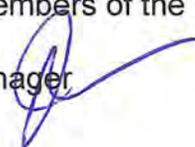


3-2)



City Council Agenda Item Meeting of March 15, 2016

TO: The Honorable Mayor and Members of the City Council
FROM: James R. O'Connor, City Manager 
DATE: March 7, 2016

SUBJECT: **Dragonfly Boatworks, LLC - Amendment to Commercial Lease Agreement**

REQUESTED BY: City Manager/Airport Director

The following is requested as it relates to the above-referenced agenda item:

Request Council review and approval based on the attached documentation.

No action required. (Information only)

MEMORANDUM

TO: James R. O'Connor, City Manager
VIA: Wayne R. Coment, City Attorney *PL*
FROM: Ericson W. Menger, Airport Director
DATE: March 3, 2016
SUBJECT: **DRAGONFLY BOATWORKS, LLC AMENDMENT TO COMMERCIAL LEASE AGREEMENT**

Attached are 3 copies of the above-referenced lease amendment, along with a copy of a revised Attachment B (standard with all airport leases) which has been updated to agree with the language in the proposed lease amendment.

BACKGROUND:

The City entered into the Commercial Lease Agreement on January 16, 2013, for Airport Parcel 32, also known as the Airport Commercial Center. The Commercial Lease Agreement was written to include a substantial increase in rent to be effective February 1, 2016, based on then-anticipated market conditions. The anticipated market conditions have not materialized, and it is likely that the large rent increase will cause economic hardship to Dragonfly. Accordingly, Dragonfly has requested the removal of the scheduled rent increase, through this amendment, in order to assist them in remaining economically viable as a business and airport tenant.

Because this is a unique lease unlike any other at the airport, staff negotiated a revised lease that would include: 1) no increase in rent (other than CPI adjustments) until February 1, 2018, when the lease reaches its original expiration date, at which time the rent would be reviewed again; 2) a written agreement between Dragonfly and the Indian River County Tax Collector for any unpaid taxes (Exhibit 1); 3) stronger language in the amendment clarifying the tenant's legal obligations to the City; and 4) inclusion of the latest Attachment B language for Airport leases that have been approved by City Council (February 16, 2016).

Note that adherence to the written agreement with the Tax Collector is a binding obligation of this amendment; failure by Dragonfly to make the agreed-upon tax payments will be a material breach of the lease agreement.

ANALYSIS:

Strengths: This amendment will assist Dragonfly Boatworks in satisfying their financial obligations, and to remain viable as a business entity in the City as its business grows.

Weaknesses: If approved, this amendment will result in a potential reduction in revenue to the Airport by approximately \$3000 per month, which was the amount the lease stipulated. This is mitigated by the fact that the tenant is having trouble paying the rent as it is now, and could default if the rent is increased according to the agreement.

Opportunities: Positions the tenant for continued success, enabling contribution to the local economy. Avoids site maintenance costs, legal costs, and reduced rent if the tenant were to default.

Threats: Could set a precedent. However, this property/lease agreement is unique in that no other airport leases include such a large increase in rent only 3 years into the agreement. All others only increase by the CPI and/or have rent-review clauses (such as is included in the Dragonfly lease at the 5-year mark).

RECOMMENDATION:

Staff respectfully requests that this item be placed on the **March 16, 2016**, City Council Agenda, recommending approval of the Amendment to Commercial Lease Agreement, Dragonfly Boatworks LLC.

EWM/ts

Attachments

cc: Airport Commissioners (via email)
City Manager's Office
City Clerk's Office (via email)

AMENDMENT TO COMMERCIAL LEASE AGREEMENT
(Dragonfly Boatworks, LLC)
(PARCEL 32)

THIS AMENDMENT to Commercial Lease Agreement ("Amendment") is entered into as of the ____ day of March, 2016, by and among the **CITY OF VERO BEACH**, a Florida municipal corporation, whose mailing address is P. O. Box 1389, Vero Beach, Florida 32961-1389 ("LANDLORD"), and **DRAGONFLY BOATWORKS, LLC**, a Florida limited liability company, whose mailing address is 3435 Aviation Boulevard, Vero Beach, Florida 32960 ("TENANT").

WHEREAS, on January 16, 2013, LANDLORD and TENANT executed a Commercial Lease Agreement, ("Lease Agreement") for Parcel 32, consisting of 142,877 square feet of land including 36,000 square feet of building space as described within said Lease Agreement with an Initial Term of nine (9) years and eleven (11) months commencing on February 1, 2013 and terminating December 31, 2022; and

WHEREAS, LANDLORD has received a request from TENANT to amend certain terms and conditions of the Lease Agreement by means of this Amendment due to a rental rate increase that, in view of current market conditions, is untenable and would cause severe economic hardship to TENANT; and

WHEREAS, as requested by TENANT, LANDLORD is willing to amend those certain terms and condition of the Lease Agreement requiring an increase from \$1.50 per square foot per year to \$2.50 per square foot per year effective February 1, 2016; and

WHEREAS, due to extenuating circumstances, Carole Jean Jordan, Indian River County Tax Collector ("Tax Collector") and TENANT have entered into an installment plan for payment

of delinquent real estate property tax, Agreement for Partial Payment of Delinquent Real Estate Property Tax Indebtedness, ("Tax Agreement") attached to this Amendment as Exhibit 1; and

WHEREAS, LANDLORD is willing to accept the Tax Agreement requiring TENANT to pay taxes outstanding and remaining due as a binding obligation on TENANT to satisfy its Lease Agreement and Tax Agreement requirements as to payment of ad valorem taxes; and

WHEREAS, modifications to the TENANT's Lease Agreement are necessary to incorporate certain tax law changes pursuant to Florida Statutes and the Florida Department of Revenue; and

WHEREAS, LANDLORD and TENANT have agreed to this Amendment to clarify and more accurately reflect the intent of LANDLORD and TENANT as to TENANT's responsibility for taxes when LANDLORD and TENANT entered into the Lease Agreement, and as both parties have performed since its inception. Accordingly, this Amendment is retroactive to the initial date of the Lease Agreement ("*nunc pro tunc*").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, LANDLORD and TENANT, intending to be legally bound, hereby agree as follows:

1. The foregoing "WHEREAS" clauses are hereby incorporated herein.
2. Rate adjustment from \$1.50 at lease execution with a scheduled increase to \$2.50 effective February 1, 2016, and other related monthly rental provisions, as set forth in section 3(a) of the Lease Agreement, shall be removed from the terms of the Lease Agreement.
3. All other terms and conditions of the January 16, 2013, Lease between LANDLORD and TENANT shall remain unchanged and in full force and effect.

4. It is understood and agreed to by LANDLORD and TENANT that if for any reason the terms and conditions of the Tax Agreement between TENANT and Tax Collector are breached, said breach shall be a material breach of this Lease Agreement.

5. Section 4(a) dealing with ownership reverting to LANDLORD upon installation shall be superceded by the language in section 1 of Attachment B to the Lease Agreement, entitled "Standard Lease Provisions For Airport Tenants" (Effective date: February 16, 2016).

6. This Amendment shall be governed by and enforced pursuant to the terms of the Lease Agreement, including but not limited to, interpretation, choice of law, venue, jurisdiction, and costs of enforcement.

7. Section 3 **RENT; RENT ADJUSTMENT** of the Lease Agreement, as amended, shall be further amended to replace in full the initial paragraph in said Section to read as follows:

TENANT shall be subject to rental payments for its leasehold interest for the real property, including any improvements to the real property constructed or installed by TENANT during the term of this Lease Agreement.

8. Section 4 **STANDARD PROVISIONS** is amended to replace in full said section to read as follows:

Attachment B to the Lease Agreement, entitled "Standard Lease Provisions For Airport Tenants" (Effective date: February 16, 2016) and City Resolution 2015-30 "Airport Leasing Policy" (Effective date: September 1, 2015) are incorporated into and made a part of the Lease Agreement, subject to Special Provision section 5 of the Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum to Lease Agreement on the date and year stated above.

TENANT – Dragonfly Boatworks, LLC.
(This section to be completed by Tenant only)

WITNESSED BY:

Sign: Wendy Wethington
Print: Wendy Wethington

Sign: Michael James Nosal
Print: MICHAEL JAMES NOSAL

TENANT:

Sign: Mark D. Castlow
Print: Mark D. Castlow
Title: Managing Member

[SEAL]



STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this 2ND day of March, 2016, by Mark D. Castlow as Managing Member, on behalf of the company. He is personally known to me or produced _____ as identification.

Michael J. Nosal
NOTARY PUBLIC
Print Name MICHAEL JAMES NOSAL
My Commission No.: FF949210
My Commission Expires: 1/10/20

LANDLORD – CITY OF VERO BEACH
(This section to be completed by Landlord only)

ATTEST:

LANDLORD: CITY OF VERO BEACH

Tammy K. Vock
City Clerk

By _____
Jay Kramer
Mayor



[SEAL]

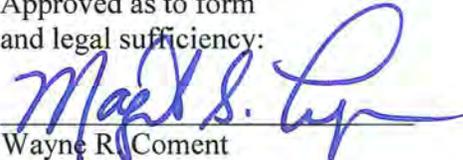
STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by Jay Kramer, as Mayor, and attested by Tammy K. Vock, as City Clerk of the City of Vero Beach, Florida. They are both known to me.

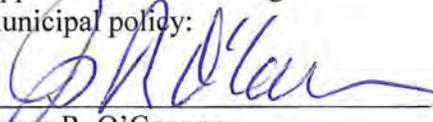
NOTARY PUBLIC
Print Name
My Commission No.:
My Commission Expires:

CITY MANAGEMENT
(This section to be completed by City Management Staff only)

Approved as to form
and legal sufficiency:

inc: 
Wayne R. Coment
City Attorney

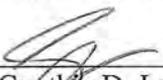
Approved as conforming to
municipal policy:


James R. O'Connor
City Manager

Approved as to technical
requirements:


Ericson W. Menger
Airport Director

Approved as to technical
requirements:


Cynthia D. Lawson
Finance Director



copy

Exhibit 1

Carole Jean Jordan, CFC
Tax Collector
Indian River County

**AGREEMENT FOR PARTIAL PAYMENT OF
DELINQUENT REAL ESTATE PROPERTY TAX INDEBTEDNESS**

Pursuant to the agreement of the following Payment Program, CAROLE JEAN JORDAN, Indian River County Tax Collector, herein referred to as "Tax Collector" and the undersigned, Dragonfly Boatworks, LLC, Mark D. Castlow, MGRM herein referred to as "Taxpayer" on this 22nd of February, 2016, agree that:

1. As of the date of this Agreement, the amount of \$13,428.60 is due to fully satisfy the 2014 delinquent real estate property taxes on Parcel number 32-39-26-00011-0320-00001/0 located at 3435 Aviation Blvd., Vero Beach, Florida.
2. The TAXPAYER shall pay to the TAX COLLECTOR the sum of \$500.00 concurrent with the execution of this agreement and \$500.00 per month to increase after 12 months. At any time, additional funds may be posted to the delinquent tax year to reduce the balance due.
3. The TAXPAYER understands that although they have entered into a payment plan agreement with the Tax Collector, interest will continue to accrue monthly at 1.5% until taxes are paid in full.

Due to extenuating financial circumstances of the Taxpayer; the Tax Collector agrees to enter into a one (1) year payment plan with the understanding of the Taxpayer that the Tax Collector will reassess the Taxpayer's financial situation on an annual basis. At that time, the Tax Collector will decide on the length of the following payment plan for the taxes outstanding & remaining due.

The Taxpayer understands that throughout the period of the current payment plan, the Taxpayer may pay the outstanding taxes due in full. It is also expected of the Taxpayer to request for an Amended Payment Plan with the Tax Collector to increase the monthly amount due when or if their financial situation has improved.

DRAGONFLY BOATWORKS, LLC
Mark D. Castlow, MGRM
TAXPAYER

CAROLE JEAN JORDAN
TAX COLLECTOR
INDIAN RIVER COUNTY

Mark D. Castlow

Kim Sinotte, (Deputy)

Sworn to and subscribed before me by the TAXPAYER this 22 day of February 2016 who produced a FL DL as identification.

Kim Sinotte
Notary Signature & Stamp

P.O. Box 1509, Vero Beach, FL 32961-1509
Phone: (772) 226-1354 Fax (772) 226-1554
www.HowMayWeHelpYou.com

