

City of Fayetteville Item Review Form

2014-0297

Legistar File Number

August 5, 2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

James Nicholson

Submitted By

Aviation

Department

Action Required:

Signature of the Mayor on the lease renewal with Devol Aviation for the corporate hangar located at 4158 S. School Ave, Fayetteville, AR 72701.

Does this item have a cost?

Cost of this request	Category or Project Budget	Program or Project Name
Account Number	Funds Used to Date \$0.00	Program or Project Category
Project Number	Remaining Balance	Fund Name
Budgeted Item? <input type="checkbox"/>	Budget Adjustment Attached? <input type="checkbox"/>	

V20130812

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:

~~7/2/14~~ 7/2/14

Paul A. Butler 7-2-2014

Am Man 7-2-14

[Handwritten Signature]



KQ





CITY COUNCIL AGENDA MEMO

MEETING OF AUGUST 5, 2014

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff
Terry Gulley, Transportation Director

FROM: Aviation Division

DATE: June 30, 2014

SUBJECT: Approval of Lease Renewal with Devol Aviation (attn. David Devol) for their Hangar at 4158 S. School Ave. with the Signature of the Mayor and City Clerk.

RECOMMENDATION:

Approve lease renewal with Devol Aviation.

BACKGROUND:

Devol Aviation is a current tenant at Drake Field.

BUDGET/STAFF IMPACT:

Devol Aviation will pay \$1700.00 per month for five years of the lease with subsequent 5 year renewal option. The lease will be reviewed every two years for a rental increase at the CPI rate, plus one percent using the formula on Lease Attachment Number One.

Attachments:

Staff Review
New lease

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A FIVE YEAR LEASE FOR THE AIRPORT HANGAR AT 4158 SOUTH SCHOOL AVENUE TO DEVOL AVIATION, INC. FOR A RENT OF \$1,700.00 PER MONTH WITH BIENNIAL RENT ADJUSTMENTS TO BEGIN RETROACTIVELY ON JULY 1, 2014

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached five year lease for the airport hangar at 4158 South School Avenue to Devol Aviation, Inc. for a rent of \$1,700.00 per month with biennial rent adjustments to begin retroactively on July 1, 2014, and authorizes Mayor Jordan to execute the lease.

PASSED and APPROVED this 5th day of August, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

LEASE AGREEMENT

This **LEASE AGREEMENT** made this 30TH day of June, 2014, by and between the City of Fayetteville, Arkansas, hereinafter called the City, and Devol Aviation, Inc., of Fayetteville herein after called Devol Aviation, Inc..

WHEREAS, the City owns and operates an Airport known as the Fayetteville Executive Airport, Drake Field, herein after referred to as the Airport; and situated in Washington County in the State of Arkansas.

WHEREAS, the City is the owner of an aircraft hangar located at 4158 S. School Avenue, at the Airport: and

WHEREAS, Devol Aviation, Inc. desires to lease said aircraft hangar at the airport to perform aircraft maintenance and aircraft repair business,

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

1. LEASED PREMISES. The City leases to Devol Aviation, Inc. and Devol Aviation, Inc. leases from the City, the aircraft hangar at the airport located at 4158 South School Avenue, Fayetteville, Arkansas 72701, as reflected on Exhibit "A" attached hereto and made a part hereof.

2. USE OF AIRPORT. Devol Aviation, Inc. is granted the use, without charge, in common with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time including, but not limited to, the landing field, and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and take-offs.

3. RIGHTS OF INGRESS AND EGRESS. Devol Aviation, Inc. shall have at all times the full and free right to ingress to and egress from the demised premises and facilities referred to herein for Devol Aviation, Inc., its employees, customers, passengers, guests, and other invitees. Such rights shall also extend to persons or organizations supplying materials or furnishing services to Devol Aviation, Inc.

4. LEASE TERM. Subject to earlier termination as hereinafter provided, the initial term of this agreement shall be for five (5) years commencing on July 1, 2014 and ending on June 30, 2019.

5. RENTAL FEES. Devol Aviation, Inc. shall pay \$1,700.00 per month with two year escalations going forward. The initial lease payment is due and payable upon execution of this Lease Agreement, and all subsequent lease payments shall be due and payable in advance on or before the first day of each calendar month thereafter.

The lease will be reviewed every two years for a rental increase at the CPI rate, plus one percent using the formula on Lease Attachment #1.

In addition to any remedy available to it hereunder, the City may impose as additional rentals a delinquency charge on all overdue payments, at the maximum rate allowed by law.

6. UTILITIES AND JANITORIAL. Devol Aviation, Inc., shall be responsible for the payment of such utilities serving the demised premises, including, but not limited to heat, light, gas, electricity, telephone, and water, sewer and trash removal. Any such services required by Devol Aviation, Inc. for their use and purposes shall be their sole and exclusive responsibility and Devol Aviation, Inc. agrees to hold the City of Fayetteville, harmless from any responsibilities or liability thereof. Devol Aviation, Inc. shall be responsible for all janitorial services to the leased premises.

7. REPAIRS, MAINTENANCE AND APPEARANCE.

A. The City shall maintain and keep in good repair so much of the airport premises as are not under the exclusive control of Devol Aviation, Inc. Devol Aviation, Inc. shall at the termination surrender or forfeiture of this lease, return said premises in same or better condition premises were at the beginning of the lease, normal wear and tear excepted.

The City shall be responsible only for major maintenance of the existing equipment, i.e. replacement of heating unit and other equipment in place in the facility which includes, roof, hangar doors, hangar door motors, exterior walls, exterior plumbing, paved ramp and paved parking lot. The City agrees that if the roof or any part of the exterior walls or plumbing of said building thereof shall become defective or damaged at any time during the term due to ordinary wear and tear and not due to negligence of the Devol Aviation, Inc., or Devol Aviation, Inc.'s agents or invites, upon notice from Devol Aviation, Inc., the City will immediately cause repairs to be made and restore the defective portions to good condition. If the damage is so extensive as to render the aircraft hangar at the airport untenable, the rent payable hereunder shall be proportionally paid up to the time of such damage and shall thenceforth cease until such time as the premises shall be fully restored. If the demised premises are completely destroyed, City may reconstruct the hangar at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or the City may, at its option, cancel this agreement, such cancellation to be effective as of the date the hangar was destroyed, and the rent adjusted as set forth above. Devol Aviation, Inc. shall not make any alterations to the controls of the hangar doors.

B. Devol Aviation, Inc. shall at all times during the term of this lease keep and maintain in good repair and safe condition the leased premises. Devol Aviation, Inc. will at all times maintain the Leased Premises in a clean, orderly, and attractive condition: Not allow the accumulation of rubbish, trash, refuse and any unsightly conditions or fire hazards on the Leased Premises. Devol Aviation, Inc. shall be responsible for mowing and the upkeep of the outside grounds of the Lease Premises.

C. Devol Aviation, Inc. agrees to reimburse the City for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the City as a result of the failure of Devol Aviation, Inc. to maintain or repair the demised premises as required.

8. ALTERATIONS AND IMPROVEMENTS. Devol Aviation, Inc. shall bear the cost of all improvements or additions made to the interior or exterior of the building on the leased premises. No improvements or additions to any part of the leased premises shall be made by Devol Aviation, Inc. without the prior written approval of the Airport Director, whose consent will not be unreasonably withheld, provided they meet all City requirements. Initial permanent improvements to the building may receive Airport participation through rent abatements for up to one half of the cost of the permanent improvement. All participation will receive Airport Board approval and be in the form of a Lease Amendment. Any signs or antennas to be erected on or attached to the leased premises must have the prior written approval of the Airport Director and conform to all City Ordinances with appropriate permits issued as necessary.

9. INSURANCE. Devol Aviation, Inc. shall maintain in force during the Term and any extended term, of this agreement fire and extended coverage insurance on Devol Aviation, Inc. aircraft , or non-owned aircraft in Devol Aviation, Inc.' possession, in an amount equivalent to the replacement cost thereof. Devol Aviation, Inc. shall also be required to insure any contents within the aircraft hangar. Devol Aviation, Inc. shall procure and maintain in force during term of this agreement fire and extended coverage on the aircraft hangar in an amount equivalent to the replacement cost thereof.

The insurance shall be issued by an insurer licensed to do business in the State of Arkansas.

Concurrent with the execution of this Agreement, Devol Aviation, Inc. shall provide proof of insurance coverage by providing a Certificate of Lessee's Insurance coverage, a copy of the declarations page on the insurance policy, and a copy of all endorsements. The Certificates of Insurance, or endorsements attached thereto, shall provide that; (a) insurance coverage shall not be canceled, changed in coverage, or reduced in limits without at least thirty (30) days prior written notice to the City; (b) the City and the Airport and their trustees, agents, officers, servants, and employees are named as additional insured; (c) the policy shall be considered primary as regards to any other insurance coverage the City may possess, including any self-insured retention or deductible

the City may have, and any other insurance coverage the City may possess shall be considered excess insurance only; (d) the limits of liability required therein are on an occurrence basis.

10. CONDITIONS, RULES AND REGULATIONS. Devol Aviation, Inc. agrees to comply with and abide by all terms and conditions set forth in this Lease. Devol Aviation, Inc. agrees to observe and obey the City's Ordinances and Regulations with respect to use of the demised premises and Airport; provided, however, such Ordinances and Regulations shall be consistent with safety and with all city, county, and state rules, regulations, including all current fire codes, and orders of the Federal Aviation Administration with respect to aircraft operations and aircraft maintenance and aircraft repair business at the Airport, and provided further, such Ordinances and Regulations shall be consistent with the provisions of this agreement or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to the operation of Devol Aviation, Inc. at the Airport.

"The Minimum Standards for Fayetteville Executive Airport, Drake Field" herein referred to as Airport Minimum Standards at Fayetteville Executive Airport are made part of this lease by reference as if included word for word.

11. USE OF HANGAR. Devol Aviation, Inc. agrees that it shall use the premises for the implementation and conducting of an aircraft maintenance and repair business, along with vehicles, equipment and supplies necessarily required for the conduct of an aircraft maintenance and repair business and that no other vehicles, equipment or supplies shall be stored on the premises unless expressly agreed to by the City. Devol Aviation, Inc. further agrees not to store any flammable material on the demised premises other than a limited supply of oils and agents necessary for the conduct of aircraft maintenance and repair on the premises or in any way endanger or violate the provisions of the City's standard commercially available property insurance policy or the requirement of same. Such violations shall constitute a material breach of this Agreement.

12. DAMAGE BY FIRE. If the demised premises are partially damaged by fire or other casualty which is not due to the negligence or fault of the Devol Aviation, Inc., said premises shall be repaired with due diligence by the City at City's expense. If the damage is so extensive as to render such building untenable, the rent payable hereunder shall be proportionally paid up to the time of such damage and shall thenceforth cease until such time as the premises shall be fully restored. If the demised premises are completely destroyed, City may reconstruct the hangar at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or City may, at its option, cancel this agreement, such cancellation to be effective as of the date the hangar was destroyed, and the rent adjusted as set forth above.

13. HAZARDOUS SUBSTANCE. Devol Aviation, Inc. shall not cause or permit any Hazardous Substance to be used or stored on or in the Leased Premises except that required in the conducting of aircraft maintenance and aircraft repair business, without first obtaining the City's written consent. If Hazardous Substances are used, stored, generated or disposed of on or in the Leased Premises, or if the Leased Premises or any other Airport property becomes contaminated in any manner for which

Devol Aviation, Inc. is responsible or legally liable, Devol Aviation, Inc. shall indemnify and Hold Harmless the City from any and all claims, damages, fines, judgements, penalties, costs, liabilities, or losses including, without limitation and decrease in value of the Lease Premises, damages caused by loss or restriction of rentable or usable space as a part of the Leased Premises arising during or after the term hereof and arising as a result of that contamination by Devol Aviation, Inc.' agents, employees, and invitees. This indemnification includes, without limitation, and all cost incurred because of any investigation of the Airport or any cleanup, removal, or restoration mandated by a federal, state, local agency or political subdivision.

14. INDEMNITY. Devol Aviation, Inc. agrees to indemnify the City against any liability for injuries to persons or damage to property caused by Devol Aviation, Inc.' use or occupancy of the leased premises; provided, however, that Devol Aviation, Inc. shall not be liable for any injury, damage or loss occasioned by the negligence of City or its agents or employees; and provided further, that each party shall give prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly affects or might affect either party, and each party shall have the right to compromise and defend the same to the extent of its own interest. This clause shall not be construed to waive that tort immunity as set forth under Arkansas Law.

15. NON-DISCRIMINATORY CLAUSE. Devol Aviation, Inc. agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, religion, national origin, sex, martial status, or handicap in the furnishing, or by refusing to furnish, to such persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the City solely to tenants, their employees, customers, patients, client, guests, and invites.

16. ASSIGNING, SUBLETTING AND ENCUMBERING. Devol Aviation, Inc. shall not assign this Agreement in whole or in part, nor sublease all or any part of the Leased Premises, nor permit other persons to occupy said Leased Premises or any part thereof, nor grant any license or concession for all or any part of said Leased Premises, without the prior written consent of the Airport Director, which consent shall not be unreasonably withheld. Any consent by the Airport to an assignment or subletting of this Agreement shall not constitute a waiver of the necessity of obtaining that consent as to any subsequent assignment. Any assignment for the benefit of Devol Aviation, Inc.' creditors or otherwise by operation of law shall not be effective to transfer or assign Devol Aviation, Inc.' interest under this Agreement unless the Airport shall have first consented thereto in writing. Neither Devol Aviation, Inc.' interest in this Agreement, not any estate created hereby in Devol Aviation, Inc. nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided in the Bankruptcy Code. If any of the corporate shares of stock of Devol Aviation, Inc. are transferred, or if any partnership interests of Devol Aviation, Inc. are transferred, by sale, assignment, bequest, inheritance, operation of law, or otherwise, so as to result in a change of the control, assets, value, ownership, or structure of Devol Aviation, Inc., same shall be deemed an assignment for the purposes of this Section 16 and shall require the Airport's prior consent, and Devol Aviation, Inc.

shall notify the Airport of any such change or proposed change.

17. TERMINATION: The City or Devol Aviation, Inc. may terminate this lease at any time by giving the other party 30 days written notice of termination. On the expiration or other termination of this lease Devol Aviation, Inc. right to use the demised premises shall cease, and Devol Aviation, Inc. shall vacate the premises without unreasonable delay. All property installed, erected, or placed by Devol Aviation, Inc. in, on, or about the premises leased hereunder shall be deemed to be personalty and shall remain the property of Devol Aviation, Inc. Devol Aviation, Inc. shall have the right at any time during the term of this agreement, or any renewal or extension hereof, and for an additional period of fourteen (14) days after the expiration or other termination of this agreement, to remove any or all of such property, subject, however, Devol Aviation, Inc.' obligation to repair all damage, if any, resulting from such removal. Any, and all property not removed by Devol Aviation, Inc. prior to the expiration of the aforesaid fourteen (14) day period shall thereupon become a part of the land on which it is located and title hereto shall thereupon vest in the City.

18. INSPECTION BY CITY: The City may enter the premises leased to Devol Aviation, Inc. at any reasonable time for any purpose necessary or incidental to the performance of its obligations or Devol Aviation, Inc. obligations hereunder.

19. NOTICES: Any notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following address:

CITY OF FAYETTEVILLE

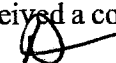
Airport Administration Office
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
Phone: 479-718-7642

DEVOL AVIATION, INC.

Devol Aviation, Inc.
~~dba Aviation Maintenance Professionals~~
Attn: David Devol
~~718 Scagate Drive~~ 2520 W. Shell Point Rd.
~~Tampa, FL 33602~~ Tampa, FL 33611
Ph. 813-785-2248

20. This agreement shall be construed under the laws of the State of Arkansas.

21. All the covenants, conditions, and provisions under this agreement shall extend to and bind the legal representative, successors, and assigns of the respective parties hereof.

I have received a copy of "*The Minimum Standards for the Fayetteville Municipal Airport Drake Field*" .
(tenants initials)



IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

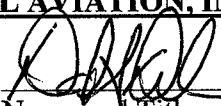
CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Lionold Jordan, Mayor Date

ATTEST

By: _____
Sondra Smith, City Clerk & Treasurer Date

DEVOL AVIATION, INC.

By:  PRESIDENT/OWNER 6/30/2014
Name and Title Date

ATTEST

By:  6/30/2014
Name Date



LEASE ATTACHMENT NUMBER ONE
Rent Adjustment Formula

Rent adjustments shall be made when required by the lease using the following formula:

Date is obtained from the U.S. Department of Labor Bureau of Labor Statistics at the web site www.bls.gov. The chart used is the consumer price index – all urban consumers from 1987 to current. When applying the formula, it is designed to result in the new rent amount. Thus when multiplied by the current rent, the multiplier will be 1 (one) and a fraction reduced to a decimal. The formula allows for a factor of 1% to be added to the rate of increase which provides for a partial catch-up in the rent amount. The 1% is added to the new rent amount. In the event that such CPI is no longer published or otherwise available, the adjustment provided for herein shall be by the successor index (or the most nearly comparable successor index) thereto, adjusted as appropriate to the applicable dates.

$$\text{Current Rent} \times \left[1 + \left(\frac{\text{current index} - \text{base index}}{\text{base index}} \right) \right] + (.01 \times \text{Current Rent}) = \underline{\hspace{2cm}}$$

Example: Current Rent = \$500.00 per month
 Base Index = 189.9 September 2004
 Current Index = 202.0 September 2006

$$\$500.00 \times \left[1 + \left(\frac{202.9 - 189.9}{189.9} \right) \right] + (.01 \times \$500.00) =$$

$$\$500.00 \times [1.0685] + (\$5.00) = \underline{\$539.25 \text{ New Rent}}$$



ACCOUNTING INFORMATION FOR LEASE AGREEMENT

**Devol Aviation, Inc.
Fayetteville Executive Airport, Drake Field**

Lessee Name: Devol Aviation, Inc.

Billing Address: ~~dba Aircraft Maintenance Professionals~~

Attn: David Devol

Cell: (813) 785-2248

~~-718 Seagate Drive~~

Bus: (479) 527-9661
Home:

~~Tampa, FL 33602~~

E-mail: dave@devolaviation.k5coxmail.com

2520 W. Shell Point Rd.

Emergency Ph: ~~(813) 785-2248~~ (479) 957-4067

Tampa, FL 33611

Emergency Contact: Michael Sergeant

Tax I.D. No.: 26-3828334

Social Security No.: —

Date of Birth: —