

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

**AGENDA DATE:** August 30, 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 be authorized to sign a Fourth Amendment to a Fuel Site Lease Agreement between the City of El Paso ("Lessor") and Southwest Airlines Co. ("Lessee") for approximately 42,640 square feet of Airport-owned property used for fuel storage and a 1,000 square foot maintenance facility located at 7619 Boeing Dr., El Paso Texas.

Annual Rental Fees: 42,640 SF x \$0.60 per SF per annum = \$25,584.00. No rental adjustment is due at this time. This Fourth Amendment adds a one-year extension to the term of the lease, which would then expire on August 31, 2023.

**BACKGROUND / DISCUSSION:**

The Department of Aviation is requesting approval of this item to add a one-year option to the current Fuel Site Lease. The addition of this extension will allow for the continued fueling operation that supports not only Southwest Airlines, but also the various commercial passenger and cargo airlines that share in this fueling operation at the El Paso International Airport (ELP). Department of Aviation management has been working with the airlines operating at ELP over the past two years to develop a new fuel site lease and find that additional time to complete this negotiation is needed. This amendment will set a new termination date of no later than August 31, 2023.

**PRIOR COUNCIL ACTION:**

- August 31, 2020 – Approval of Third Amendment to the Lease to add a fifth extension of two years through August 31, 2022.
- July 9, 2019 – Approval of Second Amendment to the Lease to add a fourth extension of thirteen months through August 31, 2022.
- June 1, 2001 – Approval of First Amendment to the Lease added 24,600 square feet of land to the premises.
- August 1, 1999 – Approval of Fuel Site Lease for 18,040 square feet of land through July 31, 2019 plus three five-year extension options, all which were exercised.

**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

**DEPARTMENT HEAD:** \_\_\_\_\_

  
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 be authorized to sign a Fourth Amendment to the Fuel Site Lease by and between the City of El Paso and Southwest Airlines Co., to add a sixth extension for a one-year period to the existing Fuel Site Lease at 7619 Boeing Drive, El Paso, Texas.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_ 2022.


### THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
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            )  
  )  
COUNTY OF EL PASO        )                    **FOURTH AMENDMENT TO**  
  )                    **FUEL SITE LEASE**

This Fourth Amendment to the Fuel Site Lease (“**Fourth Amendment**”) is by and between the City of El Paso (“**Lessor**”) and Southwest Airlines Co. (“**Lessee**”), a Texas Corporation. For purposes of this Fourth Amendment, all defined terms appear in boldface print when first defined.

**WHEREAS**, the Lessor and Lessee entered into a Fuel Site Lease (“**Lease**”), with an Effective Date of August 1, 1999, for that certain property located at 7619 Boeing Dr., El Paso, Texas (“**Leased Premises**”), as described in detail in the Lease; and

**WHEREAS**, the Lessor and Lessee entered into a First Amendment to the Lease, with an Effective Date of June 1, 2001, to add 24,600 square feet to the Leased Premises; and

**WHEREAS**, pursuant to Section 4.02 of the Lease, the parties timely exercised all three of their five-year renewal periods to extend the Lease through July 31, 2019; and

**WHEREAS**, the Lessor and Lessee entered into a Second Amendment to the Lease, with an Effective Date of July 9, 2019, to add a fourth extension, for a thirteen-month period in order to negotiate a new Lease; and

**WHEREAS**, the Lessor and Lessee entered into a Third Amendment to the Lease with an effective date of August 31, 2020 (collectively referenced as the “**SWA Lease**”) to add a fifth extension consisting of two years that may be terminated at quarterly increments in order to negotiate a new Lease; and

**WHEREAS**, the parties are still reviewing and negotiating a new Lease, and anticipate requiring a sixth extension for up to a one year period in order to fully negotiate the new Lease without having a lapse in the contractual relationship; and

**WHEREAS**, the parties agree to enter into this Fourth Amendment to add a sixth extension consisting of one year that may be terminated at quarterly increments.

**NOW, THEREFORE**, the parties agree as follows:

**Section 1.     **ARTICLE IV “TERM OF LEASEHOLD”, Section 4.02 Options to Extend** is amended to add the following language:**

In the event Lessor and Lessee require additional time to negotiate a new lease and subject to the provisions of Article X of the Lease (except that to the extent of a conflict between this paragraph and Section 10.01 of the Lease, this paragraph controls), the parties have a mutual option to extend this Lease for a sixth option period of up to one year, with the parties being able to terminate the Lease on a

quarterly basis during the sixth option, after a party wishing to terminate this option (“Moving Party”) provides written notice (“Option Termination Notice”) no less than thirty (30) days prior to the end of the then quarter of their desire to terminate the option to the other party (“Nonmoving Party”) on the 1<sup>st</sup> day of the following quarter, and within ten (10) business days of receipt of the Option Termination Notice, the Nonmoving Party approves the termination, in writing provided to the Moving Party. If the Nonmoving Party approves the termination, the Lease shall terminate at the end of the quarter in which the Option Termination Notice was provided.

If the Nonmoving Party rejects the termination, the sixth option shall continue. As the sixth option shall begin September 1, 2022, the quarters shall run through the end of November, February, May, and August, during the one-year period. In the case of this sixth option period, the parties’ signature on this Fourth Amendment shall indicate their agreement to exercise said sixth option, without the need for further notification by either party. In the event the sixth option period is exercised, the Lease shall be extended on the same terms and conditions, with no adjustment to annual rental for the sixth option period. The City Council of the City of El Paso authorizes the City Manager or designee, the authority to agree to the termination of the Lease solely and exclusively as described in this paragraph, without the need for further City Council approval, as either the Moving Party or the Nonmoving Party, upon prior review and approval as to form by the City Attorney prior to execution.

The parties hereto acknowledge that Lessee and other Air Carriers operating at the Airport are in the process of forming a consortium, which is currently negotiating a new lease with Lessor for the Leased Premises (the “New Fuel Site Lease”). Notwithstanding anything to the contrary in this Lease, upon commencement of the New Fuel Site Lease, this Lease shall immediately terminate, and the parties hereto agree to execute any documents needed to evidence such termination.

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

**Section 3.** This Fourth Amendment shall be effective upon the date it is approved by the El Paso City Council.

*(City Signatures on the Following Page)*

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

**CITY OF EL PASO:**

\_\_\_\_\_  
Tomás González, City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Leslie B. Jean-Pierre  
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 \_\_\_\_\_, 2022, 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)*

