

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

316



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
January 17, 2013

**SUBJECT:** Jacqueline Cochran Regional Airport – Lease Termination and Settlement Agreement

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Lease Termination and Settlement Agreement between the County of Riverside, as Lessor, and Coachella Valley Aviation, Inc., as Lessee, of the original lease dated October 29, 1996, between the County of Riverside and Coachella Valley Aviation, and Amended by First Amendment to Lease on or about October 17, 2006;
2. Authorize the Chairman of the Board of Supervisors to execute the Lease Termination and Settlement Agreement; and

(Continued)

*[Signature]*

Robert Field  
Assistant County Executive Officer/EDA

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

**COMPANION ITEM ON BOARD AGENDA:** No

**SOURCE OF FUNDS:** N/A

Positions To Be Deleted Per A-30   
Requires 4/5 Vote

**C.E.O. RECOMMENDATION:** APPROVE

BY: *[Signature]*  
Jennife L. Sargent

**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY: *[Signature]*  
ANNIE T. SAHAR  
DATE: 1/17/13  
Departmental Concurrence

Dep't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.:** 3.27 of 10/29/96; 3.11 of 10/17/06

**District:** 4/4

**Agenda Number:**

3-11

**RECOMMENDED MOTION: (Continued)**

3. Authorize the Assistant County Executive Officer/EDA, or designee, to execute any additional documents necessary to complete the Lease Termination and Settlement Agreement.

**BACKGROUND:**

On October 29, 1996, the County of Riverside (County) and Coachella Valley Aviation, LLC (Coachella) hereinafter referred to as Parties, entered into a long-term Ground Lease covering an approximate .94 acre parcel located at the Jacqueline Cochran Regional Airport, for a period of twenty years. The parties executed a First Amendment to Lease, on or about October 17, 2006. The Lease and the First Amendment to Lease are hereinafter collectively referred to as the Lease.

In accordance with the terms of the Lease, Coachella developed site improvements on the Property, including an approximately 14,000 square foot aircraft hangar (the Improvements). Due to the recent economic recession, Coachella has notified the County that Coachella is unable to continue making payments, including rent, and satisfying other obligations under the Lease, nor is Coachella able to make future payments or satisfy other obligations that will become due under the Lease.

After negotiations in good faith, it is the desire of the Parties to terminate and cancel the Lease and resolve the remaining terms and conditions of the Lease through settlement rather than through litigation. In the settlement terms of the Lease Termination and Settlement Agreement (Agreement), attached hereto, Coachella agrees to pay the County \$2,000, forthwith, in full settlement of the claim set forth within the Agreement. Coachella surrendered and vacated its leasehold estate as of October 31, 2012.

County Counsel has reviewed and approved the attached Agreement as to legal form.

Attachments:

Lease Termination and Settlement Agreement.

## **LEASE TERMINATION AND SETTLEMENT AGREEMENT**

This Lease Termination and Settlement Agreement (“Agreement”) is entered into between the COUNTY OF RIVERSIDE, a political subdivision of the State of California (hereinafter “County”) and COACHELLA VALLEY AVIATION, INC., a California corporation (hereinafter “Coachella”). The County and Coachella are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

### **1. INTRODUCTION**

On October 29, 1996, the Parties entered into a “Lease (Thermal Airport)” covering an approximately .94 acre parcel (the “Property”) located at the Jacqueline Cochran Regional Airport, for a period of twenty (20) years. The parties executed a First Amendment to Lease, on or about October 17, 2006. The Lease (Thermal Airport) and the First Amendment to Lease are hereinafter collectively referred to as the “Lease”. In accordance with the terms of the Lease, Coachella developed site improvements on the Property, including an approximately 14,000 square foot aircraft hangar (the “Improvements”). Due to, among other things, the recent economic recession, Coachella has notified the County that Coachella is unable to continue making payments, including rent, and satisfying other obligations under the Lease nor is Coachella able to make future payments or satisfy other obligations that will become due under the Lease. After negotiations in good faith, it is the desire of the Parties to resolve the obligations due under the terms of the Lease through settlement rather than through litigation, including any allegations or claims and liabilities raised in connection with the Lease, or which could have been raised in a legal action, or which could arise from or relate to a legal action, except for those claims as more fully described in paragraph 4 herein, and to avoid incurring costs and expenses arising out of any legal action. In addition, except as to the obligations created by this Agreement, it is the desire of the Parties to settle any and all claims, disputes and/or liabilities which the Parties have or may have against each other which relate to, or in any way could be connected with, the obligations due under the terms of the Lease. Therefore, based on the foregoing, and in consideration of the mutual promises contained herein, the Parties both desire to terminate and cancel the Lease, and the Parties have agreed that all rights and obligations of the Parties under the Lease shall be of no further force or effect as of October 31, 2012.

### **2. NO ADMISSION OF LIABILITY**

It is expressly understood, acknowledged and agreed by the Parties, that by reason of entering into this Agreement, the Parties do not admit, expressly or implicitly, any fact or liability of any type or nature, whether or not referred to herein, or the sufficiency of any claims, allegations, assertions, or positions taken or made, or those that could have been raised by any Party with respect to the Lease. Further, the Parties have not made any such admissions and this Agreement is entered into solely by way of compromise and settlement.

### **3. SETTLEMENT TERMS**

In order to alleviate County’s costs to process this Agreement and to hereby terminate and cancel the Lease,, Coachella agrees to pay the County two thousand dollars (\$2,000.00). Coachella agrees to surrender its interest in and any claims to the Property and the Improvements as of

October 31, 2012 and, in that connection, to execute any documents reasonably requested by the County to surrender Coachella's interest in and convey title to the Improvements located on the Property, with the exception of trade fixtures as that term is used in Section 1019 of the Civil Code. At or prior to October 31, 2012, Coachella shall remove, at its expense, such trade fixtures and restore the Property, notwithstanding the Improvements, to its original condition as nearly as practicable. In the event that Coachella does not remove such trade fixtures, they shall become the property of the County for no further consideration of any kind, and Coachella shall execute any documents that may be required or necessitate conveying its interest in such fixtures to the County. Coachella further agrees that it will vacate the Property and the Improvements and surrender possession to the County of the effective date hereof, free of all occupants. County will accept such surrender. The Property shall be delivered to the County in the same condition as it was at the commencement of the Lease, notwithstanding the Improvements, reasonable wear and tear excepted. Coachella shall also surrender to the County all keys and other similar items in possession by Coachella in connection with the Property. Coachella also agrees that all of Coachella's personal property, other than the Improvements and trade fixtures, shall be removed from the Property by October 31, 2012.

#### **4. RELEASE**

In consideration of the settlement terms referred to herein, each Party does hereby fully and forever completely release, acquit and discharge the other Party, together with the other Party's past and present employees, agents (whether ostensible or actual), officers, directors, shareholders, successors, assigns, departments, and representatives (collectively "Releasees") from any and all claims, demands, actions, liabilities, damages, wages, costs, attorneys' fees, rights or causes of action, whether known or unknown, present or future, which either Party may have against the other or that may arise in the future from, or are directly or indirectly related to, or are connected in any way with the Lease or the Property or the Improvements, except that County shall not waive any claims for indemnification, contribution or apportionment of claims or liability brought against the County by any third party resulting from Coachella's possession and use of the Property and/or the Improvements and/or any damages resulting from any latent or hidden defects or hazardous materials contamination caused by Coachella or resulting from Coachella's possession and use of the Property.

#### **5. NO PRIOR ASSIGNMENT OR TRANSFER**

Each Party represents and warrants that there has been no assignment or other transfer of any claims or causes of action which it is releasing pursuant to the terms of this Agreement.

#### **6. MISCELLANEOUS PROVISIONS**

##### **A. *Entire Agreement:***

This Agreement constitutes the full and entire agreement of the claims between the Parties hereto and such Parties acknowledge that there is no other claim or agreement, oral and/or written, between the Parties hereto.

##### **B. *Authority to Enter Agreement:***

This Agreement is the result of arms-length negotiations. Each Party to this Agreement represents and warrants to the other that the persons executing this Agreement on behalf

of such Party are duly and fully authorized to do so, and that each such Party is acting pursuant to the power and authority granted by their respective principals, and that no further approvals are required to be obtained from any persons or entities. Coachella further represents and warrants that there are no outstanding liens or obligations against the Improvements or the Property and that Coachella will defend, indemnify and hold harmless the County against any claims by any third party against the County for any outstanding liens or obligations, should they exist.

**C. *Final Agreement:***

The Parties to this Agreement, and each of them, acknowledge that this Agreement and its reduction to final form is the result of extensive good faith negotiations between the Parties.

**D. *Binding Agreement:***

This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, affiliates, subsidiaries, successors, assigns, parties, agents, officers, employees, shareholders, associates, legal representatives, heirs, executives and/or administrators of each of the Parties hereto.

**E. *Interpretative Law:***

This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable for whatever reason, the remaining provisions not so declared shall nonetheless continue in full force and effect without being impaired in any manner whatsoever.

**F. *Paragraph Headings:***

Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.

**G. *No Inducement:***

Each of the Parties to this Agreement acknowledges for itself that it has read this Agreement and fully understands its contents and consequences, and has voluntarily executed it. Each of the Parties also warrants that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, concerning the nature and extent of the injuries, damages or legal liabilities thereof.

**H. *Counterparts***

This Agreement may be executed in counter-parts with the same effect as if all original signatures were placed on one document and all of which together shall be one and the same Agreement.

**I. *Additional Documents:***

All Parties agree to cooperate fully to take any and all steps, perform any acts, and execute any documents consistent with the terms and conditions of this Agreement, which may be needed or required to effectuate the terms, intent, conditions, covenants, and provisions hereof.

**J. *Venue:***

Venue for enforcement of this Agreement shall be in the Superior Court of the State of California, County of Riverside, Riverside Branch.

**K. *Facsimile Signatures:***

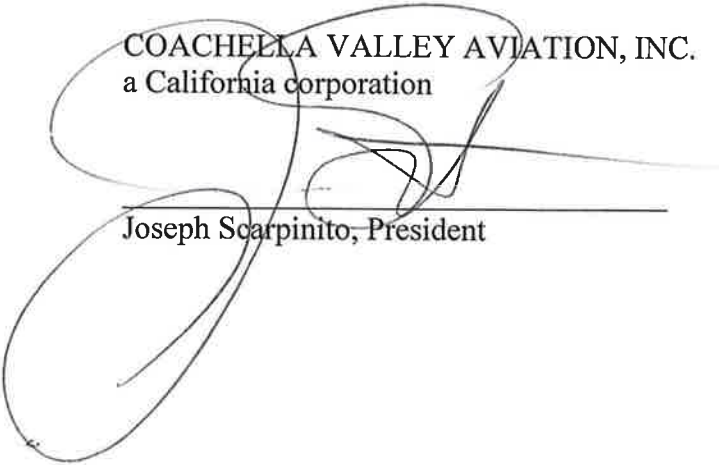
Signatures delivered by facsimile shall be as binding as originals upon the Parties so signing and delivering.

**WE HEREBY CERTIFY THAT WE HAVE READ THIS LEASE TERMINATION AND SETTLEMENT AGREEMENT AND FULLY UNDERSTAND THE SAME, AND IN WITNESS WHEREOF WE HAVE EXECUTED AND DELIVERED THIS AGREEMENT.**

COUNTY OF RIVERSIDE  
a political subdivision of the  
State of California

\_\_\_\_\_  
John J. Benoit, Chairman  
Board of Supervisors

COACHELLA VALLEY AVIATION, INC.  
a California corporation

  
\_\_\_\_\_  
Joseph Scarpinito, President

ATTEST:

KECIA HARPER-IHEM  
Clerk of the Board

\_\_\_\_\_

FORM APPROVED:

PAMELA J. WALLS  
County Counsel

  
\_\_\_\_\_  
By: Annie Sahhar, Deputy