

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: New Ground Lease for 60' x 60' Hangars

DATE: 3/18/2024

RECOMMENDATION

POLICY DISCUSSION

BUDGET INFORMATION:

STATUS REPORT

~~ANNUAL-~~

OTHER

~~CAPITAL-~~

PRESENTED BY: Phil Eberly, Lead Edge Design Group

COMMISSION ACTION REQUESTED ON: March 18, 2024

PURPOSE:

The purpose of this agenda item is to seek approval for a new Ground Lease to be utilized in conjunction with the new 60' x 60' hangar RFP to construct and lease an aircraft hangar facility at Habersham County Airport.

BACKGROUND / HISTORY:

The Habersham County Airport and Airport Commission are proposing an updated Ground Lease in conjunction with new hangar development at the airport to help meet the demand for hangar space while increasing based aircraft, as well as rental income and ad valorem income from the airport.

- Previous Ground Leases utilized by the airport in the past are several decades old and must be updated to provide maximum benefit and enforcement to the airport and Habersham County, and to comply with current FAA criteria.
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FACTS AND ISSUES:

- The proposed Ground Lease will be shared with those responding to the hangar RFP, allowing them an opportunity to review the lease prior to responding to the RFP.
 - The proposed Ground Lease includes a reversion of the hangars back to the airport after 25 years.
 - The proposed Ground Lease includes the requirement that aircraft stored in hangars pay Ad Valorem taxes in Habersham County.
 - The proposed Ground Lease contains significant upgrades to compliance enforcement and operational protections for the airport and Habersham County.
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OPTIONS:

- 1) Approve recommendation
 - 2) Deny recommendation
 - 3) Commission defined alternative
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RECOMMENDED SAMPLE MOTION: Motion to approve the advertisement of the Request for Proposals package.

DEPARTMENT:

Prepared by: Phil Eberly, Lead Edge Design Group

Director: _____

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

ADMINISTRATIVE
COMMENTS: _____

_____ DATE: _____

County Manager

**HABERSHAM COUNTY AIRPORT
LAND LEASE AGREEMENT**

This Agreement is entered into on the __ day of _____, 20__ by and between Habersham County, a political subdivision of the State of Georgia, ("Lessor") and _____ ("Tenant").

WHEREAS, Lessor is the owner of certain unimproved parcels of real property located at the Habersham County Airport designated for hangars; and

WHEREAS, Tenant submitted a Request for Proposal to Lessor for the construction of a hangar on Parcel _____, which is more particularly described in Exhibit "A" ("Property"); and

WHEREAS, Tenant's Request for Proposal was approved by Lessor; and

WHEREAS, Tenant's Request for Proposal as accepted by Lessor is incorporated herein by reference;

NOW, THEREFORE in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the adequacy and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. **RENTAL OF PROPERTY.** Landlord agrees to rent and lease to Tenant that certain parcel of real property at the Habersham County Airport identified as _____ and further identified in Exhibit "A" which is attached hereto and incorporated herein by reference on the terms and conditions set forth herein. Tenant acknowledges that its interest in said parcel is a usufruct only and Tenant has no ownership rights in or to said parcel.
2. **RENTAL RATE.** The rental rate for the Property shall be \$_____ per square foot per year for the square footage shown on Exhibit A, for an annual rental of \$_____. Said rent shall payable on an annual basis, or on a monthly basis in the amount of _____ per month.
3. **TERM.** The term of this lease shall be for a twenty five (25) year term, commencing on _____, 20__ to _____, 20__. At the end of the twenty-five year lease term, ownership of all hangars, buildings or other improvements thereon shall transfer or revert to Lessor. Tenant shall have first right of refusal to lease the Hangar from the Lessor upon termination of this land lease at fair market rental rates.
4. **EASEMENTS.** In addition to the Property subject to this Lease, Lessor during the term of this Lease, grants and conveys to Tenant, an easement for ingress, egress, placement and maintenance of utilities, and other reasonable and necessary purposes over and across, the portion of the Airport, as is reasonably necessary to provide access to the Property and Hangar, and a

construction easement over and across that portion of the Airport reasonably necessary to construct the Hangar on the Property.

5. **REPRESENTATIONS AND WARRANTIES OF TENANT.** The terms, conditions, warranties and representations made by Tenant in its application to Lessor are incorporated herein and made a part hereof.

6. **COMPLETION OF CONSTRUCTION.** Tenant specifically agrees to construct the hanger referenced in said application according to the design, plans, and specifications contained in its request for proposal and in compliance with all applicable ordinances, codes and regulations. All hangar construction activities by Tenant shall be completed in a manner so as to cause minimal conflict with Airport activities and in any event shall be completed within 18 months from the execution of this lease. Tenant shall allow no materialman's or other liens to attach to the Property or to the improvements. Tenant indemnifies and holds Lessor harmless from any and all claims arising due to the construction of any improvements on the Property whether in contract or due to injury or damage to persons or personal property on the Property due to said construction.

7. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or sublease this lease without prior written approval from Lessor.

8. **ACCEPTANCE OF PROPERTY.** Tenant accepts the Property as is and Lessor makes no representations or warranties to Tenant as to the suitability of the Property for Tenant's purposes.

9. **USE OF PROPERTY.**

(a) Tenant agrees to use the Property for aircraft storage and any other aviation related activity that is approved by Lessor. Tenant shall not use the Property for any unlawful purpose. Tenant's use of the Property is subject to the Rules and Regulations of the Habersham County Airport as may be amended, which Rules and Regulations and any amendments thereto are incorporated herein and made a part hereof. In the event of any conflict in the terms of this lease and the Rules and Regulations, the Rules and Regulations shall control.

(b) Prior to occupancy of the hangar, Tenant shall file with the Airport Manager a list identifying the model and identification number of all aircraft stored within said hangar. All aircraft stored within the hangar must be (i) owned by Tenant, or (ii) in the event the aircraft is owned by a partnership or corporate entity, Tenant must have an ownership of at least 51% in such entity, unless a lesser ownership interest is approved by the Airport Manager.

(c) Tenant shall provide Lessor with a copy of the FAA aircraft registration evidencing the ownership of the aircraft stored within the hangar. In the event the aircraft is owned by a partnership or corporate entity, Tenant shall provide Lessor with a copy of the organizational documents for such entity along with corporate or partnership records verifying Tenant's ownership interest in such entity as per this Paragraph 9. In the event Tenant sells or transfers title to the aircraft identified herein, or in the event Tenant transfers or sells Tenant's interest in the partnership or corporate entity which owns the aircraft, within ten (10) days of the transfer of such

ownership, Tenant shall notify Lessor of the transfer and Tenant shall have six months from the date of transfer to acquire and notify Lessor of Tenant's acquisition of replacement aircraft to be stored in the premises, whether such acquisition is by Tenant, individually, or by the acquisition of a minimum 51% ownership interest in a partnership or corporate entity owning said replacement aircraft (unless a lesser ownership interest is approved by the Airport Manager). Tenant must submit a copy of the new aircraft's FAA registration to the Lessor within 30 days after the date of acquisition along with corporate documents as stated herein. In the event Tenant fails to acquire a replacement aircraft within six months, this Agreement shall terminate and Tenant shall have no further rights in this Agreement or to the premises

10. **UTILITIES, TAXES AND MAINTENANCE.** Tenant is responsible for the electrical bill for the hangar. No other utilities will be furnished. Tenant shall be responsible for ad valorem property taxes on said hangar and improvements. Tenant agrees to maintain the hangar and improvements in good condition for the duration of lease. Tenant hereby releases Lessor from liability for any damage or loss to either person or property of Tenant, and all other persons, occasioned by fire, theft, vandalism, rain, windstorm, hail or any other Act of God, whether said cause the direct, indirect, or merely a contributing factor in producing the loss of any property included, but not limited to any airplane, automobile, personal property, parts or surplus that may be located or stored on said property, offices, aprons, field or any other location at Airport; and Tenant agrees that the aircraft, and their contents are to be stored, whether on the field or in the hangars, at Tenant's risk. Lessor shall have the right to enter the premises for safety and fire inspections.

11. **AD VALOREM TAXES.** Tenant shall to return all aircraft stored within the hangar for ad valorem taxes in Habersham County, Georgia, for the term of lease.

12. **CURRENT INFORMATION.** Tenant agrees to provide Lessor with such information as Lessor determines to be necessary and proper in order to protect the operational interest of the airport, including but not limited to the name, address, email and telephone numbers of the contact for the Tenant, and to promptly inform Lessor of any changes or updates to such information.

13. **INVITEES AND GUESTS.** Tenant is responsible for insuring that all persons entering the Property as a member, guest, employee or invitee of Tenant shall abide by all rules, regulations, and ordinances of the Federal Aviation Administration, the State of Georgia, Habersham County, Georgia, and the Rules and Regulations of the Habersham County Airport. Tenant shall be responsible for any injury or damages caused by the failure of Tenant's guests and invitees to comply with such ordinances or regulations.

14. **INSURANCE.**

(a) Without limiting Tenant's indemnification of Lessor, Tenant shall provide and maintain, at its sole expense, during the term of this Agreement, the policy or policies of insurance with the following limits of coverage covering its operations and liabilities hereunder. Such insurance shall be secured through a carrier satisfactory to Lessor, and evidence of such insurance shall be delivered to Lessor upon issuance of a certificate of occupancy, and on an annual basis. Such evidence shall specifically identify this Agreement and shall contain express conditions that Lessor is to be given written notice, at least thirty (30) days in advance, of any modification or

termination of any policy of insurance. Such insurance shall be primary and noncontributory to any other insurance and shall name the Lessor as additional insured.

- (i) Bodily Injury Liability - \$100,000 per person/\$1,000,000 per occurrence
- (ii) Property Damage Liability - \$1,000,000 per occurrence
- (iii) Single Limit Liability - \$1,000,000 per occurrence

(b) In the event of failure of the Tenant to procure or maintain the above insurance, this Agreement shall automatically terminate and Tenant shall surrender the premises immediately.

(c) The amount of insurance required herein shall be subject to annual review by the County to assure adequate coverage limits apply. County shall have sole discretion with respect to any adjustment of insurance limits and coverages.

15. **INSPECTIONS.** Tenant shall provide a key to any locks maintained by Tenant to secure the premises. Lessor shall have the right to inspect the premises for compliance with the terms of this Lease by giving the Tenant forty eight (48) hours prior notice of the inspection. Tenant agrees to provide access to the premises for the inspection. In the event of emergencies, or in the event of Tenant's default in the terms of this lease, Lessor shall have the right of entry with no prior notice to the Tenant. In such event, Lessor shall have the right to remove any locks which may have been placed upon the hangar in order to gain entry to the premises.

16. **HAZARDOUS MATERIAL.** Tenant shall not release, nor shall Tenant permit any employee, contractor, agent, or invitee to release any Hazardous Material on the Property or into the surrounding land, surface water, or ground water. As used herein, "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any federal, state or local governmental entity. Tenant shall obtain and maintain all necessary permits, approvals, registrations, certificates, and authorizations ("Permits") required under applicable Environmental Laws for the Premises and petroleum equipment, and Tenant shall be responsible for all related costs, fees, and charges. Where cooperation of Lessor is necessary to obtain any such Permits, Lessor shall provide such cooperation but shall not be compelled to become a permittee or co-permittee, and all costs, fees, and charges shall be reimbursed by Tenant within thirty (30) days of presentation of Lessor's statement of same. Upon request by Lessor, Tenant shall provide Lessor with copies of all reports, studies, complaints, claims, directives, citations, demands, inquiries, notices of violation, or orders relating to Hazardous Material at or emanating from or to the Premises, at any time, or any alleged non-compliance with Environmental Laws at the Premises, reasonably promptly (and in no event later than thirty (30) days after such documents are provided to or generated by Tenant). To the extent tenant is required under applicable Environmental laws or by governmental authorities having jurisdiction to report a release of Hazardous Material at, on, under, or from the Premises, Tenant also shall promptly notify Lessor of any release of Hazardous Material at, on, under, or from the Premises and promptly shall abate and remove any such releases as required by applicable Environmental Laws and governmental authorities having jurisdiction. Tenant agrees to indemnify and hold Lessor harmless from any and all claims, damages or actions of any nature arising from or related to any release of a Hazardous Substance on, under or upon the Premises by Tenant or its agents, employees or invitees.

17. **DEFAULT.** Tenant shall be in default hereunder if (a) Tenant fails to pay when due Rent and any other sums due under this lease; or (b) Tenant fails to observe and perform any of the other terms, covenants and/or conditions of this lease, including but not limited to its failure to comply with the Rules and Regulations of the Habersham County Airport. Lessor may terminate the lease and take such other actions as are provided for herein upon lease termination or such other measures as are allowed by law if such default shall continue for more than ten (10) days after written notice from Lessor to Tenant.

18. **TERMINATION.**

(a) Tenant shall have the right to terminate this Agreement on 30 days written notice to the Airport Manager.

(b) Lessor shall have the right to terminate this Agreement at any time and without prior written notice in the event of (i) any action or conduct of Tenant which violates the rules, and regulations of the Airport and constitutes a threat to public safety, or (ii) Tenant's failure to cure an event of default.

(c) Termination of this Lease for any reason shall not relieve Tenant from obligations and/or liability incurred by Tenant prior to termination. No later than three (3) calendar days following termination, Tenant shall, at Tenant's cost and expense, remove Tenant's aircraft and all other property belonging to the Tenant from the Premises, and shall restore the Premises as nearly as practicable to the same state and condition as at the inception of this Agreement. Should Tenant fail to remove Tenant's aircraft and/or personal property as provided herein, Lessor shall have the right to remove said aircraft and all personal property, without further notice and without court order. Lessor will also have the right to repair and restore the Premises to rentable condition, and Tenant shall be responsible for all costs or repair or restoration.

(d) In the event termination occurs in one month, but any property of, or property subject to the control of Tenant remains in the Premises for any portion of a subsequent month, the rent for the next successive month is due and payable in its entirety.

19. **BANKRUPTCY.** If at any time during the Term there shall be filed by or against Tenant or any successor tenant then in possession in any court pursuant to any statute either of the United States or of any state, a petition (i) in bankruptcy, (ii) alleging insolvency, (iii) for reorganization, (iv) for appointment of a receiver, or (v) for any relief under the Bankruptcy Code, or if a similar type of proceeding shall be filed, Lessor may terminate Tenant's rights under this lease by notice in writing to Tenant, and thereupon Tenant shall immediately quit and surrender the Premises to Lessor, but Tenant shall continue liable for the payment of rent and all other sums due hereunder.

20. **REMEDIES.** In the event of a breach by Tenant of any of the covenants or provisions hereof, Lessor shall have, in addition to any other remedies which it may have, the right to evict and dispossess Tenant and invoke any other remedy allowed at law or in equity to enforce Lessor's rights. Lessor's rights hereunder are cumulative.

21. **ATTORNEY FEES.** If Tenant shall at any time be in default hereunder, and if Lessor shall deem it necessary to engage attorneys to enforce Lessor's rights hereunder, the determination of such necessity to be in sole discretion of Lessor, Tenant will reimburse Lessor for the reasonable expenses incurred thereby, including but not limited to court costs and reasonable attorney's fees.

22. **WAIVER.** The failure of Lessor to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed to be a waiver of any rights or remedies that Lessor may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained except as any be expressly waived in writing.

23. **MISCELLANEOUS.**

- (a) Time is of the essence in performance of Tenant's obligations hereunder.
- (b) This Agreement is to be construed in accordance with the laws of the State of Georgia; Tenant consents to jurisdiction in Habersham County Superior Court with regard to any litigation which may be filed arising from the parties' obligations under this lease and Tenant waives any objections to venue in said jurisdiction.
- (c) Notices shall be complete upon mailing to the parties at the following address certified mail return receipt requested or to such other address as the parties may substitute in writing:

Lessor: HABERSHAM COUNTY
130 Jacobs Way
Clarkesville, GA

Tenant: _____

- (d) This Agreement shall be binding upon the parties hereto and their successors and assigns.
- (e) This document represents the full agreement between the parties and may not be modified except in writing and signed by both parties. No oral or other representations or agreements have been relied upon by the parties.
- (f) Tenant's interest in the Property is a usufruct interest only.

IN WITNESS WHEREOF, Lessor and Tenant hereunto have set their hands and affixed their seals on the aforementioned date.

LESSOR:
HABERSHAM COUNTY, a political subdivision
of the State of Georgia

By: _____

Its: _____

TENANT:

DRAFT