

Mayor and Council Communication

DATE: 08/13/24

M&C FILE NUMBER: M&C 24-0669

LOG NAME: 55FWS CONSENT TO ASSIGN BY FWS REALTY TO FWS FBO, LSE STE NW3

SUBJECT

(CD 8) Authorize Execution of Amendment No. 3 to City Secretary Contract No. 42807, a Ground Lease Agreement Known as Lease Site NW3 with FWS Realty, LTD at Fort Worth Spinks Airport, a Consent to Assignment by FWS Realty, LTD to FWS Hangar LLC and FWS FBO LLC, and a Consent to Leasehold Deed of Trust with FWS Hangar LLC and FWS FBO LLC and Signature Bank to Facilitate the Purchase of the Leasehold Interest in NW3

RECOMMENDATION:

It is recommended that the City Council:

1. Authorize execution of Amendment No. 3 to City Secretary Contract No. 42807, a ground lease agreement known as Lease Site NW3 with FWS Realty, LTD at Fort Worth Spinks Airport;
2. Authorize execution of a consent to assignment of a ground lease agreement for Lease Site NW3 by FWS Realty, LTD to FWS Hangar LLC and FWS FBO, LLC; and
3. Authorize execution of a consent to leasehold deed of trust with FWS Hangar LLC and FWS FBO LLC and Signature Bank for a ground lease agreement for Lease Site NW3, to facilitate the purchase of the leasehold interest.

DISCUSSION:

The purpose of this Mayor and Council Communication (M&C) is to recommend that the City Council authorize the following actions:

1. Execute Amendment No. 3 to City Secretary Contract (CSC) No. 42807, a ground lease agreement known as Lease Site NW3, with FWS Realty LTD, a limited liability partnership, acting through its General Partner, Harrison Realty Investments, LLC (FWS Realty) at Fort Worth Spinks Airport.
2. Execute a consent to assignment for CSC No. 42807 from FWS Realty to FWS Hangar LLC (FWS Hangar) and FWS FBO LLC (FWS FBO).
3. Execute a consent to leasehold deed of trust with FWS Hangar LLC, FWS FBO LLC (collectively, Assignees), and Signature Bank to facilitate the purchase of the leasehold interest in Lease Site NW3.

On January 10, 2012, through M&C C-25389, City Council authorized the City of Fort Worth (City) to execute a ground lease agreement for Lease Site NW3 located at Fort Worth Spinks Airport (Airport) (Agreement) under CSC No. 42807 with FWS Realty. The leased premises consist of 17,600 square feet of ground space. In addition, the Agreement includes a Right of First Refusal (ROFR Tract) for 31,327 square feet of unimproved ground space. The initial term of the Agreement commenced on January 19, 2012 and expires at 11:59 PM on September 30, 2041, with two (2) options to renew for five (5) years each. On July 24, 2012, through M&C C-25757, City Council authorized the City to enter into CSC 42807 A-1, Amendment No. 1 to expand the ground space from 17,600 square feet to 18,700 square feet to support development. On October 23, 2012, through M&C C-25941, City Council authorized the City to enter into CSC 42807 A-2, Amendment No. 2, to expand the ground space to include 797 square feet (Tract 2), which increased the Leased Premises from 18,700 square feet to 19,497 square feet to provide adequate space to extend water and sewer lines. Lessee also agreed to convey surface rights to a portion of Tract 2 that crosses over an access road to the Air Traffic Control Tower (ATCT) and not to restrict vehicle or pedestrian ingress and egress.

The City and FWS Realty wish to amend Section 14.7 (Lessor's Financial Obligations to Lessee upon Termination, Breach or Default) to better define the types of improvements that qualify as capital costs due to the possible financial obligation of the City to compensate FWS Realty for financial investments in discretionary improvements if the Agreement is terminated, of which the fair market value as of the date of termination will be determined by a third-party appraiser. These obligations are contingent upon City Council approving such action and appropriating funds. They seek to also amend Exhibit B, the ROFR Tract, to expand the ground space to Tract 1, 40,950 square feet of unimproved ground space and Tract 2, 51,405 square feet of ground space. If exercised in accordance with the Agreement, ROFR Tract 1 and ROFR Tract 2 developments will be in compliance with the Aviation Leasing Policy, Aviation Development Guide and Minimum Standards, all to be agreed upon by the parties, and subject to City Council approval.

On September 19, 2023, staff received a request from FWS Realty to consent to an assignment of the Agreement to Assignees. Upon City Council approval, Assignees will assume the leasehold interest and obligations under the Agreement. The Agreement prohibits any assignment of the Agreement or causing any lien to be made on improvements constructed on the leased premises without City Council approval. These types of transactions are routine for airport tenants and staff has no objection to this request.

Under the current Agreement, FWS Realty remits to the City \$6,967.62 annually, paid in monthly installments of \$580.64. Rates are in accordance with the Aviation Department's current Schedule of Rates and Charges. Rental rates shall be subject to an increase on October 1st of any given year based on the upward percentage change in the Consumer Price Index for the Dallas-Fort Worth Metropolitan area. At no time will the adjusted rate exceed the rate that is current in the Schedule of Rates and Charges.

The Consent to Leasehold Deed of Trust will grant Assignees' lender, Signature Bank, the right to operate as Lessee or secure another tenant, subject to the previous lien, if Assignees defaults on the loan or the Agreement with the City of Fort Worth, provided City Council has approved the replacement tenant. The lease agreement prohibits Assignees from assigning the lease or causing a lien to be made on improvements constructed on the leased premises without City Council approval. This type of transaction is routine for airport tenants and staff has no objection to Assignees' request.

Fort Worth Spinks Airport is located in COUNCIL DISTRICT 8.

FISCAL INFORMATION / CERTIFICATION:

The Director of Finance certifies that upon approval of the above recommendations and execution of the lease, funds will be deposited into the Municipal Airport Fund. The Aviation Department (and Financial Management Services) is responsible for the collection and deposit of funds due to the City.

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Expedited