CITY OF EL PASO, TEXAS

DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: **Airport**

AGENDA DATE: **June 22, 2010**

CONTACT PERSON/PHONE: **Monica Lombraña, A.A.E. - 780-4793**

DISTRICT(S) AFFECTED: **All**

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 Persistent Surveillance System ("Sublessee") for the purpose of renting office space at the Fixed Base Operator facility located at 1771 Shuttle Columbia.

BACKGROUND / DISCUSSION:
Based out of Ohio, Persistent Surveillance System is an aerial land surveying service growing its business in El Paso. Persistent Surveillance System now desires to sublease office space at Cutter's Fixed Base Operator facility to house and from which to operate its Cessna 207 for aerial surveying.

PRIOR COUNCIL ACTION:
N/A

AMOUNT AND SOURCE OF FUNDING:
This is a revenue generating lease for the Lessee.

BOARD / COMMISSION ACTION:
N/A

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

DEPARTMENT HEAD: Monica Lombraña

(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 Sublease between the City of El Paso ("Lessor"), Cutter Aviation El Paso Limited Partnership ("Lessee") and Persistent Surveillance System ("Sublessee") regarding a portion of the premises located at 1771 Shuttle Columbia, El Paso, Texas.

APPROVED this _____ day of _____ 2010.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

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

Doc. No: 55062 (3/18/10)
Doc. Name: Sublease - Cutter to Persistent Surveillance
Doc. Author: TCUL

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 Persistent Surveillance System ("Sublessee") on this _____ day of _____, 2010.

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, the Lessee desires to sublease a portion of the Premises, identified as Office #9, Office #10, and Office #11 located within the building at 1771 Shuttle Columbia Drive, to Sublessee;

WHEREAS, the 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 grant the authorization required for a sublease subject to the terms and conditions set forth in this Lessor's Approval of sublease as accepted and agreed to by Lessee and Sublessee;

NOW, THEREFORE, in consideration for 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. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than as an office and/or in support of Sublessee's aircraft stored in Lessee's hanger.

3. **Proof of Insurance.** Sublessee has provided Lessor with a certificate of insurance to evidence compliance with the insurance requirements of the Lease and understands and agrees that Lessor's consent is expressly contingent upon Sublessee maintaining the required levels of insurance and providing proof to Lessor. Failure to comply with the insurance requirements may result in a

revocation of the consent granted herein and termination of this Lessor's Approval of Sublease, as well as the sublease itself.

4. **Reporting Requirements.** As additional consideration for Lessor's approval, Sublessee agrees that it shall furnish to the Lessor's Director of Aviation, on or before the tenth (10th) day of each month, an accurate report of Sublessee's operations at the El Paso International Airport during the preceding month. The report shall include, but not be limited to, the type of aircraft and name of aircraft operator. Sublessee agrees to provide this information in such detail and on a form prescribed by the Director of Aviation. Failure to comply with the reporting requirements may result in a revocation of the Lessor's consent granted herein and termination of this Lessor's Approval of Sublease and the sublease itself.

5. **Lessee's Obligations.** This approval 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, without respect to any provision to the contrary in the Sublease. 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 Sublessee, in law or in equity, for violation of the Lease.

6. **Purpose.** This approval 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 obligations 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.

7. **Non-Waiver.** Nothing herein shall be deemed a waiver of any of Lessor's rights under the Lease. This approval 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.

8. **Subordinate Rights.** The proposed 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 and Sublease or this approval.

   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 each simultaneously terminate.

9. **Authorized Parties.** The persons signing this approval 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 approval. By execution of this approval, Lessee and Sublessee acknowledge and agree to be bound by all the terms and conditions of this approval as set forth herein.

IN WITNESS WHEREOF, this Lessor's Approval of Sublease has been approved on this _____ day of _____ 2010.

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 ACKNOWLEDGMENT

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** (Lessor).

_____
Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

LESSEE: CUTTER AVIATION EL PASO LIMITED PARTNERSHIP

Printed Name: Scott Andre
Title: G.M.

LESSEE'S ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 26th day of May, 2010, by Scott Andre as GM of **Cutter Aviation El Paso Limited Partnership** (Lessee).

INGRID M POOL
My Commission Expires
February 24, 2011

Notary Public, State of Texas

My Commission Expires:
February 24, 2011

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

SUBLESSEE: PERSISTENT SURVEILLANCE SYSTEM

Printed Name: Joshua West
Title: Network Admin

SUBLESSEE'S ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 26th day of May, 2010, by Joshua West as, Network Admin of **Persistent Surveillance System** (Sublessee).

Notary Public, State of Texas

My Commission Expires: February 24, 2011