

 <p style="text-align: center;"><b>Council Communication</b> Office of the City Manager</p>	<b>Date</b>	July 23, 2007
	<b>Agenda Item No.</b> 56A <b>Roll Call No.</b> <u>07-</u> <b>Communication No.</b> <u>07-445</u> <b>Submitted by:</b> Allen McKinley, Finance Director and Craig Smith, A.A.E. Aviation Director	

**AGENDA HEADING:**

Approval of First Amendment to Fixed Base Operator Lease and Agreement with Elliott Aviation of Des Moines, Inc. for Services at the Des Moines International Airport.

**SYNOPSIS:**

Recommend approval of First Amendment to Fixed Base Operator Lease and Agreement with Elliott Aviation of Des Moines, Inc. On May, 21, 2007, Elliott Aviation and the City of Des Moines entered into a new Fixed Base Operator Lease and Agreement for services at the Des Moines International Airport. The Agreement contained a provision to allow for the issuance of Special Facility Revenue Bonds to finance the cost of the construction of a regional headquarters for the company. Specific terms regarding the financing need to be incorporated into the Agreement and City and Airport staff have prepared an Amendment to the Agreement to include such terms.

**FISCAL IMPACT:**

Amount: The Agreement calls for Elliott Aviation to continue under the existing lease rate terms (currently \$69,058 annually) until December 31, 2011, and then pay \$220,000 annually beginning January 1, 2012. The base lease rate shall be adjusted for changes in the Consumer Price Index every two years thereafter. The Bonds will not directly financially impact the Airport or the City but will be issued to assist Elliott in financing a project involving nearly \$6 million in facilities benefiting the Des Moines community. The Amendment to the Agreement is not expected to have any direct fiscal impact beyond what was contemplated in the original Agreement.

Funding Source: Revenues will be generated within the Airport Enterprise Fund and will be credited toward the Airport’s general operating fund to offset ongoing expenses (Fiscal Year 2007-08 Operating Budget, Aviation Department, Airport Operations Fund, EN002, AIR040100, page 67).

**ADDITIONAL INFORMATION:**

On February 1, 1982, by Roll Call, No. 82-444, City Council approved a twenty-year Lease Agreement with Elliott Flying Services for certain premises, facilities and rights at the Des Moines International Airport. The Agreement contained two (2), five (5)-year options that, as exercised, extends the Agreement until January 31, 2012. On April 1, 1991, by Roll Call, No. 91-1318, City Council approved a First Amendment to the original Agreement modifying certain terms of the original Agreement.

On May 6, 1996, by Roll Call, No. 96-1666, City Council approved the assignment of the Agreement from Elliott Flying Service, Inc. to Elliott Aviation of Des Moines, Inc ("Elliott").

On October 21, 1996, by Roll Call 96-3581, City Council approved a Second Amendment to the original Lease Agreement allowing for the construction of temporary above ground fuel storage tanks to comply with Federal and State regulations. Elliott ultimately installed underground fuel storage tanks in compliance with existing regulations.

On May 1, 2007, by Resolution No. A07-85, the Airport Board recommended that the City Council approve a new Agreement with Elliott that provided, among other things, construction of a regional headquarters and FBO facility while holding out the prospect of the City of Des Moines issuing the Special Facility Bonds in an amount not to exceed \$6.0 million, the proceeds of which would be loaned to Elliott to be used for the construction. On May 21, 2007, by Roll Call No. 07-1013, City Council approved the Agreement with Elliott.

On June 18, 2007, by Roll Call No. 07-1232, the City Council held a public hearing on the matter of issuing the bonds and resolved to initiate proceedings relating to the issuance of the bonds. It was known by all negotiating parties at the time the Agreement was entered into that the terms of the bond transaction were not finalized. It was contemplated that certain amendments to the Lease would likely be necessary to accommodate the Bond issuance. The Board was previously informed when it approved the Agreement that all necessary documents to outline the exact structure of the financing were still being discussed and drafted.

It has now been negotiated that the Bond proceeds will be loaned to Elliott and held by a trustee to pay for the project's construction. The Bonds are 20-year bonds and Elliott's obligation to pay will be backed by an irrevocable letter of credit issued by U.S. Bank (the "Bank"). In turn, Elliott promises that it will reimburse the Bank for any draws under the letter of credit. As security for issuing the letter of credit and the promise to reimburse, the Bank is seeking a mortgage on the Elliott leasehold at the Airport. In the event of default on the promise to reimburse, the Bank, as leasehold mortgagee, would foreclose on the mortgage and find a new tenant at the same rent and upon the terms, covenants and conditions of the lease. Furthermore, in the event the new facility is destroyed, any insurance proceeds would be used to reconstruct it or, if the facility is not reconstructed, used to pay off the bondholders.

The Amendment permits Elliott to grant the mortgage on the leasehold and consent to the application of the insurance proceeds as stated above. If the financing mechanism described above is ultimately not acceptable to either party, the lease allows for either 1) Elliott to complete the building project using its own financing sources, or 2) Elliott to decide against construction of the new building and the lease expires on its own accord at the end of 2011.

**PREVIOUS COUNCIL ACTION(S):**

Date: June 18, 2007

Roll Call Number: 07-1232

Action: Public hearing on execution of a Preliminary Agreement with Elliott Aviation of Des Moines, Inc. regarding issuance of not to exceed \$6,000,000 aggregate principal amount of Special Facility Revenue Bonds. Moved by Hensley to adopt. Motion Carried 6-1.

Date: May 21, 2007

Roll Call Number: 07-1014

Action: Authorizing execution of a Preliminary Agreement with Elliott Aviation of Des Moines, Inc. regarding issuance of not to exceed \$6,000,000 aggregate principal amount of Special Facility Revenue Bonds, directing publication of notice of intent to issue, and setting date of public hearing, (6-18-07). Moved by Vlassis to adopt. Motion Carried 7-0.

Date: May 21, 2007

Roll Call Number: 07-1013

Action: On approval of a Fixed Base Operator Lease and Agreement with Elliott Aviation of Des Moines, Inc. for services at the Des Moines International Airport. Moved by Mahaffey to adopt. Motion Carried 7-0.

Date: May 7, 2007

Roll Call Number: 07-866

Action: Set date of hearing for approval of a Fixed Base Operator Lease and Agreement with Elliott Aviation of Des Moines, Inc. for services at the Des Moines International Airport, (5-21-07). Moved by Vlassis to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S):**

Date: July 17, 2007

Resolution Number: A07-133

Action: Recommend Approval First Amendment to Fixed Base Operator Lease and Agreement with Elliott Aviation of Des Moines, Inc. for Services at the Des Moines International Airport.

Date: May 1, 2007

Resolution Number: A07-85

Action: Recommend Approval Fixed Base Operator Lease and Agreement with Elliott Aviation of Des Moines, Inc for Services at the Des Moines International Airport

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**