



REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	
COUNCIL MEETING	06/26/07
APPROVED BY	
DEPARTMENT DIRECTOR	<i>Russell C. Widmar</i>
CITY MANAGER	

June 26, 2007

FROM: RUSSELL C. WIDMAR, AAE  
Director of Aviation

SUBJECT: APPROVE FIVE YEAR LEASE AT FRESNO YOSEMITE INTERNATIONAL AIRPORT TO DHL EXPRESS USA

**KEY RESULT AREA**

One Fresno

**RECOMMENDATION**

That City Council approves a five year lease for one preferential parking position on the air cargo ramp at Fresno Yosemite International Airport (FYI).

**EXECUTIVE SUMMARY**

DHL became a tenant of the City of Fresno through a merger with Airborne Express (ABX). They continued operations at FYI under the assumed lease originally made with ABX. In October 2005, DHL moved their operations to a facility in Riverside, California. Despite eliminating regular cargo operations at FYI, DHL wishes to maintain a preferential parking position on the cargo ramp in the event weather forces them to use Fresno as an alternate landing airport. The recommended lease, which is effective as of November 1, 2006, would provide DHL with this preferential parking position, in exchange for \$750.00 per month.

Since the Airports Department is operated as a self-supporting enterprise, there would be no impact to the General Fund from this action.

**BACKGROUND**

One of the three major cargo operators at Fresno Yosemite Airport; DHL became a tenant of the City when they merged with ABX in 2005. They continued operations on ABX's leasehold until completion of the new air cargo ramp, at which time they were the first operator to move their operations to the new ramp. In October 2005, DHL notified Airports management that they planned to consolidate their flight operations to one main West Coast location in Riverside, California. Shortly after this notification, DHL moved their equipment to Riverside and discontinued regular flight operations from FYI's cargo ramp. Since that pullout, DHL has continued to rent a preferential parking position on the air cargo ramp through a Temporary Use Permit in case they needed to fly to FYI due to poor weather conditions at Riverside.

**KEY OBJECTIVE BALANCE**

Having DHL lease a preferential parking position at FYI is a major convenience for the tenant; should the weather prevent them from landing at Riverside California (Customer Satisfaction). Receiving rents for a parking position on the cargo ramp helps offset cost of maintenance (Financial Management). Having a large aircraft tenant lease a parking position and assume maintenance responsibilities for that position on the ramp reduces the need for daily maintenance from the airport staff (Employee Satisfaction).

**FISCAL IMPACT**

There would be no impact to the General Fund from this action. Annual revenue from this lease will be \$9,000.



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SECTION A

**PURPOSE, CLASSES OF ACTIVITIES, APPLICABILITY OF ASSURANCES  
AND  
DEFINITION OF TERMS**

**1. PURPOSE:**

The City of Fresno, California, an airport owner subject to both Federal Grant Agreement obligations and terms, covenants and conditions of Surplus Property Instruments of Disposal at the Fresno Air Terminal (FAT) and Federal Grant Agreement obligations at Fresno-Chandler Downtown Airport (FCH), is required by the Federal Aviation Administration (FAA) to include specific provisions, addressing, among other things, the requirements of Title VI of the Civil Rights Act of 1964, Exclusive Rights prohibitions, and Affirmative Action items contained in Title 14 Code of Federal Regulations Part 152, within all agreements (including, without limitation, leases, licenses, permits, and contracts) between said City and any and all entities who use or perform work or conduct activities on City-owned airport premises for aeronautical or non-aeronautical purposes; therefore, the purpose of this Exhibit is to appropriately incorporate within the "Agreement", to which it is attached and made a part of by reference therein, the sixteen (16) numbered provisions contained within Section "B", "ASSURANCES", below.

**2. CLASSES OF ACTIVITIES:**

The applicability of each of the sixteen (16) numbered provisions contained within Section "B", "ASSURANCES", below, to that certain "Agreement" to which this Exhibit is attached and made a part of by reference therein, is, among other things, dependent upon the type of work to be performed and/or the type of activities to be conducted at the airport(s) by the Lessee, Permittee, Licensee, Operator, etc., named therein, pursuant to and in accordance with those certain rights, privileges, uses, and operations, expressly granted and/or authorized thereunder; therefore, the following activity classifications, as established by the FAA, are provided for the information and guidance of all concerned:

a. **Direct and Supportive Aeronautical:** The following activities, commonly conducted on airports, are **AERONAUTICAL ACTIVITIES:**

- (1) Air Carrier
- (2) Charter Operations
- (3) Pilot Training
- (4) Aircraft rental and sightseeing
- (5) Aerial Photography
- (6) Crop dusting
- (7) Aerial Advertising and Surveying
- (8) Aircraft Sales and Services
- (9) Sale of Aviation Petroleum products (whether or not conducted in conjunction with other included activities)
- (10) Repair and Maintenance of Aircraft
- (11) Sale of Aircraft Parts
- (12) Any other activities which, because of their direct relationship to the operation of an aircraft, can appropriately be regarded as an "aeronautical activity".

b. **Complementary Aeronautical:** The following activities, when conducted on airports, are **COMPLEMENTARY AERONAUTICAL ACTIVITIES:**

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- (1) Ground Transportation (taxis, car rentals, limousines)
- (2) Restaurants
- (3) Barber Shops
- (4) Auto Parking Lots
- (5) Recreational Facilities
- (6) Any other commodities, services or accommodations made available to the general public.

c. **Non-Aeronautical:** The following activities, when conducted on airports, being neither "Direct and Supportive Aeronautical" nor "Complementary Aeronautical", as defined above, are **NON-AERONAUTICAL ACTIVITIES.**

- (1) Manufacturing
- (2) Agriculture
- (3) Any other activity not appropriately falling within the abovesaid "Direct and Supportive Aeronautical" and/or "Complementary Aeronautical" classifications.

**3. APPLICABILITY OF NUMBERED PROVISIONS WITHIN SECTION "B", "ASSURANCES", BELOW TO CLASS(ES) OF ACTIVITIES SPECIFIED WITHIN PARAGRAPH 2, ABOVE:**

The applicability of the numbered provisions within Section "B", "Assurances", below, to the respective classes of activities specified within subparagraphs 2a, b, and c, of this Section "A", above, is as follows:

<u>ACTIVITY CLASS</u>	<u>NUMBERED PROVISIONS APPLICABLE TO CLASS</u>	
	<u>FAT AGREEMENTS</u>	<u>FCH AGREEMENTS</u>
Direct and Supportive Aeronautical	1 thru 16	1 thru 15
Complementary Aeronautical	1 thru 14 & 16	1 thru 14
Non-Aeronautical	1 thru 14 & 16	1 thru 14

**4. DEFINITION OF TERMS USED WITHIN SECTION "B", "ASSURANCES", BELOW**

In order to facilitate ease of fulfillment of the requirement specified within paragraph 1 of this Section "A", this Exhibit is designed to be attached to and made a part of all City of Fresno Airport's "Agreements", including, without limitation, leases, licenses, permits, contracts, etc.; therefore, in the event the "Agreement" to which this Exhibit is attached and made a part of by reference therein shall be other than a lease or be a lease within which the parties thereto are therein called or referred to other than "Lessor" and "Lessee", then, where the terms "LESSOR", "LESSEE", and "LEASE" appear, as shown, within the sixteen (16) numbered "ASSURANCES" listed within Section "B", below, said terms shall be deemed to mean "CITY OF FRESNO, CALIFORNIA", "THE OTHER PARTY TO THE PARTICULAR AGREEMENT" (e.g., Licensee, Permittee, Concessionaire, Operator, etc.), and the "AGREEMENT" itself (regardless of title, type and/or description, including, without limitation, Leases, Agreements, Licenses, Permits, and Contracts) respectively; and where the terms "LAND LEASED" and "LEASED PREMISES" (and all reasonably readily identifiable derivations thereof) appear, said terms shall be deemed to mean the land(s) and/or premises specifically identified within the "Agreement" as being that/those to which leasehold interests are expressly granted and/or those in, upon, to and/or from which tenancies, occupancies, use(s), operation(s), and/or access(es) by the Lessee, Permittee, Licensee, Operator, Concessionaire, etc., are expressly authorized. In all cases, where the term "AIRPORT" appears, as shown, it shall be deemed to

mean the particular airport(s) (i.e., either the Fresno Air Terminal or the Fresno-Chandler Downtown Airport, or both) as identified within the "Agreement" between the parties as being the Airport(s) to which the "Agreement" pertains.

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SECTION B

ASSURANCES

1. The "LESSEE", for itself, 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 if the "Agreement" to which this Exhibit is attached is a lease) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this "LEASE" for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the "LESSEE" shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Sub-title A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The "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 if the agreement to which this Exhibit is attached is a lease) that: (1) no person on the grounds of race, color, or national origin shall 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 there on, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the "LESSEE" shall use the "premises" in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, "LESSOR" shall have the right to terminate the "LEASE" and to reenter and repossess said land and the facilities thereon, and hold the same as if said "LEASE" had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. "LESSEE" shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the "LESSEE" may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the CITY OF FRESNO, CALIFORNIA ("LESSOR") shall have the right to terminate this "LEASE" and the estate hereby created without liability therefor or at the election of the "LESSOR" or the United States either or both said Governments shall have the right to judicially enforce Provisions 1, 2, 3 and 4 above.

6. "LESSEE" agrees that it shall insert the above five (5) provisions in any lease, agreement, contract, etc., by which "LESSEE" grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the "premises" herein "LEASED".

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7. The "LESSEE" assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Sub-part E.

The "LESSEE" assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The "LESSEE" assures that it will require that its covered suborganizations provide assurances to the "LESSEE" that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effect.

8. The "LESSOR" reserves the right to further develop or improve the landing area of the "Airport" as it sees fit, regardless of the desires or view of the "LESSEE" and without interference or hindrance.

9. The "LESSOR" reserves the right, but shall not be obligated to the "LESSEE" to maintain and keep in repair the landing area of the "Airport" and all publicly-owned facilities of the "Airport", together with the right to direct and control all activities of the "LESSEE" in this regard.

10. This "LEASE" shall be subordinate to the provisions and requirements of any existing or future agreement between the "LESSOR" and the United States, relative to the development, operation or maintenance of the "Airport".

11. There is hereby reserved to the "LESSOR", its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the "premises" herein "LEASED". This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the "Airport".

12. "LESSEE" agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the "LEASED PREMISES", or in the event of any planned modification or alteration of any present or future building or structure situated on the "LEASED PREMISES".

13. The "LESSEE", by accepting this "LEASE", expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the "land leased" hereunder which would exceed the height limits of Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, "LESSOR" (the owner) reserves the right to enter upon the "land leased" hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the "LESSEE".

14. The "LESSEE", by accepting this "LEASE", agrees for itself, its successors and assigns, that it will not make use of the "LEASED PREMISES" in any manner which might interfere with the landing and/or taking off of aircraft at and/or from the "AIRPORT" (Either the Fresno Air Terminal or the Fresno-Chandler Downtown Airport, or both, as applicable) or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the "LESSOR" (owner) reserves the right to enter upon the "premises hereby leased" and cause the abatement of such interference at the expense of the "LESSEE".

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This "LEASE" and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said "AIRPORT" or the exclusive or non-exclusive use of the "AIRPORT" by the United States during the time of war or national emergency.