

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 13 Ordinance/Resolution# 11-119 Council District: 4

For Meeting of November 15, 2010
(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LEASE FOR PARCEL 36 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM ROCKET RACING, INC., TO MESILLA CAPITAL INVESTMENTS, LLC.

PURPOSE(S) OF ACTION: To assign the Lease for Parcel 36 at the airport, currently leased by Rocket Racing, Inc., to Mesilla Capital Investments, LLC.

| | | | | | |
|---|---|----------------------------------|------------------------|--|--------------|
| Drafter and Staff Contact: Lisa Murphy, Airport Administrator | | Department: Facilities | | Phone: 541-2471 | |
| Department | Signature | Phone | Department | Signature | Phone |
| Facilities Director |  | 541-2506 | Budget |  | 541-2107 |
| Other | | | Assistant City Manager |  | 541-2271 |
| Legal |  | 541-2128 | City Manager |  | 541-2076 |

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Rocket Racing, Inc. currently holds a 20-year Land Lease for a 10,000-square foot parcel of airport land known as Parcel 36 and is the last remaining parcel of the original six (6) leased by Rocket Racing, Inc. The Lease was originally approved on April 17, 2006 pursuant to Resolution 06-308, and the rent is \$2000 per year. There is a partially built 3,600 square foot hangar on the parcel which, when completed, will be used by the assignee for the storage of aircraft. The terms of the Lease allow assignment with the approval of City Council. Rocket Racing, Inc. has made such a request.

The assignee would be Mesilla Capital Investments, LLC. The assignment would allow Mesilla Capital Investments, LLC to obtain the Lease for Parcel 36 and all improvements thereon. The assignee has requested that all terms and conditions of the Lease remain the same. If the assignment is approved, Mesilla Capital Investments, LLC will be responsible for payment of land rent for Parcel 36 and must abide by all terms and conditions of the Lease.

The Airport Advisory Board considered this request at their November 4, 2010 meeting and recommend that it be approved.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A", Assignment document for signature
3. Excerpt from the Lease with conditions to assign
4. Letter from Rocket Racing, Inc. requesting the assignment of lease
5. Property map and Legal Description

SOURCE OF FUNDING: N/A

| | | | |
|--|-----------------------------------|-------------------------------------|---|
| Is this action already budgeted? No expenditure associated with this action | Yes | <input type="checkbox"/> | See fund summary below |
| | No | <input checked="" type="checkbox"/> | If No, then check one below: |
| | <i>Budget Adjustment Attached</i> | <input type="checkbox"/> | Expense reallocated from: |
| | | <input type="checkbox"/> | Proposed funding is from a new revenue source (i.e. grant; see details below) |
| | | <input type="checkbox"/> | Proposed funding is from fund balance in the _____ Fund. |
| Does this action create any revenue? | Yes | <input type="checkbox"/> | Funds will be deposited into this fund: _____ |
| | No | <input checked="" type="checkbox"/> | There is no new revenue generated by this action. |

FUND SUMMARY: N/A

| Fund Name(s) | Account Number(s) | Expenditure Proposed | Available Budgeted Funds in Current FY | Remaining Funds | Purpose for Remaining Funds |
|--------------|-------------------|----------------------|--|-----------------|-----------------------------|
| | | | | | |

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and allow Rocket Racing, Inc. to assign the Lease for Parcel 36 to Mesilla Capital Investments, LLC.
2. Vote "No"; this will not allow Rocket Racing, Inc. to assign the Lease for Parcel 36 to Mesilla Capital Investments, LLC.
3. Vote to "Amend"; this could include approving a different lease term than is requested.
4. Vote to "Table"; this would delay the assignment of lease by Rocket Racing Inc.

(Continue on additional sheets as required)

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. Resolution No. 06-308

RESOLUTION NO. 11-119**A RESOLUTION AUTHORIZING AN ASSIGNMENT OF LEASE FOR PARCEL 36 AT THE LAS CRUCES INTERNATIONAL AIRPORT FROM ROCKET RACING, INC., TO MESILLA CAPITAL INVESTMENTS, LLC.**

The City Council is informed that:

WHEREAS, on May 1, 2006, the City Council approved a lease for land known as Parcel 36 at the Las Cruces International Airport to Rocket Racing, Inc., pursuant to Resolution 06-308; and

WHEREAS, paragraph 9.a. of the Lease provides that the City may approve a transfer of the Lease held by Rocket Racing, Inc., and that such approval will not be unreasonably withheld; and

WHEREAS, Rocket Racing, Inc., has now requested that the City approve assignment of the Lease to Mesilla Capital Investments, LLC; and

WHEREAS, both staff and the Airport Advisory Board recommend approval of this request.

NOW THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Mayor of the City of Las Cruces is hereby authorized to sign the Assignment of Lease for Parcel 36 currently held by Rocket Racing, Inc., to Mesilla Capital Investments, LLC, attached hereto as Exhibit "A" and made part of this Resolution.

Resolution No. 11-119
Page 2

(II)

THAT City staff are hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

| | |
|---------------------|-------|
| Mayor Miyagishima: | _____ |
| Councillor Silva: | _____ |
| Councillor Connor: | _____ |
| Councillor Pedroza: | _____ |
| Councillor Small: | _____ |
| Councillor Sorg: | _____ |
| Councillor Thomas: | _____ |

Moved by: _____

Seconded by: _____

APPROVED TO FORM:



City Attorney

ASSIGNMENT OF LEASE

Rocket Racing, Inc., assignor herein and lessee of premises described as follows:

A portion of the lease, that portion being all of Parcel 36 as shown on the attached map marked Exhibit "A-1" and described in Exhibit "A-2" and made a part hereof,

which was demised by a lease designated to Rocket Racing, Inc., by the Las Cruces City Council Resolution 06-308 on April 17, 2006, for good and valuable consideration paid by Mesilla Capital Investments, LLC, assignee of the lease, assigns the lease to assignee subject to all the terms and conditions thereof, and assignee accepts the assignment and shall perform all the terms and conditions thereof, including payment of all rent applying to Parcel 36 required by the provisions of the lease. Assignee shall enjoy the same right and power to assign the lease as assignor enjoyed under the lease.

The CITY OF LAS CRUCES, NEW MEXICO, a municipal corporation, lessor under the lease, consents to the assignment of the lease to assignee, but does not waive any rights against assignor that lessor has under the lease.

In witness whereof, the parties have executed this assignment at Las Cruces, New Mexico the _____ day of _____, 2010.

MICHAEL R. D'ANGELO, Chief Operating Officer
Assignor

ATTEST:

(Seal)

STATE OF NEW MEXICO)
) ss.
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Michael R. D'Angelo, Chief Operating Officer, on behalf of Rocket Racing, Inc.

Notary Public

My Commission Expires:

Land Lease
City of Las Cruces, New Mexico, International Airport
ROCKET RACING INC., LESSEE

8. Obtain Permits, Pay Taxes, and Obey Laws.

a. Lessee shall pay when due all valid taxes, special assessments, excises, license fees and permit fees of whatever nature applicable to its operation or levied or assessed against the Airport, or improvements thereto. Lessee shall take out and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at and upon the Airport, and further agrees not to permit any of said taxes, excise or license fees to knowingly become delinquent.

b. Lessee shall, at its own expense, fully comply with all laws, regulations, rules, ordinances, and requirements of the applicable City, County, State and Federal authorities and agencies which affect this Lease, the land granted by this Lease, any improvements upon the Leasehold, and/or operations thereon. Such compliance shall be with any laws, regulations, rules, ordinances or requirements which have been or may be enacted or promulgated during the effective period of this Lease.

c. Lessee recognizes the authority of the City Council and staff to take those necessary and legal actions required to safeguard any person, aircraft, equipment or property at the Airport. Lessee agrees to abide by any suspension, restriction, or designation of specific procedures applicable to any or all Airport operations whenever such actions are established by such authorities.

9. Assignment And Sublease.

a. **City Consent Required.** Lessee shall not assign or sublease the rights granted by this Lease, nor the Leased Parcels, nor the improvements constructed or occupied in accordance with this Lease, without the prior written consent of the City, which consent shall not be unreasonably withheld. All approved assignments or subleases shall be in accordance with the Minimum Standards For Commercial Airport Aeronautical Activity And Service Providers At The Las Cruces International Airport. The City may condition such consent upon an increase in the Rent, and may require other conditions or covenants before consenting to an assignment or sublease. Such additional rent, conditions or covenants shall be in accord with those terms and conditions for similar agreements in effect at the time of the assignment, sublease, or sale. If the Lease is assigned or subleased, all clauses herein binding the parties hereto are also binding on any and all successors and/or assigns, unless specifically amended by the City as a condition of consent.

b. **Assignment Relieves Lessee.** Upon a valid assignment of this Lease, but not upon a sublease, the Lessee shall be relieved of all obligations and liabilities arising from this Lease effective as of the date of the assignment.

10. Default and Termination.

a. **Definition.** If the City determines the Lessee is in violation of any of the terms, conditions or covenants of this Lease, or the Lessee fails to pay, on time, any fees or charges due, the condition shall be considered a default of the Lease.

b. **Written Notice Required.** The City shall provide the Lessee with written notice of any determination of default.

c. **Compliance Time.** The Lessee shall then have ten (10) days to cure or remedy said default or otherwise comply with any demand contained within such written notice which cures or remedies the default.

d. **Failure to Comply.** If the Lessee fails to correct the default as specified by the City's notice within the specified period, or if the Lessee receives a third notice of default within any 18 consecutive month period, the City may, at its option, terminate this Lease immediately, or at any time thereafter. Such termination may be made without further notice or demand. Upon such termination, without further notice or demand, the City may enter upon and into the Leased area, or improvements thereto, or any part thereof, and take absolute possession of the same fully and absolutely, and such re-entry shall not be judged trespass. In addition, the City may also require all associated and permitted operations to cease and be removed from the Airport.

e. **Lease Remains Binding.** All provisions of this Lease remain binding upon the Lessee while the Lessee is in default, and if this Lease is terminated due to default.



Michael D'Angelo
Chief Operating Officer

October 22, 2010

Lisa Murphy
Airport Administrator
Las Cruces International Airport
Las Cruces, NM

Re: Lease Transfer

Dear Lisa,

I am requesting approval to transfer lease on parcel 36 to Mesilla Capital Investments or Mr. Glenn Porter should he exercise his first right of refusal. It is also my hope this will be on the November 15th city council agenda.

The new lessee will use the hangar only for purposes authorized by airport. It is understood it will be used for holding personally owned aircraft of lessee.

Very best,

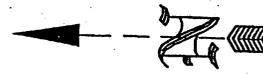
Michael R. D'Angelo
Rocket Racing, Inc.

PRELIMINARY

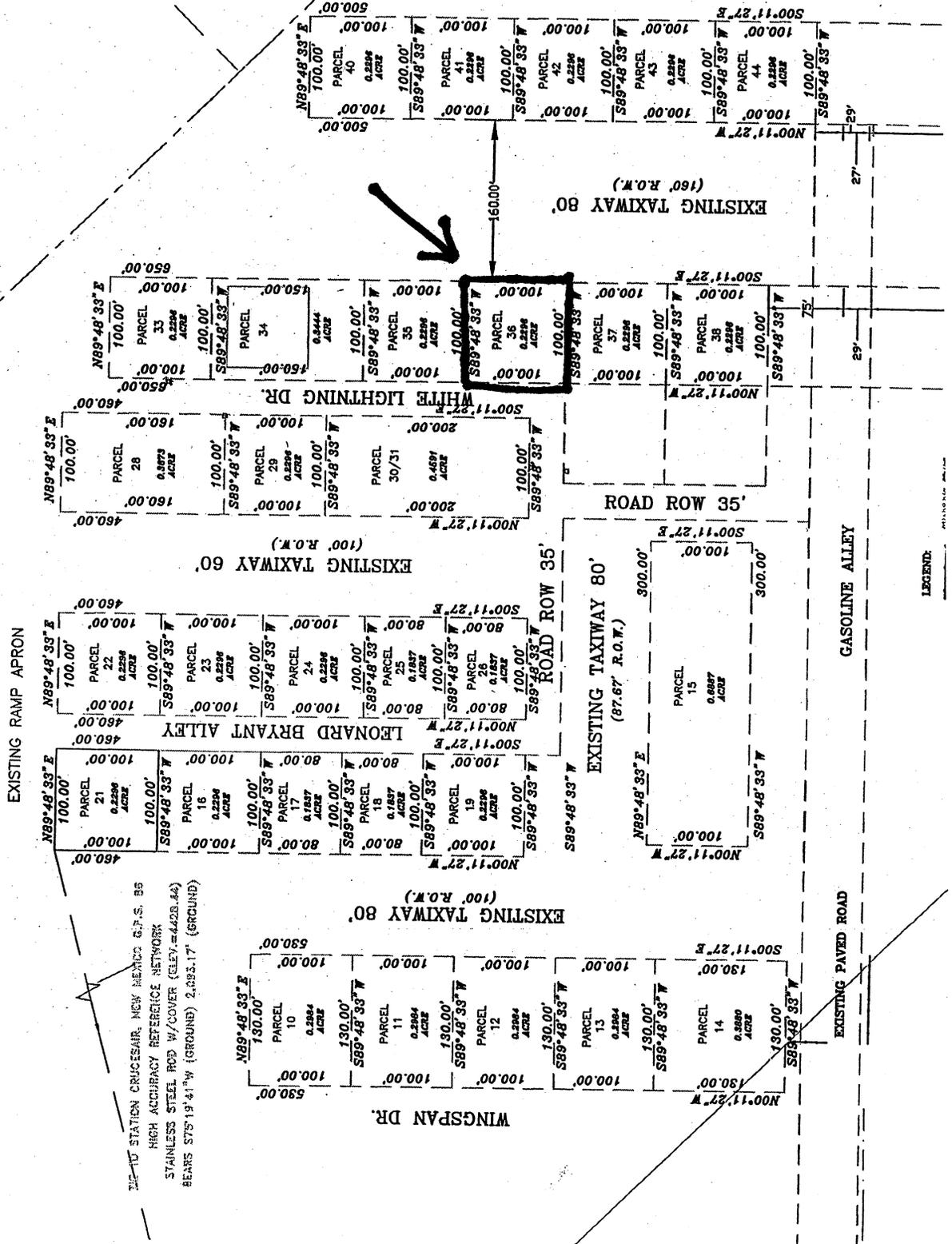
PLAT SHOWING LEASE PROPERTIES
 AT THE LAS CRUCES INTERNATIONAL AIRPORT
 NW 1/4 OF SECTION 26, T.23S., R.1W.,
 N.M.P.M. OF THE U.S.G.L.O. SURVEYS
 LAS CRUCES, DONA ANA COUNTY, NEW MEXICO

THE 10' STATION CRUCESAR, NEW MEXICO G.P.S. BS
 HIGH ACCURACY REFERENCE NETWORK
 STAINLESS STEEL ROD W/COVER (ELEV.=4428.44)
 BEARS S75°19'41"W (GROUND) 2,825.17' (GROUND)

BUILDING RESTRICTION LINE



NOT TO SCALE



LEGEND:



March 29, 2006
 Lease Parcel 36
 05-S-036D

DESCRIPTION OF A 0.2296 ACRE PARCEL

A parcel of land situate within the corporate limits of the City of Las Cruces, Dona Ana County, New Mexico. In the NW1/4 of Section 26, T.23S., R.1W., N.M.P.M. of the U.S.G.L.O. Surveys. Being part of the Las Cruces International Airport Reserve and more particularly described as follows, to wit:

BEGINNING at a ½ inch rebar with City of Las Cruces identification cap set on the east side of a 35 foot wide road for the northwest corner of the lease parcel herein described, whence station CRUCESAIR of the New Mexico High Accuracy Reference Network bears S86°51'53"W a distance of 2,499.97 feet;

THENCE FROM THE POINT OF BEGINNING leaving the 35 foot wide road N89°48'33"E – 100.00 feet to a ½ inch rebar with City of Las Cruces identification cap set for the northeast corner of the lease parcel herein described;

THENCE S00°11'27"E – 100.00 feet to a ½ rebar with City of Las Cruces identification cap set for the southeast corner of the lease parcel herein described;

THENCE S89°48'33"W – 100.00 feet to a ½ inch rebar with City of Las Cruces identification cap set on the east side of said 35 foot wide road for the southwest corner of the lease parcel herein described;

THENCE along the road, N00°11'27"W – 100.00 feet to the point of beginning, containing 0.2296 acres of land more or less..

AUTHORITY STATEMENT: I, Gilbert Chavez, a New Mexico registered Professional Surveyor certify that I directed and am responsible for this survey, that this survey is true and correct to the best of my knowledge and belief, and that this survey and legal description meets the "Minimum Standards for Land Surveying in New Mexico."

THIS PROPERTY DESCRIPTION WAS PREPARED SOLELY FOR THE PURPOSE OF NEGOTIATIONS FOR LEASE. A FILED SUBDIVISION WILL BE REQUIRED FOR COMPLIANCE WITH THE CITY OF LAS CRUCES SUBDIVISION CODE.

Gilbert Chavez
 NMPS 6832

P.O. BOX 20000
 LAS CRUCES
 NEW MEXICO
 88004-9002
 505.541.2000

AN EQUAL OPPORTUNITY EMPLOYER

RESOLUTION NO. 06-308

A RESOLUTION APPROVING A LAND LEASE OF SIX CITY-OWNED PARCELS KNOWN AS PARCELS 36, 37, 41, 42, 43 AND 44 AT THE LAS CRUCES INTERNATIONAL AIRPORT TO ROCKET RACING, INC., DBA ROCKET RACING LEAGUE, FOR A TERM OF TWENTY YEARS AT AN INITIAL RENT OF TWO THOUSAND DOLLARS (\$2,000) PER PARCEL PER YEAR FOR A TOTAL OF TWELVE THOUSAND DOLLARS (\$12,000) PER YEAR.

The City Council is informed that:

WHEREAS, the City of Las Cruces, New Mexico, a municipal corporation, is the owner of certain real property know as the Las Cruces International Airport; and

WHEREAS, the City, with the approval of the Federal Aviation Administration, has identified specific areas of the airport for development through the lease of land parcels; and

WHEREAS, Rocket Racing Inc., dba Rocket Racing League, has requested to execute a lease agreement with the City of Las Cruces for land known as Parcels 36, 37, 41, 42, 43 & 44 for the construction of aircraft hangars; and

WHEREAS, Rocket Racing League has agreed to the City's terms and conditions, and a lease has been prepared with hose terms and conditions in accordance with the Las Cruces Municipal Code Section 7.5; and

WHEREAS, under Section 3-54-1, NMSA, 1978, as amended, the property may be leased without referendum.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the City of Las Cruces hereby approves the lease of Parcels 36, 37, 41, 42, 43 & 44 at the Las Cruces International Airport for the terms and conditions contained in the Las Cruces International Airport Land Leases, Parcels 36, 37, 41, 42, 43, & 44, Rocket Racing Inc., Lessee, attached hereto and made part of this resolution.

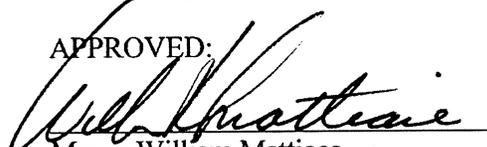
(II)

THAT the Mayor is authorized to execute the Lease on Behalf of the City.

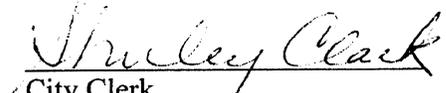
(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 17th day of April, 2006.

APPROVED: 
Mayor William Mattiace

ATTEST:


City Clerk

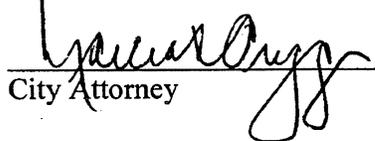
Moved by: Connor

Seconded by: Archuleta

VOTE:

- Mayor William Mattiace: aye
- Councillor Frieze: ~~aye~~
- Councillor Connor: ~~aye~~
- Councillor Archuleta: aye
- Councillor Trowbridge: aye
- Councillor Jones: ~~aye~~
- Councillor Miyagishima: aye

APPROVED AS TO FORM:


City Attorney

1554