicate to the Employees described in this Paragraph 9, that they may at their convenience contact Lessor's Parking Lot Manager, preferably well in advance of January 15, 2023, as follows:

SP Plus Corporation Notice:

Jose Chavez
2102 Airway Blvd.
El Paso, Texas 79925
915-771-7990
Jchavez@spplus.com

operation of the Service through Lessor's Parking Lot Manager, by way of separate agreement with same.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Lessee shall surrender the Lease to Lessor and shall vacate the Premises as of January 14, 2023, 11:59:59 p.m.
2. Lessor shall accept the surrender of the Premises from Lessee.
3. Lessor and Lessee shall discharge and release each other from all obligations under the Lease, as amended, as of January 14, 2023, 11:59:59 p.m., except as otherwise agreed to, including, but not limited to, those specified in Paragraph 16 in this Agreement. The Parties agree to the following:
 - a. Each party has fulfilled all of its respective obligations under the Lease, as amended.
 - b. Lessee's operations are paid in full with a zero balance as of January 14, 2023, including utility bills and other services for the Service.
 - c. The Parties acknowledge that this Agreement marks the end of the Lease, as amended.
 - d. Each party retains its right to pursue all remedies at law in the event the other party has failed to meet its respective obligations under the Lease, as amended, or this Agreement.
4. The Parties agree that Lessee shall retain revenue from customers accessing the Service through January 14, 2023. Lessor shall retain revenue from customers accessing the Service beginning January 15, 2023. By way of example, in the case of a vehicle that arrives to the Premises prior to January 14, 2023, and remains at the Premises for the Service beyond January 14, 2023, revenue shall be paid solely to Lessee for days through January 14, 2023, and solely to Lessor for days from January 15, 2023 and beyond. Within sixty (60) days of January 15, 2023, Lessee shall provide a revenue report stating all revenue received by Lessee for the Services provided to Lessee's customers through January 14, 2023. Lessee shall also list revenue mistakenly received by Lessee for the service provided to Lessor's customers during that sixty-day timeframe beginning January 15, 2023, and shall issue a check or electronic payment to Lessor for said amounts mistakenly paid to Lessee no later than March 15, 2023.
 - a. Lessee agrees to transfer to Lessor, if Lessor desires to accept said transfer, Lessee's parking revenue control system on or before January 1, 2023. Lessor will notify Lessee by December 15, 2022 if it agrees to continue with the parking revenue control system.

5. Lessor and Lessee agree Lessor will take over the operation of the Service through Lessor's Parking Lot Manager, SP Plus Corporation. No later than October 15, 2022, Lessee will allow Lessor to place signage at the entrance and exit notifying customers that the ownership change will occur on January 15, 2023. The Parties may agree that additional pre-transfer signage locations may be used by Lessor on the Premises, without the need to amend this Agreement.
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El Paso, Texas 79925
915-771-7990
Jchavez@spplus.com

Lessor is in no way obligated to hire the Employees and Lessee is in no way obligated to instruct the Employees to accept any employment offered by Lessor.

- a. Lessee agrees to allow the Lessor's Parking Lot Manager to be trained by and to shadow Lessee's employees to learn the Service operational details, as part of the ownership transition process from December 1, 2022 to January 15, 2023.
 - b. Lessee agrees to allow Lessor to install equipment, as necessary, beginning December 15, 2022 to allow for seamless transition of operations on January 15, 2023. Lessee will be allowed seven (7) days beginning on January 15, 2023 to remove any final personal property, signage and equipment that was required to operate through January 14, 2023.
10. Lessee agrees to provide Lessor, preferably before January 1, 2023 and no later than January 14, 2023 any and all customer data for its monthly or pre-paid parking customers.
 11. Lessee agrees to provide Lessor on or before January 15, 2023 any and all service agreements in effect at the real property. The Lessor is under no obligation to continue with such service agreements. Lessor will notify Lessee which service agreements Lessor requires that Lessee assign to Lessor; all other agreements need to be terminated by the Lessee prior to January 14, 2023. All services fees will be paid by the Lessee through January 14, 2023.
 12. Lessee agrees to indemnify and hold the Lessor harmless for any and all claims or causes of action arising out of the Lease including, but not limited to, arising out of Lessee's use, occupancy, subleasing, assigning or mortgaging of the Premises; including but not limited to the payment of taxes which accrued during the Lease term. Lessee agrees to defend Lessor against any such claims and to defend the Lessor in any legal actions which may be brought against Lessor, including attorney's fees and court costs, or fees or claims arising out of the Lease. Lessee shall provide written confirmation to Lessor of payment for all taxes.
 13. Refund of property taxes. Lessee shall be responsible for applying directly to the El Paso County Tax Assessor-Collector for any refund for taxes Lessee paid on the Premises.
 14. Payment of rent and amounts due. Upon full execution of this Agreement, the Parties agree that neither party owes any amounts to the other party under the Lease, as amended.
 15. Representation and Warranties. Lessee represents and warrants to the Lessor that as of the Effective Date of this Agreement, there are no mortgagees or other third parties that may claim ownership or rights over the improvements located on the Premises through any grant made by the Lessee to such mortgagee or party.

16. All provisions of the Lease and its amendments, which expressly or impliedly contemplate or require performance after the cessation, expiration, cancellation, or termination of the Lease hereunder shall survive such cessation, expiration, cancellation or termination of the Lease, including without limitation, Paragraphs 3.03 Compliance with Laws; and 6.05 Indemnification.

17. General Provisions. The Parties agree to the following:

- a. This Agreement is governed by the laws of the State of Texas.
- b. Venue regarding any disputes regarding this Agreement lies exclusively in El Paso County, Texas.
- c. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected.
- d. This Agreement constitutes the entire agreement between the Parties.

18. The person signing this Agreement on behalf of Lessor and Lessee warrants that he or she has the authority to do so and to bind the party represented.

IN WITNESS WHEREOF, this Lease Termination Agreement has been executed by the Parties hereto as of the date, month and year first hereinabove written.

[Signatures begin on the next page]

EXECUTED by Lessor the ____ day of _____, 2022.

Lessor:


By: _____
Samuel Rodriguez, P.E.
Director of Aviation

APPROVED AS TO FORM

APPROVED AS TO CONTENT:



Josette Flores
Senior Assistant City Attorney



for Terry Sharpe, Assistant Director
Department of Aviation

LESSOR'S ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF EL PASO**

This instrument was acknowledged before me on this _____ day of _____, 2022,
by Samuel Rodriguez, P.E., as Director of Aviation of the City of El Paso, Texas.

Notary Public in and for the State of Texas

My Commission Expires:

[Signatures continue on the following page]

Attachment "A"

[Deed without warranty starts on the next page]

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DEED WITHOUT WARRANTY

Effective Date: [REDACTED], 20 [REDACTED]

Grantor:

Grantor's Mailing Address: [REDACTED]

Grantee: **City of El Paso, Texas, a Texas home-rule municipality**

Grantee's Mailing Address:

City of El Paso
P.O. Box 1890
El Paso County
El Paso, Texas 79950-1890

PROPERTY- IMPROVEMENTS ONLY:

Improvements only, located on the property legally described as:

All of Lots 2, 3 and 4, Block 1A, El Paso International Airport Tracts, Replat of Unit 4, City of El Paso, El Paso County, Texas, municipally known and numbered as 6440 Airport Road, El Paso, Texas, as more particularly described in the attached survey and metes and bounds as **Attachment "A"**.

CONSIDERATION

\$10.00 and other valuable consideration, receipt of which is hereby acknowledged.

EXCEPTIONS TO CONVEYANCE

NONE

RESERVATIONS TO CONVEYANCE

NONE

WARRANTY:

The Grantor represents and warrants to the Grantee that as of the Effective Date of this Deed there are no mortgagees or other third parties that may claim ownership or rights over the improvements located on the property through any grant or conveyance made by the Lessee (Grantor) to such mortgagee or party.

CONVEYANCE:

The GRANTOR, for the consideration and subject to the reservations from, exceptions to conveyance, and warranty GRANTS, and CONVEYS to the GRANTEE the improvements located on the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to the GRANTEE, the GRANTEE'S administrators, successors and assigns forever.

Except to the warranty expressly made in this Deed above, the Grantor grants and conveys the improvements on the property to the Grantee "As Is" and makes no warranties of any kind.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED by Grantor the ___ day of _____, 20__.

GRANTOR:

By: _____

ACKNOWLEDGMENT

**STATE OF TEXAS
COUNTY OF EL PASO**

This instrument was acknowledged before me this ___ day of _____, 2022,
by _____, in its capacity as _____, on behalf of Grantor.

Notary Public, State of _____

My Commission Expires:

"Attachment A"
Description of Improvements at 6440 Airport Road, El Paso, Texas 79925

Date of Inspection and Inventory: September 20, 2022

Improvements Inventory:

Structure	# Square Feet	Description of Improvement	Notes
Main Administrative Building	2,520 square feet	30 parking spaces (uncovered / non rent)	
Car Port A	6,426 square feet	40 covered spaces	
Car Port B	4,440 square feet	24 covered spaces*	*13 rows of covered spaces (max 2 cars = 26 spots)
Car Port C	27,132 square feet	200 covered spaces*	*40 rows of covered spaces (max 4 cars = 160 spaces, appraiser estimates 5 per row)
Car Port D	31,996 square feet	235 covered spaces*	*47 rows of covered spaces (max 4 cars = 188 spaces, appraiser estimates 5 per row)
Car Port E	5,976 square feet	37 covered spaces*	*2 uncovered spots on either side of port
Added Site Parking	75 uncovered parking spaces (various areas)	Added Site Parking: 75 uncovered parking spaces (various areas)	
Perimeter of the subject site	1,700 lineal feet	5 foot high rock wall fencing	
Asphalt pavement	156,200 square feet		
NOTE: The covered parking does not have electrical; however, does provide for solar powered LED lighting.			

Building Description:

The subject main building contains 2,520 square feet. The floor plan consists of a front entry lobby area followed by an open administrative area. The administrative area consists of an office and a storage room. A portion of the area is partitioned with wire mesh walls and is used for paperwork shelving. Main administrative office is separated with a wall with window. Water damage on ceiling tiles throughout the administrative area, storage room and main office.

The rear section is open with perimeter office type space. However, this section of the building is currently being used as storage space. This area consists of two restrooms (men's/women's) and seven (7) offices labeled Suites C through I. Beginning counterclockwise from the entrance, there is a door leading back outside. All offices and restrooms have water damage on the ceiling tiles except Suite I. Suite I also has the lighting fixture covers hanging. The restrooms consist of one toilet and one sink, the men's also having a urinal that it is not in service. The subject ceilings are ceiling tiles set in a metal grid with recessed lighting.

All windows throughout main administrative area, administrative offices and secondary space offices free of breaks and cracks. Construction consists of a painted EFIS finish with a flat built up composition roof and further reflects an average to low cost Class "C" structure. Management (on-site) indicated there are roof concerns to include the heating and cooling units and plumbing fixtures, which will require maintenance.

Car Wash, Parking Area & Structures:

All of the covered parking (# canopies) and car wash (quantity 1) are maintained in good shape. There were no significant dents or signs of wear on any of the support columns.

"Attachment A"
Description of Improvements at 6440 Airport Road, El Paso, Texas 79925

Perimeter Rock Wall & Fencing:

The rock wall interior was also inspected and there was notable damage parallel to Car Port A and E. Portions of chain link fence were also in good shape. Car Port painted parking lines are severely faded throughout however.

Storage Shed:

Storage shed next to car wash kept in good shape as well. Landscaping around building is maintained however there is overgrowth of vegetation at the public entrance.

Outdoor Signage:

Signage posted at main public entrance and rear exit. Includes one (1) branded sign with two posts at the main entrance off of Airport Road.