

CITY OF PALMER ACTION MEMORANDUM No. 10-066

SUBJECT: Renew BJ Custom Aircraft Engines, Inc. Real Property Lease at the Palmer Municipal Airport

AGENDA OF: September 14, 2010

Council action:	Renewed
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Approved for presentation by B. B. Allen, City Manager Bob Casey

Route To:	Department/Individual:	Initials/Date:	Remarks:
X	Originator – City Manager	8-30-10 <i>Pa</i>	
X	City Clerk	<i>JR</i> 9/7/10	
X	City Attorney	<i>[Signature]</i> 9/7/10	
	Director of Administration		
	Director of Community Development		
	Director of Community Services		
	Director of Public Safety		
	Director of Public Works		

Attachment(s): Lease Agreement Renewal

Certification of Funds:

	No fiscal impact.	
X	Funds are budgeted from this account number: 03-00-00-3431	\$1,600
	Funds are not budgeted. Affected account number:	
	Unrestricted/undesignated fund balance (after budget modification):	

Director of Administration Signature: *[Signature]*

Summary statement: BJ Custom Aircraft Engines, Inc. (BJ CAE) currently leases 40,000 square feet of property at the Palmer Municipal Airport and a building used as an aircraft repair shop. The aircraft repair shop is approximately 22' by 37', is comprised of three smaller buildings put together, and is attached to a hanger the lessee owns. The aircraft repair shop is in a severely dilapidated building which BJ CAE would like to purchase from the City. Please see IM 10-077 and Resolution 10-055.

Upon the sale and transfer of the Building to BJ CAE the current lease with the City for the

leased property would need to be amended to remove the lease term for the Building. The original lease is set to expire August 2012 and contains a provision which allows BJ CAE to renew the lease for an additional 20 years. It is in the best interests of the City to reduce its liability by selling the Building to BJ CAE and renew the current lease amending the terms so as to remove the provision for lease of the Building.

Action memorandum 10-066 authorizes the execution of a new lease, without the structure for a 20 year period.

Administration recommendation: Approve action memorandum 10-066.

**CITY OF PALMER
PALMER MUNICIPAL AIRPORT
LEASE AGREEMENT - RENEWAL**

THIS LEASE, made this ____ day of _____, 2010, by and between the CITY OF PALMER, Alaska, (hereinafter "Lessor"), and BJ CUSTOM AIRCRAFT ENGINES, INC., an Alaska corporation, (hereinafter "Lessee"), whose address is P.O. BOX 3269, Palmer, Alaska to lease real property located at the Palmer Municipal Airport in Palmer, Alaska.

WITNESSETH:

That the Lessor, in consideration of the payments of the rents and the performance of all the covenants herein contained by the Lessee, does hereby lease to the Lessee the following described property more commonly known as Palmer Municipal Airport Tract B, Lot 31, located in the Palmer Recording District, Alaska, bearing the legal description to-wit:

Commencing at the Section Corner common to Sections 3 and 4, Township 17 North, Range 2 East, Seward Meridian and Sections 33 and 34, Township 18 North, Range 2 East, Seward Meridian, Palmer Recording District, Third Judicial District, Palmer, Alaska, monumented by a 2" standard brass cap, reset 1978, thence S 89°49'W for 665.00 feet; thence N 00°11'W for 898.00 feet to the True Point of Beginning; thence S 89°49'W for 200 feet; then N 00°11'W for 200.00 feet; thence N 89°49'E for 200.00 feet; thence S 00°11'E for 200.00 feet to the True Point of Beginning containing 40,000 square feet or .918 acres more or less.

for the renewal term of 20 year(s) from the first day of August, 2010, to the first day of August, 2030, at the annual rent of \$1,600.00 (One Thousand Six Hundred Dollars and NO/100) and so in proportion for any less time, payable yearly in advance of the first day of each year of said term. Right of Entry and Occupancy is authorized as of the ____ day of _____, 2010, and first rent shall be computed from Right of Entry and Occupancy date.

The rental specified herein is calculated at the rate of \$0.04 (four cents) per square foot per year. (40,000 square feet at \$0.04 or \$1,600.00).

Checks, bank drafts and postal money orders shall be made to the City of Palmer and delivered to City Clerk, City Hall, 231 W. Evergreen Avenue, Palmer, Alaska 99645-6952.

The purposes for which this lease is issued are limited to the following uses only:

Aircraft repair and maintenance activities

and Lessee agrees to continue to use the land or privilege granted uninterrupted by periods which in the aggregate amount to more than one (1) year. The Lessee shall abide by the General Covenants contained herein.

This lease is a renewal agreement pursuant to General Covenant No. 28 of the original lease entered into on the 21st day of July, 1992 between Lessor and Lessee. Upon execution of this renewal agreement, the terms of the original lease dated July 21, 1992 shall immediately expire and the terms of this lease shall control.

GENERAL COVENANTS:

1. Except for the uses provided herein, any regular use of land or facilities without the written consent of the City is prohibited. This prohibition shall not apply to use of areas designated by the City for specified public uses such as, but not necessarily limited to: passenger terminals, automobile parking areas, roads and streets.

2. This lease is subject to the Palmer Municipal Airport Regulations, including any future amendments, and Lessee shall abide by the same.

3. Any or all personal or real property placed or used upon lands or in facilities in violation of the purposes of this lease may be removed and/or impounded by the City and when so removed and/or impounded, such property may be redeemed by the owner thereof only upon the payment to the City of the costs of removal plus storage charges.

4. The Lessee agrees to pay the annual rental and fees specified and not to assign this lease or any part thereof, nor let, nor sublet, either by grant or implication, the whole or any part of the premises without written consent of the City, which consent may be withheld in Lessor's sole discretion. Any assignment or sublease, whether by operation of law or otherwise without the written consent of Lessor shall be voidable at the option of Lessor.

5. The Lessee agrees to keep the premises clean and in good order at Lessee's own expense, suffering no strip or waste thereof nor removing any material therefrom without written permission of the Lessor. At the expiration of the term fixed, or any sooner termination of the lease, the Lessee will peaceably and quietly quit and surrender the premises to the Lessor.

6. Building construction shall be neat and presentable and compatible with its use and surroundings. Prior to placing of fill material and/or construction of any building or facility on a leased area, the Lessee must submit detailed drawings of proposed development of the property and, if a building is contemplated, comprehensive architectural drawings showing the location of all proposed utility lines, front, side and plan elevation views of the proposed structure, materials to be used,

dimensions, elevations, and all data subsequently requested by the Lessor, who shall review and approve, if satisfactory, In writing all major permanent improvements.

7. (A) Each of the following shall be deemed a default by the Lessee and a breach of this lease:

(B) (1) A default in the payment of the rent and additional rents due hereunder, or any part thereof, for a period of ten (10) days;

(2) A default in the performance of any other covenant or condition on the part of the Lessee to be performed for a period of ten (10) days after service by Lessor on Lessee of a notice specifying the particular default or defaults;

(3) The filing of a petition by or against the Lessee for the adjudication as a bankrupt under the Bankruptcy Act of 1898, as now or hereafter amended or supplemented (to include the Bankruptcy Act of 1978), or for reorganization within the meaning of said Bankruptcy Act, or for arrangement within the meaning of said Bankruptcy Act, or the filing of any petition by or against the Lessee under any future bankruptcy act for the same or similar relief:

(4) The dissolution or the commencement of any action or proceeding for the dissolution or liquidation of the Lessee, whether instituted by or against the Lessee or for the appointment of a receiver or trustee of the property of the Lessee;

(5) The taking possession of the property of the Lessee by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the Lessee;

(6) The making by the Lessee of an assignment the benefit of creditors;

(7) Lessee vacates or abandons the premises.

If either 7(B)(3), (4) or (5) shall be involuntary on the part of the Lessee, the event in question shall not be deemed a default within the meaning of this lease if removed by Lessee within fifteen (15) days.

8. In the event of any default of the Lessee as recited in Section 7 above, the Lessor shall have the following rights and remedies; all in addition to any rights and remedies that may be given to Lessor by statute, common law or otherwise:

(A) Re-enter the premises and take possession thereof and remove all property from the premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of Lessee, all without resort to legal process (all of

which Lessee expressly waives) and without becoming liable for any loss or damage which may be occasioned thereby; except as caused by Lessor's negligence.

(B) Declare the demised term ended;

(C) Relet the premises in whole or in part for any period equal to or greater, or less, than the remainder of the original term of this lease, for any sum which may be deemed reasonable; provided however, Lessor shall have no duty arising out of this Lease to mitigate Lessee's damages, and any duty to mitigate, if any, shall be subject to Lessor's duty pursuant to its Municipal Charter and Code of Ordinances for the City of Palmer, Alaska, as may exist and as may be revised from time to time, to lease property for no less than fair market value;

(D) Collect any and all rents due or to become due from subtenants or other occupant or occupants of the premises;

(E) Recover, whether this lease be terminated or not, from the Lessee, damages provided for below consisting of Items (1) and (2) and (3). (1) reasonable attorney fees and other expenses incurred by Lessor by reason of the breach or default by Lessee, and (2) the cost of performing any covenant on the Lessee's part to be performed, and (3) an amount equal to the amount of all minimum rents, percentage rents and additional rents reserved under this lease, less the minimum rent. percentage rents and additional rents collected by the Lessor on reletting the premises, which shall be due and payable by the Lessee to the Lessor on the several days on which the rent and additional rent reserved in this lease would have become due and payable; that is to say, upon each of such days the Lessee shall pay to the Lessor the amount of deficiency then existing. Such net rent collected on reletting by the Lessor shall be computed by deducting from the gross rents collected all expenses incurred by the Lessor in connection with the reletting of the premises or any part thereof, including broker's commissions and the cost of renovating or remodeling said premises. If this lease be deemed terminated, the Lessee's liability for rent shall survive and Lessee shall be liable only for damages for rent as provided above. The enumeration of the default rights of the Lessor above are not intended to imply that they are mutually exclusive nor that they are in lieu of any or all statutory, common law, or other rights.

9. The amount of rents or fees specified herein shall be subject to increase or decrease at intervals of five (5) years from the first day of July preceding the effective date of this lease and such increases or decreases shall be determined as follows:

Land lease rental shall be not less than eight percent (8%) of the tax appraised fair market value, but if either party so desires, the fair market value shall be determined by an independent fee appraiser mutually agreed upon in advance, the costs of such appraisal to be shared equally. In the event such an appraiser cannot be agreed upon, a court of competent jurisdiction shall appoint an appraiser and the parties shall share the costs equally. The fair market value shall then be as so determined.

Building lease rental rates on City-owned buildings shall be determined in the same way, except if the City so desires, a percentage of gross business receipts shall be charged as rental in lieu of land or building rental.

10. No building or other permanent structure shall be placed within ten (10) feet nor allowed to be placed within ten (10) feet of the boundary line of any lot held by a Lessee; provided, however, that where two or more lots held by the Lessee are contiguous the restriction in this condition shall apply only to the boundary lines separating such leased property from other airport property, and not to a common boundary line between contiguous parcels of land held by the Lessee.

11. No building or other permanent structure shall be placed within fifty (50) feet of the property line fronting a landing strip, taxiway or apron without the written approval of the City. This area shall be used for parking aircraft only.

12. The interests transferred or conveyed by this lease are subject to any or all of the covenants, terms or conditions contained in the instruments conveying title or other interests to the Lessor, and to applicable state and federal requirements.

Subject to the above, the Lessor covenants and warrants that prior to delivery of the demised premises that Lessor shall have the full right and authority to enter into this lease for the full term set forth herein, and Lessee upon performance of its obligations hereunder shall have the quiet and uninterrupted possession of said premises throughout the term of this lease.

13. Lessor shall have the right, at all reasonable times, to enter the premises, or any part thereof, for purposes of inspection.

14. Lessee covenants to save the Lessor harmless from all actions, suits, liabilities or damages resulting from or arising out of any acts of commission or omission by the Lessee, his agents, employees or customers, or arising from or out of the Lessee's occupation or use of the premises demised or privileges granted.

15. Any or all rents, charges, fees or other consideration which are due and unpaid at the expiration or voluntary or involuntary termination or cancellation of this lease shall be a charge against the Lessee and Lessee's property, real or personal, and the Lessor shall have such lien rights as are generally allowed by law, and enforcement by distraint may be made by the Lessor or its authorized agent.

16. The Lessee covenants and agrees that it will not, on the grounds of race, Color, religion, national origin, ancestry, age or sex, discriminate or permit discrimination against any patron, employee, applicant for employment, or other person or group of persons in any manner prohibited by federal or state law or regulations promulgated thereunder.

17. Lessor reserves the right to grant and control easements in, on or above the land leased. No such grant or easement will be made that will unreasonably interfere with the Lessee's use of the land.

18. The Lessor may modify this lease to meet revised requirements of federal or state grants, or to conform to the requirements of any revenue bond covenant to which the Lessor is a party; provided that, in the case of modification to conform to the requirements of any revenue bond covenant the modification may not act to unreasonably reduce the rights or privileges granted the Lessee by this lease nor act to cause the Lessee financial loss.

19. (A) All improvements made by Lessee ~~(shall)~~ (shall not) belong to Lessor at the termination of the initial term by expiration of time or otherwise.

(B) Unless owned by Lessor, improvements shall be removed by Lessee within sixty (60) days after the expiration, termination or cancellation of this lease, provided that such property shall be removed without substantial Injury to the leased premises. No injury shall be considered substantial if it is promptly corrected by restoration to the condition prior to installation of such property, if so requested by Lessor,

(C) Subsection 19(A) notwithstanding, all underground utilities shall belong to Lessor.

20. If any improvements and/or chattels belonging to Lessee are not removed within the time allowed by General Covenant No. 19 of this Lease Agreement, such improvements and/or chattels shall revert to and absolute title shall vest in the Lessor or at the option of the Lessor, the same may be removed at Lessee's expense.

21. If any term, provision, condition or part of this lease is declared by the Legislature or a court of competent jurisdiction to be invalid or unconstitutional, the remaining terms, provisions, conditions or parts shall continue in full force and effect as though such declaration was not made.

22. Lessee shall, within thirty (30) days after completion of any improvements placed upon or in the land described herein, deliver to the Lessor at least three (3) copies of as-built drawings showing the location and construction specifications of said improvements; furthermore, if Lessee's improvement is underground, Lessee shall appropriately mark the surface of the land with a stake or otherwise to identify the type of underground installation and its location.

23. Lessee will not install any radio transmitting equipment without the written approval of the Lessor, and will discontinue upon the request of the Lessor the use of any machinery or installation causing interference to the State or United States Government radio receiving or transmitting equipment until the cause of such interference is eliminated, the providing of said written approval shall be contingent

upon there being no indication or belief that such an installation would be harmful to airport operations, or interfere with State or United States Government radio receiving or transmitting equipment.

24. The Lessee shall at its own expense, maintain and keep in force during the term of this lease, adequate insurance to protect both the Lessor and the Lessee against comprehensive public liability, products liability (where applicable) and property damage, in no less than the following amounts:

\$500,000 CSL (COMBINED SINGLE LIMIT) FOR LIABILITY AND
PROPERTY DAMAGE

The Lessee shall deposit with the Lessor a copy or copies of such insurance policy or policies or a certificate of such insurance coverage together with appropriate evidence that the premiums thereupon have been paid. All such insurance of the Lessee shall name the Lessor as an additional assured, contain a waiver of subrogation endorsement, and provide that the Lessor shall be notified at least thirty (30) days prior to any termination, cancellation, or material change in such insurance coverage.

Such requirement for insurance coverage shall not relieve Lessee of its obligations under this agreement.

25. Lessee shall notify Lessor in writing delivered by certified mail at least ten (10) days prior to construction, alteration or repair on or of the premises.

26. Lessee shall allow Lessor to post a Notice of Non-Responsibility in prominent place on the premises, and Lessee shall keep said Notice posted. Lessee shall notify Lessor immediately in writing if said Notice is removed, covered, or in any way becomes inoperable.

27. The failure of the Lessor to insist in any one or more instances upon a strict performance by the Lessee of any of the provisions, terms, covenants, reservations, conditions or stipulations contained herein may not be considered as a waiver or relinquishment thereof for the future, but the same shall continue and remain in full force and effect, and no waiver by the Lessor of any provision, term, covenant, reservation, condition or stipulation herein may be deemed to have been made in any instance unless expressed in writing by the Lessor.

28. Lessee has an option to extend this lease for an additional ___ year period, to be exercised on or before six (6) months prior to the expiration of the initial term by delivering written notice to the City. However, this option may not be exercised if Lessee is in default.

29. (A) Time is of the essence concerning this Lease Agreement and the performance of each and every provision contained in it.

(B) No change or modification of this Lease Agreement shall be valid unless the same be in writing and signed by all the parties to the Lease Agreement.

(C) This Lease Agreement shall be construed and enforced according to the laws of Alaska and the City of Palmer, Alaska. The venue for any action arising out of or connected in any way with this Lease Agreement shall be only at Palmer, Alaska, or other place in the Matanuska-Susitna Borough if there is no court at Palmer, Alaska.

(D) This Lease Agreement has been reviewed by the attorneys for both of the parties to this Lease Agreement and the rule of construction or interpretation that ambiguities, if any, in a writing be construed against the drafter shall not apply to this Lease Agreement.

(E) This Lease Agreement contains the full and complete understanding of the parties and upon execution supersedes and renders null and void any and all prior understandings, writings, and oral agreements between them.

(F) Lessee shall follow and obey all laws of the United States, State of Alaska, Matanuska-Susitna Borough and City of Palmer applicable to its operations.

(G) Each term and each provision of this Lease Agreement shall be construed to be both a covenant and a condition.

(H) It is specifically agreed between the parties executing this Lease Agreement that it is not intended by any of the provisions of any part of the Lease Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Lease Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Lease Agreement.

(I) All written notices required by this Lease Agreement shall be sent by Registered or Certified Mail or delivered personally by Lessor on Lessee to the last address of Lessee on record in the files of the Lessor, and by Lessee on Lessor to Lessor's then current address.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year stated in the acknowledgments below.

(CORPORATE SEAL)
(if applicable)

LESSEE: BJ CUSTOM AIRCRAFT ENGINES
INC.

By: Robert J. Lutz
Title: President

LESSOR: CITY OF PALMER

By: Bill Allen
Title: City Manager

The undersigned guarantee performance by the above corporation.

LESSEE: BJ CUSTOM AIRCRAFT ENGINE,
INC.

By: Robert J. Lutz
Title: President

LESSOR: CITY OF PALMER

By: Bill Allen
Title: City Manager

ATTEST:

Janette Bower, CMC
Palmer City Clerk

ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ___ day of _____, 2010, before me, the undersigned, a Notary Public in and for the state of Alaska, duly commissioned and sworn, personally appeared Robert J. Lutz, known to me and to me known to be the President of BJ Custom Aircraft Engine, Inc., a corporation organized and existing by virtue of the laws of the State of Alaska, which is named in the foregoing instrument, and he acknowledged to me that he signed the same freely and voluntarily on behalf of BJ Custom Aircraft Engine, Inc. for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

Notary Public in and for Alaska
My commission expires:_____

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this ___ day of _____, 2010, before me, the undersigned, a Notary Public in and for the state of Alaska, duly commissioned and sworn, personally appeared Bill Allen, known to me and to me known to be the City Manager of the City of Palmer, Alaska who executed the foregoing instrument, and he acknowledged to me that he signed the same freely and voluntarily on behalf of the City of Palmer for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

Notary Public in and for Alaska
My commission expires:_____