

RESOLUTION NO. 07-121

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING AN AMENDMENT TO AIRPORT LEASE AGREEMENT
MILTON C. CULVER AND DONALD L. CULVER, LESSEE**

WHEREAS, the City of El Paso de Robles continues to operate, maintain and develop the Paso Robles Municipal Airport for the service and benefit of the community; and

WHEREAS, long-term lease of land in the Airport Industrial Park is beneficial and in the best interest of the community, and;

WHEREAS, said agreements require maintenance and amendment due to changing conditions, and;

WHEREAS, that certain lease agreement dated September 1, 1987, between the City and Milton C. Culver and Donald L. Culver remains in full compliance, and Lessee has requested a division of interest in the lease among Lessee family members,

THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. That the City Council of the City of Paso Robles does hereby approve the Amendment to Lease dated February 28, 2007, and;

Section 2. That the City Council of the City of Paso Robles does hereby authorize the execution of the necessary documents as required.

PASSED AND ADOPTED by the City Council of the City of Paso Robles, this 19th day of June, 2007, by the following vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham

NOES:

ABSENT:

ABSTAIN:

Frank R. Mecham, Mayor

ATTEST:

Deborah Robinson, Deputy City Clerk

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "**Amendment**") is made and entered into as of February 28, 2007, by and between MILTON C. CULVER, an individual ("**Original Lessee**"), CULVER BROTHERS ENTERPRISES, LLC, a California limited liability company; MONA C. CULVER, Trustee of the Donald L. Culver Exemption Trust; MONA C. CULVER, Trustee of the Donald L. Culver Marital Deduction Trust; MITCHELL G. CULVER, an individual; and WILLIAM B. CULVER, an individual, jointly and severally (each, an "**Additional Lessee**" and collectively, the "**Additional Lessees**"), and CITY OF EL PASO de ROBLES, a municipal corporation ("**City**"), who agree as follows:

RECITALS

A. This Amendment is made with respect to that certain Municipal Airport Property Lease made and entered into on September 1, 1987, by and between City, as lessor, and Milton C. Culver and Donald L. Culver, as lessee (the "**Original Lease**") with respect to certain space situated at the Paso Robles Municipal Airport located in El Paso de Robles, California and referred to in the Original Lease as Parcel 52 of Parcel Map PRAL 80-53 (the "**Premises**").

B. Milton C. Culver and Donald L. Culver executed the Original Lease as the "Lessee" under the Original Lease. As a result of the death of Donald L. Culver, Milton C. Culver has succeeded to the right, title and interest of Donald L. Culver under the Original Lease and is currently the sole lessee under the Original Lease.

C. City and Original Lessee desire to amend the Original Lease to join the Additional Lessees with the Original Lessee to comprise, on a joint and several basis, the "Lessee" under the Original Lease as amended hereby, and the Additional Lessees desire to be joined with Original Lessee to comprise, on a joint and several basis, the "Lessee" under the Original Lease, as amended hereby.

D. All capitalized terms used herein but not specifically defined in this Amendment shall have the meanings ascribed to such terms in the Original Lease. The Original Lease, as amended hereby, shall herein and hereafter be referred to as the "Lease." All references in the Original Lease to the "Lease" shall herein and hereafter refer to the Original Lease, as amended hereby.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Original Lessee, City and Additional Lessees agree as follows:

1. Additional Lessees. Effective as of the date of this Amendment, all references in the Lease to "Lessee" shall mean and collectively refer to Original Lessee and each and every Additional Lessee, jointly and severally. Without limiting Original Lessee's continuing duties, liabilities and obligations under the Lease, effective as of the date of this Amendment, each Additional Lessee agrees to join with Original Lessee as the "Lessee" under the Lease and agrees to pay and perform, as a direct obligation to City, all of the duties, liabilities and obligations required to be paid and performed by the "Lessee" under the Lease.

2. Notices. Section XLII of the Lease is hereby amended to provide that the notice contact for Lessee shall be as follows:

Milton C. Culver & Mitchell G. Culver
630 14th Street
Paso Robles, CA 93446

3. Attorneys' Fees. If any party commences an action against any of the parties arising out of or in connection with this Agreement, the prevailing party or parties shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs of suit.

4. Lease in Full Force. Except for those provisions which are inconsistent with this Amendment and those terms, covenants and conditions for which performance has heretofore been completed, all other terms, covenants and conditions of the Original Lease shall remain in full force and effect and Lessee, Additional Lessees and City hereby ratify the Original Lease, as amended hereby.

5. No Brokers. Lessee, City and each Additional Lessee each warrants to the others that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Amendment and that it knows of no real estate broker or agent who is or might be entitled to a commission in connection with this Amendment. Each party to this Amendment shall indemnify, defend and hold harmless the other parties from and against any and all claims asserted against such other party by any real estate broker, finder or intermediary relating to any act of the indemnifying party in connection with this Amendment.

6. Governing Law. This Amendment shall be governed by and construed and enforced in accordance with the laws of the State of California.

7. Binding Effect. This Amendment shall be binding upon and inure to the benefit of City, its successors and assigns and Lessee and its permitted successors and assigns.

8. Invalidity of Provisions. If any provision of this Amendment is found to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of any such provision shall not affect the validity and enforceability of the remaining provisions hereof.

9. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original part and all of which together shall constitute a single agreement.

10. Joint and Several. The obligations herein imposed upon Original Lessee and each and every Additional Lessee shall be joint and several as to each of the persons, firms, entities or corporations of which "Lessee" may be composed.

11. Approval by City; Memorandum of Lease Amendment. The parties hereby acknowledge and agree that this Amendment is subject to the adoption of a Resolution by the City approving this Amendment, with findings. Following the approval of this Amendment and the adoption of the Resolution by the City, the parties acknowledge and agree that a Memorandum of Lease Amendment in the form attached hereto as Exhibit A shall be executed by the parties and recorded with the County of San Luis Obispo Recorder's office.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, this Amendment is executed as of the date first written above.

Original Lessee:

City of El Paso de Robles:

Milton C. Culver, an individual

James L. App, City Manager

Additional Lessees:

Culver Brothers Enterprises, LLC

Mitchell G. Culver, Manager

Mona C. Culver, Trustee of the
Donald L. Culver Exemption Trust

Mitchell G. Culver, an individual

Mona C. Culver, Trustee of the
Donald L. Culver Marital Deduction Trust

William B. Culver, an individual

ATTEST:

Deborah Robinson, Deputy City Clerk