

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

DEPARTMENT: Aviation

AGENDA DATE: August 23, 2016

CONTACT PERSON/PHONE: Monica Lombraña, A.A.E. -212-7301

DISTRICT(S) AFFECTED: 2 & 3

CITY STRATEGIC GOAL #1:

Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

Resolution authorizing the City Manager to sign a Second Amendment to the Fixed Base Operators Lease and Operating Agreement by and between the City of El Paso ("Lesser") and Trajen Flight Support, L.P. d/b/a Atlantic Aviation ("Lessee") to increase the square footage of the Premises, change the description of the Premises, and to add the provisions of FAA Order 1400.11.

BACKGROUND / DISCUSSION:

Atlantic Aviation is a Fixed Base Operator (FBO) for general aviation aircraft at El Paso International Airport. The Second Amendment adds about 80,472 SF of land between the former Cutter FBO at 1751 Shuttle Columbia and the Atlantic FBO at 1771 Shuttle Columbia for use as an Aircraft Parking Ramp. EPIA will receive a fuel flowage fee of \$0.08 per gallon for fuel sales as well as a 15% fee for line services and parking fees on this segment. This amendment also adds 6,400 SF of land for a commercial self-service aviation fueling facility at a rate of \$0.24/SF. This provides an added customer service benefit to the General Aviation community. FAA Order 1400.11 was effective August 2013 and sets forth the operating procedures for the implementation and enforcement of Title VI and other non-discrimination laws. The new self-serve fuel island will generate additional revenue of \$1,536.

This FBO Lease and Operating Agreement was effective November 1, 2003 and expires on October 31, 2033 with two 5-year options.

PRIOR COUNCIL ACTION:

- Fixed Base Operators Lease and Operating Agreement on December 2, 2003
- First Amendment to the Fixed Base Operators Lease and Operating Agreement on February 22, 2005
- Lessor's Approval of Assignment on November 17, 2015

AMOUNT AND SOURCE OF FUNDING:

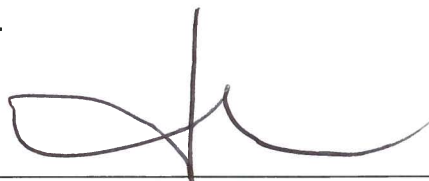
N/A - Revenue Generating

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



ML: **Monica Lombraña, A.A.E., Director of Aviation**

RESOLUTION

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

That the City Manager be authorized to sign a Second Amendment to the Fixed Based Operators Lease and Operating Agreement by and between the City of El Paso (“Lessor”) and Trajen Flight Support, L.P. d/b/a Atlantic Aviation (“Lessee”) to increase the square footage of the Premises, change the description of the Premises, and to add the provisions of FAA Order 1400.11.

APPROVED this ____ day of _____, 2016.


CITY:

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



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

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**SECOND AMENDMENT TO
FIXED BASE OPERATORS LEASE
AND OPERATING AGREEMENT**

This Second Amendment to the Fixed Base Operators Lease and Operating Agreement (“Agreement”), by and between the City of El Paso (Lessor) and Trajen Flight Support, L.P. d/b/a Atlantic Aviation, a Delaware limited partnership (Lessee) is executed on this _____ day of _____, 2016.

WHEREAS, Lessor entered into a Fixed Base Operators Lease and Operating Agreement with Cutter Aviation El Paso Limited Partnership with an effective date of November 1, 2003 (the “Lease”) for the following described property:

A parcel of property known as Site 5, El Paso International Airport Tracts, Unit 11, El Paso County, Texas, containing 435,612.927 square feet of land, more fully described on Exhibit “A” attached hereto and incorporated herein by reference, and municipally known and numbered as 1771 Shuttle Columbia Drive, El Paso, El Paso County, Texas (the “Premises”).

WHEREAS, the Lease was amended by that First Amendment to Fixed Base Operators Lease and Operating Agreement dated February 22, 2005; and

WHEREAS, the Lease was assigned to Lessee as evidenced by that certain Lessor’s Approval of Assignment effective as of November 17, 2015; and

WHEREAS, Lessor and Lessee desire to amend the Lease to increase the square footage of the Premises by adding Site 4 as shown on Exhibit “A” attached hereto, which contains approximately 80,472.165 square feet and by adding Site “Fuel Tank” as shown on Exhibit “B” attached hereto, which contains 6,400.00 square feet.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Section 1.01, Description of Premises, of the Lease is amended to read as follows:

Three (3) parcels of property known as:

Site 5, El Paso International Airport Tracts, Unit 11, El Paso County, Texas, containing 435,612.927 square feet of land, more fully described on Exhibit “A” attached hereto and incorporated herein by reference, and municipally known and numbered as 1771 Shuttle Columbia Drive;

Site 4, El Paso International Airport Tracts, Unit 11, El Paso County, Texas, containing 80,472.165 square feet of land, more fully described on Exhibit “A”

attached hereto and incorporated herein by reference, and also municipally known and numbered as 1771 Shuttle Columbia Drive; and

Site "Fuel Tank" being a portion of Tract 2A, Block 2, Ascarate Grant, El Paso County, Texas, containing 6,400.0 square feet of land, more fully described on Exhibit "B" attached hereto and incorporated herein by reference, and not municipally known or numbered because it is on the airfield within the El Paso International Airport ("all three sites collectively referred to as Premises").

2. Section 5.01, Rent, of the Lease is amended to read as follows: The Premises are comprised of one area of land known as the Aircraft Parking Ramp containing 318,145.692 square feet of land; a second parcel known as the Tenant Improvement Site containing 117,467.235 square feet of land (the first and second parcels together forming Site 5); a third parcel of land known as Site 4; and a fourth parcel of land known as the Fuel Tank Site to be used as a fuel tank site for self-service refueling of smaller, general aviation aircraft. Rent is paid for the use of each of the parcels as follows:

A. Fixed Annual Rent. Lessee shall pay a Fixed Annual Rental based upon the Fair Market Value of the Tenant Improvement Site (excluding improvements placed on site by Lessee). During the first five (5) years of the Initial Term the Fixed Annual Rent shall be \$20,265.85 per annum ($\$0.20 \text{ per square foot} \times 101,329.235 = \$20,265.85$). At the end of the first five years and on every 5th anniversary during the Initial Term, the Fixed Annual Rent shall be adjusted in accordance with Section 5.07 below.

B. Percentage Rent. In consideration for the use of the Aircraft Parking Ramp and Site 4, Lessee shall pay to Lessor an amount equal to fifteen percent (15%) of its Gross Receipts from parking fees or associated line services charged to customers for parking on the Aircraft Parking Ramp or Site 4. Gross Receipts are defined as all amounts actually charged to its customers by Lessee or by any sub-lessee for or in connection with aircraft parking. Gross Receipts shall include all monies or other consideration paid or payable to Lessee or any sub-lessee in cash or on credit for the aircraft parking or associated line services.

C. Pass-Through Fees. In consideration for the use of the West Ramp, Lessee agrees to collect and remit to Lessor all applicable landing fees and parking fees assessed for such uses as required by Title 14 of the El Paso Municipal Code on aircraft which Lessee ground handles or services.

D. Rent for "Fuel Tank" Site. Lessee shall pay a Fixed Annual Rental for the "Fuel Tank" Site based upon the Fair Market Value of the Fuel Tank Site (excluding improvements placed on site by Lessee). The initial Fixed Annual Rent for the Fuel Tank Site shall be \$1,536.00 per annum ($\$0.24 \text{ per square foot} \times 6,400.00 = \$1,536.00$). On April 1, 2021, and thereafter on every 5th anniversary during the remainder of the term of the Lease, the Fixed Annual Rent for the Fuel Tank Site shall be adjusted in accordance with Section 5.07 below. In addition,

Lessee shall pay all Fuel Flowage Fees attributable to the Fuel Tank Site, as set forth below.

3. Article XII – FAA Order 1400.11: The following is hereby added to the Lease:

12.01 FAA Order 1400.11. Pursuant to Federal Aviation Administration Order 1400.11, effective August 27, 2013, and because the described premises are located at the El Paso International Airport which is subject to regulation by, among others, the U.S. Federal Aviation Administration, the parties specifically agree to the following:

1. A. Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations set out in Federal Aviation Administration Order 1400.11, Appendix 4, as same may be amended from time to time (the “Acts and Regulations”) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix C]

2. A. The Lessee for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations.

B. With respect to the Lease, in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the Lease and to enter or re-enter and repossess said Premises and the facilities thereon, and hold the same as if said easement had never been made or issued. [FAA Order 1400.11, Appendix D]

3. A. During the term of this Lease, Lessee for itself, its successors in interest, and assigns, as a part of the consideration hereof, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). Grantee shall take reasonable steps to ensure that LEP persons have meaningful access to its programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. 1681 et seq).

B. In the event of breach of any of the covenants in this section 3, Lessor shall have the rights and remedies set forth in sections 1 and 2 above, in addition to all other rights and remedies available to it under applicable law. [FAA Order 1400.11, Appendix E]


4. Except as expressly modified herein, all other terms and conditions of the November 1, 2003 Fixed Base Operators Lease and Operating Agreement, as amended by that First Amendment dated February 22, 2005, shall remain in full force and effect and shall remain as written.

IN WITNESS WHEREOF this Second Amendment to the Fixed Base Operators Lease and Operating Agreement has been approved by the parties hereto as of the date first noted above.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Marvin Foust
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, 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 _____, 2016, by **Tomás González** as **City Manager** of the **City of El Paso** (Lessor).

My Commission Expires: _____

Notary Public, State of Texas

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**LESSEE: TRAJEN FLIGHT SUPPORT,
L.P., a Delaware limited partnership
a/k/a Atlantic Aviation**

**By: Trajen FBO, LLC, its General
Partner**

By: 

Printed Name: Louis T. Pepper

Title: Manager

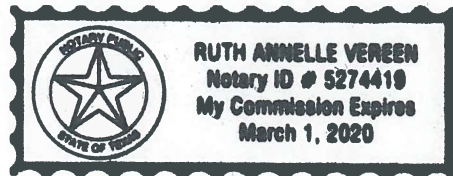
ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on this 5th day of JULY, 2016, by Louis T. Pepper, Manager of Trajen FBO, LLC, General Partner of Trajen Flight Support, L.P. a/k/a Atlantic Aviation, a Delaware limited partnership (Lessee), on behalf of said limited partnership.


Notary Public, State of Texas

My Commission Expires:
3/1/2020





BROCK & BUSTILLOS INC.
CONSULTING CIVIL ENGINEERS
LAND SURVEYORS

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RANDY L. BROCK, P.E.
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Vice President - Surveying

ISAAC CAMACHO, R.P.L.S.
Survey Manager

TBPE Reg. No. F-737
TBPLS Reg. No. 101314-00

METES AND BOUNDS DESCRIPTION
ATLANTIC AVIATION FUEL TANK LEASE AREA

A 0.1469 acre parcel situate within the corporate limits of the City of El Paso, El Paso County, Texas as a portion of Tract 2A, Block 2, Ascarate Grant, El Paso County, Texas and being more particularly described by metes and bounds as follows.

COMMENCING for reference at a city monument found at the centerline point of tangency of Shuttle Columbia Drive right-of-way (70 feet wide); *THENCE*, leaving said centerline, North 86°28'36" West, a distance of 2,531.08 feet to a PK Nail with shiner "TX 6223" set for the *POINT OF BEGINNING* and easterly corner of the parcel herein described;

THENCE, South 46°49'00" West, a distance of 80.00 feet to a PK Nail with shiner "TX 6223" set for the southerly corner of the parcel herein described;

THENCE, North 43°11'00" West, a distance of 80.00 feet to a PK Nail with shiner "TX 6223" set for the westerly corner of the parcel herein described; *WHENCE*, a National Geodetic Survey (NGS) Brass Cap "ARP 2 ELP" found bears, North 05°54'16" West, a distance of 3,980.28 feet;

THENCE, North 46°49'00" East, a distance of 80.00 feet to a PK Nail with shiner "TX 6223" set for the northerly corner of the parcel herein described;

THENCE, South 43°11'00" East, a distance of 80.00 feet to the *POINT OF BEGINNING*.

Said Parcel contains 0.1469 acres (6,400.0 square feet) more or less and being subject to any easements, restrictions or covenants of record.

Basis of Bearings is the Texas State Plane Coordinate System, Central Zone 4203, NAD 83. Distances were scaled to surface.

Aaron Alvarado, TX R.P.L.S. No. 6223

Date: July 11, 2016

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