

AIRPORT COUNSEL BRIEFING

From: Steven E. Tackes, Esq., Airport Counsel

To: Carson City Airport Authority members, staff

Re: May 17, 2107 CCAA MEETING

1. FOR POSSIBLE ACTION: TO APPROVE AUGMENTATION OF THE CARSON CITY AIRPORT AUTHORITY 2016-2017 BUDGET; AUTHORIZATION FOR STAFF TO MAKE THE REQUIRED FILINGS. (B. Kohn-Cole, L. Harvey)

Staff Summary: The General Fund was budgeted to be \$3,419,653 on July 1, 2016 and the resources for the General Fund are now determined to be \$3,503,813. An Augmentation is required to balance the General Fund using other unused assets in the Budget.

This is the Airport Manager's item.

Nevada law requires public bodies to augment their budgets for changes in budgeting due to unanticipated expenses or resources. The augmentation must be done prior to the end of the fiscal year.

NRS 354.598005 Procedures and requirements for augmenting or amending budget.

1. If anticipated resources actually available during a budget period exceed those estimated, a local government may augment a budget in the following manner:

(a) If it is desired to augment the appropriations of a fund to which ad valorem taxes are allocated as a source of revenue, the governing body shall, by majority vote of all members of the governing body, adopt a resolution reciting the appropriations to be augmented, and the nature of the unanticipated resources intended to be used for the augmentation. Before the adoption of the resolution, the governing body shall publish notice of its intention to act thereon in a newspaper of general circulation in the county for at least one publication. No vote may be taken upon the resolution until 3 days after the publication of the notice.

(b) If it is desired to augment the budget of any fund other than a fund described in paragraph (a) or an enterprise or internal service fund, the governing body shall adopt, by majority vote of all members of the governing body, a resolution providing therefor at a regular meeting of the body.

2. A budget augmentation becomes effective upon delivery to the Department of Taxation of an executed copy of the resolution providing therefor.

3. Nothing in [NRS 354.470](#) to [354.626](#), inclusive, precludes the amendment of a budget by increasing the total appropriation for any fiscal year to include a grant-in-aid, gift or bequest to a local unit of government which is required to be used for a specific purpose as a condition of the grant. Acceptance of such a grant and agreement to the terms imposed by the granting agency or person constitutes an appropriation to the purpose specified.

4. A local government need not file an augmented budget for an enterprise or internal service fund with the Department of Taxation but shall include the budget augmentation in the next quarterly report.

5. Budget appropriations may be transferred between functions, funds or contingency accounts in the following manner, if such a transfer does not increase the total appropriation for any fiscal year and is not in conflict with other statutory provisions:

(a) The person designated to administer the budget for a local government may transfer appropriations within any function.

(b) The person designated to administer the budget may transfer appropriations between functions or programs within a fund, if:

(1) The governing body is advised of the action at the next regular meeting; and

(2) The action is recorded in the official minutes of the meeting.

(c) Upon recommendation of the person designated to administer the budget, the governing body may authorize the transfer of appropriations between funds or from the contingency account, if:

(1) The governing body announces the transfer of appropriations at a regularly scheduled meeting and sets forth the exact amounts to be transferred and the accounts, functions, programs and funds affected;

(2) The governing body sets forth its reasons for the transfer; and

(3) The action is recorded in the official minutes of the meeting.

6. In any year in which the Legislature by law increases or decreases the revenues of a local government, and that increase or decrease was not included or anticipated in the local government's final budget as adopted pursuant to [NRS 354.598](#), the governing body of any such local government may, within 30 days of adjournment of the legislative session, file an amended budget with the Department of Taxation increasing or decreasing its anticipated revenues and expenditures from that contained in its final budget to the extent of the actual increase or decrease of revenues resulting from the legislative action.

7. In any year in which the Legislature enacts a law requiring an increase or decrease in expenditures of a local government, which was not anticipated or included in its final budget as adopted pursuant to [NRS 354.598](#), the governing body of any such local government may, within 30 days of adjournment of the legislative session, file an amended budget with the Department of Taxation providing for an increase or decrease in expenditures from that contained in its final budget to the extent of the actual amount made necessary by the legislative action.

8. An amended budget, as approved by the Department of Taxation, is the budget of the local government for the current fiscal year.

The proposed augmentation was posted to the Airport Authority website. A significant change is that the Airport Authority expended approximately \$100,000 on the Terminal renovation that was not budgeted, but collected a bit more than that in donations via the one-time opportunity payments made on the lease extensions.

Proposed action. I move we approve and adopt the budget augmentation for fiscal year 2016-2017 as presented, and direct the Airport Manager to make the necessary filings.

2. FOR POSSIBLE ACTION: TO APPROVE THE CARSON CITY AIRPORT AUTHORITY TENTATIVE BUDGET AS THE FINAL BUDGET FOR FISCAL YEAR 2017 TO 2018; AUTHORIZATION TO CERTIFY AND TRANSMIT SAME TO THE DEPARTMENT OF TAXATION AND THE NEVADA TAX COMMISSION; AUTHORIZATION FOR STAFF TO MAKE THE REQUIRED FILINGS. (B. Kohn-Cole; L. Harvey; T. Rowe)

Staff Summary: The Budget was prepared in such detail and on forms prescribed by the Department of Taxation.

This is the Airport Manager's item. As I advised you last month, Nevada law required that the Authority file a Tentative Budget with the Dept of Taxation by April 15, 2017 for the FY 2017/2018 (which runs from July 1, 2017 to June 30, 2018). The law further requires that a hearing be held at a publicly noticed meeting "not sooner than the third Monday in May and not later than the last day in May" (ie. our regular May meeting) to approve the final budget. NRS 354.596. This meeting is the meeting required by the statute to adopt the final budget. The Airport Authority was required to publish a notice of the May meeting, which presumably the Airport Manager has done.

NRS 354.598 Final budget: Adoption; budget by default; certification; appropriations; limitations; changes.

1. At the time and place advertised for public hearing, or at any time and place to which the public hearing is from time to time adjourned, the governing body shall hold a public hearing on the tentative budget, at which time interested persons must be given an opportunity to be heard.

2. At the public hearing, the governing body shall indicate changes, if any, to be made in the tentative budget and shall adopt a final budget by the favorable votes of a majority of all members of the governing body. Except as otherwise provided in this subsection, the final budget must be adopted on or before June 1 of each year. The final budgets of school districts must be adopted on or before June 8 of each year. Should the governing body fail to

adopt a final budget that complies with the requirements of law and the regulations of the Committee on Local Government Finance on or before the required date, the budget adopted and used for certification of the combined ad valorem tax rate by the Department of Taxation for the current year, adjusted as to content and rate in such a manner as the Department of Taxation may consider necessary, automatically becomes the budget for the ensuing fiscal year. When a budget has been so adopted by default, the governing body may not reconsider the budget without the express approval of the Department of Taxation. If the default budget creates a combined ad valorem tax rate in excess of the limit imposed by [NRS 361.453](#), the Nevada Tax Commission shall adjust the budget as provided in [NRS 361.4547](#) or [361.455](#).

3. The final budget must be certified by a majority of all members of the governing body, and a copy of it, together with an affidavit of proof of publication of the notice of the public hearing, must be transmitted to the Nevada Tax Commission. If a tentative budget is adopted by default as provided in subsection 2, the clerk of the governing body shall certify the budget and transmit to the Nevada Tax Commission a copy of the budget, together with an affidavit of proof of the notice of the public hearing, if that notice was published. Certified copies of the final budget must be distributed as determined by the Department of Taxation.

4. Upon the adoption of the final budget or the amendment of the budget in accordance with [NRS 354.598005](#), the several amounts stated in it as proposed expenditures are appropriated for the purposes indicated in the budget.

5. No governing body may adopt any budget which appropriates for any fund any amount in excess of the budget resources of that fund.

6. If a local government makes a change in its final budget which increases the combined ad valorem tax rate, the local government shall submit the amended final budget to the county auditor within 15 days after making the change.

Thus, this is the meeting to approve and adopt the final budget.

Proposed action. I move we approve and adopt the final budget as presented, and direct the Airport Manager to make the necessary filings.

3. FOR POSSIBLE ACTION: TO APPROVE KOHN AND COMPANY, LLP TO CONDUCT THE FY 2016/2017 AUDIT OF THE CARSON CITY AIRPORT AUTHORITY (B. Kohn)
Staff Summary: Kohn & Company, LLP has been chosen to continue to provide audit services to the Carson City Airport Authority for FY 2016/2017.

This is the Airport Manager's item. I did not see a briefing from him, but presumably he is recommending that the Authority approve the engagement of Beth Kohn, CPA to do the 2016-2017 audit. She has done the audits in the past and has done an excellent job.

I have reviewed the engagement letter (Contract) which Ms. Kohn has supplied. It is fairly standard in its terms and tracks previous engagements. The contract states that the auditor may accept the representations of management and does not separately audit those. This is a typical disclaimer. My legal review was only to the operational terms of the engagement, not the actual information that management must provide or the fee for services.

Proposed action. I move we approve KOHN AND COMPANY, LLP to conduct the fiscal year 2016-2017 annual audit.

4. FOR POSSIBLE ACTION: TO APPROVE THE REQUEST BY BRIAN KULPA OF KRNVTV TO OPERATE UNMANNED AERIAL VEHICLES (aka Unmanned Aircraft Systems, or "DRONES"; UNDER 55 LBS) WITHIN 5 MILES OF THE CARSON CITY AIRPORT IN FURTHERENCE OF THE NEWS AGENCY. (B. Kulpa)
Staff Summary: Brian Kulpa and KRNVTV News have acquired drones to be used for purposes related to their operations. NRS 493.109 prohibits operations of an unmanned aerial vehicle within 5

miles of an airport unless the operator obtains consent of the Airport Authority. KARNV has requested that consent. Consistent with other such approvals, consent should be conditioned on notice to the Airport Manager in the event that KARNV intends to operate within 1 mile of the Airport so that a NOTAM or other decision can be made as to the safety of ongoing Airport operations.

Legal background. Consent to operate within a 5 mile radius of an airport is required by Nevada law.

NRS 493.109 Unmanned aerial vehicles: Operation near critical facility or within 5 miles of airport prohibited; exceptions; penalty.

1. A person shall not operate an unmanned aerial vehicle within:
 - (a) A horizontal distance of 500 feet or a vertical distance of 250 feet from a critical facility without the written consent of the owner of the critical facility.
 - (b) Except as otherwise provided in subsection 2, 5 miles of an airport.
2. A person may operate an unmanned aerial vehicle within 5 miles of an airport only if the person obtains the consent of the airport authority or the operator of the airport, or if the person has otherwise obtained a waiver, exemption or other authorization for such operation pursuant to any rule or regulation of the Federal Aviation Administration. A person who is authorized to operate an unmanned aerial vehicle within 5 miles of an airport pursuant to this subsection shall, at all times during such operation, maintain on his or her person documentation of any waiver, exemption, authorization or consent permitting such operation.
3. A person who violates this section is guilty of a misdemeanor.
4. As used in this section, "airport" means any area of land or water owned, operated or maintained by or on behalf of a city, county, town, municipal corporation or airport authority that is designed and set aside for the landing and taking off of aircraft and that is utilized in the interest of the public for such purposes.

The Airport Authority has previously approved Robison Engineering, Carson City Public Works, Carson City Fire Department, and Steve Jackson dba Great Images. In the early approvals, we included special conditions, most of which are now set forth in the final FAA rules on operation of drones. 14 CFR Part 107 <https://www.gpo.gov/fdsys/pkg/FR-2016-06-28/pdf/2016-15079.pdf>

In light of the FAA safeguards already in place, we can condition the approval on compliance with FAA Part 107 and notification when the operations are within 1 mile of the Airport.

Proposed Action: I move we approve the request of Brian Kulpa and KARNV TV News to operate within 5 miles of the Carson City Airport, so long as they comply fully with FAA Part 107, and that they notify the Airport Manager at least 24 hours prior to operations that are within 1 mile of the Carson City Airport.

5. FOR POSSIBLE ACTION: APPROVAL OF ASSIGNMENT OF THE CUBIX CORPORATION LEASE (Parcel W1-C under lease recorded October 19, 2006 as Document No. 360015) TO GONI AVIATION, LLC (S. Lewis, B. Hartman).

Staff Summary: Goni Aviation, LLC has agreed to purchase the Fixed Base Operation lease and facilities currently held by Cubix Corporation. This item is presented to obtain Airport Authority approval of an assignment of the underlying Airport lease to Goni Aviation, LLC., as required by the lease agreement.

Background. The current Cubix Corporation hangar lease is a full FBO lease. It was executed August 16, 2006, and terminates by its terms on August 20, 2047. Copy attached. Cubix prepaid their rent to August, 2021, at which time the lease rate goes to the then-current market rate. The lease permits assignment upon Landlord consent.

“ 9. ASSIGNMENT AND SUBLEASING. Tenant shall have no right to assign or sublet its

interest in this lease except upon Landlord's prior consent. Any such assignment or sublease will be binding to assignees/sublessees on all terms and conditions in this lease.

Tenant shall have the right to assign, pledge, or hypothecate this lease for the purpose of securing additional financing, upon the prior approval of Landlord.

The parties agree that a transfer of corporate interests in excess of twenty-five percent (25%) shall be deemed an assignment of this lease.

The Landlord reserves the right to assign, pledge, or hypothecate this Agreement upon notice to the Tenant.

Goni Aviation LLC has requested Landlord (Airport Authority) approval to assign the lease from Cubix Corporation to Goni Aviation LLC. Cubix has signed the Assignment and Goni Aviation will do so prior to the meeting.

Goni Aviation LLC is made up of the following 3 owners: Steve Lewis, Bill Hartman, and George Clary. Their background information has been supplied by the Airport Manager.

CCMC 19.02.020.315 sets forth the bases under which an application to do business on the Airport may be denied. (eg. proposed operations are unsafe, approval would cause Airport expenditure of funds, inadequate space, etc.) None of the disqualifying elements appear to be present in that this is presently a land lease (Class 1) FBO in good standing. The new owners are already tenants in the hangar and from a practical standpoint, already operate the facility.

Proposed Action: I move we approve the assignment of the lease from Cubix Corporation to Goni Aviation, LLC.

(Note: After approval, this item will go to the Carson City Board of Supervisors as they must also approve all lease arrangements on the Airport.)

6. FOR POSSIBLE ACTION: REGARDING THE REQUEST BY DENNIS GIANGRECO TO LEASE PARCEL 219B OF AIRPORT LAND FOR THE CONSTRUCTION OF HANGARS FOR AIRCRAFT STORAGE; DETERMINE PROPOSED USE AND PROCEED WITH APPRAISAL; AND RECOVERY OF THE COST OF APPRAISAL. (D. Giangreco)

Staff Summary: Dennis Giangreco is requesting a land lease of Parcel 219B in order to construct aircraft-storage-only-hangars to the east of the Heritage Hangars Condo Association. The Authority may decide to proceed with an appraisal of the parcel and consider reimbursement of the cost of the appraisal. On April 15, 2015, the Airport Authority approved "in principle" to create parcel 219B to accommodate a similar proposed hangar development.

Background. The Airport Authority had previously leased parcel 219 to Airport Structures (DiLoreto) to build hangars. Airport Structures, LLC., installed the underground utilities and constructed one row of hangars before deciding to abandon the project. At that point, the Airport Authority reduced the size of the constructed project to the one row of hangars and a taxilane and assigned that lease to Heritage Hangars Condo Association. Dennis Giangreco is now requesting that the Airport Authority put out to lease the remaining area which was returned to the Airport with the infrastructure installed. The CCAA is requested to authorize staff to commission an appraiser to define the fair market value lease rate to be discussed at the May CCAA meeting.

As with all county and city owned property, Nevada law requires that leases must be based on recent appraisals (no older than 6 months) and that a sealed bid process be used to non-discriminatorily offer the property to the public. NRS 244.2795, NRS 244.281
<http://www.leg.state.nv.us/NRS/NRS-244.html#NRS244Sec2795>

To summarize, here is the procedure:

1. Someone requests that an area be put up for lease.
2. The Airport Authority decides whether it wants to go forward and obtains a current appraisal on the area to be offered for lease. As in the past, the Authority usually requires the requesting party to advance the fee for the appraisal with the caveat that if someone else wins the lease bid, they must reimburse the requesting party.
3. After obtaining the appraisal, the Airport Authority (at a noticed meeting) adopts a resolution setting forth the area to be offered for lease, the lease terms (types of uses to be permitted, length of lease, sample lease), the minimum rental rate (based on the appraisal), a deadline for submitting sealed bids, a date on which the bids will be publicly opened, and a meeting at which the Airport Authority will consider the bids and award the lease.
4. A notice is published in the newspaper inviting bids and identifying the deadlines.
5. The sealed bids are opened on the day identified.
6. The Authority awards the lease based on the highest responsible bid. Per the statute, if there are more than one bidder, the Authority will allow oral bidding as between persons who have submitted bids. (This in fact happened on the original underlying lease area when it was leased to DiLoreto's predecessor, Pat Dang.)
7. After awarding the lease, the matter is put before the Board of Supervisors for their approval, which is typically given since the Authority utilizes all of the underlying legal requirements used by the Board of Supervisors under NRS 244.

Proposed Action: I move we approve the Staff to proceed with an appraisal for the lease rate for lease parcel 219B; conditioned upon Mr. Giangreco's advance of the appraisal fee.

I. LEGAL COUNSEL'S REPORT (Non-Action Item).