

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

CITY CLERK DEPT.
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DEPARTMENT: AIRPORT

AGENDA DATE: November 21, 2006

CONTACT PERSON/PHONE: Patrick T. Abeln, A.A.E. – 780-4724

DISTRICT(S) AFFECTED: 3

SUBJECT:

Resolution approving 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, Inc. (Lessee) and Capital Cargo, Inc. (Sublessee).

BACKGROUND / DISCUSSION:

Capital Cargo, Inc. flies cargo exclusively for ATI BAX Global, formerly Burlington Air Cargo and the need to be in close proximity to the large aircraft in the north cargo facilities, has prompted them to request a small office space in the Cutter fuel site facility. Cutter has both a Fixed Base Operation and a separate Fuel Site adjacent to the north cargo facilities in which Capital Cargo has asked to sublet an office. The terms of the lease requires that the City approve any proposed sublease of a Lessee's premises.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one? If so, when?

Yes. Standard Lessor's Approval of Subleases are common going to Council on a regular basis with the most recent going to Council on August 28, 2006.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

There will be no economic impact on Airport funds.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

This Lessor's Approval of Sublease was presented to the Airport Board on October 19, 2006.

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

LEGAL: (if required) Raymond L. Telles **FINANCE:** (if required) _____
Raymond L. Telles, Asst. City Attorney

OTHER: Patrick T. Abeln, A. A. E., Director of Aviation Patrick T. Abeln
(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, Inc. ("Lessee"), and Capital Cargo, Inc. ("Sublessee") regarding a portion of the premises located at 253 George Perry Blvd., El Paso, Texas 79925.

APPROVED this _____ day of _____ 2006.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

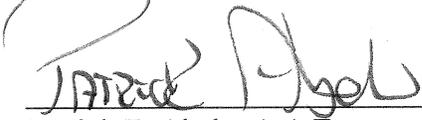
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A.A.E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF SUBLEASE

THIS Lessor's Approval of Sublease is made and entered into on this _____ day of _____, 2006 by and between the City of El Paso ("Lessor"), Cutter Aviation El Paso, Inc. ("Lessee"), and Capital Cargo, Inc. ("Sublessee").

WHEREAS, Lessor and Lessee entered into a Fuel Site Lease with an effective date of November 1, 2000 as amended by that First Amendment dated March 28, 2006 (collectively referred to as the "Lease") covering the following described property:

A portion of Lot 1, Block 1, Butterfield Trail Aviation Park, Unit One, El Paso, El Paso County, Texas consisting of approximately 71,429 square feet of land and municipally known and numbered as 253 George Perry Blvd., El Paso, Texas (the "Premises");

WHEREAS, Lessee desires to sublease a portion of the Premises to Sublessee and the Lease requires the prior written consent of the Lessor for any such sublease; and

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

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. **Subleased Premises.** Sublessee acknowledges that the subleased premises located at 253 George Perry, El Paso, El Paso County, Texas 79925 is described as approximately 225 sq. ft. of office space on the Premises.

3. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than for office use. Sublessee also acknowledges that its use of the subleased premises shall be further limited by those restrictions and prohibitions enumerated within the Lease. Lessor acknowledges that the office use contemplated herein for the subleased premises are "related uses", as referenced and required by the Lease, and Lessor hereby approves such office use as a permitted use.

4. **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 to Sublease is expressly contingent upon Sublessee maintaining the required levels of insurance and Sublessee's providing proof of such to Lessor. Failure to comply with any insurance requirements may result in a revocation of Lessor's consent to the sublease and termination of this Lessor's Approval of Sublease and the Sublease.
5. **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: (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 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 this Lessor's Approval of Sublease and the Sublease.
6. **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.
7. **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.
8. **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.
9. **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.

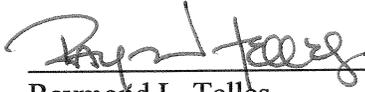
- 10. **Authorized Parties.** The persons signing this Lessor's Approval of Sublease on behalf of the Lessee and Sublessee represent and warrant that they have the authority to legally bind their respective entity to the provisions of this instrument. Further, Lessee and Sublessee acknowledge and agree 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:

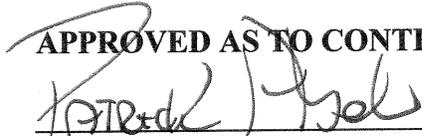
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:



Raymond L. Telles
Assistant City Attorney

APPROVED AS TO CONTENT:



Patrick T. Abeln, A.A.E.
Director of Aviation

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2006, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso**. (Lessor).

Notary Public, State of Texas

My Commission Expires:

ATTEST:

Annie Moreno
Printed Name: Annie Moreno

LESSEE: CUTTER AVIATION EL PASO, INC.

Alfonso Moreno Jr
Printed Name: Alfonso Moreno Jr
Title: V.P. / G.M.

ATTEST:

Annie Moreno
Printed Name: Annie Moreno

SUBLESSEE: CAPITAL CARGO, INC.

Donald E Julian
Printed Name: Donald E Julian
Title: STATION SUPERVISOR

ACKNOWLEDGMENT

THE STATE OF Texas
COUNTY OF EL PASO

This instrument was acknowledged before me on this 23rd day of October, 2006,
by Alfonso Moreno Jr as VP/GM of Cutter Aviation El Paso, Inc. (Lessee).

Impidell Pool
Notary Public, State of Texas

My Commission Expires:
02-24-2007

ACKNOWLEDGMENT

THE STATE OF Texas
COUNTY OF EL PASO

This instrument was acknowledged before me on this 23rd day of October, 2006,
by Donald E Julian as Station Supervisor of Capital Cargo, Inc. (Sublessee).

Impidell Pool
Notary Public, State of Texas

My Commission Expires:
02-24-2007

