

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

**DEPARTMENT:** Airport

**AGENDA DATE:** May 13, 2014

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

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

Resolution authorizing the City Manager to sign a Lessor's Approval of Sublease by and among the City of El Paso ("Lessor"), Trajen Flight Support, LP a/k/a Atlantic Aviation. ("Lessee"), and Billie Kirkwood d/b/a Horizon Flight School LLC ("Sublessee") regarding a portion of the premises located at 1751 Shuttle Columbia., El Paso, Texas.

**BACKGROUND / DISCUSSION:**

Lessor entered into a Fixed Based Operators (FBO) Lease, with Superior Aviation Fuel Enterprises, L.L.C., with an effective date of September 1, 2003, which requires the prior written consent of the Lessor for a sublease of all or part of the Premises. The Lease was subsequently assigned to Lessee pursuant to a Lessor's Approval of Assignment dated April 12, 2005 for the property municipally known and numbered as 1751 Shuttle Columbia Drive, El Paso, Texas. Lessee now desires to sublease a portion of the Premises to Sublessee as office space for flight school operations.

**PRIOR COUNCIL ACTION:**

- Council approved the Fixed Based Operators (FBO) Lease with an effective date of September 1, 2003
- Council approved the assignment of the FBO on April 12, 2005

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

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

**DEPARTMENT HEAD:**

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

*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 by and among the City of El Paso ("Lessor"). Trajen Flight Support, LP a/k/a Atlantic Aviation. ("Lessee"), and Horizon Flight School LLC ("Sublessee") for a portion of the premises located at 1751 Shuttle Columbia., El Paso, Texas.

APPROVED this \_\_\_\_ day of \_\_\_\_\_ 2014.

### CITY OF EL PASO

\_\_\_\_\_  
Oscar Leeser  
Mayor

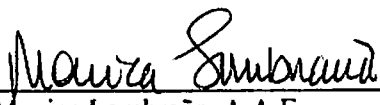
### ATTEST:

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

### APPROVED AS TO FORM:

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

### APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Monica Lombrana, 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 among the City of El Paso ("Lessor"), Trajen Flight Support, LP a/k/a Atlantic Aviation ("Lessee") and Billie Kirkwood d/b/a Horizon Flight School LLC ("Sublessee") on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**WHEREAS**, Lessor entered into a Fixed Based Operators Lease with Superior Aviation Fuel Enterprises, L.L.C., with an effective date of September 1, 2003 ("Lease"); which was subsequently assigned to Lessee pursuant to a Lessor's Approval of Assignment dated April 12, 2005, covering the following described property:

A parcel of property known as Site 3, El Paso International Airport Tracts, Unit 11, El Paso, El Paso County, Texas containing 435,542.892 square feet of land and municipally known and numbered as 1751 Shuttle Columbia Drive, El Paso, Texas (the "Premises");

**WHEREAS**, the Lessee desires to sublease a portion of the Premises 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 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 are located at 1771 Shuttle Columbia Drive, El Paso, El Paso County, Texas.
4. **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than for an office for flight school operations. 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 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.
6. **Reporting Requirements.** As additional consideration for Lessor's approval, Sublessee agrees that it shall furnish to Lessor, upon ten (10) days written request by the Director of Aviation and at no cost to Lessor, 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.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, this Lessor's Approval of Sublease has been approved on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

CITY OF EL PASO:

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

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
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 \_\_\_\_\_, 2014, 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: TRAJEN FLIGHT SUPPORT, LP  
a/k/a Atlantic Aviation

Steven Markuffo

Printed Name: STEVEN MARKUFFO

Title: General Manager

LESSEE'S ACKNOWLEDGMENT

THE STATE OF TEXAS

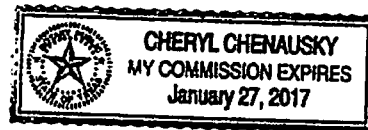
COUNTY OF EL PASO

This instrument was acknowledged before me on this 11<sup>th</sup> day of April, 2014,  
by STEVEN MARKUFFO as GEN. MANAGER of Trajen Flight Support, LP a/k/a  
Atlantic Aviation (Lessee).

Notary Public, State of TEXAS


My Commission Expires:

01/27/17



(SIGNATURES CONTINUE ON FOLLOWING PAGE)

SUBLESSEE: BILLIE KIRKWOOD  
d/b/a Horizon Flight School LLC


  
Printed Name: Billie Kirkwood  
Title: President

SUBLESSEE'S ACKNOWLEDGMENT

THE STATE OF Texas  
COUNTY OF El Paso

This instrument was acknowledged before me on this 11<sup>th</sup> day of April, 2014,  
by Billie Kirkwood d/b/a Horizon Flight School LLC (Sublessee).

My Commission Expires:  
01/27/17

  
Notary Public, State of Texas

