City of Benson
City Council Communication

Regular Meeting **October 26, 2015**

To: Mayor and Council Agenda Item # 3

From: Bradley J. Hamilton, P.E. Director of Public Works/City Engineer

Subject:

Discussion and possible action regarding the transfer of the Hangar Agreement between the City of Benson and Cliff Deane Aviation, L.L.C. to Flying Fletchers, L.L.C.

Discussion:

On May 23, 2011 the Mayor and Council approved a long-term lease with Clifford D. Deane for hangar Pad E1 at the Benson Municipal Airport. Mr. Deane then asked for the name on the lease to be changed from Clifford D. Deane to Cliff Deane Aviation, LLC., which was approved by Council on September 26, 2011.

Mr. Deane is now seeking to transfer his existing lease to Flying Fletchers, L.L.C. This would be the only change to the lease and all other terms and conditions approved previously would remain in effect.

Staff Recommendation:

Approval of the transfer of the Hangar Agreement between the City of Benson and Cliff Deane Aviation, L.L.C. to Flying Fletchers, L.L.C.

AIRPORT HANGAR LEASE AGREEMENT
FLYING FLETCHERS, LLC
at
Benson Municipal Airport

THIS LEASE AGREEMENT, is entered into this 1st day of May, 2011, by and between the City of Benson, an Arizona body politic, hereinafter referred to as "LESSOR", whose Authorized Representative is:

WILLIAM D. STEPHENS, CITY MANAGER
City of Benson
120 W. Sixth Street
Benson, Arizona 85602
(520) 586-2245

and the CONTRACTOR, hereinafter referred to as "LESSEE", whose complete name, address and Authorized Representative is:

FLYING FLETCHERS, LLC
~~600 Saguaro Drive #98~~ 361 N. Vail View Rd.
~~Benson, Arizona 85602~~ Vail, AZ 85641
~~(520) 586-7913~~ 520-762-5798

in consideration of the mutual covenants contained herein, the parties agree as follows:

I. LEASED PROPERTY:

The LESSOR will Lease to the LESSEE the following described real property situated at the Benson Municipal Airport, otherwise known as PAD "E1", which measures approximately 56 feet x 60 feet and containing an improved hangar built by LESSEE and approved by LESSOR, the legal description for which is attached hereto as Exhibit "A" and by reference incorporated herein. Herewith, this real property will be referred to as the "Leased Premises".

II. USE OF LEASED PROPERTY:

A. The LESSEE shall use the hangar to store aircraft and other activities associated with the use and minor regular maintenance of aircraft. No other use of the Leased Premises shall be allowed without the express written consent of the LESSOR'S Authorized Representative.

B. LESSEE is granted the use, in common with others similarly authorized, of all airport facilities, equipment, improvements, and services, which have been or may hereinafter be provided at or connected with the airport from time to time including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, sewage and water facilities, floodlights, landing lights, beacons and all other conveniences for flying, landings, and takeoffs.

III. LESSEE'S RESPONSIBILITIES:

A. In the event that LESSEE shall provide and maintain an accessible and sanitary restroom for public use, such restroom must be compliant with the Americans with Disabilities Act.

B. LESSEE shall maintain the Leased Premises in a neat and clean manner, free of weeds and debris.

C. LESSEE shall meet all requirements of the Benson Airport Operating Regulations, to include maintaining remotely alarmed smoke and or heat detection devices, as approved by the Benson Fire Chief, until such time as land telephone lines are reasonably available to the Leased Premises, at which time a remote monitoring must be installed with sixty (60) days.

IV. LEASE PAYMENTS:

LESSEE agrees to pay LESSOR for the use of the Premises, rights, services and privileges granted hereunder according to the following:

A. For the exclusive use of the unimproved hanger area Pad "E1", which consists of approximately two thousand (2,000) square feet, the Lease rate shall be THREE HUNDRED AND TWELVE DOLLARS ($312.00) the first year of this Lease.

B. The Lease rate will automatically be adjusted upwards four percent (4%) per year during the first five (5) years of the Lease. After this period, the Lease rate will be established for each future five (5) year period to reflect a four percent (4%) rate increase per year or the average percentage rate of the "consumer price index", whichever is higher, for the previous five (5) year period.

C. LESSEE'S annual Lease payments shall be due LESSOR in advance, with the first payment due on the 1st day of June, 2011, hereinafter referred to as the commencement date. Thereafter, annual Lease payments shall be due on the anniversary of the commencement date. All payments shall be made payable to the City of Benson, Airport Account, and shall be mailed to or made in person at 120 W. 6th Street, Benson, Arizona 85602. Any payment not received on or before the 15th day after the anniversary of the commencement date shall incur a late payment charge of ONE HUNDRED AND NO/100'S DOLLARS ($100.00) per month and all outstanding balances shall accrue interest at the rate of one percent (1%), compounded monthly until paid in full. Further, a TWENTY FIVE AND NO/100'S DOLLAR ($25.00) fee will be assessed on all returned checks.

V. UTILITIES:

LESSEE shall be solely responsible for obtaining and paying for all necessary and related costs associated with utility services on the Leased Premises and all applications and connections, including communications, shall be made in the LESSEE'S name only. LESSEE will be responsible for all the costs associated with extending and connecting to these utilities.

VI. TERM OF LEASE:

LESSOR and LESSEE agree that the term of this Lease agreement shall be subject to the following:

A. The term of this agreement shall commence on the date of execution and shall continue for an initial term of **twenty (20) years** and may be renewed at the option of the LESSEE for **two (2)** consecutive terms of **twenty (20) years** each for a total term of **sixty (60) years**.

B. If the LESSOR fails to perform any act or render any service required to be performed hereunder by LESSOR under the term of this agreement, and if LESSOR fails to remedy and such default in a manner reasonably satisfactory to LESSEE within thirty (30) days following the receipt from LESSEE of written notice to remedy the same, LESSEE may elect to terminate this agreement by providing LESSOR with ninety (90) days written notice of his intent to transfer or terminate the Lease.

C. If the LESSEE fails to perform any act or render any service required to be performed hereunder by LESSEE under the term of this agreement, and if LESSEE fails to remedy any such default in a manner reasonably satisfactory to LESSOR within thirty (30) days following the receipt from LESSOR of written notice to remedy the same, LESSOR may elect to terminate this agreement by providing LESSEE with ninety (90) days written notice of its intent to terminate the Lease.

D. In the event of termination, for any reason, of this agreement, all parties hereby agree that all right, title and interest to all improvements upon the Leased Premises shall vest in LESSOR.

E. In the event that the Lease is terminated by the LESSOR, at absolutely no fault of the LESSEE, the LESSEE shall be compensated at a prorated rate for such termination based upon the fair market value of the remaining Lease term, including all extensions and options, and building improvements constructed by Clifford D. Deane or their successor on Pad "E1", as determined by a certified real estate appraiser agreed upon by the parties.

VII. IMPROVEMENTS AND MAINTENANCE:

A. LESSEE hereby acknowledges that the purpose of this agreement is to facilitate construction of an aviation hanger upon the real property known as the Benson Municipal Airport to which all right, title and interest to shall vest in LESSOR upon termination of this agreement.

B. It is agreed, that LESSEE, during the existence of this Lease, may make other improvements or alterations to the Leased Premises in addition to the hangar already built. However, before commencement of any work, LESSEE shall first receive the written approval of LESSOR'S Authorized Representative. Such approval shall not be unreasonably withheld or delayed and shall be provided within a reasonable period of time.

C. Future Improvements to the Leased Premises shall be at the sole cost of the LESSEE. The Leased Premises are provided "AS IS" and LESSOR makes no warranties as to the condition or fitness for purpose. **LESSOR EXPRESSLY DISCLAIMS ANY WARRANTY OF HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Any improvements that may be necessary for the LESSEE'S purposes shall be the sole responsibility of LESSEE and any such improvements provided by LESSEE shall be deemed to be for the benefit of the LESSEE and the LESSOR shall not reimburse LESSEE for any expenses incurred thereby.

D. LESSEE may transfer title to the fixed assets which shall include the improvements to the real property of the City of Benson at anytime during the course of the Lease. However, at the end of the Lease, and all executed option periods, all title, right and ownership to all fixed assets shall vest with the LESSOR. It is agreed that all personal property shall remain the personal property of the LESSEE and be subject to removal by LESSEE, where such removal will not cause damage or injury to the Leased Premises, if any. Under no circumstances shall LESSEE remove any building improvements, electrical or plumbing fixtures which have become a part of LESSOR'S real property by virtue of their installation in the ground.

E. LESSEE shall be responsible for maintaining structures upon the Leased Premises and the immediate grounds in an attractive manner and in good condition, including, but not limited to the removal of trash and tumbleweeds from LESSEE'S Premises.

F. LESSEE shall, at all times during the term of this agreement, at LESSEE'S own expense, repair, and maintain in a good and safe condition, any improvements on the Leased Premises, and shall use all reasonable precaution to prevent waste, damage or injury to the Leased Premises.

VIII. LIENS:

LESSEE shall keep the Leased Premises free and clear of any and all mechanics, material men and other liens arising out of LESSEE'S use and occupancy of the Leased Premises, excepting landlord's written consent granted by LESSOR providing mortgagee the right to operate the Leased Premises during the Lease period but shall not permit said mortgagee ownership rights in the real property. In the event that an adverse lien is filed against any building or structure erected by LESSEE on the Leased Premises, LESSEE hereby agrees to indemnify, defend and hold harmless the LESSOR, its officers, agents, and employees against all liability for any such debt(s), and further, agrees that LESSEE shall be responsible for any and all costs, including attorney's fees, that may be associated with any loss LESSOR may incur as a result of LESSEE'S encumbrance of any structures placed upon the Leased Premises.

IX. TAXES AND ASSESSMENTS:

LESSEE shall pay all taxes, assessments and charges including, without limiting the generality of the foregoing, personal and any applicable real property taxes and utility charges, which may be taxed or charged to the LESSEE or upon the Leased Premises in connection with LESSEE'S use and occupancy of the Leased Premises. It shall be the obligation of LESSEE to pay any assessed personal property on any goods, equipment, inventory, machinery, movable trade fixtures or other personal property located in or upon the Leased Premises.

X. ASSIGNMENT, SUBLEASE OR LICENSE:

A. LESSEE shall not at any time assign it rights to the Leased Premises under this agreement or any part thereof without the prior written consent of the LESSOR, wherein such approval shall not be unreasonably withheld.

B. LESSEE shall not be prevented from subletting space in any of the buildings or structure hereafter erected by LESSEE on the Premises and said subletting shall not require prior approval by the LESSOR. However, LESSEE shall be responsible for all acts of its sublessees.

XI. COMPLIANCE WITH LAWS AND REGULATIONS:

A. LESSEE and LESSOR shall comply with all federal, state, and city laws, rules and regulations, controlling or in any manner affecting the use or occupancy of the Leased Premises or the airport. LESSEE shall operate the facilities in compliance with any and all federal, state, and city regulations pertinent to the operations of the Benson Municipal Airport, and shall not engage in any activities which may adversely affect airport operations. LESSEE'S rights hereunder are subject to any prior or overriding rights of the United States.

B. All City of Benson regulations and ordinances, as applicable to this facility or the operations conducted thereon, and any future amendments thereto, including, but not limited to, building permit and development fees, are incorporated by reference into this Lease and shall be considered part of the regulations LESSEE must comply with under the terms of this Agreement.

C. Additionally, LESSEE is responsible for acquiring and maintaining in current status any and all necessary permits and/or certifications as required by all applicable State and/or Federal agencies governing all activities associated with LESSEE'S occupancy and use of the Leased Premises.

XII. ENTRY TO PROPERTY:

A. LESSEE shall have at all times the full and free right of ingress to and egress from the Leased Premises and facilities referred to herein for LESSEE, sub-lessees, its employees, customers, guests and other invitees.

B. LESSOR or LESSOR'S agents shall be allowed to inspect the Leased Property as deemed necessary and appropriate upon reasonable notification to LESSEE or sub-lessees of not less than twenty four (24) hours notice. LESSOR or LESSOR'S agents may enter the Leased Premises at any time in case of fire or other emergency.

XIII. PARKING:

LESSEE shall utilize existing designated parking areas and LESSEE'S vehicles shall not cause undue interference with any other airport activity. In the event that LESSEE'S activity upon the Leased Premises should generate the need for additional parking facilities, LESSEE shall be required to provide additional parking in an area to be designated by LESSOR in conformance with the City of Benson's regulations and ordinances.

XIV. INDEMNIFICATION:

LESSEE agrees to indemnify, defend and hold harmless the LESSOR, its officers, agents, and employees against all liability for injuries to persons or property damage occurring on the Leased Premises, or caused by the LESSEE'S use or occupancy of the premises, or from any claims for damages, liabilities, fines, or claims of every kind, including attorney fees, arising or in any manner occasioned, by the acts or omissions of the LESSEE, its tenants, assignees, invitees, or guests, in the use or occupancy of the Leased Premises.

XV. INSURANCE:

A. During the lease term, LESSEE shall, at his own expense, take out and maintain liability insurance on the Leased Premises and on his business operations in the amount of TWO MILLION AND NO/100'S ($2,000,000) DOLLARS. This liability insurance shall provide a minimum of ONE MILLION AND NO/100'S ($1,000,000) DOLLARS liability coverage for each occurrence and with such insurance companies, as shall be satisfactory to the LESSOR to protect and indemnify the LESSOR from all damages or claims of any kind whatsoever, arising from the LESSEE'S use and occupancy of the Leased Premises. Said liability insurance shall not have an exclusion for hazardous waste handling or storage.

B. LESSEE shall, at his own expense, take out and maintain property insurance in an amount sufficient to cover the value of all property owned, Leased, or stored by the LESSEE on the Leased Premises.

C. LESSEE shall cause all liability insurance policies to name the LESSOR as an additional insured and LESSEE shall provide the LESSOR with certificates of insurance evidencing the coverage and naming LESSOR as an additional insured within thirty (30) days of signing this Lease Agreement or prior to occupancy, whichever is sooner. A current certificate of insurance will be provided on the anniversary of the policy, to the LESSOR at the same address to which lease payments are sent. Certificates shall indicate that LESSOR must be given written notice at least ten working days prior to any reduction, cancellation, termination or expiration of insurance.

XVI. DEFAULT OR BREACH:

A default or breach of this Lease by LESSEE shall include, but not be limited to, the following events:

A. If LESSEE shall fail to pay LESSOR any Lease payments when such payments are more than thirty (30) days past due.

B. If LESSEE shall fail to perform or comply with any of the conditions of this Lease.

C. If LESSEE shall abandon the entire Leased Premises.

D. If this Lease shall be transferred to or shall pass to or devolve on any other person or party without the prior written consent of the LESSOR and such consent shall not be unreasonably withheld. However, subletting shall not require approval by LESSOR.

E. If LESSEE shall fail to maintain current, required amounts of insurance coverage.

F. Any violation of any federal, state, or local law, rule or regulation.

G. Failure to comply with any of the Terms of this Lease Agreement.

H. LESSEE files for bankruptcy, or otherwise becomes insolvent, or any of its assets are assigned to creditors.

XVII. SUPPLEMENTARY CONDITIONS:

A. LESSEE hereby agrees to indemnify, defend and hold harmless the LESSOR, its officers, agents, and employees against all liability for injuries to persons or property damage caused by fire as a result of fire department response time to the Premises due to the Premises' remote location.

B. LESSEE agrees to hold harmless LESSOR for any damage that may occur to any of LESSEE'S personal property as a result of the waiver of fire protection granted to LESSEE in paragraph A. above.

C. LESSEE and each sub-lessee is authorized to display signage in an amount as prescribed by the City of Benson, if applicable.

D. This Lease Agreement may be cancelled by LESSOR for conflicts of interest pursuant to A.R.S. 38-511.

E. Compliance with Immigration Laws. As mandated by Arizona Revised Statutes ["A.R.S."] § 41-4401, the CITY is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. § 23-214(A). The CITY must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A). Therefore, in signing or performing any contract (including this Lease Agreement) for the CITY, the LESSOR fully understands that:

1. It warrants that both it and any subcontractors it may use comply with all Federal Immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A);

2. A breach of the warranty described in subsection A, shall be deemed a material breach of the Lease Agreement that is subject to penalties up to and including termination of the Lease Agreement; and

3. The CITY or its designee retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Leased Premises to ensure that the contractor or subcontractor is complying with the warranty under subsection A.

F. **Performance Bonds**: Performance Bonds may or may not be required at the discretion of the City Engineer.

G. **Hazardous Materials**.

1. LESSEE shall not cause nor permit any hazardous material, as defined by state and federal laws, to be generated, brought onto, used, disposed or stored on the Leased Premises, except for limited quantities as required in the ordinary course of LESSEE'S business conducted on the Premises. LESSEE shall comply with all applicable laws concerning protection of the environment and use of hazardous substances.

2. To the furthest extent permitted by law, LESSEE shall, at LESSEE'S sole expense and with counsel reasonably acceptable to LESSOR, indemnify, defend, and hold harmless LESSOR, and LESSOR'S Council Members, officers and employees, with respect to all losses arising out of or resulting from the release of any hazardous material in or about the Premises or the buildings, or the violation of any environmental law, by LESSEE or LESSEE'S agents, employees, contractors, sub-lessees or invitees. Indemnification shall survive the termination of this Agreement for any reason.

XVIII. DESTRUCTION OF PREMISES:

A. LESSOR and LESSEE agree that if the Leased Premises shall be wholly or partially damaged by an act of God to such extent that the Leased Premises shall be rendered wholly untenable, then LESSEE may elect to terminate this Lease by giving written notice of the same to LESSOR.

B. The Leased Premises, or any portion thereof, shall be deemed to be wholly untenable and if the condition of a specific structure, or structures, is no longer in compliance with the applicable State and City building codes.

C. In the event that a portion of the Premises is deemed wholly untenable, LESSEE may undertake to repair, remove or replace said portion within three (3) months of the date of the damaging event. In the event LESSEE should fail to make substantial and continuous progress toward completion or repair of the damaged property or LESSOR may elect to notice LESSEE as prescribed by paragraph VI(C) of terminate the Lease if such repairs are not completed within a reasonable time period.

XIX. DEVELOPMENT RESERVATION:

LESSOR reserves the right to further develop or improve the landing and taxiway areas of the airport as it sees fit and the right to take any action it considers necessary for the protection of the aerial approaches to the airport from obstruction. LESSOR may prevent LESSEE from erecting or permitting the erection of any building or other structure on the airport premises which, under the regulations of the Federal Aviation Administration, would limit the usefulness of the airport or constitute a hazard to aircraft.

XX. LEGAL REMEDIES:

The laws of the State of Arizona shall govern this agreement and venue for any legal proceedings shall be within Cochise County. Any claim or controversy must first be presented in writing, with supporting documentation, to the agent of the other party. The recipient shall have ten (10)

business days to prepare and deliver a response. Further, the parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiation. Thereafter, if the parties fail to resolve the claim or controversy following a reasonable period for such resolution, but not less than twenty (20) days, the aggrieved party may pursue its legal remedies in either the Cochise County Superior Court or Arbitration and Mediation Program.

XXI. RIGHTS AND REMEDIES:

No provision in this document or in the LESSEE'S offer shall be construed, expressly or by implication, as a waiver by the LESSOR of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of any party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release the other party(s) from any responsibilities or obligations imposed by the contract or by law, and shall not be deemed a waiver of any right of any party(s) to insist upon the strict performance of the contract

XXII. CONTRACT:

The terms of this Lease Agreement, shall be interpreted and governed by the laws of the State of Arizona and the unenforceability of any provision herein shall not affect or impair any other provision.

XXIII. CONTRACT AMENDMENTS:

This contract may be modified only by a written contract amendment signed by persons duly authorized to act on behalf of the LESSOR and the LESSEE.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be signed by their duty authorized representatives.

APPROVED:
LESSEE

Dave J. Fletcher

By: DAVE FLETCHER, LLC

7-9-2015

Date

APPROVED:
LESSOR

TONEY D. KING, SR., MAYOR
CITY OF BENSON

Date

APPROVED AS TO FORM:

MESCH, CLARK AND ROTHSCHILD, P.C.
By Gary J. Cohen
City's Attorney

ATTEST:

Vicki L. Vivian, CMC, City Clerk