

City of Fayetteville Staff Review Form

2022-0261

Legistar File ID

4/5/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Summer Fallen

3/18/2022

AIRPORT SERVICES (760)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval and signature of the Mayor on a ground lease with Dawson Aero, LLC & Shannon Homes, LLC for land located on the east side of Drake Field off of taxiway G to construct a 120' X 100' hangar.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u> No </u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u> No </u>	Item Cost \$ -
Budget Adjustment Attached? <u> No </u>	Budget Adjustment \$ -
	Remaining Budget \$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF APRIL 5, 2022

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Terry Gulley, Assistant Public Works Director

FROM: Summer Fallen, Airport Director

DATE: March 18, 2022

SUBJECT: **Ground Lease with Dawson Aero, LLC and Shannon Homes, LLC**

RECOMMENDATION:

Staff recommends approval and signature of the Mayor on a ground lease with Dawson Aero, LLC and Shannon Homes, LLC for land located on the east side of Drake Field off of taxiway G to construct a 120' X 100' hangar.

BACKGROUND:

The area in question was originally improved via grant funds to support the Arkansas Forestry service who has since terminated their lease. This area will allow for the construction of four additional corporate size hangars on the field.

DISCUSSION:

Dawson Aero, LLC and Shannon Homes, LLC will construct at 120' X 100' corporate hangar at Drake Field. This hangar will have the ability to house multiple corporate sized aircraft.

BUDGET/STAFF IMPACT:

Dawson Aero, LLC and Shannon Homes, LLC will pay \$2,160 per year during the 18-month discount period, and \$4,200 per year after the discount period is expired.

Attachments:

Staff Review Form
City Council Memo
Ground Lease
Exhibit A
Exhibit B

Ground Lease Agreement
between The City of Fayetteville, Arkansas
And
Dawson Aero, LLC & Shannon Homes, LLC

The purpose of this Lease Agreement is to establish an agreement between the City of Fayetteville, Arkansas (“CITY”) and Dawson Aero, LLC, a foreign LLC registered to do business in Arkansas & Shannon Homes, LLC (“LESSEES”) for the use of space for the construction of an aircraft hangar and associated aprons and taxilanes as described below.

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by LESSEES as obligations to the CITY, the CITY lets, leases and demises unto LESSEES, subject to the terms and conditions contained herein, the following described property situated in Washington, County, Arkansas:

A certain tract of land located on the eastside of the airport off of taxiway G for a building for construction of a 120’ x 100’ hangar.

2. **Term.** The initial term is for forty (40) years beginning on _____, 2022, and shall end on _____, 2062 unless otherwise terminated, canceled or extended as set forth hereinbelow:

- a. LESSEES shall have eighteen (18) months from _____, 2022 (the “Discount Period”) to begin construction of the hangar. The CITY or LESSEES may terminate this lease at any time by giving the other party thirty (30) days written notice of termination during the first eighteen (18) months following the _____ 2022 date, or prior to the ground breaking for the new facility, whichever occurs earlier. The Discount Period may be extended by up to an additional eighteen (18) months upon written agreement of CITY and LESSEES. Failure to begin construction before _____ 2022 (or the expiration of any extended period agreed upon by the parties pursuant to this subsection) shall be an automatic cancellation of this ground lease. EXHIBIT A contains the fuel pricing breakdown that is valid for the term of the lease.
- b. Option to Extend. LESSEES shall have the option to extend the lease term of this lease for one (1) period of five (5) years if LESSEES have satisfied the following conditions:
 - i. LESSEES have complied with and performed all conditions, covenants, and terms of the Agreement without any defaults known to LESSEES, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.
 - ii. Notice of LESSEES’ request to renew has been made and presented in writing to the City at least one hundred twenty (120) days prior to the expiration of the initial term.
 - iii. The amount of rental fees shall have been successfully negotiated and agreed to by the parties for the extended lease term.

3. **Rent.** LESSEES agree to pay to CITY for the Discount Period set forth in paragraph 2.A above a discounted annual ground rental fee of eighteen cents (\$0.18) per square foot of total leased ground space. Annual rental due for this Discount Period is TWO THOUSAND ONE HUNDRED AND SIXTY DOLLARS (\$2,160). The discounted rate shall expire at the end of Discount Period (including any extension agreed upon by the parties pursuant to paragraph 2.A above) or upon the issuance of a Final Certificate of Occupancy, whichever shall occur first.

Upon the expiration of the Discount Period, LESSEES agree to pay to CITY an annual ground rental rate of thirty-five cents (\$0.35) per square foot of total leased ground space. Annual rental due for this period of time is FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200).

Rental payments during the Discount Period shall be paid in advance on the first day of each month beginning _____, 2022. Rental payments after the Discount Period shall be paid in advance in yearly installments on the first day following the issuance of a final certificate of occupancy.

A delinquency charge shall be imposed on payments not received by the close of business on the tenth (10th) day after the due date. Such delinquency charge shall be the maximum amount allowable under Arkansas law. Payments shall be delivered or mailed to: City of Fayetteville, 4500 S School Ave Ste. F, Fayetteville, Arkansas 72701.

4. **Use.** LESSEES agree to use the leased premises only as an aircraft hangar and any other related lawful purposes.

- a. **Flammable Material:** LESSEES agree not to store any flammable material on the leased premises other than a limited supply of oils and agents necessary for the operation of an aircraft hangar.
- b. **Hazardous Substances.** LESSEES shall not cause or permit any hazardous substances to be used or stored on or in the leased premises without first obtaining 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 become contaminated in any manner for which LESSEES are responsible or legally liable, LESSEES shall indemnify and hold harmless CITY from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises or damages caused by loss or restriction of rentable or usable space as part of the leased premises) arising during or after the term hereof and arising as a result of that contamination by LESSEES, LESSEE'S agents, employees or invitees. This indemnification includes, without limitation, any costs incurred because of any investigation of the airport or any cleanup removal or restoration mandated by a federal, state, or local agency or political subdivision.

- c. LESSEES shall not start or operate aircraft engines within the facility to be constructed on the leased premises and shall not allow such operations by any other person.

5. **Use of the Airport.** LESSEES are granted the use, in common, without charge, 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, floodlights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and takeoffs.

LESSEES agree to observe and obey the CITY's ordinances and regulations with respect to use of the leased premises and airport as well as all applicable county, state or federal regulations or laws. LESSEES agree to abide by "The Minimum Standards for the Fayetteville Municipal Airport Drake Field".

6. **Repairs, Maintenance and Appearance.** LESSEES shall at all times during the term of this agreement, at their expense, keep and maintain in good repair and safe condition the leased premises and the equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not due to wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions and betterments. LESSEES acknowledge that they are responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. LESSEES shall at all times maintain the leased premises in a clean, orderly, and attractive condition and will not allow the accumulation of rubbish, trash, refuse or any other unsightly condition or fire hazard on the leased premises. LESSEES shall be responsible for all janitorial services and trash removal from the leased premises.

In the event LESSEES fail to repair or maintain the leased premises as required, CITY may enter the leased premises for the purpose of making such repairs necessary to maintain the structural integrity of the hangar or to perform any maintenance required to keep the leased premises in a clean, orderly and attractive condition. LESSEES shall be liable for any costs incurred by the CITY in the event CITY exercises its authority due to LESSEE'S Failure to make necessary repairs or perform other required maintenance work.

7. **Alterations and Improvements.** Following issuance of a final certificate of occupancy for the hangar and office space to be constructed on the leased premises, LESSEES shall have prior written consent from the CITY, meeting all CITY requirements, to make any alterations, additions and improvements LESSEES deem necessary and desirable to the interior of the leased premises. LESSEES shall not be entitled to make any major or material alterations, additions or changes to the exterior of the leased premises without the CITY's written consent. LESSEES acknowledge and agree that all such alterations, additions, attachments and improvements including, but not limited to, paneling, partitions, railings, floors, ceilings and the like, shall become the property of the CITY upon the termination of this agreement.

8. **Insurance.** LESSEES shall obtain and maintain sufficient insurance coverage for the repair or replacement of the leased premises and any adjacent improvements, with an insurance company licensed to do business in the State of Arkansas, naming the CITY as an Additional Insured on the policy. LESSEES shall provide the Airport Director with a valid certificate of insurance at all times during the term of this agreement. LESSEES acknowledge that it is their responsibility to maintain insurance on any personal property on the leased premises.

9. **Sub-Leasing and Assignment.** LESSEES shall not assign this lease or sublet the Leased Premises without prior written consent of the CITY of Fayetteville. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3 above. Any such assignment or subletting shall in no way relieve LESSEES from liability for the obligations imposed by this lease. LESSEES may only be released from liability by a specific written release executed by the CITY.

10. **Events of Default.** The following shall be Events of Default under this agreement:

- a. LESSEES shall fail to pay when due and owing any rent and such nonpayment continues for twenty days after written notice by the CITY;
- b. LESSEES voluntarily abandon, desert or vacate the leased premises;
- c. LESSEES fail to comply with the insurance requirements set forth above;
- d. LESSEES fail to observe or perform any other obligation under the terms of this agreement and such failure is unremedied for twenty (20) days after the CITY has provided written notice specifying such default. CITY may, but is not required to, grant LESSEES such additional time as is reasonably required to correct any such default if LESSEES have instituted corrective action and are diligently pursuing the same; or
- e. LESSEES fail to provide and maintain any security assurances required under the terms of this agreement.

11. **Remedies Upon Default.** Whenever an Event of Default shall occur, and at its exclusive option, CITY may deliver to LESSEES written notice of termination specifying the date upon which the agreement shall terminate. In the event of termination, LESSEES rights to possession of the leased premises shall immediately cease. CITY may reenter and take possession of the leased premises and LESSEES shall surrender possession. Upon termination, LESSEES shall be liable to CITY for payment of:

- a. All rents and sums accrued through the date of termination.
- b. The reasonable costs incurred by CITY to re-let the leased premises, or any portion thereof; and

- c. The reasonable cost incurred by CITY to restore the leased premises or any portion thereof to the condition in which they were originally leased, ordinary wear and tear excepted; and
- d. Reasonable attorney's fees and costs related to the termination of the lease agreement including those incurred through the judicial process if LESSEES fail to vacate.

All rental payments received by CITY from re-letting the leased premises after termination of this agreement shall be credited against the LESSEES' Outstanding Rental Balance. The acceptance by CITY of any rent payments by LESSEES after termination of this agreement shall not be considered a reinstatement or waiver of any other remedies available to CITY.

CITY may also pursue any other available right or remedy available to it in the event of default.

12. **Joint and Several Liability of Lessees.** LESSEES acknowledge that they are jointly and severally liable for the obligations imposed on them by this agreement

13. **Expiration or Termination.** LESSEES hereby agree that upon termination of this lease by expiration or by earlier termination for any reason whatsoever, it will remove its property from the leased premises immediately. All property installed, erected or placed by LESSEES in, on, or about the leased premises shall be deemed to remain the property of CITY.

14. **Closure of Airport.** In the event that the Fayetteville Municipal Airport facility and property are no longer used by the CITY for aviation purposes, LESSEES may remain in possession of the premises until the end of the lease term with the right to use the premises for any use allowable under Arkansas law.

15. **Taxes.** LESSEES shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term.

16. **Indemnity.** LESSEES agree to indemnify the CITY against any liability for injuries to persons or damage to property caused by LESSEE'S gross negligent use or occupancy of the leased premises; provided, however, that LESSEES shall not be liable for any personal injury, damage or loss occasioned by the negligence of the 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 may in any way directly or indirectly affect either party. 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 granted to the CITY under Arkansas law.

17. **Non-Waiver.** It is agreed that the failure of CITY to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by LESSEES under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent the CITY from invoking such remedies in the event of any future breach or default.

18. **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 addresses:

LESSEES

Dawson Aero, LLC
4468 Jean Lane
Fayetteville, AR 72704

Shannon Homes, LTD., A Limited Liability Company
17663 Highway 412 East
Springdale, AR 72764

CITY

City of Fayetteville
ATTN: Airport Manager
4500 S School Ave. Ste. F
Fayetteville, Arkansas 72701

19. **Succession.** This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

20. **Severability.** Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

21. **Interpretation.** This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

22. **Entire Agreement.** This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

CITY OF FAYETTEVILLE:

DAWSON AERO, LLC & SHANNON HOMES, LLC

By: _____
LIONELD JORDAN, Mayor

By: Charles C. Dawson
Printed Name: Charles C. Dawson

ATTEST:

Title: Manager

By: _____
KARA PAXTON, CITY Clerk

By: Kaedon Steinert
Printed Name: Kaedon Steinert
Title: Manager - Shannon Homes LLC

EXHIBIT A

YEARLY TIERED FUELING DISCOUNT BREAKDOWN- DAWSON AERO

<u>1-50,000 GALLONS</u>	COST + .55
<u>50,001-75,000 GALLONS</u>	COST + .45
<u>75,000-100,000+ GALLONS</u>	COST + .40

**** DISCOUNT RESETS AS OF JANUARY 1 EACH YEAR**

Exhibit B

