

CITY OF EL PASO, TEXAS
DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Airport
AGENDA DATE: June 16, 2009
CONTACT PERSON/PHONE: Monica Lombraña – 780-4793
DISTRICT(S) AFFECTED: 3

SUBJECT:

That the City Manager be authorized to sign a Lessor's Approval of Sublease by and between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited partnership ("Lessee") and the Texas Department of Public Safety ("DPS") ("Sublessee") for the purpose of renting office, hangar and ramp space at the Fixed Base Operator facility located at 1771 Shuttle Columbia.

BACKGROUND / DISCUSSION:

DPS now desires to rent space at El Paso International Airport at Cutter Aviation by and through an Aircraft Storage Hangar Lease with Vendor HL-01014 El Paso. DPS will sublease office and hangar space for the operation and storage of its helicopter.

PRIOR COUNCIL ACTION:

Lessor's Approvals of Sublease are commonly executed documents at the Airport with the last one having been approved by Council for Cutter Aviation on July 1, 2008.

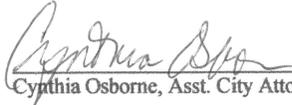
AMOUNT AND SOURCE OF FUNDING:

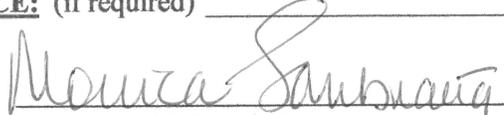
This is a revenue generating lease for the Lessee.

BOARD / COMMISSION ACTION:

This Lessor's Approval of Sublease was approved by the Airport Board on May 28, 2009.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required)  **FINANCE:** (if required) _____
Cynthia Osborne, Asst. City Attorney

OTHER: Monica Lombraña, A. A. E., Director of Aviation 
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

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 Sublease between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and the Texas Department of Public Safety ("DPS") ("Sublessee") regarding a portion of the premises located at 1771 Shuttle Columbia Drive, El Paso, Texas.

APPROVED this ____ day of _____ 2009.

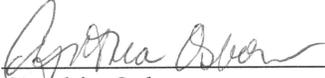
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



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

STATE OF TEXAS §
 § LESSOR'S APPROVAL OF SUBLEASE
COUNTY OF EL PASO §

THIS Lessor's Approval of Sublease is made and entered into by and between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and the Texas Department of Public Safety ("DPS") ("Sublessee"), effective the ____ day of _____, 2009.

WHEREAS, Lessor entered into a Fixed Base Operator's Lease and Operating Agreement effective November 1, 2003 as amended by the First Amendment dated February 22, 2005 (collectively referred to as the "Lease") covering the following described property:

A parcel of property known as Site 5, El Paso International Airport Tracts, Unit 11, El Paso, El Paso County, Texas containing 435,612.927 square feet of land and municipally known and numbered as 1771 Shuttle Columbia Drive, El Paso, Texas ("Premises").

WHEREAS, Lessee desires to sublease a portion of the Premises to Sublessee by and through an Aircraft Storage Hangar Space Lease with Vendor HL-01014 El Paso ("Sublease");

WHEREAS, Lease requires the prior written consent of the Lessor for a sublease of all or part of the Premises; and

WHEREAS, Lessor is willing to approve the proposed sublease subject to the terms and conditions set forth in this Lessor's Approval of Sublease, and accepted and agreed to by Lessee and Sublessee;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, Lessor, Lessee, and Sublessee agree as follows:

1. **Acceptance of Lease Terms and Covenants.** Sublessee acknowledges that it has been provided with a copy of the Lease and agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **Lease Terms Conflicting with State or Federal laws.** To the extent any clause in this Lessor's Approval of Sublease or the Lease conflicts with the applicable Texas and/or United States law(s) or regulation(s), such clause is void and unenforceable. By executing an agreement which contains the conflicting clause(s), Sublessee makes no representations or warranties regarding the enforceability of such clause(s) and Sublessee does not waive the applicable Texas and /or United States law(s) or regulations(s) which conflict with the clauses(s).

3. **Subleased Premises.** Sublessee acknowledges that the subleased premises located at 1771 Shuttle Columbia Drive, El Paso, El Paso County, Texas are described as the portion of the Premises known as **Space #9**.
4. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than for aircraft storage. Sublessee also acknowledges that its use of the subleased premises shall be further limited by those restrictions and prohibitions enumerated within the Lease.
5. **Proof of Insurance.** Sublessee is self insured.
6. **Reporting Requirements.** As additional consideration for Lessor's approval, Sublessee agrees that it shall furnish to Lessor, on or before the tenth (10th) day of each month, an accurate report of Sublessee's operations at the Airport during the preceding month. The report shall include, but not be limited to, any information related to the following: (i) the amount of cargo, freight, or mail loaded or off-loaded from any aircraft by Sublessee, its customers, contractors, or agents; and (ii) the type of aircraft and name of aircraft operator handled. Sublessee agrees to provide this information, if applicable, in such detail and on the form as prescribed by the Director of Aviation. Failure to comply with the reporting requirements may result in a revocation of the Lessor's consent to the sublease and termination of the Lessor's Approval of Sublease and the Sublease.
7. **Lessee's Obligations.** Notwithstanding any provision to the contrary in the Sublease, this Lessor's Approval of Sublease shall in no way release the Lessee or any person or entity claiming by, through, or under Lessee, including Sublessee, from any of its covenants, agreements, liabilities, and duties under the Lease, as same may be amended from time to time. Lessee shall remain liable to Lessor for any defaults under the Lease, whether such default is caused by Lessee or Sublessee or anyone claiming by or through either Lessee or Sublessee. The foregoing shall not be deemed to restrict or diminish any right which Lessor may have against Lessee or Sublessee, in law or in equity, for violation of the Lease.
8. **Purpose.** This Lessor's Approval of Sublease does not constitute approval by Lessor of any of the provisions of the Sublease document or agreement; nor shall the same be construed to amend the Lease in any respect. The sole purpose of the Sublease shall be to set forth the rights and obligations between Lessee and Sublessee. In no event, however, shall Lessor be deemed to be in privity of contract with Sublessee or owe any obligation or duty to Sublessee under the Lease or otherwise; any duties of Lessor under the Lease being in favor of, for the benefit of, and enforceable solely by Lessee.
9. **Non-Waiver.** Nothing herein shall be deemed a waiver of any of Lessor's rights under the Lease. This Lessor's Approval of Sublease does not end the need for

Lessor's approval of any future subleases or for any other matter for which Lessor's approval is required under the Lease or otherwise.

10. **Subordinate Rights.** The Sublease is, in all aspects, subject and subordinated to the Lease as the same may be amended. The terms of the Lease shall prevail in the case of any conflict between the provisions of the Lease, Sublease, or this Lessor's Approval of Sublease.

If, at any time prior to the expiration of the term of the Sublease, the Lease shall terminate or be terminated for any reason (or Lessee's right to possession shall terminate without termination of the Lease), this Lessor's Approval of Sublease and the Sublease shall simultaneously terminate.

11. **Authorized Parties.** The persons signing this Lessor's Approval of Sublease on behalf of the Lessee and Sublessee represent and warrant that they have the authority to legally bind the Lessee and Sublessee to the provisions of this instrument. Further, Lessee and Sublessee acknowledge and agree to be bound by all the terms and conditions of this Lessor's Approval of Sublease as set forth herein.

IN WITNESS WHEREOF, this Lessor's Approval of Sublease has been executed and shall be effective as of the date first noted above.

CITY OF EL PASO, TEXAS

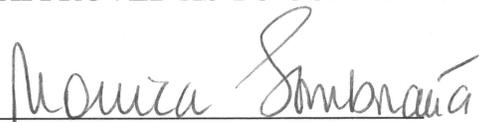
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:



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

(Acknowledgment on following page)

**SUBLESSEE: TEXAS DEPARTMENT
OF PUBLIC SAFETY**

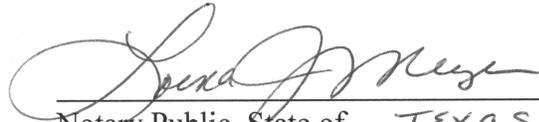


Printed Name: Oscar Ybarra
Title: Chief of Finance

ACKNOWLEDGMENT
SUBLESSEE

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

This instrument was acknowledged before me on this 12th day of March, 2009,
by Oscar Ybarra as Chief of Finance of The **Texas Department of Public
Safety ("DPS")**. (Sublessee).


Notary Public, State of TEXAS

My Commission Expires:
9-6-09

