

BOARD OF COUNTY COMMISSIONERS

DATE: November 19, 2013

AGENDA ITEM NO. 7

Consent Agenda

Regular Agenda

Public Hearing

County Administrator's Signature:

Subject:

Approval of Second Amendment of Lease Agreement with Renewal Options between Pinellas County and AvAero Services, LLC.

Department:

St. Pete-Clearwater International Airport /
Department of Environment & Infrastructure

Staff Member Responsible:

Noah Lagos, A.A.E., Airport Director
David E. Scott, P.E., Executive Director

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE THE SECOND AMENDMENT OF LEASE AGREEMENT WITH RENEWAL OPTIONS (AMENDMENT) BETWEEN AVAERO SERVICES, LLC (AVAERO) AND PINELLAS COUNTY (COUNTY), AUTHORIZE THE CHAIRMAN TO EXECUTE, AND THE CLERK TO ATTEST.

Summary Explanation/Background:

On July 8, 1986 the County and Air International, Incorporated (Air International) entered into a 21.897 acre Lease Agreement with Renewal Options (Lease) for the purpose of operating a facility for aircraft maintenance, repair and refurbishing, and manufacturing. Air International assigned their Lease to AvAero on April 21, 2005.

The Lease currently grants the Lessee a limited right that allows the sale of fuel. AvAero is not a Fixed Base Operator (FBO), and in accordance with current Airport Rules and Regulations and Airport Minimum Standards, only FBO's reserve the exclusive right to sell fuel and other petroleum products at the Airport. This Amendment will ensure consistency between their Lease, Airport Rules and Regulations, and Airport Minimum Standards by relinquishing AvAero's limited right to sell fuel. The Amendment will also clarify that use of the premises may include aircraft hangar storage, flight school, aircraft charter, and fractional ownership operations.

The leasehold includes six (6) separate parcels of land, five (5) of which adjoin. The remaining, non-adjointing 1.341 acre parcel (Parcel "F") is vacant, irregular-shaped and is not required by AvAero for business purposes or future development. Parcel "F" is located in the proximity of the United States Coast Guard entry gate and adjacent to a main storm water drainage ditch that services the airfield. Due to the parcel's location, the Airport desires to retain Parcel "F" for future storm water and airfield access improvements. For that purpose, the Amendment will also allow for the Airport to take possession of the parcel.

All other provisions of the Lease will remain in full force and effect.

Fiscal Impact/Cost/Revenue Summary:

Upon the Airport's possession of Parcel "F", AvAero shall pay the County a reduced annual rental amount in the sum of \$9,897.19.

Exhibits/Attachments Attached:

Contract Review Transmittal Slip
Second Amendment of Lease Agreement with Renewal Options.
Site Location Map.

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: AvAERO SERVICES, LLC SECOND AMENDMENT TO LEASE AGREEMENT WITH RENEWAL OPTIONS

CONTRACT NO.: N/A

ESTIMATED EXPENDITURE / REVENUE: N/A
(Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT:

This Amendment will relinquish AvAero's existing right to sell petroleum products, clarify that the existing use will allow for aircraft hangar storage, flight school, aircraft charter, and fractional ownership operations, and allow Airport to take possession of a 1.341 acre parcel (Parcel F) of the leasehold for future access and drainage improvements.

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: Airport Noah Lagos, A.A.E.	9/3/13	NL		
Real Estate Mgmt: David DeMonte Mgr., Lease Mgmt	N/A	N/A	N/A	N/A
Risk Mgmt: Virginia Holscher Business Director	N/A	N/A	N/A	N/A
Finance:** Cassandra B. Williams Finance Acct. II	N/A	N/A	N/A	N/A
Legal: Michael A. Zas Sr. Asst. Co. Atty	9/4/13	MZ	See provision 4	OK_Zas
DEI: David E. Scott, P.E.	9/5/13			

Please return to Airport by **September 25, 2013**. All inquiries should be made to **Bob Humberstone** ext. 37820.

** See Contract Review Process

SECOND AMENDMENT TO LEASE AGREEMENT
WITH RENEWAL OPTIONS

THIS SECOND AMENDMENT TO LEASE AGREEMENT WITH RENEWAL OPTIONS, made and entered into this _____ day of _____, 2013, by PINELLAS COUNTY, ("County") a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as LESSOR and AVAERO SERVICES, LLC, a Florida Limited Liability Company, hereinafter referred to as ("LESSEE");

WITNESSETH:

WHEREAS, the County and Air International, Incorporated (Air International) have previously entered into a Lease Agreement with Renewal Options (Lease Agreement) on July 8, 1986 for the purpose of aircraft maintenance, repair, refurbishing and manufacturing; and

WHEREAS, Avantair, Incorporated ("Avantair"), a Nevada corporation, and Air International as an assignor entered into an Asset Purchase Agreement dated September 2, 2004 pursuant to which Air International agreed to transfer and assign to Avantair, and Avantair agreed to assume from Air International all right, title, and interest in, to and under the Lease Agreement; and

WHEREAS, pursuant to that certain assignment agreement dated January 12, 2005, Avantair assigned all of its rights and obligations under the Purchase Contract to LESSEE; and

WHEREAS, an Assignment, Assumption and Amendment of Lease was dated April 21, 2005, by and between Air International, LESSEE, and LESSOR; and

WHEREAS, the LESSEE does not require a certain surplus 1.341 acre portion (Parcel "F") of the existing leasehold premises for aviation operations, and both LESSOR and LESSEE deem it desirable to remove said surplus portion of acreage from the leasehold premises; and

WHEREAS, LESSEE and LESSOR desire to clarify LESSEE'S allowable use of the Premises, subleasing, and the sale of petroleum products; and

WHEREAS, the parties now desire to amend certain terms of said Lease Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings contained herein, the Parties hereto covenant and agree to amend the Lease Agreement as follows:

1. Description of Premises: LESSOR does hereby releases LESSEE from that certain portion of the premises described in Exhibit "A" of the Lease Agreement as Parcel "F" consisting of 58,425 sq/ft of vacant land.

2. Rental and Method of Payment: The parties hereto hereby agree that for computing the adjusted annual rental, the total square footage of the Premises shall therefore not include Parcel "F" of which will adjust the annual rental by removing 58,425 sq/ft of land area from the Premises. Total annual rental amount to be deducted is \$9,897.19.

3. Rent Adjustment: Pursuant to Paragraph 4 of the Lease Agreement, for purposes of determining future CPI increases, the fixed annual rental dollar amount shall be revised to reflect the amended rental amount. The current annual rental dollar amount for calculation purposes shall be One Hundred Sixty-one Thousand, Five Hundred Eighty Dollars and Sixty-three Cents (\$161,580.63).

Effective on November 1, 2013, LESSOR shall take possession of Parcel "F". Upon LESSOR'S possession of Parcel "F", LESSEE shall pay LESSOR a reduced rental amount in the sum of \$12,640.29 per month (\$151,683.48 as annual rent) together with applicable state sales tax thereon, as specified in Paragraph 3 of said Lease Agreement.

4. USE: The Lease Agreement is hereby amended in Paragraph 8 of the Lease and substituted as follows:

LESSEE shall be allowed to utilize the Premises for non-transient aircraft hangar storage, flight school, aircraft charter, fractional ownership operations, maintenance, repair, refurbishing and manufacturing of aircraft, provided that

exercise of any allowable use is not inconsistent with Airport operations and Airport Minimum Standards that may be amended from time to time. LESSEE shall not utilize the Premises for any other purpose without the express prior written consent of LESSOR, and any unauthorized use of the Premises shall constitute a material breach and default, subject to the provisions of Paragraph 27 of the Lease Agreement.

Nothing herein is to be construed to authorize LESSEE to conduct business as a Fixed Base Operation (FBO). THIS IS A PROHIBITED ACTIVITY. FBO's reserve exclusive rights to engage in aircraft emergency recovery services, aircraft line services and courtesy ramp assistance, retail sale and dispensing of aviation gasoline, fuels, and lubricants, and transient aircraft hangar rentals, storage, and tie-down space rentals. For the purposes herein, non-transient is to be defined as aircraft with a written contractual relationship with LESSEE equal to or greater than a six-month period.

5. SUBLEASE AND ASSIGNMENT: The Lease Agreement is hereby amended in Paragraph 13 of the Lease and substituted as follows:

LESSEE shall not assign this Lease Agreement without the prior written consent of LESSOR. A consent to, or acquiescence in one assignment by LESSOR shall not be deemed a consent to, or acquiescence in any subsequent assignment. Any such assignment without such prior written consent shall constitute a material breach of this Lease Agreement and shall be considered a default by LESSEE subject to the provisions of Paragraph 27 herein. LESSOR agrees that such consent to assignment shall not be unreasonably withheld, conditioned or delayed. Any such assignment shall be subject to all of the terms and conditions of this Lease Agreement.

Notwithstanding the foregoing, LESSOR hereby consents and agrees that LESSEE may freely sublet portions of the Premises to subtenants and/or to grant concessions in the Premises to concessionaires and/or to license portions of the Premises to licensees, without the requirement to obtain LESSOR'S consent; provided, however, no such sublease, concession or license shall exceed 25% of any leasehold building's floor area or release LESSEE from its obligations under this Lease Agreement. LESSEE'S, subtenants, concessionaires or licensees shall abide by the terms of this Lease Agreement, with the use of the Premises complying with zoning, Airport and FAA regulations.

6. PETROLEUM PRODUCTS: Paragraph 15 of the Lease Agreement is null and void and substituted as follows:

For the purpose of self-fueling LESSEE shall be responsible for fuel flowage fee payments to Airport at the prevailing rate and calculated upon the amount shown upon the delivery tickets of all gasoline and jet fuel delivered to the LESSEE at, or on the Premises. LESSEE shall furnish copies of all delivery tickets by the dispensing company. Said delivery tickets shall be mailed monthly by LESSEE beginning on the first day of the month and must be received by the Airport Director no later than the 10th day of each month for the preceding month's deliveries, and shall be accompanied by an accurate monthly statement indicating the respective gallonage on such products furnished by the suppliers to the LESSEE for storage at the Airport.

7. Effective Date: Said Second Amendment to Lease Agreement With Renewal Options shall be and become effective as of the date hereof.

8. OTHER: All other provisions of the Lease Agreement between the Parties dated July 8, 1986 and Assignment, Assumption and Amendment of Lease dated April 21, 2005 shall remain in full force and effect.

(The remainder of this page is left intentionally blank.)

IN WITNESS WHEREOF, LESSOR and LESSEE have caused this Second Amendment to the Lease Agreement with Renewal Options to be executed as of the day and year first above written.

ATTEST:
KEN BURKE
CLERK OF THE CIRCUIT COURT

LESSOR:
PINELLAS COUNTY, FLORIDA,
by and through its Board of
County Commissioners

By: _____
Deputy Clerk

By: _____
Chairman

(Seal)

ATTEST:

LESSEE:
AVAERO SERVICES, LLC

By: _____

By: Maria Quijano
Its: Managing Member

APPROVED AS TO FORM:

By: M. Zuo
Senior Assistant County Attorney

APPROVED AS TO CONTENT:
OFFICE OF THE AIRPORT DIRECTOR

By: Noah Lagos
Noah Lagos, A.A.E. Airport Director

CORPORATE ACKNOWLEDGMENT
AVAERO SERVICES, LLC

STATE OF California)
COUNTY OF Los Angeles)^{ss.}

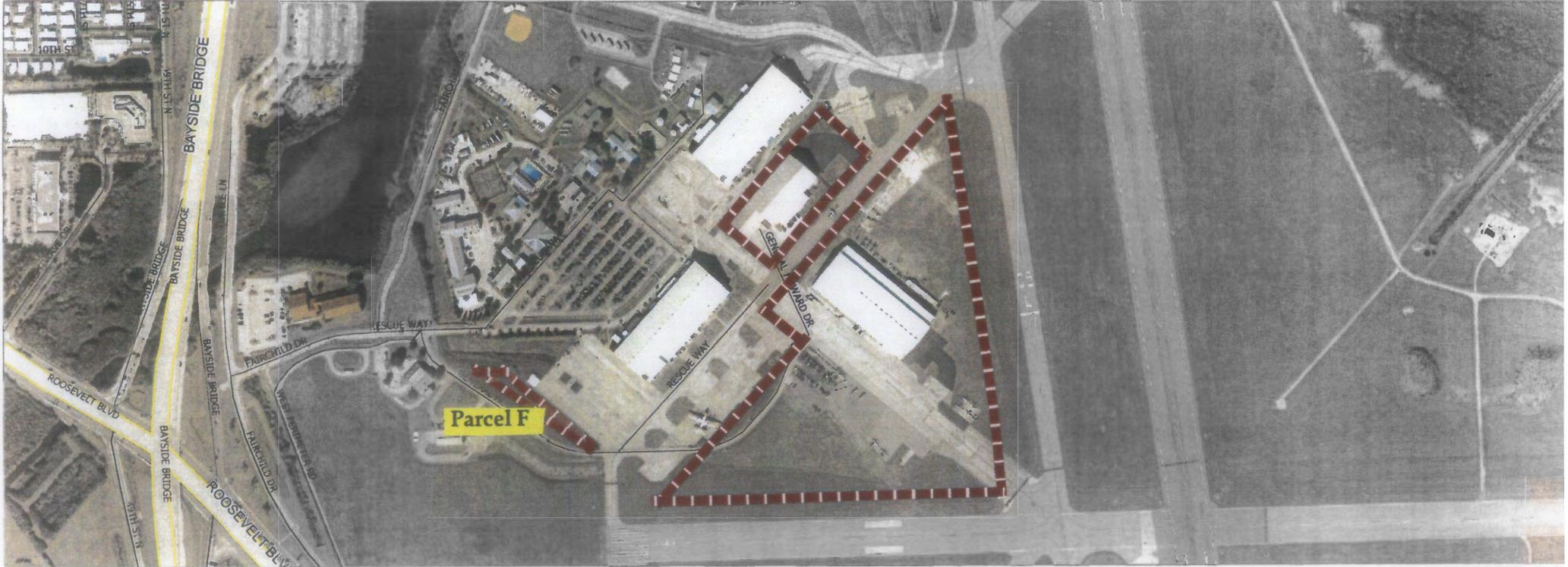
BEFORE ME personally appeared Mark Dessy, to me well known and known to me to be the individual described in and who executed the foregoing instrument as managing member of the above-named corporation, and severally acknowledged to and before me that they executed such instrument, of said corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was affixed to said instrument by due and regular corporate authority, and that said instrument is the free act and deed of said corporation.

WITNESS my hand and official seal this 24th day of September, 2013.

Chelsea M Johnson
Notary Public

My Commission Expires: Feb 9, 2017





AvAero Services, LLC Site Location Diagram