

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

DEPARTMENT: Aviation

AGENDA DATE: December 17, 2019

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E.,
Chief Operations and Transportation Officer
915 212-7301

DISTRICT(S) AFFECTED: District 2

CITY STRATEGIC GOAL 1: Create an Environment Conducive to Strong, Sustainable Economic Development.

SUBJECT:

This Resolution is to authorize the City Manager to sign a Lessor's Approval of Sublease between the City of El Paso ("Lessor") and Trajen Flight Support, L.P., d/b/a Atlantic Aviation ("Lessee") and the United States of America ("Sublessee") for the lease of an airport ramp, office areas and hanger space located at Trajen Flight Support, 1751 Shuttle Columbia Drive, El Paso, Texas.

The lease term is 6 months with an optional 6-month extension.

BACKGROUND / DISCUSSION:

The U.S. Governments policy is to self-insure which differs from the indemnification requirements of the lease, thus a lessors approval of sublease is required. As the indemnification provisions in this agreement have been modified and the required indemnification of the City for negligence attributed to the City is not included, Atlantic Aviation agrees to cover any obligations under the provisions of the sublease, which are not covered by the U.S. Government.

RENTAL FEES:

N/A

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A: This is a revenue-generating item.

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



Monica Lombraña, A.A.E.
Chief Operations and Transportation Officer

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"), Trajen Flight Support, L.P. d/b/a Atlantic Aviation ("Lessee"), and The United States of America ("Sublessee") for a portion of the premises located at 1751 Shuttle Columbia Drive, El Paso, Texas for a 6 month term, with an option to extend for an additional 6 months for the purpose of aircraft parking, office space and hangar use.

APPROVED this _____ day of _____ 2019.


CITY OF EL PASO

Dee Margo
Mayor

ATTEST:

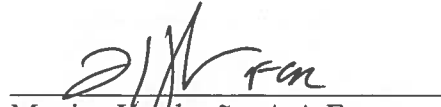
Laura D. Prine
City Clerk

APPROVED AS TO FORM:



Kristen Lynn Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Chief Operations and Transportation Officer

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR’S APPROVAL OF SUBLEASE

THIS Lessor’s Approval of Sublease is made and entered into by and among the City of El Paso (“Lessor”), Trajen Flight Support, L.P. d/b/a Atlantic Aviation (“Lessee”) and The United States of America (“Sublessee”), effective the ____ day of _____, 2019.

WHEREAS, Lessor entered into a Fixed Based Operator and Fuel Sites Lease dated December 10, 2019 (the “Lease”), leasing several parcels of land to Lessee, including the following:

Approximately 268,470 rentable square feet located at Trajen Flight Support 1751 Shuttle Columbia Drive El Paso, Texas 79925 more particularly described in Exhibit “C, Legal Description, attached hereto and made a part hereof, to be used for Government purposes.

WHEREAS, Lessee desires to sublease a Portion of the parcel described above, which includes airport ramp, office areas and hangar space, further described in Exhibits “A” and “A-1” herein after referred to as the Premises, to Sublessee, who will use the space for the same purposes described in the Lease, for a 6 month period with an optional 6 month extension;

WHEREAS, the Lease requires the prior written consent of the Lessor for a sublease of aircraft parking ramp or hangar space, as well as if any terms differ;

WHEREAS, the Sublessee, as a Federal Government, cannot provide the Indemnification required in the Lease, and provides self insurance in the place of the required Insurance, and therefore Lessee and Sublessee are requesting that Lessor approve a sublease of the Parcel;

WHEREAS, the Director of Aviation and International Bridges is recommending that the sublease be approved pursuant to Section 10.06 of the Lease; 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.** Lessor approves a Sublease from Lessee to Sublessee under the terms described herein, for a term of 6 months with an option to extend for an additional 6 months to begin on January 1, 2020, and such approval expires on December 31, 2020. 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,

however, Sublessee has represented that it cannot fully comply with Section VI, Indemnification. Sublessee shall provide self-insurance as described in the attached Exhibit "B" in compliance with the limits set forth in the Lease. The Parties agree as follows:

- a) Lessee agrees to cover any obligations under such provisions that are not covered by Sublessee.
- b) Lessor, Lessee and Sublessee acknowledge that Lessee is responsible for the indemnification requirements contained in the Lease, however, as Lessor, the City of El Paso and Sublessee, the United States of America relate to each other, they agree to the following Risk Allocation and Limitation of Liability.
 - i) *No Indemnification.* Lessor and Sublessee agree that neither has the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.
 - ii) *Governmental Function.* Lessor and Sublessee agree that the City is performing a governmental function, as defined by the Texas Tort Claims Act. They agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function. The parties also agree that Sublessee is entering into this Agreement as part of its duty to provide federal military services.
 - iii) *Exclusion of Incidental and Consequential Damages.* Neither Lessor nor Sublessee is liable to the other party (nor to any person claiming rights derived from either) for incidental, consequential, special, punitive, or exemplary damages of any kind-including lost profits, loss of business, economic damage, injury to property, mental and emotional distress as a result of breach of any term of this Agreement, regardless of any other enforceable or unenforceable provision of this Agreement, IN NO EVENT WILL THE CITY AGGREGATE LIABILITY TO THE UNITED STATES OF AMERICA (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY SUBLESSEE), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID TO THE CITY UNDER THE TERMS OF THIS AGREEMENT.
 - iv) As applicable, The United States of America and the City each acknowledge that the provisions of this Agreement were negotiated to reflect and informed, voluntary allocation between them of all the risks (both known and unknown) associated with this Agreement. The disclaimers and limitations in this Agreement, are intended to limit the circumstances of liability. The remedy limitations, and limitations of liability, are separately intended to limit the forms of relief available to the parties.

- 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 1751 Shuttle Columbia Drive, El Paso, El Paso County, Texas are described as the office space, ramp area, and hangar space outlined on Exhibits "A" and "A-1" and incorporated herein by this reference.
- 4) **Permitted Use of Premises.** Sublessee acknowledges that the subleased premises will not be used for any activity other than those contemplated in the Lease. 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 will provide Lessor with evidence of 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 self-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.
- 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 International Bridges and at no cost to Lessor, an accurate report of Sublessee's operations at El Paso International Airport during the preceding month. 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.** 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 Lessor, 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.
- 11) 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.
- 12) **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.

LESSOR: CITY OF EL PASO


Tomás González
City Manager

APPROVED AS TO FORM:



Kristen Lynn Hamilton-Karam
Assistant City Attorney

APPROVED AS TO CONTENT:



Monica Lombraña, A.A.E.
Chief Operations and Transportation Officer

ACKNOWLEDGMENT
LESSOR

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me this _____ day of _____ 2019,
by **Tomás González**, as **City Manager** of the **City of El Paso**.

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

Exhibit A

ATLANTIC FBO – LEASED FACILITY SPACE ASSIGNMENTS

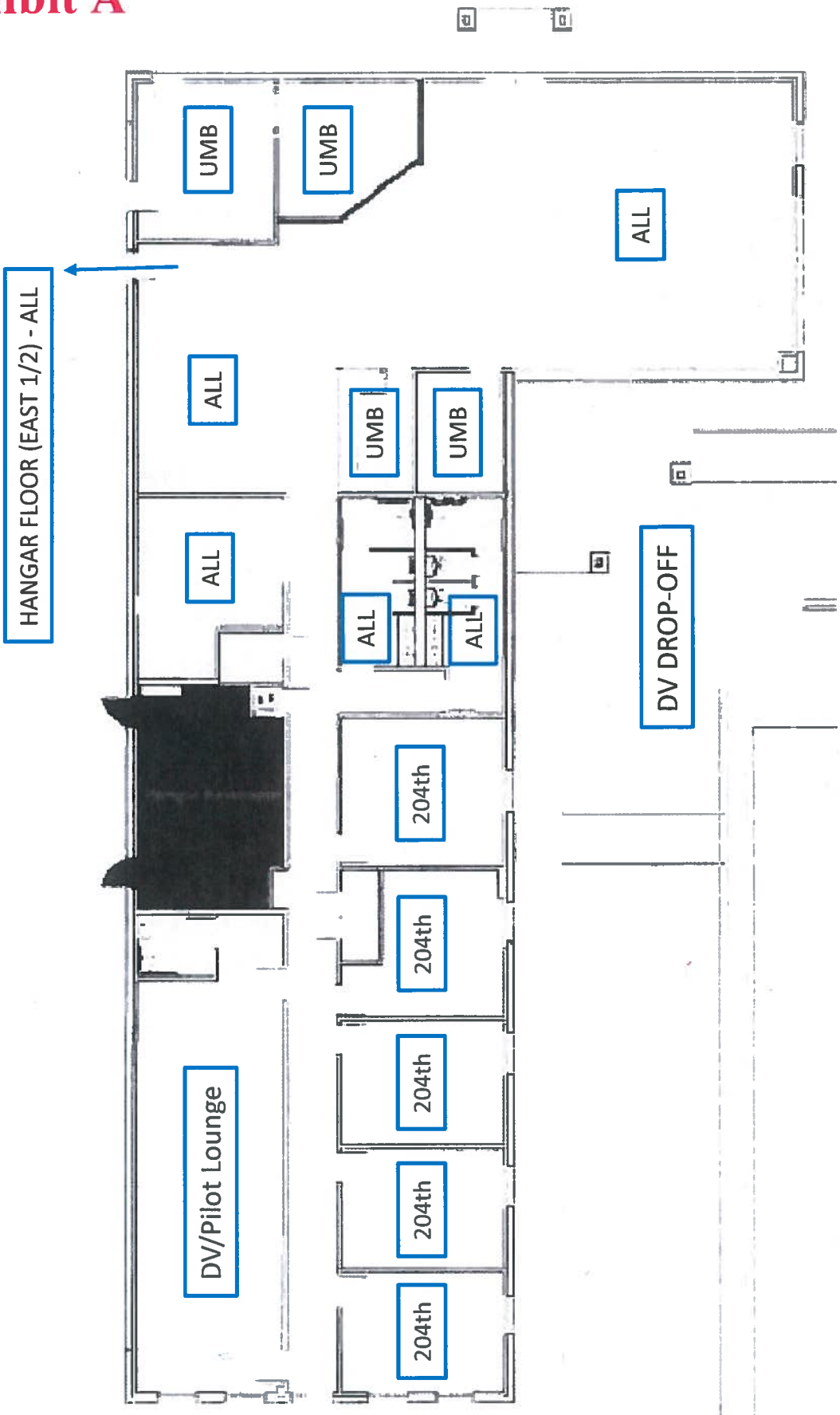
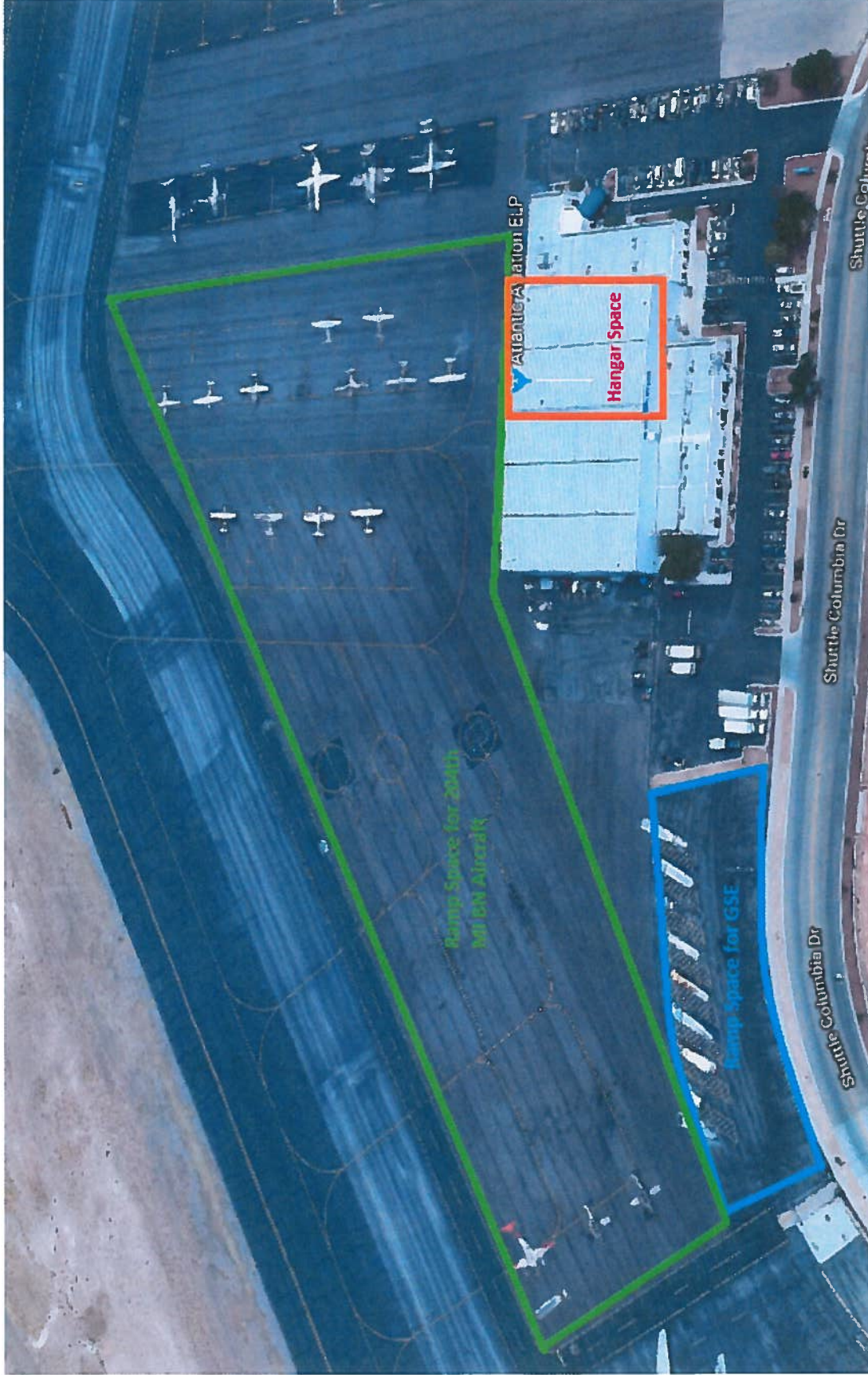


Exhibit A.1

Atlantic Aviation Ramp & Hangar Space



*The use of the office space is granted exclusively to the Government. The use of the hangar space is granted exclusively to the Government; provided that the Government acknowledges that Operator and its other customers are permitted to use the remaining areas of the hangar and there are no partitions or separations within the hangar space. The ramp space is granted exclusively to the Government; provided that the Government acknowledges that Operator will access the area in order to provide services to the Government or other customers, and other aircraft or Airport personnel may require access or passage when operational needs require.

Exhibit "B"

SCHEDULE 2

The Government's Right to Self-insure. The Government selects the right to Self-insure with respect to the coverages set forth under User Insurance Coverage, subject to the following terms and conditions:

(a) "Self-insure" with respect to the Government means that the Government (i) is acting as though it were the insurance company providing the insurance required of the Government under the provisions of this Lease, and (ii) shall pay amounts equal to the insurance proceeds which would have been payable if the insurance policies had been carried by such party, which amounts will be treated as insurance proceeds for all purposes under this Lease.

(b) In the event that the Government elects to Self-insure and an event or claim occurs for which a defense and/or coverage would have been available for Lessor from an insurance company providing the coverages outlined in User Insurance Coverage, (i) the Government shall use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds, but for such election by the Government to Self-insure, and (ii) the Government shall have the same duty to act in good faith toward the Lessor involved as an insurer would have had under the laws and regulations of the State of Texas.

(c) The obligations of the Government under this Schedule 2 are independent and will remain in full force and effect notwithstanding any breach of any provision of this Lease by Lessor.

USER INSURANCE COVERAGE

Commercial General Liability: Commercial General Liability Insurance which provides liability insurance coverage for bodily injury and property damage arising from User's use or occupancy of the Space provided for under the terms of this Agreement in an amount not less than fifty million dollars (\$50,000,000) each occurrence and in the annual aggregate in accordance with industry standards. Such insurance shall include war risks, hijack and other perils liability coverage to the extent such is commercially available.

Aircraft Liability and Physical Damage: The following insurance requirements shall apply to all Aircraft (including any substitute aircraft) identified on the Summary of Terms:

(i) Liability insurance for the Aircraft, both in flight and not in flight, with limits not less than fifty million dollars (\$50,000,000) for each occurrence, including bodily injury (including passenger bodily injury), property damage and personal injury liability damage arising from User's operations, including the ownership, maintenance or use of Aircraft or use or occupancy of the Space under the terms of this Agreement in an amount not less than fifty million dollars (\$50,000,000) each occurrence and in the annual aggregate in accordance with industry standards. Such insurance shall include war risks, hijack and other perils liability coverage to the extent such is commercially available;

(ii) All risk ground and flight physical damage insurance covering the Aircraft and personal property therein against any loss, theft or damage. Such insurance shall include war risks, hijack and other perils liability coverage to the extent such is commercially available;

(iii) Liability coverage for automobiles on Airport premises.

Property Insurance: Property Insurance in sufficient coverage amounts to insure against loss of or damage to all owned, leased and/or borrowed tools, equipment and other property of User and its agents, invitees and employees and coverage as is reasonable for loss of or damage to tools, equipment and property of third

Ex. C

Property Description

Approximately 268,470 rentable square feet located at Trajen Flight Support 1751 Shuttle Columbia Drive El Paso, Texas 79925 more particularly described in Exhibit "C, Legal Description, attached hereto and made a part hereof, to be used for Government purposes.

Dimensions shown are NOT surveyed bearings or distances. The bearing and distances shown were obtained from the subdivision plat El Paso International Airport Tracts - Unit 11. These bearings and distances shown were used to compute areas for the Fixed Base Operators Project.

EXHIBIT C

