

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Airport

**AGENDA DATE:** April 6, 2010

**CONTACT PERSON NAME AND PHONE NUMBER:** Monica Lombraña, A.A.E. 780 4793

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

That the City Manager be authorized to sign the Lessor's Approval of Assignment of a Butterfield Trail Industrial Park Lease by and between the City of El Paso ("Lessor"), Marvin L. Oates, as Trustee of Marvin L. Oates Trust ("Oates Trust")("Assignor")and Buzz Oates LLC ("Assignee").

**BACKGROUND / DISCUSSION:**

Marvin L. Oates, as Trustee of the Marvin L. Oates Trust has been a Butterfield Trail Industrial Park ("BTIP") lessee at #5, 7, 9, & 11 Founders since Texas Builders/Mueller assigned ownership of leasehold in March 2002.

The initial term of the Lease is for 35 years, terminating on October 31, 2026 and presently generating annual revenues of \$114,693.37 on approximately 732,397 square feet of land. There are 16½ years remaining on the initial lease term, with two – 10 year options. All terms and conditions of Lease are to remain the same.

Marvin L. Oates, as Trustee of Marvin L. Oates Trust ("Oates Trust") now desires to assign the current Lease to Buzz Oates LLC, a California limited liability company.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A. This is a revenue generating lease.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

# RESOLUTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor"), Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 ("Assignor"), and Buzz Oates LLC ("Assignee") for the following described property:

Lots 3, 4 and 5, Block 3, Butterfield Trail Industrial Park Unit One, Replat "A", and lot 2, Block 3, Butterfield Trail Industrial Park Unit One Replat "C", municipally known and numbered as #5, 7, 9 & 11 Founders, City of El Paso, El Paso County, Texas.

**ADOPTED this** \_\_\_\_ **day of** \_\_\_\_\_ **2010.**

**THE CITY OF EL PASO**

\_\_\_\_\_  
John F. Cook  
Mayor

**ATTEST:**

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Theresa Cullen  
Deputy City Attorney

**APPROVED AS TO CONTENT:**



\_\_\_\_\_  
Monica Lombraña, A. A. E.  
Director of Aviation

STATE OF TEXAS

§  
§  
§

LESSOR'S APPROVAL OF ASSIGNMENT

COUNTY OF EL PASO

The City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease dated May 12, 1992 (effective November 1, 1991 ("Lease")), between Lessor and Mark III Industrial Developers ("Lessee"); for the property legally described as:

Lots 3, 4 and 5, Block 3, Butterfield Trail Industrial Park Unit One, Replat "A", and lot 2, Block 3, Butterfield Trail Industrial Park Unit One Replat "C", municipally known and numbered as #5, 7, 9 & 11 Founders, City of El Paso, El Paso County, Texas.

Thereafter, effective January 1, 1993, Lessor approved Lessee's assignment all of its right, title and interest in the Lease to Mark III/Mueller, a Texas joint venture. On March 5, 2002, Lessor approved Lessee's assignment pursuant to an Agreement of Assignment and Assumption of Leases dated September 1, 2001 to Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 (an undivided 67.5% interest), Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, (an undivided 25% interest), Wayne Windle, an undivided 3.75% interest, and Katherine Alday (an undivided 3.75% interest). On Oct. 14, 2003, Lessor approved a Lessor's Approval of Assignment of the collective 32.4% partial undivided interests of Mueller Capital Plaza-Sacramento, Hawaii Limited Partnership, Wayne Windle, and Katherine Alday in the Lease to be divided equally between Buzz Oates Development Limited Partnership, a California limited partnership and Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995. This assignment resulted in Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995 owning an 83.75% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a 16.25% undivided undivided interest in the Lease.

Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995(Assignor") now desires to assign all of his 83.75% undivided interest in the Lease to Buzz Oates LLC, a California Limited liability company. Effective Dec. 31, 2009, this would result in Buzz Oates LLC owning an 83.75% undivided interest in the Lease and Buzz Oates Development Limited Partnership owning a16.25% undivided interest in the Lease.

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of Assignor's 83.75% undivided interest in the Lease from Assignor to Buzz Oates LLC, a California limited liability company ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.

2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Assignor guarantees payment of rent and other charges or fees due to the Lessor and shall remain fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Lease.
4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignors shall be sufficient if sent by certified mail, postage prepaid, addressed to:

**ASSIGNOR:** Marvin L. Oates, as Co-Trustee of the Marvin L. Oates Trust  
dated March 7, 1995, as amended  
615 Elder Creek Road  
Sacramento, CA 95828  
Attn: Brian Marty, Esq.

**ASSIGNEE:** Buzz Oates LLC  
8615 Elder Creek Road  
Sacramento, CA 95828  
Attn: Brian Marty, Esq.

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee, Assignor, and Guarantor represent and warrant that they have the legal authority to bind the Assignee, Assignor or Guarantor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be April 6, 2010.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2010.

LESSOR: CITY OF EL PASO

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

APPROVED AS TO FORM:

Theresa Cullen  
Theresa Cullen  
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña  
Monica Lombraña, A.A.E.  
Director of Aviation

**LESSOR'S ACKNOWLEDGEMENT**

THE STATE OF TEXAS )  
  )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2010, by **Joyce A. Wilson as City Manager of the City of El Paso, Texas** (Lessor).

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Sacramento

On 2/24/10 before me, Bonnie Allerhand, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Marvin L. Oates, Phillip D. Oates  
Name(s) of Signer(s)

Larry E. Allbaugh

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Bonnie Allerhand  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Lessor's Approval of Assignment

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_ Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_  Corporate Officer — Title(s): \_\_\_\_\_

Individual  Individual

Partner —  Limited  General  Partner —  Limited  General

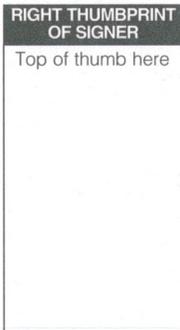
Attorney in Fact  Attorney in Fact

Trustee  Trustee

Guardian or Conservator  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_



MILITARY RESERVATION

POND 517

B L V D  
F O U N D E R S

7

ZANE GREY ST.

5 01' 06" 00" E ~ 680.00'

P.O.C.

5 88' 54" 00" W  
174.37'

11 01' 06" 00" W  
60.00'

193,793 SQ. FT. OR  
5  
4.449 AC.

P.O.B.

197,200 SQ. FT. OR  
4  
4.527 AC. (3)

197,200 SQ. FT. OR  
3  
4.527 AC.

144,204 SQ. FT. OR  
2  
3.310 AC.

15' STORM SEWER EASEMENT

11 01' 06" 00" W ~ 480.68'

95' UNDERGROUND  
UTILITY EASEMENT

N 88° 54' 00" E ~ 864.99'

20' UNDERGROUND UTILITY EASEMENT

5 88' 54" 00" W ~ 1164.99'

11 01' 06" 00" W  
200.00'

POND SITE

2A  
N 88° 54' 00" E  
300.00'

EL PASO ELECTRIC  
CO. EASEMENT

1A

CONCORD ST.

6

A I R P O R T R O A D

732,397 SQ. FT. OR 16.813 AC.

Faught & Associates Inc.

Consulting Engineers

1651 Montana Ave.  
El Paso, Texas 79902  
(915) 542-4000

EXHIBIT  
A

LOTS 3, 4 & 5, BLOCK 3, BUTTERFIELD TRAIL INDUSTRIAL  
PARK UNIT ONE REPLAT 'A' AND LOT 2, BLOCK 3, BUTTER-  
FIELD TRAIL INDUSTRIAL PARK UNIT ONE REPLAT 'C'  
CITY OF EL PASO EL PASO COUNTY, TEXAS

Drawn by L.M.

Date 7-29-85

Job No. W.O. No. 5010-52

