



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, Florida 32827-4392

MEMORANDUM

TO: Members of the Aviation Authority

FROM: Levi A. Powell, Manager of Commercial Properties

DATE: June 24, 2015

ITEM DESCRIPTION

Recommendation to Approve Amendment No. 3 to Extend Lease with USDA, APHIS Unit

BACKGROUND

On March 3, 2000, the Aviation Authority executed a Lease with the United States of America for a USDA, APHIS Unit to occupy 16,892 square feet at 9317 Tradeport Drive (Bldg. 446 and 447 formerly known as the Perishable Center), Orlando International Airport. The effective date of the lease was October 1, 1999, and the termination date was September 30, 2014. The rent at termination was \$177,366 per annum. Amendment No. 2 was executed for a one year extension of the lease for the period October 1, 2014, to September 30, 2015 at the same rent, and on the same terms and conditions.

ISSUES

Aviation Authority staff has negotiated Amendment No. 3 for a four year extension of the lease for the period October 1, 2015, to September 30, 2019. The USDA shall pay \$180,744 per year which is comprised of base rent of \$126,690 per year and pass through of building common area maintenance and operating expenses billed in year one of \$54,054. The initial annual base rent of \$126,690 will remain fixed throughout the term. The operating expenses billed during the first year will be reconciled and may be adjusted at the end of the lease year to the actual cost of the operation and maintenance of the building and site. Each year thereafter operating and maintenance expenses billed to the USDA will be adjusted on the anniversary of the lease based on the actual cost of operating and maintaining the building for the prior year and at the end of the year will be reconciled and adjusted to actual cost. The rent and expense pass through provisions and other terms and conditions have been modified to be consistent with the rent, common area maintenance, and operating expense pass through provisions and other terms contained in the lease of the co-tenant in the building(s) (Bldg. 446 and 447 collectively), United Airlines.

ALTERNATIVES

No reasonable alternatives are being considered.

FISCAL IMPACT

Amendment No. 3 to lease as negotiated will generate \$180,744 in rent and expense recovery in year one and an estimated rent and expense recovery of \$750,542 during the four year term.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board resolve to (1) approve Amendment No. 3 to the USDA Lease extending the term for Building 446 for four years; (2) request Orlando City Council approval of a lease term in excess of ten years; and (3) authorize an Aviation Authority Officer or the Executive Director to execute the necessary documents following satisfactory review by legal counsel.

CONSENT AGENDA ITEM - R -

U.S. DEPARTMENT OF AGRICULTURE LEASE AMENDMENT	LEASE AMENDMENT No. <u>3</u>
	TO LEASE NO. 57-6395-00-009
ADDRESS OF PREMISES 9317 TRADEPORT DRIVE ORLANDO, FL	PDN Number: N/A

THIS AGREEMENT, made and entered into this date by and between Greater Orlando Aviation Authority (GOAA)

whose address is: Orlando International Airport
 One Jeff Fuqua Boulevard
 Orlando, FL 32827-4399
 Attention: Executive Director

hereinafter called the Lessor, and the **UNITED STATES OF AMERICA**, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended, effective **June 1, 2015** as follows:

The lease covering 16,892 s.f. is extended from October 1, 2015 through September 30, 2019. The Government shall pay **\$180,744.00/Annum or \$15,062.03/Monthly in arrears as follows:**

Rent - \$7.50 X 16,892 s.f. = \$126,690.00
 Operating Expense \$3.20 X 16,892 s.f. = \$54,054.40

The operating expenses will be adjusted each year based on Actual Cost (as defined in the Addendum) for the prior year.

The Government may terminate this lease at any time by giving at least 90 day notice in writing to the Lessor, and no rental shall accrue after the effective date of termination.

The Lease is further modified by terms and conditions set forth on the Addendum to Lease Amendment No. 3 attached hereto and by reference incorporated herein. Except as modified herein, the Lease remains unchanged and in full force and effect. In the event of any ambiguity or conflict between the terms of the Lease and this Amendment, this Amendment shall control.

This Lease Amendment contains 8 pages, including Addendum and Exhibit A attached hereto.

All other terms and conditions of the lease shall remain in force and effect.

IN WITNESS WHEREOF, the parties subscribed their names as of the below date.

FOR THE LESSOR:

FOR THE GOVERNMENT:

Signature: _____
 Name: _____
 Title: _____
 Entity Name: Greater Orlando Aviation Authority _____
 Date: _____

Signature: _____
 Name: Theresa Gmitterko, Real Property Leasing Officer
 USDA, APHIS, MRPBS, AAMD
 Date: _____

WITNESSED FOR THE LESSOR BY:

Signature: _____
 Name: _____
 Title: _____
 Date: _____

Addendum to Lease Amendment No. 3
To Lease No. 57-6395-00-009
9317 Tradeport Drive, Orlando, FL 32827

1. **Premises to be Occupied** Approximately 16,892 square feet of office/warehouse (the "Building") depicted on **Exhibit A**, together with any buildings, structures, fixtures, fences, utility installations, parking facilities, landscaping and irrigation systems currently existing or hereafter located thereon ("Improvements") (the Land and Improvements collectively referred to as the "Premises").
2. **Condition of Premises** Government accepts the Premises "AS-IS". Government acknowledges that Lessor has made no representations or warranties relating to the suitability of the Premises for any particular use except as otherwise provided herein, and unless otherwise expressly provided in this Lease, Lessor shall have no obligation whatsoever to repair, maintain, renovate or otherwise incur any cost or expense with respect to the Premises; notwithstanding the foregoing, Lessor represents and warrants to Government that, as of the Effective Date, the Permitted Uses are allowed under the rules, regulations and policies promulgated by Lessor.
3. **Permitted Use** Government shall be permitted to use the Premises only for a USDA, APHIS, Plant Inspection Facility and for related functions approved by the Executive Director, which such approval shall not be unreasonably withheld.
4. **Government's General Obligations.** In addition to all other covenants set forth in this Lease, Government hereby covenants and agrees:

to surrender the Premises upon the expiration or earlier termination hereof in as good a condition as it was in on the effective date of this Amendment No. 3, reasonable wear and tear and damage from fire or other casualty excepted;

to observe and comply with any and all valid and applicable requirements of duly constituted public authorities and with all federal, state and local statutes, ordinances, regulations and standards applicable to Government, the Premises and the Airport;

to procure and keep in force during the term of this Lease all licenses (including, but not limited to, occupational licenses), permits or other authorizations required by law for the operation of Government's business on the Premises;

not to commit or suffer to exist any unlawful nuisance, waste or injury on the Premises;

to be solely responsible to secure any federal, state, county and municipal approvals of an environmental or other nature as are required as a condition for any construction or alteration by Government of leasehold improvements on the Premises, or for any of Government's business or operation hereunder; and

to promptly repair, at its expense and in a manner reasonably acceptable to Lessor, any damage to Lessor's property or to the property of others caused by Government or its officers, agents, employees, contractors, subcontractors, licensees or invitees.

5. **Initial Term of Lease** The Initial Extension Term of this Lease is four (4) years defined as the period beginning on October 1, 2015 (the "Rent Commencement Date"); and shall expire on September 30, 2019 (the "Expiration Date"), unless sooner terminated and subject to renewal.

6. Renewal Term Provided that (i) no Event of Default has occurred and is continuing at the time Government exercises its options to renew set forth herein, and (ii) no Event of Default has occurred and is continuing at the time any such option would otherwise become effective, Government shall have the option to extend the term of this Lease for one (1) additional term of five (5) years (the "Renewal Term") by notifying the Lessor in writing of Government's exercise of the option at least two hundred seventy (270) days prior to the expiration of the Initial Term or Renewal Term, the rental for each such Renewal Term to be calculated as described herein. The unexpired Lease term prior to the Rent Commencement Date, the Initial Extension Term and the Renewal Term, if any, sometimes collectively referred to herein as the "Term".

7. Calculation of Annual Rent Beginning on the Rent Commencement Date and during the initial five (5) years of the Initial Extension Term of this Lease, Government shall pay to the Lessor Annual Rent in the amount of One Hundred Twenty-Six Thousand Six Hundred Ninety and No/100 (\$126,690.00) per year (equivalent to \$7.50 per square foot X 16,892) payable in monthly installments of Ten Thousand Five Hundred Fifty Seven and 50/100 Dollars (\$10,557.50). Should Government exercise the Renewal Term, beginning on the first month of the Renewal Term, the Annual Rent shall be increased to an amount equal to ten percent (10%) of the Fair Market Value for property comparable to the Building and Land, as established by appraisal by a MAI-designated appraiser approved by the Authority; provided, however, in no event shall the amount of the Annual Rent ever be decreased except as otherwise provided in this Lease.

8. Operating Expenses; Taxes In addition to the rent described above, commencing on the Rent Commencement Date, and in respect to Operating Expenses (defined below) incurred after the Rent Commencement Date and Taxes (defined below) related to the period of time after the Rent Commencement Date, Government shall be liable for and pay to Lessor as additional rent an amount equal to Government's Proportionate Share of Operating Expenses and Taxes with respect to the Property and any improvements thereon, the Premises, and/or the Building. The current cost per square foot per annum of the Operating Expenses is \$3.20, which equals \$54,054.40 or \$4,504.53 for the Premises which will be billed as additional rent. Operating Expenses will be adjusted each year based on Actual Cost for the prior year.

"Operating Expenses" shall mean all expenses, costs and disbursements of every kind and nature which Lessor shall incur because of or in connection with the Lessor's maintenance, repair and/or operation of the Premises, the Land and any improvements thereon (excluding, however, any such costs associated with capital alterations or improvements made by the Lessor that are not deemed to be reasonably necessary by Lessor in its sole discretion), or the Building, including, without limitation, the following (collectively referred to herein as "Actual Cost"):

(i) All supplies and materials used in operation or maintenance of the Building, the Premises and/or the Property and any improvements thereon;

(ii) Maintenance and repair of the Property and any improvements thereon, the Premises, the Building (excluding however any structural maintenance and repairs, including any repairs to the roof and exterior walls or foundation, which costs shall be borne solely by Lessor), and all Building systems, including, without limitation, plumbing, HVAC, electrical system and landscaping (including, without limitation, all personnel costs allocated to such work to the extent it is undertaken by Lessor's staff);

(iii) Costs of all utilities, including water, sewer, electricity, gas and fuel oil used on the Premises (but not including telephone or other communications services which shall be billed to and paid directly by Government);

(iv) Cost of property insurance with respect to the Building.

(v) A reasonable administrative fee, not to exceed ten percent (10%) of all expenses which constitute "Operating Expenses" hereunder.

(b) "Taxes" shall mean all taxes, assessments or other governmental impositions on the Property, the leasehold interests therein, the Building and all other Improvements to the Land.

(c) No later than thirty (60) days after the end of each successive calendar year during the term of this Lease, Lessor shall notify Government of the amount which, as evidenced by budgets prepared by or on behalf of Lessor, Lessor estimates will be the amount of Government's Proportionate Share of Operating Expenses and Taxes for the then-current calendar year. Government shall pay such sum in advance to Lessor in equal monthly installments, together with all applicable sales or rent tax, during the balance of said calendar year, on the first day of each remaining month in said calendar year commencing on the first day of the first month following Government's receipt of such notification.

(d) Within ninety (90) days following the end of each calendar year during the term of the Lease, Lessor shall submit to Government a statement showing the Actual Cost amount which should have been paid by Government with respect to Operating Expenses and actual amount of Taxes for the past calendar year, the amount Government actually paid, and the amount of the balance due or overpayment, as the case may be. Any balance shown to be due pursuant to said statement shall be paid by Government to Lessor within thirty (30) days following Lessor's submission to Government of the statement and any overpayment shall be immediately credited against Government's obligation to pay rent, or, if by reason of the termination of the term of the Lease, no such future obligation exists, refunded to Government. Notwithstanding anything contained herein to the contrary, absent manifest error, Government shall not delay or withhold payment of any balance shown to be due, pursuant to the above-described statement rendered by Lessor to Government because of any objection which Government may raise with respect to the statement.

(e) Government's Proportionate Share of Operating Expenses and Taxes for a partial month during the term of this Lease shall be prorated based on the number of days in such month.

9. Maintenance Subject to reimbursement by the Government as provided herein, the Lessor shall keep and maintain the Premises and Building in a good state of repair, including without limitation structural maintenance and repair of the Building, including the roof and exterior wall, the plumbing, HVAC, fire protection systems and electrical systems. The Lessor shall also be responsible for maintaining the Common Areas of the Building and the Property.

10. Trash and Garbage During the entire Term of this Lease, Government shall be responsible for the storage, collection and removal from the Premises of all trash, garbage and other refuse resulting from Government's activities on the Premises. Government shall provide appropriate, covered, metal receptacles for trash, garbage and other refuse, will maintain the receptacles in a safe and sanitary manner, and will store receptacles in inconspicuous places on the Premises that are screened from public view in accordance with the Airport Design Guidelines.

11. Utilities During the entire Term of this Lease, Government shall be responsible, at Government's sole cost and expense, for costs related to utility services on or within the Premises. Except as otherwise provided herein, Government agrees that Lessor shall have no liability to Government arising out of any failure or interruption of utility service to the Premises, unless such failure or interruption was caused by the negligence or willful misconduct of the Lessor. The acts of a third party shall not constitute acts within the control of Lessor unless such acts were authorized by Lessor. If any failure or interruption of utilities to the Premises is caused by actions of the Lessor, its employees, contractors or agents within the reasonable control of Lessor, and, as a result, the Premises is rendered unusable by Government for a continuous

period of five (5) consecutive days after Government gives Lessor written notice thereof, then Government shall be entitled to an abatement of Annual Rent for the period beginning on the day after such five (5) day period ends and continuing until the date that such utility service is restored to the Premises. In the event that such failure or interruption of utility service is a result of strikes, lockouts or labor disputes, inability to obtain labor or materials, government restrictions, fire or other casualty, adverse weather conditions not reasonably foreseeable at the location and time of year in question, by reason of war or other national emergency, acts of God or other causes beyond the reasonable control of Lessor or acts a third party not authorized by Lessor (including, without limitation, other tenants or licensees of the Lessor)(collectively, events of "Force Majeure"), Government shall not be entitled to any abatement of Annual Rent, and Lessor shall have no liability to Government in connection therewith.

12. Construction of Additional Improvements Construction of additional improvements shall be at the sole cost of Government. Prior to commencement of construction of any Improvements, and prior to commencing to renovate, enlarge, demolish or modify any Improvements now or hereafter existing on the Premises, Government shall submit the plans and specifications therefor (prepared in accordance with the Airport Development Standards and under the seal of a duly licensed architect or engineer) to Lessor for its approval (the "Plans"), in accordance with the approval process described in the Airport Development Standards. No construction of any type shall commence prior to Government's receipt of: (i) Lessor's written approval of the Plans, and (ii) a notice to proceed from the Lessor. The Lessor shall not unreasonably withhold consent to Government's Plans; provided, however, that it shall not be unreasonable for the Lessor to withhold consent to construction in the areas marked on Exhibit "A" hereto as areas where construction shall not be permitted.

13. Trade Fixtures Government may, from time to time, install, operate, repair and replace any trade fixtures and other personal property on the Premises or in the Improvements, all of which shall be and remain the Property of Government and may be removed at any time. Government shall repair any damage to the Premises or any Improvements caused by such removal in a manner reasonably acceptable to the Executive Director.

14. Signage The Lessor will permit Government to install signage on the Building, subject to review and approval by the Executive Director of a signage proposal complying with the Lessor's Development Standards and all applicable ordinances, laws and regulations.

15. Environmental Obligations Government shall comply with all applicable federal, state and local laws, regulations, administrative rulings, orders, ordinances, and requirements, and all Lessor rules and regulations pertaining to the protection of the environment, including by not limited to those regulating the use, storage, handling and disposal of Hazardous Substances ("Environmental Laws"). Such Hazardous Substances may be used, stored or handled at the Premises only in quantities reasonably necessary in connection with activities permitted under this Lease and in compliance with all Environmental Laws. Notwithstanding any other provision hereof, Government is not authorized to dispose of any Hazardous Substances at the Premises, except in compliance with applicable laws.

16. Fire and Other Risks Insurance Subject to reimbursement by Government for Government's Proportionate Share of Operating Expenses as provided herein, Lessor shall carry property insurance on the Building and Improvements (other than those installed by Government) in the amount of their replacement cost and agrees to waive claims against Government for damages to same to the extent covered by insurance. Any deductibles that apply to the Lessor's property insurance policies that apply to this Premises, shall be the responsibility of the Government.

IN WITNESS WHEREOF, the parties hereto by their duly authorized officers have caused this Lease to be executed in their names and their seals to be affixed hereto as of the day and year first above written.

WITNESSES:

GOVERNMENT:

Print Name: _____

By: _____

Name: _____

Title: _____

Print Name: _____

ATTEST:

By: _____, Secretary

WITNESSES:

Print Name: _____

Print Name: _____

GREATER ORLANDO AVIATION AUTHORITY

By: _____

Name: _____

As Its: _____

ATTEST:

By: _____, Secretary

Approved as to Form and Legality this
_____ day of _____, 2015

BROAD AND CASSEL

By: _____

General Counsel / Greater Orlando Aviation
Authority