

**City of Fayetteville Staff Review Form**

**2022-0462**

**Legistar File ID**

**6/7/2022**

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

Summer Fallen

5/17/2022

AIRPORT SERVICES (760)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval and signature of the Mayor on a ground lease with N79TW, LLC for land located immediately north of the Drake Field Terminal building at 4240 S School Ave for construction of a 75' x 100' hangar.

**Budget Impact:**

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

V20210527

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF JUNE 7, 2022**

**TO:** Mayor and City Council

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

**FROM:** Summer Fallen, Airport Director

**DATE:** May 17, 2022

**SUBJECT: Ground Lease with N79TW, LLC**

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**RECOMMENDATION:**

Staff recommends approval and signature of the Mayor on a ground lease with N79TW, LLC for land located to the north of Drake Field as depicted in Exhibit A to construct a 75' X 100' hangar.

**BACKGROUND:**

The area in question is currently unoccupied. This area will allow for the construction of one additional corporate size hangar on the field.

**DISCUSSION:**

N79TW, LLC will construct a 75' X 100' corporate hangar at Drake Field. This hangar will have the ability to house multiple corporate sized aircraft.

**BUDGET/STAFF IMPACT:**

N79TW, LLC will pay \$1,350 per year during the 18-month discount period, and \$2,625 per year after the discount period is expired.

**Attachments:**

Staff Review Form  
City Council Memo  
Ground Lease  
Exhibit A

**Ground Lease Agreement**  
**between The City of Fayetteville, Arkansas**  
**And**  
**N79TW, LLC**

The purpose of this Lease Agreement is to establish an agreement between the City of Fayetteville, Arkansas (“CITY”) and N79TW, LLC (“LESSEE”) 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 LESSEE as obligations to the CITY, the CITY lets, leases and demises unto LESSEE, subject to the terms and conditions contained herein, the following described property situated in Washington, County, Arkansas:

A certain tract of land located immediately north of the Drake Field Terminal building as depicted on Exhibit “A” attached hereto for construction of a 75’ x 100’ hangar. The leased premises shall be further legally described in a survey to be obtained by LESSEE within sixty (60) days of the execution of this Agreement.

2. **Term.** The initial term is for thirty (30) years beginning on \_\_\_\_\_, 2022 (the “Effective Date”), and shall end on \_\_\_\_\_, 2052 unless otherwise terminated, canceled or extended as set forth hereinbelow:

- a. LESSEE shall have eighteen (18) months from the Effective Date (the “Discount Period”) to begin construction of the hangar. The Discount Period may be extended by up to an additional eighteen (18) months upon written agreement of CITY and LESSEE. Failure to begin construction before expiration of the Discount Period (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.
- b. Option to Extend. LESSEE shall have the option to extend the lease term of this lease for one (1) period of ten (10) years if LESSEE has satisfied the following conditions:
  - i. LESSEE has complied with and performed all conditions, covenants, and terms of the Agreement without any defaults known to LESSEE, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.
  - ii. Notice of LESSEE’s 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.** LESSEE agrees 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 ONE THOUSAND THREE HUNDRED AND FIFTY DOLLARS (\$1,350). 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, LESSEE agrees to pay to CITY an annual ground rental rate of twenty-five cents (\$0.35) per square foot of total leased ground space. Annual rental due for this period of time is TWO THOUSAND, SIX HUNDRED AND TWENTY-FIVE DOLLARS (\$2,625).

Rental payments during the Discount Period shall be paid in advance on the first day of each month beginning with the first full calendar month after the month of the Effective Date. 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 and on the same annual anniversary thereof. Rental charges shall be reviewed every five (5) years and the rental charges for the next five (5) years of the lease term will be adjusted up to reflect the Consumer Price Index (CPI) plus one (1) percent.

A delinquency charge shall be imposed on payments not received by the close of business on the tenth (10<sup>th</sup>) 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.** LESSEE agrees to use the leased premises only as an aircraft hangar and any other related lawful purposes.

- a. **Flammable Material:** LESSEE 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.** LESSEE 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 LESSEE is responsible or legally liable, LESSEE 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 LESSEE, 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. LESSEE 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.** LESSEE is 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.

LESSEE agrees 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. LESSEE agrees to abide by "The Minimum Standards for the Fayetteville Municipal Airport Drake Field".

6. **Repairs, Maintenance and Appearance.** LESSEE 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. LESSEE acknowledges that it is responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. LESSEE 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. LESSEE shall be responsible for all janitorial services and trash removal from the leased premises.

In the event LESSEE fails 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. LESSEE 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, LESSEE shall have prior written consent from the CITY, meeting all CITY requirements, to make any major or material alterations, additions and improvements LESSEE deems necessary and desirable to the interior of the leased premises, which will not be unreasonably withheld. LESSEE 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, which will not be unreasonably withheld. LESSEE acknowledges and agrees 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.** LESSEE 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. LESSEE shall provide the Airport Director with a valid certificate of insurance at all times during the term of this agreement. LESSEE acknowledges that it is its responsibility to maintain insurance on any personal property on the leased premises.

9. **Sub-Leasing and Assignment.** LESSEE may lease the building/improvements constructed on Leased Premises to another party, but shall not assign this lease or sublet the underlying Leased Premises without prior written consent of the CITY of Fayetteville, which will not be unreasonably withheld. LESSEE shall notify the CITY if it leases any portion of the building/improvements on the Leased Premises and provide the name and contact information of any other person or entity occupying the building/improvements on the Leased Premises. 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 LESSEE from liability for the obligations imposed by this lease. LESSEE 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. LESSEE shall fail to pay when due and owing any rent and such nonpayment continues for twenty days after written notice by the CITY;
- b. LESSEE voluntarily abandons, deserts or vacates the leased premises;
- c. LESSEE fails to comply with the insurance requirements set forth above;
- d. LESSEE fails 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 LESSEE such additional time as is reasonably required to correct any such default if LESSEE has instituted corrective action and is diligently pursuing the same; or
- e. LESSEE fails 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 LESSEE written notice of termination specifying the date upon which the agreement shall terminate. In the event of termination, LESSEE's rights to possession of the leased premises shall immediately cease. CITY may reenter and take possession of the leased premises and LESSEE shall surrender possession. Upon termination, LESSEE shall be liable to CITY for payment of:

- a. All rents and sums accrued through the date of termination but not thereafter;
- b. The reasonable costs incurred by CITY to re-let the leased premises, or any portion thereof, but not any special, indirect, or consequential damages or further rent;
- 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 LESSEE fails to vacate.

The acceptance by CITY of any rent payments by LESSEE 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. LESSEE may pursue any remedies at law against CITY for breach of this lease, including specific performance.

12. **Expiration or Termination.** LESSEE hereby agrees 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 buildings installed, erected or placed by LESSEE in, on, or about the leased premises shall be deemed to remain the property of CITY. Notwithstanding anything herein to the contrary, LESSEE shall have the right to terminate this agreement at any time upon giving sixty (60) days written notice to CITY and by paying CITY a termination fee in the amount of one (1) year additional rent.

13. **Closure of Airport.** In the event that the Fayetteville Municipal Airport facility and property are no longer used by the CITY for aviation purposes, LESSEE 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.

14. **Taxes.** LESSEE 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.

15. **Indemnity.** LESSEE agrees 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 LESSEE 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.

16. **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 LESSEE 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.

17. **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:

**LESSEE**

N79TW, LLC  
4058 North College, Suite 300  
Fayetteville, AR 72703

**CITY**

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

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

19. **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.

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

21. **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.

23. **LESSEE'S First Right of Refusal (Sale or Lease).** Commencing on the date hereof and during the term, LESSEE shall have the right of first refusal to purchase the Leased Premises and CITY shall not sell, contract to sell, transfer, lease or otherwise dispose of or convey all or any part of CITY'S interest in the Leased Premises without complying with the terms hereof. If and when CITY receives a bona fide offer for the Leased (or any part thereof), whether through public bidding processes or otherwise, the Fayetteville City Council passes a resolution of intent to sell the Leased Premises, and the Federal Aviation Administration has authorized the sale, CITY shall provide written notice thereof (with a copy of the offer) to LESSEE. LESSEE shall have twenty (20) days after receipt of CITY's notice and offer to provide CITY with a written response and notice that LESSEE elects to exercise its first right to purchase the Property from CITY on the same terms offered or awarded via public bidding or otherwise, in which case the parties hereto



will proceed to consummate the sale of the Leased Premises on those terms. Otherwise, if LESSEE declines or fails to exercise its right within this time period, then CITY may proceed to sell the Leased Premises to the third-party offeror on the terms offered. These terms and this right shall apply to all subsequent and additional offers received by CITY, including a change in the terms of sale previously disclosed to LESSEE. The terms and rights herein shall also apply to any lease of the Leased Premises after the term hereof and LESSEE shall have the first right to re-lease the Leased Premises after the term as provided above.

**CITY OF FAYETTEVILLE:**

**TENANT**

By: \_\_\_\_\_  
LIONELD JORDAN, Mayor

By: N79TW, LLC   
Printed Name: SCOTT A PETERS

**ATTEST:**

Title: MANAGER

By: \_\_\_\_\_  
KARA PAXTON, CITY Clerk

EXHIBIT "A"

