

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

DEPARTMENT: Aviation

AGENDA DATE: January 2, 2024

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:

A Resolution that the City Manager, or designee, be authorized to sign a First Amendment to the Crosswinds Entertainment District Lease by and between the City of El Paso ("Lessor") and Anzures & Son, LLC ("Lessee") to delay the Rent Commencement an additional twelve (12) months and to provide credit for six (6) months of rent and credit for \$3,265.79 for a single month's rent as a result of \$25,405.37 of In-Kind Services performed by Lessee.

BACKGROUND / DISCUSSION:

The Department of Aviation is requesting approval for a First Amendment to the Crosswinds Entertainment District Lease with Anzures & Son, LLC to delay the Rent Commencement due to a delay in construction and accept \$25,405.37 payment of back taxes as In-Kind Service performed in lieu of payment of rent on the property.

Term: Forty (40) years and one (1) ten (10) year option

PRIOR COUNCIL ACTION:

- December 7, 2021 – Crosswinds Entertainment District Ground Lease

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue generating item.

*****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, be authorized to sign a First Amendment to the Crosswinds Entertainment District Ground Lease by and between the City of El Paso ("Lessor") and ANZURES & SON, LLC ("Lessee") to delay the Rent Commencement twelve (12) months to account for a six (6) month delay in access and to provide credit for six (6) months of rent and credit of \$3,265.79 to a single month's rent as a result of \$25,405.37 of In-Kind Services performed by Lessee.

APPROVED this ____ day of _____ 2024.

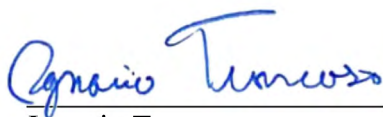
CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

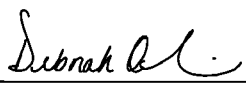
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:

for 

Samuel Rodriguez, P.E.
Director of Aviation

**STATE OF TEXAS)
)
COUNTY OF EL PASO) **FIRST AMENDMENT TO LEASE
AGREEMENT FOR THE CROSSWINDS
ENTERTAINMENT DISTRICT LEASE
BETWEEN THE CITY OF EL PASO AND
ANZURES & SON, LLC****

This First Amendment to the Crosswinds Entertainment District Ground Lease (the “First Amendment”) is made and entered into this ___ day _____ of 2024, by and between the City of El Paso, a municipal corporation existing under the laws of the State of Texas (the “Lessor”), and Anzures & Son, LLC, a Texas LLC (the “Lessee”).

WHEREAS, Lessor and Lessee entered into a Crosswinds Entertainment District Ground Lease (“Lease”) with an effective date of December 7, 2021, for the following described real property located in El Paso County, Texas:

All of Lot 15 and a portion of Lot 14, Block 5, El Paso International Airport Tracts, Replat of Unit 3, City of El Paso, El Paso County, Texas, more commonly referred to as 6631 Montana Street, El Paso, Texas, further described in Exhibit "A", attached hereto and incorporated herein, (hereinafter referred to as the "Leased Premises").;

WHEREAS, Lessee was unable to access the property for a total of 6 months due to a delay in construction that was being performed by the Texas Department of Transportation (“TXDOT”);

WHEREAS, Lessee provided payment in the sum of \$25,405.37 for unpaid back taxes owed on the property that were left unpaid due to bankruptcy by a prior tenant;

WHEREAS, The sum of \$25,405.37 for unpaid back taxes paid by Lessee accounts for the total rent amount for 6 full months of rent and an additional \$3,265.79 of a single month’s rent;

WHEREAS, The City wishes to delay the commencement of rent in order to account for the delay in access to the property caused by TXDOT;

WHEREAS, The City wishes to accept the \$25,405.37 payment of back taxes as in In-Kind Service performed in lieu of payment of the rent on the property;

WHEREAS, The parties wish to extend the Rent Commencement Date in order to account for the delay in access and the In-Kind Service;

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 this First Amendment of the Lease Agreement as follows:

1. Section 3.02 is amended to read as follows:

The Payment of rent shall commence twelve (12) months from the Effective Date of this Amendment. The Rent amount for the first month subsequent to the twelve months shall be a total of \$424.14. The Rent amount thereafter will be the amount as specified in Section 3.01 of this Lease. The Rent shall be paid in twelve (12) equal monthly installments. The Rent payments shall be paid in advance on or before the first day of each and every month during the term of this Lease.

2. General Civil Rights Provision. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as the transferor.

This provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Compliance with FAA Requirements and Nondiscrimination Requirements. Lessee shall comply with and shall cause its assignees, successors in interest, and any contractor, subcontractor, lower-tier subcontractor, or service provider of Lessee to comply with, to the extent required by applicable law, all provisions of Exhibit A, Federal Aviation Administration Required Provisions, as amended or interpreted by the FAA from time to time, which are incorporated as if fully set forth herein.

Affirmative Action.

Grantee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, and any amendments thereto, and any other federal statutes or regulations applicable to the receipt of federal assistance from the Department of Transportation by local governments for Airport use, or otherwise applicable to persons leasing premises from the City of El Paso, to insure that no person shall, on the grounds of race, color, sex, age, disability or national origin be excluded from participating in or receiving the services or benefits of any program of activity covered by this Subpart. Grantee assures that it will require that its covered sub-organizations (sublessees) provide assurances to Grantor, as set forth herein, that they similarly will undertake affirmative action programs, and that they will require assurance from their sub-organizations (sublessees) to the same effect.

FAA Order 1400.11. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International

Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the "Acts and Regulations") such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]

3. **Ratification.** Except as herein amended, all other terms and conditions of the Lease Agreement not specifically modified by this First Amendment shall remain unchanged and in full force and effect.

4. **Effective Date.** This First Amendment shall be effective upon the date it is approved by the El Paso City Council.

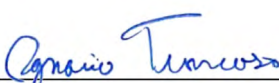
(Signatures begin on the following page)

EXECUTED this _____ day of _____, 2024.


LESSOR: CITY OF EL PASO

Cary S. Westin
Interim City Manager

APPROVED AS TO FORM:


Ignacio Troncoso
Assistant City Attorney

APPROVED AS TO CONTENT:


For 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 _____, 2024, by **Cary S. Westin** as **Interim City Manager** of the City of El Paso, Texas (Lessor).

Notary Public, State of Texas

(Signatures continue on the following page)

LESSEE:
ANZURES & SON, LLC

By: [Signature]
Printed Name: LUIS ARIL ANZURES
Title: President

ACKNOWLEDGMENT

THE STATE OF Texas)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 14 day of December 2024, by Luis Aril Anzures, its President of Anzures & Son, LLC (Lessee).

[Signature]
Notary Public, State of Texas

My Commission Expires: 12.29.20

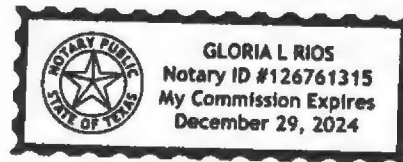


Exhibit "A"
Federal Aviation Administration Required Provisions

A. General Civil Rights Clause.

1. In all its activities within the scope of its airport program, Lessee agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee.
2. The above provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the Airport remains obligated to the Federal Aviation Administration.

B. Compliance with Nondiscrimination Provisions. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:

1. Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Lease.
2. Non-discrimination: The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. Solicitations for Agreements, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Lessor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to Lessor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, Lessor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as Lessor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request Lessor to enter into any litigation to protect the interests of Lessor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

1. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
2. 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

4. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
5. The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
6. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
7. The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
8. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
9. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. 74087 (2005));
12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

D. Transfer of Real Property Acquired or Improved Under the Airport Improvement Program.

1. Lessee for itself, its, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running

with the land that: In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. In the event of breach of any of the above Nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

E. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

1. Lessee, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Title VI List of Pertinent Nondiscrimination Acts and Authorities.
2. With respect to the Lease, in the event of breach of any of the above Non-discrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.

F. Subcontracts. Lessee agrees that it shall insert in any subcontracts the clauses set forth in paragraphs (A) through (E) above and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. Lessee shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (E).