Agenda Item Form

Agenda Date: 8/3/04

Districts Affected: 2
Dept. Head/Contact Information: Patrick T. Abeln, Director of Aviation-780-4724

Type of Agenda Item:

- ☒ Resolution
- ☐ Tax Installment Agreements
- ☐ RFP/ BID/ Best Value Procurement
- ☐ Application for Facility Use
- ☐ Interlocal Agreements
- ☒ Other 2nd Amendment
- ☐ Staffing Table Changes
- ☐ Tax Refunds
- ☐ Budget Transfer
- ☐ Bldg. Permits/Inspection
- ☐ Contract/Lease Agreement
- ☐ Board Appointments
- ☐ Donations
- ☐ Item Placed by Citizen
- ☐ Introduction of Ordinance
- ☐ Grant Application

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☐ Other Source: _____

Legal:

☒ Legal Review Required Attorney Assigned (please scroll down): Sylvia Firth ☒ Approved ☐ Denied

Timeline Priority: ☐ High ☒ Medium ☐ Low # of days:_____

Why is this item necessary:
To correct a clerical error in the Lease regarding the option to extend to exclude any and all improvements thereon in the calculation of the rental rate during the option period. This new language will reflect the current leasing policy.

Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:
N/A

Statutory or Citizen Concerns:
NONE

Departmental Concerns:
NONE

ITEM: That the Mayor be authorized to sign a Second Amendment to Lease dated January 1, 1997, by and between the City of El Paso ("Lessor") and The Kennedy 1979 Trust ("Lessee") covering the property municipally known and numbered as 35 Celerity Wagon, El Paso, Texas.

El Paso International Airport

TO: Mayor Joe Wardy
Jim Martinez, CAO
City Council Representatives

FROM: Patrick T. Abeln, A.A.E.
Director of Aviation

DATE: July 29, 2004

RE: **SECOND AMENDMENT TO BUTTERFIELD TRAIL INDUSTRIAL PARK LEASE BETWEEN THE CITY OF EL PASO (LESSOR) AND THE KENNEDY 1978 TRUST, (LESSEE), #35 CELERITY WAGON**
8-3-04 CONSENT AGENDA ITEM #_____

BACKGROUND:
On January 1, 1997, the City of El Paso entered into a Butterfield Trail Industrial Park Lease with Louis I. Kennedy to develop the property located at #35 Celerity Wagon. The Leased Premises comprise approximately 5.288 acres, and is described as follows:

> #35 Celerity Wagon, a portion of Lot 7, Block 13, Butterfield Trail Industrial Park, Unit Three, City of El Paso, El Paso County, Texas.

The lease was written for forty years and contains two (2) 10-year options for renewal. The initial term will expire December 31, 2036. The current rental is $48,829.54 per annum ($0.212/sq. ft.) with the next increase due January 1, 2007.

The site is improved with warehouse and office space and occupied by various tenants.

ANALYSIS:
Mr. Kennedy is in the process of refinancing the improvements located on the property and is requesting an amendment to Section 4.02 "Option to Extend" to change the language to the same standard verbiage used in Butterfield Trail Industrial Park leases. The existing language requires that the value of improvements on the Leased Premises be included in the appraisal to determine fair market value during the option periods. The language was inadvertently placed in this section and does not reflect the leasing policy.

RECOMMENDATION:
The City Attorney's office has reviewed the document as to form and the Department of Aviation and the Airport Advisory Board recommends approval of this Third Amendment of Lease. This item has been placed on the City Council agenda of August 3, 2004 for your consideration.

Attachment

6701 Convair Rd. El Paso, Texas 79925-1091 Ph. (915) 780-4700 Fax (915) 779-5452

RESOLUTION

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

That the Mayor be authorized to sign a Second Amendment to Lease dated January 1, 1997, by and between THE CITY OF EL PASO ("Lessor"), and THE KENNEDY 1978 TRUST ("Lessee") covering the property municipally known and numbered as 35 Celerity Wagon, El Paso, Texas.

ADOPTED this 3rd day of August 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A. A. E.
Director of Aviation

ORIGINATING DEPARTMENT: AIRPORT

Airport/1/2nd Amend 36 Celerity Wagon Lease
Doc #1984
Author: SFIR

STATE OF TEXAS)
) SECOND AMENDMENT TO LEASE
COUNTY OF EL PASO)

This Second Amendment by and between THE CITY OF EL PASO and THE KENNEDY 1978 TRUST is made and entered into the 3rd day of August 2004.

WHEREAS, the City of El Paso ("Lessor") entered into a lease with Louis I. Kennedy dated January 1, 1997 covering the property municipally known and numbered as 35 Celerity Wagon, El Paso, Texas ("Lease");

WHEREAS, Louis I. Kennedy assigned all his right, title and interest in the Lease to The Kennedy 1978 Trust ("Lessee") on May 5, 1998;

WHEREAS, the parties executed and delivered a First Amendment to the Lease dated May 5, 1998 for the purpose of changing Lessee's rights with regard to subleasing;

WHEREAS, the parties have agreed that a clerical error was made at the time the Lease was signed; and

WHEREAS, the parties have agreed to sign this Second Amendment to Lease for the sole purpose of correcting the clerical error.

NOW THEREFORE, the parties do hereby agree to the following.

1. **Description of Clerical Error.** The Lease contains two (2) options to extend and the calculation of the rental rate during the option period provides that the annual rent shall be equal to "8% of the then fair market value of the Leased Premises ***including any and all improvements thereon....***" The parties are in agreement that the value of the improvements should be ***excluded*** from the calculation.

2. **Correction of Clerical Error.** Section 4.02 "Option to Extend", is hereby amended to read as follows:

4.02 Option to Extend. So long as Lessee is not in default of any terms or conditions of this Lease, Lessee shall have the option to extend this Lease for an additional term of ten (10) years by notifying Lessor in writing of Lessee's election at least one hundred and twenty (120) days prior to the expiration of the initial term. In the event the election is so exercised, the Lease shall be extended for ten (10) years on the same terms and conditions, except that the annual rent for this ten (10) years shall be eight percent (8%) of the then fair market value of the Leased Premises, excluding any and all improvements thereon, without regard to the twenty percent (20%) rental adjustment limitations in Section 5.03 hereinbelow. In no event however, shall this adjusted annual rental during the option period be less than the annual rental established at the beginning of the immediately preceding five (5) year period. The Appraiser(s) to determine the fair market value shall be selected using the procedure outlined in Section 5.03(B) of this Lease.

So long as Lessee is not in default of any terms of this Lease, Lessee shall have the further option to extend this Lease for an additional ten (10) years by notifying Lessor in writing of Lessee's election at least one hundred twenty (120) days prior to the expiration of the first option period. In the event the election is so exercised, the Lease shall be extended an additional ten (10) years under the same terms and conditions, except that the annual rental for these ten (10) years shall be equal to eight percent (8%) of the then fair market value of the Leased Premises, excluding any and all improvements thereon, without regard to the twenty percent (20%) rental adjustment limitations in Section 5.03 herein below. The Appraiser(s) to determine the air market value shall be selected using the procedure outlined in Section 5.03(B) of this Lease.

3. **RATIFICATION**. Except as herein amended, all other terms and conditions of the Lease dated January 1, 1997, as amended May 5, 1998, remain in full force and effect.

4. **EFFECTIVE DATE.** This Amendment shall be effective upon such the date it is executed by the Mayor on behalf of the City of El Paso.

APPROVED this the 3rd day of August 2004.

LESSOR: CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sylvia Borunda Firth
Assistant City Attorney

APPROVED AS TO CONTENT:

Patrick T. Abeln, A. A. E.
Director of Aviation

LESSEE: THE KENNEDY 1978 TRUST

By:
Printed Name: Louis Kennedy
Title: Trustee

(ACKNOWLEDGMENTS ON FOLLOWING PAGE)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____day of _____ _____, 2004, by JOE WARDY as Mayor of the City of El Paso, Texas.

My Commission Expires:

_____

_____
Notary Public, State of Texas

ACKNOWLEDGMENT

THE STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

This instrument was acknowledged before me on this 27th day of July, 2004, by Louis Kennedy, as Trustee of THE KENNEDY 1978 TRUST.

My Commission Expires:

Mar 13, 2007

Notary Public, State of California

MARINA B. SCHLESINGER
Commission # 1405301
Notary Public - California
Los Angeles County
My Comm. Expires Mar 13, 2007