

RESOLUTION NO. 16-059

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES APPROVING THE TERMINATION OF LEASE FOR 5070 WING WAY, AND A FIRST AMENDMENT TO MUNICIPAL AIRPORT PROPERTY LEASE WITH APPLIED TECHNOLOGIES ASSOCIATES FOR 3034 PROPELLER DRIVE, TO ADD 5055 WING WAY AND 5095 WING WAY TO THE LEASED PREMISES

WHEREAS, Applied Technologies Associates (“ATA”) currently leases from the City a hangar at 5070 Wing Way (the “5070 Wing Way Lease”), which lease term terminates on March 21, 2017; and

WHEREAS, ATA and City also entered into a Municipal Airport Property Lease, dated December 5, 2014, for property located at 3034 Propeller Drive (the “3034 Propeller Drive Lease”), which lease term terminates on October 16, 2049; and

WHEREAS, the hangar properties located at 5055 Wing Way and 5095 Wing Way are adjacent to the premises leased under the 3034 Propeller Drive Lease and are vacant; and

WHEREAS, ATA desires to terminate the 5070 Wing Way Lease and lease the hangar properties located at 5055 Wing Way and 5095 Wing Way (the “Added Premises”), as the Added Premises will be more convenient for and will enhance ATA’s business operations; and

WHEREAS, the proposed lease amendment ensures that two vacant hangar properties will be occupied for the remaining 33 years of the 3034 Propeller Lease Drive term and be of economic benefit to the City;

NOW, THEREFORE the City Council of the City of El Paso de Robles does hereby resolve as follows:

Section 1. The City Council hereby approves and authorizes the City Manager to execute the Termination of Lease with Applied Technologies Associates for the property located at 5070 Wing Way, in substantially the form attached hereto as Exhibit A and incorporated herein by reference, subject to any minor, technical or clarifying changes by the City Attorney.

Section 2. The City Council hereby approves and authorizes the City Manager to execute the First Amendment to Municipal Airport Property Lease with Applied Technologies Associates to add the Added Premises (5055 Wing Way and 5095 Wing Way) to the premises under the 3034 Propeller Drive Lease, in substantially the form attached hereto as Exhibit B and incorporated herein by reference, subject to any minor, technical or clarifying changes by the City Attorney.

APPROVED by the City Council of El Paso de Robles this 7<sup>th</sup> day of June, 2016, by the following roll call vote:

AYES: Strong, Gregory, Reed, Martin  
NOES:  
ABSTAIN: Hamon

  
Steven W. Martin, Mayor

ATTEST:

  
Kristen L. Buxkemper, Deputy City Clerk

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

City of El Paso de Robles  
Department of Public Works  
1000 Spring Street  
Paso Robles, CA 93446

Exempt from Recording Fees pursuant to  
Government Code Sec. 27383

Space Above This Line For Recorder's Use

**TERMINATION OF LEASE**

THIS TERMINATION OF LEASE (this "Termination Agreement") is made and entered into as of this 1<sup>st</sup> day of June 2016 ("Termination Date"), by and between THE CITY OF EL PASO DE ROBLES, a municipal corporation ("Landlord," "Lessor" or "City"), and APPLIED TECHNOLOGIES ASSOCIATES, a California corporation ("Lessee" or "Tenant"), with reference to the following Recitals:

**RECITALS**

- A. The City, as Landlord, and John Reed and Harry Reed, as Tenant, entered into that certain unrecorded Municipal Airport Lease, dated January 31, 1997 ("Original Lease"), wherein Tenant leased from the Landlord real property known as Lot 3 of Parcel 16 of Parcel Map PRAL 96-025, commonly referred to as 5070 Wing Way, Paso Robles, California ("Premises"), and more particularly described as follows:  
PARCEL 3 OF PARCEL MAP NO. PRAL 96-025, IN THE CITY OF PASO ROBLES, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED SEPTEMBER 11, 1996, IN BOOK 52, PAGE 16 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.  
A Memorandum of Lease was recorded by the San Luis Obispo County Clerk/Recorder as Document #2001084919 on November 1, 2001.
- B. The Lease, and all Tenant's rights thereunder, were assigned to Allen R. Yarborough ("Yarborough"), pursuant to that certain unrecorded Assignment and Amendment of Lease agreement, dated June 1, 2001, and consented to by City on June 19, 2001 (the "First Assignment").
- C. City consented to an Assignment and Assumption of Master Lease between Yarborough, as Assignor, and KMBG, LLC, a Colorado Limited Liability Company, as Assignee ("KMBG"), dated December 1, 2007 (the "Second Assignment"). The Second Assignment was recorded by the San Luis Obispo County Clerk/Recorder on December 24, 2007 as Document #2007082103.
- D. City consented to an Assignment and Assumption of Master Lease between KMBG and Applied Technologies Associates, a California corporation, as Assignee and Lessee hereunder, dated January 1, 2013 (the "Third Assignment"). (As used hereinafter, the term "Lease" shall mean and refer to the Original Lease, as assigned and amended by the First Assignment, the Second Assignment and the Third Assignment.)
- E. City and Lessee have mutually agreed to terminate the Lease. City wishes to release Lessee of all rights to possession of the Premises, and Lessee wishes to release City of all rights and obligations under the Lease.

## AGREEMENTS

NOW, THEREFORE, this is an integrated contract, relying on the statements in the above Recitals and with each and every covenant, term and condition stated below, each as a promise and consideration for the other, City and Lessee do hereby covenant and agree as follows:

1. Lease Termination.

The Lease shall be terminated as of June 1, 2016, ("Termination Date"). With the exception of those provisions that survive termination of the Lease, including without limitation the indemnity provisions contained in Sections 3.5.1 and 9.2 of the Lease, no provisions, terms or conditions of the Lease shall survive this termination, and following the Termination Date, neither City nor Lessee has any obligations to or rights against the other thereunder.

2. Surrender of Premises.

On or before the Termination Date, Lessee shall vacate and surrender possession of the Premises, in its current condition. City has inspected and accepts the premises in its current as-is condition. Any and all improvements to the Premises shall remain intact and in place on the Premises and are hereafter the property of City.

3. No Assignment or Sublease.

Lessee represents and warrants that it has not made any assignment, sublease, transfer, conveyance or other disposition of the Lease or its interest in the Lease or its right to occupy or use the Premises.

4. Attorneys' Fees.

In the event of any action at law or in equity between the parties to enforce any provision of this Termination Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the Court, together with costs of suit therein incurred.

5. Authority to Execute Termination Agreement.

City and Lessee warrant that the individuals who have signed this Termination Agreement have the legal power, right and authority to enter into this Termination Agreement so as to bind each party for whom they sign.

6. Severability.

The invalidity of any provision of this Termination Agreement shall not affect the validity or enforceability of any other provision of this Termination Agreement.

7. Entire Agreement.

This Termination Agreement contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

8. Construction.

The parties acknowledge that they have reviewed this Termination Agreement and have had the opportunity to have the same reviewed by their legal counsel. The parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Termination Agreement.

9. Governing Law.

This Termination Agreement and the rights and obligations of the parties hereunder shall be construed, enforced, and interpreted according to the laws of the State of California applicable to contracts made in and performed in the State of California.

10. Further Assurances.

City and Lessee agree to perform, execute and deliver or cause to be performed, executed and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the actions contemplated in this Termination Agreement.

11. Successors and Assigns.

This Termination Agreement shall be binding upon and inure to the benefit of City and Lessee and their respective successors and assigns.

This Termination Agreement may be executed in a number of identical counterparts (including, without limitation, facsimile counterparts or ".pdf" counterparts delivered by e-mail) which, taken together, shall collectively constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Termination Agreement to be duly executed on the date first stated above.

**"CITY":**

**CITY OF EL PASO DE ROBLES, a municipal corporation**

By: \_\_\_\_\_  
Thomas Frutchey, City Manager

**"LESSEE":**

**APPLIED TECHNOLOGIES ASSOCIATES, a California corporation**

By: \_\_\_\_\_  
Dan Carter, SVP and General Counsel

**ATTEST:**

\_\_\_\_\_  
Dennis Fansler, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Iris P. Yang, City Attorney

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

**City of Paso Robles  
Department of Public Works  
1000 Spring Street  
Paso Robles, CA 93446**

**FOR RECORDERS USE ONLY**

**FIRST AMENDMENT TO MUNICIPAL AIRPORT PROPERTY LEASE  
APPLIED TECHNOLOGIES ASSOCIATES, INC.  
[3034 Propeller Drive]**

This First Amendment to Municipal Airport Property Lease ("First Amendment") is made and entered into as of the 1<sup>st</sup> day of June, 2016 ("Effective Date"), by and between the City of El Paso de Robles, a municipal corporation, (hereinafter called "City" or "Landlord") and Applied Technologies Associates, Inc., a California corporation (hereinafter called "Tenant") with reference to the following recitals:

**RECITALS**

- A. City and Tenant entered into that certain Municipal Airport Property Lease, dated December 5, 2014 ("Lease"), wherein Tenant leased from City real property known as Parcel 1 as described in Document No. 2014050341 Recorded November 25, 2014 in the Office of the County recorder of County of San Luis Obispo, California (commonly known as 3034 Propeller Drive), more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "Original Premises").
- B. Tenant desires to lease the adjacent parcel (Parcel 2 of Parcel Map PRAL 88-207) (commonly known as 5055 Wing Way and 5095 Wing Way), including all buildings and other site improvements contained thereon as more particularly described below, and to include such additional parcel within the current Lease as a part thereof.

Therefore, City and Tenant agree as follows:

**AGREEMENT**

- 1. Added Premises. The Lease is hereby amended to add, as a part of the "Leased Premises" or "Premises," that certain property described in the attached Exhibit A, including the two hangar buildings, consisting of approximately 2,400 square feet of aircraft hangar storage space, commonly known as 5055 Wing Way, and approximately 4,000 square feet of aircraft hangar storage space, commonly known as 5095 Wing Way, and other site improvements currently located thereon (the "Added Premises"). Following the Effective Date of this First Amendment, the terms "Leased Premises" and "Premises" as used in the Lease shall thereafter mean and refer to the Original Premises and the Added Premises.
- 2. Acceptance of Added Premises. Tenant hereby accepts the Added Premises, including all existing buildings and site improvements contained thereon, in the condition existing as of the date hereof. With the exception of the water damage referenced in Section 4, below, Tenant hereby agrees that the Premises are in a good and tenantable condition, acknowledges that it has inspected the Added Premises and common areas of the Airport to its satisfaction, and acknowledges that Landlord is not obligated to make any repairs or alterations to the Added Premises or common areas.

3. Rent. In consideration for this First Amendment, and subject to the credit provided for under Section 4 of this First Amendment, the monthly Base Rent payable by Tenant under Section 4.1 of the Lease shall be increased by Seven Hundred Eighty Nine Dollars (**\$789.00**) per month, to Two Thousand Three Hundred Ninety Seven and 28/100 Dollars (\$2,397.28) per month as of the Effective Date. The monthly Base Rent, as so amended, shall be subject to increase in accordance with Section 4.3 of the Lease effective as of July 1, 2017. Further, all taxes, assessments and any other amounts due and payable by Tenant under the Lease with respect to the Premises shall be due and payable as they relate to the entire Premises as amended by this First Amendment.
  
4. Repair of Water Damage; Credit Toward Rent. Tenant and City acknowledge that there is existing water damage to the hangar building located at 5095 Wing Way caused by water intrusion, but such water damage does not impact the use of the Added Premises. Tenant shall, at its own cost and expense, undertake to repair such water damage promptly following the Effective Date of this First Amendment, in accordance with the requirements of Article 7 of the Lease.  
  
So long as Tenant is not in default under the Lease, City and Tenant agree that Tenant shall receive a credit toward monthly Rent due under Section 4.1 of the Lease (as amended by Section 3, above) as consideration for the cost of remediation of such existing water damage, in a total amount not to exceed Ten Thousand Two Hundred Fifty-Seven Dollars (\$10,257.00). Said credit shall be applied at the rate of \$789.00 per month for thirteen (13) months, with the first credit to be applied to the monthly Base Rent due June 1, 2016, and each subsequent credit applied on the first day of each month thereafter, through and including the monthly Rent due June 1, 2017.
  
5. Except as specifically amended by this First Amendment, all of the terms and conditions of the Lease shall remain unchanged and in full force and effect. If there is any conflict between the Lease and this First Amendment, this First Amendment shall control.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed as of the date first entered above.

**CITY OF EL PASO DE ROBLES**

**APPLIED TECHNOLOGIES ASSOCIATES, INC.**

By: \_\_\_\_\_  
Thomas Frutchey, City Manager

By: \_\_\_\_\_  
Dan Carter, SVP and General Counsel

ATTEST:

By: \_\_\_\_\_  
Kristen L. Buxkemper, Deputy City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Iris P. Yang, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Parcel 1 as described in Document No. 2014050341 Recorded November 25, 2014; Parcel 2 of Parcel Map 88-207 as recorded in Book 48 of Parcel Maps at Page 23 in the Office of the County Recorder of County of San Luis Obispo, State of California.

