

RESOLUTION 91-195

A RESOLUTION OF THE DELTA CITY COUNCIL APPROVING A CONTRACT BETWEEN DELTA CITY AND DEL-AERO SERVICE, INC, FOR THE PURPOSE OF ALLOWING DEL-AERO SERVICE, INC. TO CONDUCT COMMERCIAL OPERATIONS AT THE DELTA CITY MUNICIPAL AIRPORT.

The City Council of the city of Delta, Utah, referred to herein as the "City Council" recites the following as the basis for adopting this resolution:

W I T N E S S E T H:

A. Delta City is the owner of the Delta Municipal Airport located in Millard County, State of Utah.

B. Del-Aero Service, Inc. has previously conducted business at the Delta Municipal Airport, pursuant to a lease agreement dated January 11, 1971, which agreement expired by its terms on December 31, 1990.

C. Delta City and Del-Aero Service, Inc. now desire to renew said lease agreement for the purpose of allowing Del-Aero Service, Inc. to continue its commercial operations and to conduct its business at the Delta Municipal Airport, all in accordance with the terms and conditions set forth in that certain Airport Lease Agreement ("Agreement"), a copy of which is attached to this resolution as Exhibit "A" and incorporated herein by reference.

NOW, THEREFORE, be it resolved by the City Council of the City of Delta, Utah:

1. Approval of Contract. The City Council of the City of Delta, Utah does resolve that the Agreement attached hereto between the City of Delta, a municipal corporation and political subdivision of the State of Utah, and Del-Aero Service, Inc., a corporation organized and existing under and pursuant to the laws and statutes of the State of Utah, with its principal place of business at Delta, Millard County, Utah, be and the same is hereby approved; the Mayor is hereby authorized and directed to execute the Agreement for and on behalf of the City; and the City Recorder is authorized and directed to attest such signature.

2. Effective Date. This resolution shall become effective upon adoption.

3. Repeal of Conflicting Resolutions. To the extent that any resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

INTRODUCED AND PASSED this 14TH day of January, 1991.

AYES: 3

NAYS: 0

ABSENT: 2

Don Dafoe
DON DAFOE, Mayor

Attest: Dorothy Jeffery
DOROTHY JEFFERY
City Recorder

14:DEL-AERO.RES

AIRPORT LEASE AGREEMENT

THIS AGREEMENT is being made and entered into on this 1ST day of JANUARY, 1991 by and between the City of Delta, a municipal corporation and political subdivision of the State of Utah of 76 North 200 West, P.O. Box 397, Delta, Utah, 84624, hereinafter referred to as "**Lessor**", and Del-Aero Service, Inc., a corporation organized and existing under and pursuant to the laws and statutes of the State of Utah, with its principle place of business at Delta, Millard County, Utah, hereinafter referred to as "**Lessee**". Lessor and Lessee shall hereafter be referred to jointly as "**the Parties**".

WITNESSETH

A. Lessor is the owner of the Delta Municipal Airport which includes the property described in Exhibit "A" attached hereto, (which exhibit is made a part of this lease and incorporated into this Lease by reference), located in Millard County, State of Utah. Hereinafter referred to as "**Leased Premises**".

B. Lessor and Lessee have previously entered into a Lease Agreement to allow Lessee to conduct commercial operations at the Delta Municipal Airport, which Lease Agreement expires by its terms on midnight, December 31, 1990.

C. Lessor and Lessee now desire to renew said Lease Agreement for the purpose of allowing Lessee to continue said commercial operations and to conduct its business, all in accordance with the terms and conditions hereafter set forth.

NOW, THEREFORE, the parties hereto, for the consideration expressed herein, agree as follows:

1. Premises. Lessor, for and in consideration of the covenants and conditions herein contained to be kept and performed by Lessee, does hereby demise and lease unto Lessee and Lessee hereby leases from Lessor, that portion of the premises commonly known and referred to as the Delta Municipal Airport, together with improvements thereon, more particularly described and referred to in Exhibit "A", and attached hereto.

2. Purpose and Use of Site. Lessor leases to Lessee the aforementioned property for the purpose of and to be used by Lessee to conduct its present commercial operations, conducting a school of aviation, the sale and purchase of aircraft, the repair and alteration of aircraft and to do all other things necessary for the carrying out of such purposes.

3. Appurtenances. Lessee shall be responsible under this Lease to supply electrical, telephone, heating, water and sewer or any other utility service or any other rights and appurtenances to the leased premises described above, except as specifically set out in this Agreement.

4. Term. Lessee shall have and hold the Leased Premises for an initial period of FIVE (5) YEARS, commencing on the first day of January, 1991 and ending December 31, 1995. This Lease shall be extended for an additional FIVE (5) YEAR period unless either party gives six (6) months notice of intent to terminate the Lease at the end of the initial FIVE (5) YEAR term.

Lessee shall not hold over without the express consent of Lessor after the expiration of the initial term or after the expiration of the FIVE (5) YEAR renewal term, if applicable. In the event Lessee should remain in possession of the Leased Premises after the expiration of the primary term or any extension of this Lease, without the exercise of an option or the extension by Lessor and Lessee of a new lease, then Lessee shall be deemed to be occupying the Leased Premises as a Tenant-at-Will of the Lessor, and will immediately vacate and surrender said premises to the Lessor.

5. Rent. During the initial FIVE (5) YEAR term of this Lease, Lessee shall pay as rental to Lessor, at the address designated in paragraph 10 below, the annual sum of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00); said rent shall be paid in quarterly installments of NINE HUNDRED (\$900.00) DOLLARS, beginning ^{JAN. 10} April 1, 1991, and continuing each and every quarter thereafter during the life of this Lease. PROVIDED, if the parties to this Lease hereafter increase or decrease said rental fees, the quarterly rental payments shall be adjusted accordingly to reflect said increase or decrease in said rental payments. The parties hereto agree that the rent shall be reevaluated at the end of the initial FIVE (5) YEAR term of this lease, and any adjustment of said rental fees shall be agreed upon between Lessor and Lessee, prior to the continuation of this Lease.

6. Condition and Maintenance of Site.

a. The officials of the Lessee corporation have examined and know the condition of said Leased Premises and no representations as to the condition thereof have been made by the Lessor prior to or at the time of execution of this Lease. Furthermore, the Leased Premises and improvements thereon are in good and serviceable condition, and Lessee agrees to keep and maintain said Leased Premises and improvements in the same state of repair as they now are, and will, at the expiration of this Lease, return same to the Lessor in a condition equal to that which it is now in, natural wear and tear, damage by the elements, fire and other unavoidable casualty excepted.

b. In addition to the payment of the rental here and before reserved, and as additional consideration for the granting of this Lease, Lessee agrees to cooperate with Lessor in keeping the landing strips clear of weeds, sand, snow or other debris.

7. Liability for Repair of Property on Leased Premises.

a. Lessee shall be responsible for the general upkeep of the Leased Premises and shall make all necessary repairs, interior and exterior, in and about the Leased Premises, that contribute to the general upkeep and maintenance of said Leased Premises.

b. Lessee shall be responsible to make all necessary repairs, interior or exterior, in and about the Leased Premises at its own expense, which repairs are necessitated as a result of

damage to the Leased Premises caused by the negligent or intentional acts of Lessee, its agents or employees.

c. Lessee shall not be responsible for repairs to the structure or permanent fixtures located in or about the Leased Premises and owned by Lessor, so long as any damage to said structure or fixtures are not caused by the negligent or intentional acts of the Lessee, its agents or employees.

d. Lessee shall give to Lessor prompt written notice of any accident to, or any defects in, the structure (building) or fixtures on the Leased Premises, which include, but are not limited to, water pipes, gas pipes, electric light fixtures and heating apparatus, and such defects shall be remedied by Lessor, at the expense of Lessor, with due diligence.

8. Reimbursement from Lessor to Lessee for Making Necessary Repairs or Improvements.

^{DD}
70/Contd. a. Should Lessor fail to make repairs, within a reasonable time and after Lessee's written notice to Lessor of repairs to the Leased Premises that ought to be made, Lessee may make the same itself and deduct such costs from the rent.

^{DD}
A b. Lessee shall be allowed to make permanent improvements to the Leased Premises in furtherance of Lessee's business operations, and to deduct the costs of said improvements from Lessee's rent. PROVIDED, that prior to making any improvements on the Leased Premises and applying any cost toward the reduction of rent, Lessee shall first obtain permission from the Delta City Council to make said necessary improvements. PROVIDED FURTHER,

that any improvements made by Lessee to the Leased Premises, the costs of which are born by Lessor through reduction of the Lessee's rent, shall become the property of Lessor, and Lessee shall execute such contracts, agreements or bills of sale necessary to evidence transfer of ownership of said property to Lessor.

9. Liability and Insurance. Lessee shall save and hold the Lessor harmless by reason of any injury to persons or damaged property which might result from the use of the Leased Premises by the Lessee, its agents or employees, during the life of this Lease, and Lessee shall further indemnify and hold Lessor harmless from all claims, judgments, awards and costs, (including attorney's fees and costs and expenses in defending against such claims), which may in any way be brought against Lessor by reason of Lessee's use of the Leased Premises. As an additional responsibility of Lessee and not in limitation of the foregoing, Lessee agrees to keep and maintain in full force and effect, during the life of this Agreement, general liability insurance covering bodily injury and property damage in those types and amounts currently being carried by Lessee, and to provide Lessor with a copy of said liability policy and a copy of the receipt showing payment of the annual premium thereon, or other evidence of payment of premium which is satisfactory to the Lessor. In addition, the Lessee covenants and agrees that it will annually, so long as this Agreement remains in full force and effect, furnish to the Lessor a receipt or other evidence of payment satisfactory to the Lessor showing that the annual premium on the insurance policy here and before referred to

has been paid. It is expressly understood that the specified limits of insurance shall in no way limit the liability of Lessee, nor the obligation of Lessee to hold Lessor harmless from all claims, suits, demands or actions.

10. Assignment or Subletting. Lessee shall not assign, transfer, sublease, pledge or otherwise encumber or dispose of its interest in this Lease or any estate created by this Lease or permit any other person or persons, company or corporation to occupy the Leased Premises without the written consent of Lessor being first obtained. Lessor shall not unreasonably withhold consent to an assignment of Lessee's interest in the Leased Premises.

11. Compliance with Law. Lessee shall abide by and conform to all federal, state and local laws, regulations, rules and orders, including any future amendments thereto, controlling or in any manner effecting Lessee's use or occupancy of the airport premises, including but not limited to, the operation and the conducting and maintenance of airports and the governing of flying of aircraft in the conduct of its business.

12. Construction of Improvements. Lessee shall submit to Lessor plans and specifications for any building or improvements to be located upon the Leased Premises and all plans and specifications shall be subject to written approval of Lessor and of the Federal Aviation Administration.

It is mutually covenanted and agreed by and between the Lessor and the Lessee as follows, to wit:

13. Allocation of Taxes on Gasoline. The Lessor shall receive for its own use and benefit all state taxes on gasoline sold at the Delta Municipal Airport in accordance with the provisions of the present Agreement between Chevron USA and the City of Delta (Chevron USA and Lessee), and in accordance with any existing agreements between the City of Delta and the Utah Division of Aeronautics, and in accordance with any future agreements by and between suppliers of gasoline products and the City of Delta and the City of Delta and the Utah Division of Aeronautics.

14. Damage or Destruction to Leased Premises. In the event the Leased Premises, or any part thereof, shall be destroyed or damaged by fire or other unavoidable casualty, then and in such event the rent here and before reserved or a just and proportionate part thereof, according to the nature and extent of the damage sustained, shall be suspended or abated until said Leased Premises shall be restored to at least as good of condition as they were prior to such casualty; PROVIDED, HOWEVER, that the Lessor shall be under no obligation to repair the damage done by such unavoidable casualty, and instead of making such repairs shall have the right to terminate this Lease Agreement.

15. Termination. In the event that either party shall fail to perform any covenant or obligation under this Lease Agreement, except for the timely payment of rent, the party not in default shall have the right to terminate this Lease Agreement by giving THIRTY (30) DAYS written notice of intent to so terminate. The Lessor's remedies for failure of the Lessee to make timely

payment of rentals shall be governed by § 78-36-1 et seq. U.C.A. (1953 edition), as amended, known as the Utah Forcible Entry and Detainer Statute. Otherwise, the Lease shall be terminated in accordance with the provisions of Paragraph 4 above relating to the term of this Lease.

16. Removal of Property. Lessee shall have the right, prior to surrendering the premises, to remove any improvements heretofore made by Lessee, which ownership is not subject to transfer to Lessor pursuant to Paragraph 8 above, and to remove all personal property belonging to the Lessee, which it has placed upon said premises, provided that Lessee shall repair any damages to the Leased Premises incident to such removal and shall, at the option and under the direction of the Lessor, either remove all improvements owned by Lessee and restore the Leased Premises to their original condition or leave such improvements in the Leased Premises as Lessee intends to abandon. Any improvements to be removed by Lessee shall be removed within NINETY (90) DAYS after termination of this Lease, unless the parties hereto agree to a longer or shorter period of time in which to remove said improvements.

17. Lessee's Default. Notwithstanding anything in the Lease to the contrary, Lessee shall not be in default under this Lease until:

a. In the case of the failure to pay rent or other sums due under this lease, THREE (3) DAYS after receipt of written notice thereof from Lessor, or;

b. In the case of any other default, THIRTY (30) DAYS after receipt of written notice thereof from Lessor; PROVIDED, HOWEVER, where any such default cannot reasonably be cured within THIRTY (30) DAYS, Lessee shall not be deemed to be in default under the Lease if Lessee commences to cure such default within said THIRTY (30) DAY period and thereafter diligently pursues such cure to completion.

18. Remedies. In the event of any default of the terms of this Agreement, Lessor shall have, in addition to any other remedies available at law or in equity, the right to any one or more of the following remedies, without the necessity of giving notice thereof:

a. Taking possession of the Leased Premises without termination of the Lease.

b. Reletting of the Leased Premises for the benefit of Lessee, in which case Lessee shall be liable for any deficiency in agreed rental and other damages, including costs of reletting.

c. Termination of the Lease, with Lessee to be liable for lost rents for the remainder of the lease term.

d. Costs of retaking the property.

e. Reasonable attorney's fees and costs of court.

In the event of Lessee's default in the payment of rentals or Lessee's failure to comply with any other material provision of this lease, Lessor may, at its option, terminate this Lease without effecting its rights to sue for all past due rentals, and any other damages to which the Lessor may be entitled.

18. Nondiscriminatory Practices.

a. Lessee, for itself, its successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that:

(1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities;

(2) That in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

(3) That the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs in the Department of Transportation - Effectuation of Title 6 of the Civil Rights Act of 1964, as said regulations may be amended.

b. Lessee shall make its accommodations and services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, sex, age or national origin.

c. Non-compliance with sub-paragraphs (a) and (b) above after written findings, shall constitute a material breach of this

Lease Agreement and in the event of such non-compliance the Lessor shall have the right to terminate this Lease and the estate hereby created without liability therefore or at the election of the Lessor or the United States of America, either or both said governments shall have the right to judicially enforce said subparagraphs (a) and (b) above.

20. Non-exclusive Right. It is specifically understood and agreed upon between the parties hereto, that nothing herein contained shall be construed as granting an exclusive right within the meaning of Section 308 of the Federal Airport Act or any amendment thereto, or to any successor statute to Section 308 of the Federal Airport Act.

21. Condemnation of Leased Premises. In the event that any government or public body shall take all or such part of the Leased Premises thereby making it physically or financially infeasible for the Leased Premises to be used in the manner it was intended to be used by this Agreement, Lessee shall have the right to terminate this Lease effective as of the day of the taking by the condemning party and the rental shall be prorated appropriately. However, if only a portion of the Leased Premises is taken, and Lessee does not elect to terminate this Lease, then rental payments provided under this Lease shall be abated proportionately as to the portion taken which is not then useable by Lessee and the Lease shall continue in full force and effect.

22. Attorney's Fees and Costs. It is hereby understood and agreed upon by and between the parties hereto, that if either

party shall fail or neglect to perform any of the covenants or conditions herein contained and to be performed on their part, and if any suit or action is brought to enforce any of the covenants or conditions herein contained, the defaulting party shall pay all costs and expenses of such action, including a reasonable attorney's fee.

23. Notice. Any notice required to be given by either party hereto shall be effective within FIVE (5) DAYS after deposit of such notice in the United States Mail by First Class Mail, postage prepaid, addressed as follows:

- a. If to Lessor: City of Delta
76 North 200 West
Delta, Utah 84624
- b. If to Lessee: Del-Aero Service, Inc.
207 North 100 West
Delta, Utah 84624

24. Entire Agreement and Amendment. The provisions of this Lease constitute the entire agreement between the parties hereto related to the subject matter hereof. Any prior statements, representations or agreements are void and of no effect. This Agreement shall not be amended except by a writing executed by duly authorized representatives of Lessor and Lessee.

25. Severability. In the event that any provision of this Lease less than the entire Lease is held invalid by a court of competent jurisdiction, this Lease shall be deemed severable and such finding of invalidity shall not effect the remaining portions of this Lease.

26. Captions. Captions herein are for convenience only, and neither limit nor amplify the provisions of this Lease.

26. Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the Lessor has signed this contract by its mayor, duly authorized and duly attested by the City Recorder, and the Lessee has signed this Agreement by its President, duly authorized and duly attested by its secretary, the day and year first written above.

LESSOR:

CITY OF DELTA

By Don Dafoe
DON DAFOE,
Mayor

Attest:

Dorothy Jeffery
DOROTHY JEFFERY,
City Recorder

LESSEE:

DEL-AERO SERVICE, INC.

By Alan J. Burraston
ALAN BURRASTON
President

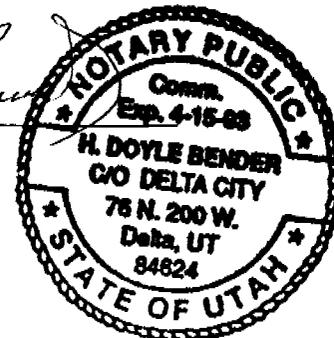
Attest:

Lola Burraston
LOLA BURRASTON
Secretary

STATE OF UTAH)
 : ss.
COUNTY OF MILLARD)

On this 18th day of January, ¹⁹⁹¹~~1990~~, personally appeared before me DON DAFOE and DOROTHY JEFFERY, who, being first duly sworn, did say that they are the Mayor and the City Recorder, respectively, of the City of Delta, a municipal corporation of Millard County, State of Utah, and that the foregoing instrument was signed in behalf of said municipal corporation by authority of a resolution of its City Council, and the said DON DAFOE and DOROTHY JEFFERY, duly acknowledged to me that said municipal corporation executed the same.

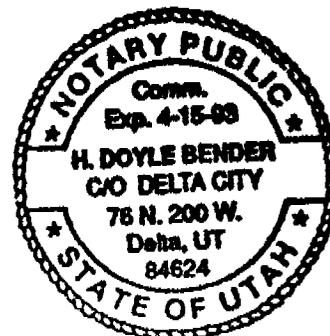
H. Doyle Bender
Notary Public



STATE OF UTAH)
 : ss.
COUNTY OF)

On this 22 day of January, ¹⁹⁹¹~~1990~~, personally appeared before me ALAN BURRASTON and LOLA BURRASTON, who being first duly sworn, did say that they are the President and the Secretary, respectively, of Del-aero service, Inc., a corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said ALAN BURRASTON and LOLA BURRASTON duly acknowledged to me that said corporation executed the same.

H. Doyle Bender
Notary Public



al4:del-aero.lsa