

AN ORDINANCE 2007-06-28-0781

**APPROVING THE ASSIGNMENT & ASSUMPTION AGREEMENT
TRANFERRING THE INTEREST IN STINSON MUNICIPAL AIRPORT
LEASE AGREEMENT 200616 FROM CHECK-SIX AVIATION, INC. TO
OCOTILLO AVIATION LLC, AND AMENDING THE LEASE TO
REDUCE THE PREMISES**

* * * * *

WHEREAS, an Agreement (the "Agreement") for Lease No. 200616 at Stinson Municipal Airport ("Stinson") between T&M Aviation, Inc. and the City of San Antonio was entered into on February 27, 1997 pursuant to Ordinance No. 85662; and

WHEREAS, T&M Aviation, Inc. subsequently assigned its rights and obligations under the Agreement to Stinson Air Center, LLC pursuant to Ordinance No. 89353 passed and approved on March 4, 1999 and the Lease was collaterally assigned to Jefferson State Bank; and

WHEREAS, pursuant to Ordinance No. 89354 passed and approved on March 4, 1999, Stinson Air Center, LLC and the City amended Lease No. 200616 to add an additional twelve (12) years to the remaining eight (8) years under the Lease Agreement and added an additional 154,194 square feet of ground space to the Leased Premises; and

WHEREAS, as part of the consideration for adding 154,194 square feet of ground space and the extension of the Lease Agreement for twelve (12) years, Stinson Air Center, LLC made substantial improvements upon the Leased Premises in an amount of not less than \$250,000.00; and

WHEREAS, a default occurred under the Loan's Deed of Trust and the Note given to Jefferson State Bank by Stinson Air Center, LLC and Jefferson State Bank foreclosed upon the interest of Stinson Air Center, LLC in the Lease; and

WHEREAS, Check-Six Aviation, Inc. (hereinafter called "Assignor") succeeded to the interest of Stinson Air Center, LLC in the lease via a Substitute Trustee's Deed; and

WHEREAS, pursuant to Ordinance No. 99267 passed and approved on June 3, 2004, Lease No. 200616 was amended to delete 42,025 square feet of ground space, Building 660A and 131,090 square feet of ground space adjacent thereto and Building 660A and the 131,090 square feet of associated ground space were leased to U.S. Helicopters, Inc., via a separate lease agreement; and

WHEREAS, Assignor has requested that the City approve the assignment of Assignor's rights and obligations under the Agreement to Ocotillo Aviation, LLC (hereinafter "Assignee"); and

WHEREAS, the City is willing to grant this request of Assignor to assign its rights and obligations under the Agreement to Assignee; and

WHEREAS, Assignee has requested that the lease be amended to delete all but a 117,882 square feet tract on which a T-Hangar development is situated and Sky Safety, Inc, by separate agreement, has agreed to lease the premises that will be deleted; and

WHEREAS, the City is willing to grant Assignor's request to assign the Lease Agreement to Assignee and the City is willing to amend the lease as requested by Assignee; and **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, is hereby authorized to execute the attached Assignment & Assumption Agreement transferring the interest in the premises known as Lease No. 200616 from Check-Six Aviation, Inc. to Ocotillo Aviation, LLC.

SECTION 2. The City Manager or her designee, is hereby authorized to execute the attached Amendment of Lease deleting all but a 117,882 square feet tract on which a T-Hangar development is situated from the lease premises.

SECTION 3. The proceeds from this Lease Agreement will be deposited into SAP Fund No. 51001000, entitled "Aviation Operating and Maintenance Fund;" Internal Order 233000000014, entitled "Stinson Municipal Airport;" and SAP General Ledger Accounts 4405400, 4405410, and 4405415 respectively entitled "Stinson Building Rental Aviation," "Stinson Ground Rental Aviation," and "Stinson Ground Rental Non-Aviation."

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 28th day of June, 2007.


MAYOR

PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

City Council Meeting

DATE: June 28, 2007

ORDINANCE: 2007-06-28-0781

AGENDA ITEM: 49A

RESOLUTION:

Consent Agenda

NAME	MOTION	SECOND	ABSTAIN	AYE	NAY	ABSENT
Mary Alice Cisneros DISTRICT 1						
Sheila McNeil DISTRICT 2						
Roland Gutierrez DISTRICT 3						
Philip Cortez DISTRICT 4						
Lourdes Galvan DISTRICT 5						
Delicia Herrera DISTRICT 6						
Justin Rodriguez DISTRICT 7						
Diane Cibrian DISTRICT 8						
Kevin Wolff DISTRICT 9						
John Clamp DISTRICT 10						
Phil Hardberger MAYOR						

COMMENTS:

**San Antonio Aviation Department
Contract/Agreement Routing Slip**

Date: July 5, 2007

RE: Ordinance 2007-06-28-0781, Passed and Approved June 28, 2007

SIGNATURES:

1. Steven Southers/Griselda Sanchez Initial: JS
Asst. City Attorney
Please sign
After signature please forward to:

2. Aviation Director Initial: MHW
Attn: Mark H. Webb
Please sign
After signature, return to Molly Gorena-Bullis

3. Penny Postoak Ferguson Initial: PF
Please sign
After signature, please forward to:

4. Leticia M. Vacek, City Clerk Initial: LV 7/9
Please sign and return all originals to:
(One copy will be retained for your files)

5. Aviation Department, Mezzanine Level, 9800 Airport Blvd. Initial: _____
Attn: Molly Gorena-Bullis, Paralegal

Comments: Please Return inside "red" colored see-
through envelope.

Thanks,

Please call Molly Gorena-Bullis at 207-3494 if you have any questions. *Thank you.*

CITY OF SAN ANTONIO
AVIATION DEPARTMENT

INTERDEPARTMENTAL CORRESPONDENCE

TO: Penny Postoak Ferguson, City Manager
FROM: Mark H. Webb, Aviation Director
COPY: Joyce Wiatrek, file
SUBJECT: Assignment, Assumption and Amendment Agreement of Check-Six, Inc.
DATE: July 5, 2007

With this memorandum, we are routing original contracts for execution by the City of San Antonio. The information outlined below is applicable:

Background: Ordinance Number 2007-06-28-0781 (copy attached), dated 28 June 2007, approved the Assignment and Assumption Agreement transferring the interest in Stinson Municipal Airport Lease Agreement No. 200616 from Check-Six, Inc. to **Ocotillo Aviation, LLC** and amending the Lease to delete Buildings 614, 616, ground space and parking lot.

Policy Analysis: This action is consistent with the City Council's policy to generate revenue through the leasing of City-owned property.

Coordination: This agreement has been coordinated with the following departments: Finance, Budget and Management, and the City Attorney's Office.



Mark H. Webb
Aviation Director



for City Attorney

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (“Assignment”) is made and entered into by and between **Check-Six Aviation, Inc.**, a Texas Corporation, and **Ocotillo Aviation, LLC**, a Texas limited liability company, with the Approval of the City of San Antonio (“City”), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2007-06-28-0181 passed and approved on JUNE 28, 2007 with reference to the following facts:

WHEREAS, an Agreement (the “Agreement”) for Lease No. 200616 at Stinson Municipal Airport (“Stinson”) between the T&M Aviation, Inc. and the City of San Antonio was entered into on February 27, 1997, pursuant to Ordinance No. 85662; and

WHEREAS, T&M Aviation, Inc. assigned its rights and obligations under the Agreement to Stinson Air Center, LLC pursuant to Ordinance No. 89353, passed and approved on March 4, 1999 and the Lease was collaterally assigned to Jefferson State Bank; and

WHEREAS, pursuant to Ordinance No. 89354, passed and approved on March 4, 1999, Stinson Air Center, LLC amended Lease No. 200616 to add an additional twelve (12) years to the remaining eight (8) years under the Lease Agreement and add an additional 154,194 square feet of ground space to the Leased Premises; and

WHEREAS, as part of the consideration for adding 154,194 square feet of ground space and the extension of the Lease Agreement for twelve (12) years, Stinson Air Center, L.L.C. made substantial improvements upon the Leased Premises in an amount of not less than \$250,000.00; and

WHEREAS, a default occurred under the Loan, Deed of Trust and the Note given to Jefferson State Bank by Stinson Air Center, L.L.C.; and Jefferson State Bank foreclosed upon the interest of Stinson Air Center, L.L.C. in the Lease; and

WHEREAS, Check-Six Aviation, Inc. (hereinafter called “Assignor”) succeeded to the interest of Stinson Air Center, L.L.C. in the lease via a Substitute Trustee’s Deed; and

WHEREAS, pursuant to Ordinance No. 99267, passed and approved on June 3, 2004, Lease No. 200616 was amended to delete 42,025 square feet of ground space, Building 660A and 131,090 square feet of ground space adjacent thereto; and Building 660A and the 131,090 square feet of associated ground space were leased to U.S. Helicopters, Inc. via a separate lease agreement; and

WHEREAS, Assignor has requested that the City approve the assignment of Assignor’s rights and obligations under the Agreement to Ocotillo Aviation, LLC (hereinafter “Assignee”); and

WHEREAS, the City is willing to grant this request of Assignor to assign its rights and obligations under the Agreement to Assignee;

NOW THEREFORE: in consideration of the terms, covenants and promises, agreements and demises herein contained, and for other good and valuable consideration, each to the other given, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Assignor hereby transfers, assigns, and sets over to the Assignee all right, title and interest of the Assignor in and to the Agreement, as amended, effective on the date hereinafter set forth.
2. In consideration therefor, the Assignee hereby accepts, assumes, takes over and succeeds to all of the Assignor's rights, duties, interests, liabilities and obligations under the Agreement; Assignee agrees to all of the terms, conditions, provisions, covenants and obligations contained therein which the Assignor is obligated to keep or perform, including, but not limited to, liabilities for any prior and/or existing environmental contamination of any premises leased; and Assignee shall indemnify and hold harmless the City of San Antonio with respect to any and all such duties, liabilities, or obligations.
3. Assignee hereby acknowledges that the Agreement includes an **INDEMNITY CLAUSE FOR THE BENEFIT OF THE CITY**. Assignee expressly agrees to be bound by said indemnity clause, excerpted below in its entirety.

“Lessee covenants and agrees to indemnify, hold completely harmless and (at Lessor’s option) defend the City of San Antonio, its members, agents, officers and employees, their successors and assigns, individually or collectively from and against any and all fines, liabilities, claims, suits, demands, actions or causes of action of any kind and nature including, but not limited to personal injury or death and property damage, in any way arising out of or resulting from any activity or operation of Lessee, its officers, agents, employees, contractors, subcontractors, licensees or invitees in, on or about the Leased Premises without limit and without regard to cause or causes thereof or the negligence of any party or parties. The Lessee and the Lessor shall give prompt and timely notice of any claim made, or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party. The provisions of this section shall survive the expiration or early termination of this Lease Agreement.

“The provisions of this indemnification are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

“Lessor DOES NOT waive any available governmental immunity or defenses under Texas Law, and shall have the right at its option and at its own expense, to participate in the defense without releasing Lessee from any of its obligations under this Indemnification Paragraph.”

4. The City of San Antonio consents to the assignment of the rights and obligations of Check-Six Aviation, Inc. to Octotillo Aviation, LLC, and authorizes the City Manager or her

designee to execute this Assignment and Assumption Agreement.

5. The effective date of this Agreement shall be July 1, 2007.

IN WITNESS WHEREOF, the undersigned have duly executed this Assignment and Assumption Agreement as of the date set forth above.

EXECUTED THIS THE _____ day of _____, 2007.

ASSIGNOR:
CHECK-SIX AVIATION, INC.

ASSIGNEE:
OCOTILLO AVIATION, LLC

By: [Signature]
Name: Harold G. Jensen
Its: President

By: [Signature]
Name: JAMES MARTINSON
Its: Member / MANAGER

CONSENT GRANTED:

CITY OF SAN ANTONIO

ATTEST:

By: [Signature]
Sheryl Sculley, City Manager

[Signature]
City Clerk

APPROVED:

[Signature]
for City Attorney

