Lumpkin County, Georgia

Date: October 30, 2015

Agenda Item: Renew contract for Hanger E at Lumpkin County Airport

Item Description: Recommendation renew contract for hanger E

Facts & Historical Information: In December of 2013 The BOC agreed to a new contract for Hanger E. This contract increased the price from $1.10 per linear foot to $1.85 per linear foot per month. The contract was never signed by the hangar lessees. In 2014 the BOC agreed to renew the contract for $1.85 per foot and the contract was once again not sighed by the lessees.

Potential Courses of Action:

A. Renew contract at the current rate.
B. Renew contracts at a different rate as determined by the BOC
C. Do not renew the contract

Budget Impact:

A. Renewing the contract at the current rate would have no impact on the budget.
B. Renewing the contract at a different rate could impact the budget by increasing or decreasing the revenue based on what rate was chosen.
C. Not renewing the contract would reduce revenue by $2,664 annually.

Staff Recommendation: It is staff recommendation that Hanger E contracts be renewed at the current rate of $1.85 per linear foot of taxiway frontage per month (option A) with the terms of the contract being for 1 year.

BB&S - "E"

LUMPKIN COUNTY
HANGAR LEASE AGREEMENT 2015
EFFECTIVE CALENDAR YEAR - 2016
HANGAR E

STATE OF GEORGIA
COUNTY OF LUMPKIN

THIS AGREEMENT is being made and entered into with an effective date of January 1, 2016, by and between LUMPKIN COUNTY, a political subdivision of the State of Georgia, hereinafter referred to as "Lessor," and Lessee - 1: **William "Bill" Barber**, Lessee - 2: **John Broaddus**, Lessee - 3: **David Seabolt**, each being an independent and separate "Lessee," but the entire number of Lessees hereinafter referred to in the collective as "Lessee".

Whereas Lessee wishes to lease from Lessor a certain tract or parcel of land at the Lumpkin County - Guy Wimpy Airport for the purpose of maintaining an existing hanger thereon to provide protective housing for Lessee's aircraft; and,

Whereas, Lumpkin County - Guy Wimpy Airport is maintained as a public service, funded as a County function of government and not as a self-supporting commercial enterprise; and

Whereas Lessor desires to promote economic development by encouraging and assisting the reasonable growth of aviation in the County;

Now, Therefore, the parties hereto enter into the following agreement:

1. **RENTAL FEE: LEASED PREMISES**

All responsibility for compliance with the financial terms of this lease agreement and contract shall be the responsibility of Lessee. Lessee shall pay all fees and shall have the responsibility for insurance and maintenance as set out herein. Each of the individual Lessees set out above shall be liable jointly and severally for the entire amount, such that any one of them, or any group of them, may be required to pay the total amount for all of them. Internal accounting within the group shall be the responsibility of the individual Lessees.

In consideration of a fee in the amount of $1.10 per linear foot of taxiway frontage per month for the term of the lease, Lessor rents to Lessee the following described space (hereinafter referred to as "the leased premises"): Hangar **E** (with **120** feet of frontage) for the purpose of storage of aircraft (hereinafter referred to as Lessee's aircraft). The total monthly lease shall be $222.00 per month, which shall be paid in advance in two semiannual installments of $1,332.00. The first installment shall be due on or before January 1, with the second payment due on or before July 1.

2. **TERMS**

a. Initial term of lease.

(1) Subject to early termination as hereinafter provided, the terms of this agreement shall be for an initial period beginning January 1, 2016, and ending at midnight on the 31st day of December, 2016.

(2) Said lease may be renewed annually as provided below for not more than eight full years following the initial year, unless earlier terminated as provided herein. It is understood and accepted by the parties hereto that Lumpkin County will evaluate the general value of hangar space, and that the cost of the lease renewal may be adjusted once within the first three years if renewed; such cost may be greater than the initial lease cost.

(3) Lessor as governing authority of Lumpkin County reserves the right to terminate this lease at the completion of any annual lease term by giving notice on or before October 2 of that year (90 days' notice).

(4) In the event Lessor deems it necessary to terminate said lease at any time other than as provided for termination by notice as provided in subparagraph (3) above, the parties hereto agree that Lessor shall pay the amount set out in subparagraph (4) above, plus the residual value of the hangar based on original cost of construction and straight line ten year depreciation. The parties agree that such sum shall be liquidated damages and Lessee waives any additional claim against Lessor.

b. Additional Lease Term.

(1) Lessor further grants to Lessee an option to renew this lease as an annual renewable lease for ten additional years under the terms and conditions and subject to the rates, fees, and other charges, in effect for hangar leases at the time of renewal.

(2) To exercise this renewal option, Lessee shall notify Lessor in writing of Lessee's intention to exercise the renewal option not later than July 1 next preceding the end of the initial lease period. A lease renewal shall be valid only upon the execution of an extended lease agreement.

(3) An extended lease shall be paid at the market rate at that time, as established by Lumpkin County based on the five closest general aviation airports of runway length 5000 feet or less and with no Fixed Base Operator on the field.

3. **MODIFICATION**

a. Hangar modification design and specifications must be submitted in writing to Lessor and approved in writing by Lessor and conform to standard building codes, prior to beginning of construction or modification. Hangar must be constructed as approved by Lessor unless Lessor approves a modification in writing. Building inspections by the

Planning Department and the issuance of a Certificate of Occupancy shall be required as for general construction.

b. Lessee must clean the premises of building materials, debris, scraps, packing materials, and other trash within fourteen (14) days after construction or modification of the hangar is completed.

c. All construction must be completed with zero tolerance for danger to other aircraft and pilots; Lessee shall be personally responsible for any damage caused by simple negligence or higher level of negligence or disregard for safety.

4. **ASSIGNMENT AND SUBLETTING**

a. The purpose of this lease is to aid aircraft owners in providing a protected environment for the airplane they own; it is not intended as a base for landlord-tenant rental agreement. Lessee shall not have the right to assign or convey any of its rights under this agreement and any part thereof except with the written approval by Lessor. In the event a Sub-Lessee is approved, Lessee shall continue to be fully responsible for all acts or failures to act by Sub-Lessee and Lessee shall be subject to termination of this agreement due to acts of Sub-Lessee.

b. A condition of said Sub-Lease, if approved, shall be that Lessee shall have the right to sublet or allow any other individual or entity to use or occupy the leased premises or any part thereof only provided that Lessee and Sub-Lessee house and maintain a minimum of one aircraft designated on the Lumpkin County Tax Digest.

c. The hangar and any other buildings, fixtures, structures, or improvements constructed or placed upon the leased premises or any part thereof shall remain and be deemed the property of the Lessor, subject to the terms and conditions as provided herein.

d. Lessor reserves the right to assign this lease to any other County Agency.

5. **RIGHTS AND DUTIES OF LESSEE**

a. Lessee shall not operate a commercial business on the leased premises without prior written consent of Lessor. ("Operate a business" does not include use of the aircraft as a part of an "off airport" business, but does include air charter or rental operations. "Operate a business" would include aircraft maintenance for third parties; it does not include any activity under the Experimental Aircraft Association or other home built activity, or maintenance by Lessee/owner of an aircraft.)

b. Lessee shall keep and store aircraft in/on the above described leased premises. Lessee is, and agrees to be, responsible for keeping said aircraft properly secured.

c. Lessee shall exercise diligent care during the handling and moving of aircraft.

d. Lessee agrees to avoid run up of aircraft with propeller/jet blast toward hangars or other aircraft.

e. Lessee agrees to observe and obey reasonable rules and regulations established by Lumpkin County with respect to use of the premises and aircraft usage and operation, provided, however, that such rules and regulations shall be consistent with safety, normal aircraft operating procedures, and rules and regulations of the Federal Aviation Administration with respect to the operation of airports and aircraft. Each Lessee is responsible for monthly review of current FAA safety information and for Air Safety information concerning airport operations, and for implementation and practice thereof.

f. The premises shall be used only for the storage and use of aircraft and any equipment or materials for the use or maintenance of aircraft. Any such equipment or materials used for the maintenance of aircraft shall be secured inside said hangar or aircraft. No cars, boats, furniture, or other objects shall be stored on the premises; however, automobiles may be secured inside hangar while aircraft are in use.

g. Aircraft stored in hangar shall be maintained in an airworthy condition or shall be in a reasonably progressive state of repair or construction. If aircraft is not airworthy or in a reasonably progressive state of repair or construction for a period in excess of ninety (90) days, then the Lessor may at its option terminate this lease.

h. Lessee is responsible for all upkeep on and around the leased premises, and shall keep said areas free and clear of debris, trash, and other objects. Lessee shall not damage, destroy, or litter upon airport premises.

i. Lessee shall annually provide to Lumpkin County Manager a copy of the current liability insurance coverage. Failure to maintain a general liability policy, which shall include Lumpkin County as a named insured, shall constitute a breach of the terms of the lease. See below: *7. LIABILITY INSURANCE*

j. The Lessor must approve all modifications or additions to the leased premises in writing prior to initiation of such modifications; all such modifications must be permitted by the Planning Department and inspected as for general construction within the County.

6. **RIGHTS AND DUTIES OF LESSOR**

a. Lessor may enter the leased premises upon twenty-four (24) hours' notice to Lessee for any purpose necessary or incidental to the performance of its obligations hereunder. Lessor shall have the right to move Lessee's aircraft (if not secured completely within hangar) from time to time, as required in the interest of efficient storage practices and allow access to other aircraft.

b. During the terms of this lease, Lessor shall maintain and keep in good repair, and consistent with the annual budget approved by the governing authority, so much of the airport premises as are not under the exclusive control of individual Lessees, including, but

not limited to, any terminal building, vehicle parking areas, roadways, aprons, taxiways, runways, runway mowing, sewage and water facilities, all lighting, electrical, and electronic facilities, security fencing, and all such other facilities, appurtenances and services as are now or hereafter connected with the operation of Lumpkin County – Wimpy Airport.

c. Without waving Lessee's responsibility to provide upkeep and maintenance to the leased premises, Lessor reserves the right, in its discretion, to provide upkeep or maintenance to the leased premises and to charge the expense of such maintenance to Lessee.

d. Lessor reserves the right to perform any acts necessary for the safety of air traffic operations, and to take such steps as may be required to meet Federal Aviation Agency and Georgia aviation standards. The parties agree as a consideration of this lease that any such acts shall be considered the duty of a sovereign government and Lessee hereby waives any claims arising therefrom except as may be otherwise provided by law.

7. **LIABILITY INSURANCE**

a. Lessor shall not be liable for loss or damage to the hangar, any aircraft or any other personal property of Lessee or anyone else stored in or around the leased premises, whether due to fire, storm, theft, or otherwise. Lessor shall not be liable for any damage to the hangar, any aircraft or any other personal property resulting from upkeep or maintenance of the leased premises.

b. As a function of this lease and the use of the airport and its facilities, Lessee agrees that all decisions of Lessor shall be deemed discretionary, and not ministerial, to the maximum amount provided by law.

c. Lessee shall be solely liable for the acts or failure to act of any persons brought onto the airport, or entering on Lessee’s invitation, whether arriving by ground or air.

d. Lessor shall not be liable for any negligence other than the direct and gross negligence of the Lessor causing bodily injury or loss of life to Lessee or anyone brought or permitted upon the leased premises by the Lessee.

e. Lessee agrees to indemnify and hold harmless Lessor against all liability for injuries to persons or damage to property caused by Lessee's negligent use or occupancy of the leased premises.

f. Lessor shall not be liable for any injury, damage or loss occasioned by the negligence of Lessee or any of its agents.

g. Lessee shall give to Lessor prompt and timely notice of any claim made or suit instituted which in any way, directly or indirectly, contingently or otherwise, affects or

might affect Lessor. This notice will include any and all claims which might be made against Lessee.

h. Lessor shall have the right to compromise and defend any claim made or suit instituted to the extent of its own interest. Lessee shall have the same rights and remedies provided hereunder with respect to claims, which may affect Lessee.

8. **TERMINATION**

a. If aircraft stored in hangar are/is not airworthy or in a reasonably progressive state of repair or construction for a period in excess of 120 days, then the Lessor may at its option terminate this lease. Lessee shall have the obligation to inform Lessor of major rebuilding or repair projects, and to provide notice of any parts or weather delays in the ongoing work. Lessor may for good cause extend the period as it deems appropriate for good cause shown: such extension shall be in the sole discretion of Lessor or its designated agent or employee.

b. Lessor may, at its option, terminate this lease in the event of a violation by Lessee of any term of this lease.

c. Lessor may, at its option, terminate this agreement in the event that there are reasonable grounds to believe that Lessee has violated or is violating any State or Federal criminal statute on the leased premises or with Lessee's aircraft.

d. Lessee may for any or no reason terminate this lease agreement upon sixty days' notice to Lessor.

e. In the event Lessor deems it necessary to terminate said lease at any time other than as provided for termination by notice as provided in paragraph 2.a.(3) above, the parties hereto agree that Lessor shall pay the amount set out in paragraph 2.a.(4) above. The parties agree that such sum shall as liquidated damages and Lessee waives any additional claim against Lessor. Parties agree that an increase in rates is not a notice of intent to terminate, and such increase will not act as a termination by Lessor.

f. In the event the Airport is no longer operated as a general aviation airport and the property reverts to the Wimpy estate, pursuant to paragraph 10(b) of this document, Lessee shall have the right to remove their personal property and all improvements, including the hangar, to the extent provided by the reversion clause, within 90 days of the airport ceasing to operate as a County Airport.

9. **Surrender of Possession; Rights in Property**

a. This agreement shall be considered a usufruct rather than a ground lease.
b. Upon the expiration or other termination of this Lease, Lessee's rights to use of the premises, facilities, and services described herein shall cease, and Lessee shall vacate the premises without unreasonable delay.

c. Except as otherwise provided in this agreement, Lessee's aircraft and all materials and equipment shall be deemed to be personal property, and shall remain the property of Lessee.

d. The hangar and any other buildings, fixtures, structures, or improvements constructed or placed upon the leased premises or any of Lessor's premises shall remain and be deemed the legal property of Lessor, with Lessee retaining an equitable interest unless terminated and compensated as provided in 2.a.(4) above. Upon completion, the hanger and fixtures shall not be moved, removed, damaged or destroyed during the term, or at the expiration or other termination, of this lease unless otherwise agreed to in writing by Lessor. Any damage or destruction by Lessee shall be deemed to be destruction of government property.

e. Lessee shall have thirty (30) days after the expiration or other termination of this agreement, to remove Lessee's aircraft, and any or all of Lessee's personal property from airport premises. Any and all property not removed by Lessee within thirty (30) days after the expiration or other termination of this agreement shall by agreement be deemed abandoned property and thereafter be deemed the property of the Lessor.

10. **NOTICES**

a. All notices and notifications provided for herein shall be sufficient if and only if sent by registered or certified mail to the address set forth below or to such other address as the parties may from time to time designate in writing.

b. This lease is subject to the terms of that certain deed from A.G. Wimpy to Lumpkin County dated 18 October 1966 and recorded in Deed Book P-2 page 367, Lumpkin County records, and incorporated herein by reference.

11. **SEVERABILITY**

This agreement shall be construed under the laws of the State of Georgia. Any covenant, condition, or provision herein contained that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this agreement; but such deletion shall in no way affect any other covenant, condition, or provision herein contained so long as such deletion does not materially prejudice Lessor or Lessee in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this agreement.

12. **EFFECT OF AGREEMENT**

All covenants, conditions, and provisions in this agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

Signatures of execution of this lease on next page.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement

***2016 Lease of Hanger* – BB&S - "E"**
Signature Page - 2016 Lease of Hanger
BB&S - "E"

LESSOR:

Lumpkin County Board of Commissioners
Attn: Public Works
99 Courthouse Hill, Ste H
Dahlonega, Georgia 30533
706-864-3742

Lumpkin County Board of Commissioners

_____ _____
Chris Dockery, Chairman Date

LESSEE - 1:

Address:

_____

_____
William "Bill" Barber Date

_____
Telephone:
Hm
Ofc
Cell
Email:

LESSEE - 2:

Address:

_____ _____
John Broaddus Date

193 Chestatee Springs Road
Dahlonega, GA 30533
Telephone:
Hm
Ofc
Cell

LESSEE- 3:

Address:

_____

_____
David Seabolt Date

_____
Telephone:
Hm
Ofc
Cell