



**Request for Proposals (RFP)
#2022-02
for
LEASE OF LAND AT THE SAN MARCOS REGIONAL AIRPORT FOR
AERONAUTICAL DEVELOPMENT**

Issued: June 20, 2022

ISSUED BY:
Texas Aviation Partners
Airport Management
4400 Highway 21
San Marcos, Texas 78666

**RESPONSES DUE:
July 22, 2022
Prior to 5:00 PM, Local Time**

1. AIRPORT OVERVIEW

San Marcos Regional Airport (the “Airport” or “HYI”) is a general aviation airport located in and owned by the City of San Marcos, Texas (the “City”). The Airport, which is categorized as a National Asset in the Federal Aviation Administration’s (FAA) National Plan of Integrated Airport Systems (NPIAS) is well positioned between Austin and San Antonio in one of the fastest growing regions in the United States.

The 1,420 acre Airport has an average of 85,000 annual operations and is home to over 240 based aircraft. The Airport is equipped with three runways ranging from 5,214 to 6,330 feet in length. Additional amenities include an Instrument Landing System (ILS) and Air Traffic Control Tower staffed daily from 7 AM to 9 PM.

2. PURPOSE

The City sees the Airport as an economic generator and recognizes the need for additional development. This RFP is being issued to solicit proposals (the “Proposals”) from qualified and experienced operators/developers (the “Respondent”) to provide aviation-related development on two parcels totaling approximately 55,100 square feet as identified in Exhibit A. A map of utilities is included in Exhibit B.

Respondents may submit proposals for one or both parcels.

3. GENERAL PROVISIONS

Proposals must include a business plan to include terms of proposed agreement, such as a traditional land lease, concession agreement, management agreement, or other potential joint venture. Detailed rate structures will be incorporated into the subsequent negotiation process with the successful Respondent.

Upon approval and execution of a Lease Agreement, the successful Respondent will be responsible for all onsite and offsite costs and expenses associated with the development, construction, ownership, management, and operation of the proposed project, including but not limited to planning, design, permit fees, utility charges, and all other project costs.

4. REQUIREMENTS & RESPONSIBILITIES

- a. The selected Respondent will comply with Airport Minimum Standards (Exhibit C) and Rules and Regulations (Exhibit D) as they exist today or may be amended in the future and any other terms and provisions of the lease as will be negotiated.
- b. The selected Respondent will accept the property in an “AS IS, WHERE IS” condition, without any express or implied warranties or representations.

- c. The selected Respondent will survey the parcel and prepare a set of site plans, floor plans, and elevations for the proposed project, within the time frame approved by the City in conjunction with Lease negotiations.
- d. The selected Respondent will be responsible for obtaining any and all necessary building and construction permits required for the proposed project from the City of San Marcos.
- e. The selected Respondent will be responsible for all compliance with local, state, and federal environmental regulations including but not limited to the City of San Marcos, the Texas Commission on Environmental Quality (TCEQ), and the National Environmental Protection Agency (NEPA).
- f. The selected Respondent will submit copies of as-built plans for all proposed project improvements after each phase of construction has been completed.
- g. The selected Respondent will coordinate construction of the proposed project with other development, construction, or aviation activities taking place adjacent to the proposed project development. The selected Respondent will be responsible for repairing or paying for the costs of repairing any damage that its activities may cause to any existing public and/or private infrastructure.
- h. If any agency, division, or department of governmental entity with appropriate jurisdiction condemns the Premises or any part of the Premises as unsafe or not in conformity with any of the laws or regulations controlling their construction, occupation or use, or orders or requires any alteration, repair, or reconstruction of the Premises the responsible party shall be the Lessee who at its sole cost and expense (and without any right of reimbursement from the City) immediately effect all necessary alterations and repairs required for the Premises full and exact compliance.

5. SITE TOUR AND PRE-PROPOSAL MEETING

A site tour and pre-proposal meeting to discuss the proposal process will be held on June 28 at 10:00 AM. Respondents interested in attending will meet at Airport Management Offices at 4400 Highway 21, San Marcos, Texas 78666 followed by a tour of the physical site.

Any questions outside of the pre-proposal meeting should be directed in writing to Cassidy Berenato at cberenato@texasaviationpartners.com. Questions asked after July 11, 2022 will not receive a response.

All questions and answers (either in-person at the pre-proposal meeting or received in writing) will be recorded and posted to the Airport's RFP webpage which can be found at the following address: www.flysanmarcos.com/rfps.

6. EVALUATION CRITERIA

The Airport will evaluate and rank each Response based on the following factors. The Airport reserves the right to request additional information or clarifications from all Respondents and to allow corrections of errors or omissions.

CRITERIA	SCORING	DESCRIPTION
Qualifications (Experience and Knowledge)	25	Aviation development/management will be reviewed and evaluated to demonstrate ability to successfully complete the project.
Services Proposed and Business Plan	20	The overall quality and depth of any proposed development and services will be evaluated pursuant to the Airport Minimum Standards and the needs of the local aviation community.
Development & Investment in Airport	20	Plans will be evaluated to determine the project's positive long-term impact on the airport, general aviation, and the community as a whole.
Fee Schedule & Proposed Lease Terms	15	Proposed lease terms will be reviewed to determine financial impact to the airport and proposed rates and fees will be evaluated to determine if they are consistent with the aviation industry and standards.
Financial Ability and Credit Worthiness	20	Evidence of financial capacity to deliver the proposed project improvements and business plan will be evaluated.

Optional Interviews: The shortlisted Respondents may be requested to participate in an interview and provide a presentation that is worth up to an additional twenty-five (25) points. Any additional points earned will be added to the points the Respondent received in the first round evaluations.

Final Decision: In responding to this RFP, the Respondents understand that the decision of the selection committee is final. All proposals will be reviewed and ranked according to the criteria above, the Respondents may be selected for interviews or oral presentations as may be necessary. The Airport makes no commitment to any Respondent to this RFP beyond consideration of the Proposals.

7. SUBMITTAL INSTRUCTIONS

Proposals shall be submitted in writing and delivered to the following address only:

Texas Aviation Partners
San Marcos Regional Airport
4400 Highway 21
San Marcos, Texas 78666

Proposals will be accepted until 5:00pm PM on July 22, 2022.

Proposals shall be submitted in a sealed envelope package and clearly marked with the Proposal Number from the cover page and Respondent's name and contact information. Please include one (1) printed version and one (1) version via flash drive.

Emailed or faxed submittals, or submittals received after the above due date and time will not be accepted or considered.

Any information deemed confidential by the submitted Respondent must be clearly marked as such. No information about any Proposal will be related to the public until the process is complete. Respondents are informed that documents related to the Airport are subject to the Texas Public Information Act and are presumed public with few exceptions. The Respondent will be informed of any request for information seeking information submitted in response to this RFP and will be provided an opportunity to seek ruling from the Attorney General of Texas allowing the City to withhold the information. The Airport is under no obligation to return Proposals.

It is the sole responsibility of the Respondent to ensure that its Proposal reaches the Airport Management Office. Deliver all Proposals to the address above no later than the submittal deadline. The Respondent is cautioned that it is responsible for the delivery to the Airport Management Office. Therefore, if your Proposal is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the address above. The Airport is not responsible for deliveries made to any other place or address.

The Airport will not accept or consider responses received after the submittal deadline.

8. SUBMITTAL FORMAT

The following items are required to be submitted with the response. In order to expedite the evaluation of qualifications, interested Respondents will organize their Proposals in the sequence provided below. These instructions are designed to ensure the submission of information essential to the understanding and comprehensive evaluations of the Proposal.

a. Cover Letter

Include a cover letter identifying the Respondent and the company/entity status. Additionally, include the following:

- Name of project manager who will negotiate the lease and be the main point of contact.
- Respondent contact information to include address, website, telephone number, and email address.

b. Executive Summary

Provide an Executive Summary of the major features of the proposal, including any conclusions, assumptions, and general recommendations the Respondent desires to make. Explain how the proposed development would address airport user needs.

c. **Business Entity Description, Development History, and Qualifications**

Provide a statement of the Respondent's corporate status, type of legal entity, and the names of its principal officers, including percentage interest if applicable. Include a certification from the Secretary of State indicated the complete legal name and the date of incorporation. Respondents should also provide a brief history of the entity and a detailed description of development history and experience. Respondent should highlight any aviation-related development.

d. **Business Plan**

Please include the following as applicable:

- Summary of physical improvements including conditional/conceptual site plan(s).
 - Respondents should strive to maximize the buildable area for each parcel.
 - Eastern edge of development near Taxiway Kilo should take aircraft wingspan into account.
- Proposed services to be offered.
- A list of key personnel and their responsibilities.
- Proposed rents and fees to be paid to City.
 - Per square foot ground lease rate should be no less than \$0.40 per square foot per year.
- Proposed term of lease, including any extensions and increases.
 - Minimum rental increase should be 10% every 5 years.
- Proposed time to complete construction.
- Existing or proposed marketing plan.

e. **Financial Data**

Include copies of current financial statements for the Respondent for the most recent two years. Financial statement should include a balance sheet and an income and expense statement including profit and loss statement with net worth present and pro-forma business projections for the future. It is understood that the financing of the development and any resulting services and/or equipment will be the sole responsibility of the Respondent. The Respondent is expected to demonstrate that it can provide the required financing from either (1) internally generated funds, or (2) commitments from external sources. In the event funds are to be borrowed to finance the investment, the Proposal should include Letters of Intent from a bank or other lending institution. Please provide amount of initial capital investment.

Indicate if the Respondent has been involved in any litigation. Indicate whether or not the Respondent has ever filed for bankruptcy or had operations foreclosed upon.

This financial information shall remain confidential to the Selection Committee only for the purposes of determining the financial viability of the respondent.

9. AWARD OF CONTRACT

a. Negotiations

After evaluation and ranking based on the evaluation criteria, the Airport may then enter into negotiations with the top ranked Respondent as to the terms of the Lease, and all aspects of the project to reach an agreement.

b. Inability to Reach an Agreement

In the event the negotiations between the top ranked Respondent and the Airport cannot be completed because of an inability to reach agreement, the Airport may formally end negotiations with that Respondent and attempt to negotiate a Lease with the next ranked Respondent until a Lease is entered.

c. Lease Award

The selection of a Respondent and the execution of a Lease, while anticipated, are not guaranteed by the Airport. The Airport reserves the right to determine which Proposal is in the Airport's best interest and to award a Lease on that basis.

d. City Council Approval

The City Council will consider the final Lease for approval.

10. SPECIAL PROVISIONS

a. Selected Response

The Airport reserves the right to include the selected response or any part or parts of the selected response in the final Lease.

b. Collusion

By submission of a response, the Respondent certifies, and in the case of a joint submission each party certifies as to its own organization, that in connection with any cost proposal, the lease terms or rate structures are not the product, direct or indirect, of any collusion with any other Respondent, and have not been knowingly disclosed by the Respondent directly or indirectly to any other Respondent prior to submission to the Airport.

c. Lobbying

Respondents are prohibited from directly or indirectly communicating with City Council members regarding their qualifications or any other matter related to the eventual award of a Lease. Respondents are prohibited from contacting City or Airport staff regarding their qualifications or the award of a Lease. Any violation will result in the immediate disqualification of the Respondent from the selection process.

d. "Green" Solutions

It is the City's objective to be proactive with regard to the environment. Respondents are encouraged to clearly identify any green solution in the Proposals.

e. [Right to Reject, Waive, or Terminate the RFP.](#)

The Airport reserves the right to reject any or all proposals and/or to terminate the RFP process at any time and in the Airport's sole and absolute discretion. In no event will the Airport have any liability for terminating this RFP. The Respondent assumes all risk, cost, and responsibility for all expenses associated with the pursuing, preparation, and submittal of its Proposal to include any and all traveling and subcontractor expenses.

f. [Right to Not Award](#)

The Airport reserves the absolute and subjective right not to award a Lease pursuant to this RFP.

g. [Right to Add Terms and Conditions](#)

The Airport reserves the right to add terms and conditions to the RFP and any necessary agreements.

h. [Right to Negotiate Fees and Lease Terms and to Terminate Negotiations](#)

The Airport reserves the right to negotiate the fees and other terms proposed by the successful Respondent. The Airport reserves the right to terminate negotiations at any time during the RFP process or in the negotiation of any necessary agreements. The Airport in its sole and absolute discretion and for any reason or purpose may terminate this process by providing notice in writing to a selected Respondent of such termination of negotiations. The Airport shall have no obligation to compensate a selected Respondent for any and all costs incurred by the Respondent.

i. [Smoking Prohibition](#)

Pursuant to San Marcos Ordinance No. 2013-57, as amended, all City of San Marcos- owned and rented/leased properties are smoke-free properties. All contractors, vendors, subcontractors, and their employees are prohibited from smoking while on City property. This prohibition includes the enclosed areas of public places and workplaces and within ten (10) feet of doors and windows of City-owned or rented buildings, all City parks and the grounds outside of any City building. This prohibition includes e-cigarettes and other inhaled vapor devices. The City may terminate the contract for noncompliance with this ordinance.

j. [Non-Discrimination](#)

The Respondent understands and certifies that it is an Equal Opportunity Employer and does not and will not discriminate in employment and in subcontracts based on race, color, sexual orientation, gender identity, national origin, sex, age, disability, or economic condition and prohibits retaliation, discharge, or discrimination against any employee or applicant for employment or against any subcontractor or supplier.

11. INSURANCE

During the period of the resulting Lease, the Respondent will maintain, at its expense, insurance with limits not less than those prescribed in the San Marcos Regional Airport Minimum Standards as they exist today or may be amended in the future. Insurance underwriters will be acceptable to the City. With respect to required insurance, the Respondent will:

- Name the City of San Marcos, 630 East Hopkins Street, San Marcos, Texas 78666 and Texas Aviation Partners, 4400 Highway 21, San Marcos, Texas 78666 as additional insured.
- Provide the City with a thirty (30) days' written notice to the Certificate Holder prior to cancellation or material change of any insurance referred to in the certificate.
- Failure of Certificate Holder to demand a certificate or other evidence of full compliance with these insurance requirements or failure of Certificate Holder to identify from evidence that is provided will not be construed as a waiver of Insured's obligation to maintain such insurance.
- Provide the City of San Marcos, 630 East Hopkins Street, San Marcos, Texas 78666, and Texas Aviation Partners, 4400 Highway 21, San Marcos, Texas 78666 a Certificate of Insurance evidencing required coverage before execution of Lease.
- The City reserves the right to require additional insurance coverages and amounts through the final Lease negotiated between the City and the Respondent as related to the construction of the resulting facility.

12. EXHIBITS

Exhibit A – Site Map

Exhibit B – Utilities Map

Exhibit C – Airport Minimum Standards

Exhibit D – Airport Rules and Regulations

Exhibit E – Sample Ground Lease Document

EXHIBIT A

KILO DEVELOPMENT AREA SITE MAP

BOUNDARIES APPROXIMATE AND WILL BE SURVEYED BY RESPONDENT PRIOR TO LEASE EXECUTION



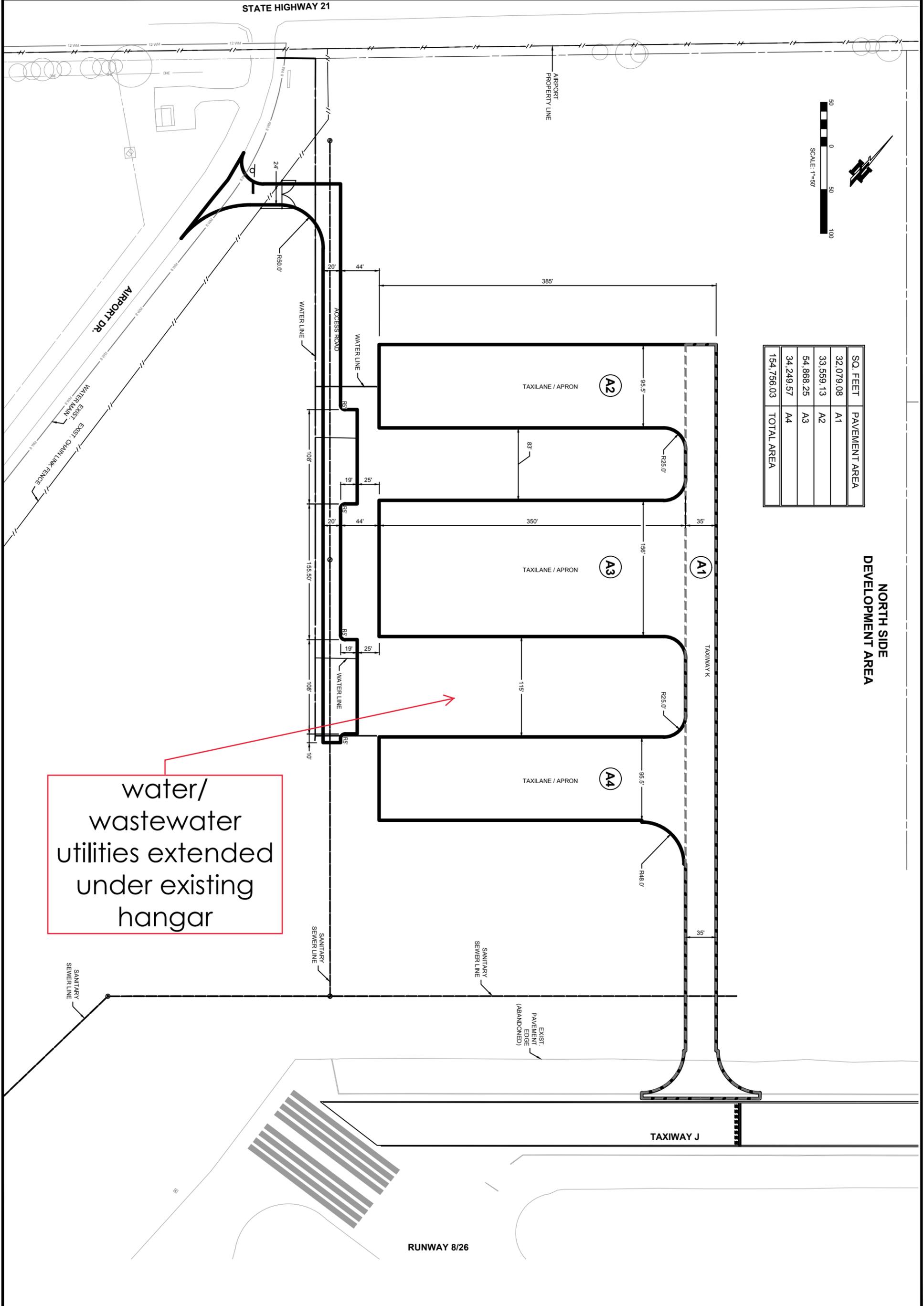
EXHIBIT B

STATE HIGHWAY 21



SQ. FEET	PAVEMENT AREA
32,079.08	A1
33,559.13	A2
54,868.25	A3
34,249.57	A4
154,756.03	TOTAL AREA

NORTH SIDE
DEVELOPMENT AREA



water/
wastewater
utilities extended
under existing
hangar

SHEET - OF -	<p>816 Park Two Dr. - Sugar Land, Texas 77478 T.281-494-3252 F.281-494-3234 www.ksaeng.com</p>	DRAWN BY: AAJ	NORTH SIDE DEVELOPMENT SAN MARCOS MUNICIPAL AIRPORT SAN MARCOS, TEXAS	NORTH SIDE DEVELOPMENT PHASE 1	<table border="1"> <thead> <tr> <th>MARK</th> <th>REVISION</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	MARK	REVISION	DATE			
		MARK				REVISION	DATE				
		DESIGNED BY: CHP									
LATEST REVISION: 9/13/2013											
KSA JOB NO.: SM010											
PROJECT NAME: 	SHEET NAME: 	P:\SM010 - AIRPORT NORTH SIDE DEVELOPMENT\01 DESIGN AND BIDDING FILES\20 DRAW\10 EXHIBIT \ SM010-C-LO-PVMT_7-15-2013.DWG PAVEMENT DRAWING: PAVEMENT LAYOUT PLOT DATE: TIME									

EXHIBIT C

Airport Management Office
4400 Airport Highway 21
San Marcos, Texas 78666
Phone: (512) 216-6039
Fax: (512) 216-6043

Updated August 18, 2015



SAN MARCOS
REGIONAL AIRPORT

Minimum Standards

San Marcos Regional Airport Minimum Standards

Table of Contents

Section 1: General

1.1	Introduction	3
1.2	Purpose	3
1.3	Policy	4
1.4	Objective	4
1.5	Application of Minimum Standards	5
1.6	Insurance.....	5
1.7	Personnel	5
1.8	Common Rights and Privileges.....	6
1.9	Land and Facility Use	6
1.10	Compliance	6

Section 2: Aeronautical Operators & Tenants

2.1	Authority	7
2.2	Fixed Base Operator (FBO).....	7
2.3	Specialized Aviation Service Operation (SASO).....	8
2.4	Temporary Aeronautical Commercial Activity(TACA).....	8
2.5	Executive Hangar	9
2.6	Nonprofit.....	9

Section 3: Application Process

3.1	Improvements to Airport Property	9
3.2	Temporary Aeronautical Commercial Activities (TACA)	10
3.3	Additional Requirements	10
3.4	Action on Application.....	10

Appendix

A	Insurance Requirements.....	11
B	Temporary Permit Application.....	14

San Marcos Regional Airport Minimum Standards

Section 1 General

1.1 Introduction

The City of San Marcos, as Owner of the San Marcos Airport, establishes these Minimum Standards for persons who are or wish to become Commercial Operators, or anyone who leases land, and/or who makes use of Airport property. These Minimum Standards consider the significant role of the Airport in aviation, facilities that currently exist at the Airport, services being offered at the Airport, and the future development planned for the Airport. These Minimum Standards serve the following purposes:

1. Ensure that all commercial operators, tenants, and the City of San Marcos are not exposed to illegal, unsafe, or irresponsible practices.
2. Serve the public interest and discourage substandard business practices and construction, thereby protecting both the established aeronautical activity and the San Marcos Airport customers.

1.2 Purpose*

In accordance with the Airport and Airway Improvement Act of 1982 and the Airport Improvement Program (AIP) sponsor assurances, the owner or operator of the Airport (the Airport Sponsor) that has been developed or improved with federal grant assistance or conveyances of Federal property assistance is required to operate the Airport for the use and benefit of the public and to make it available for all types, kinds, and classes of aeronautical activity.

These federal obligations involve several distinct requirements. Most important is that the Airport and its facilities must be available for public use as an Airport. The terms imposed on those who use the Airport and its services must be reasonable and applied without unjust discrimination, whether by the Airport Sponsor or by a contractor or licensee who has been granted a right by the Airport sponsor to offer services or commodities normally required to serve aeronautical users of the Airport.

Federal law requires that recipients of federal grants sign a grant agreement or covenant in a conveyance of property that sets out the obligations that an Airport Sponsor assumes in exchange for federal assistance. The FAA's policy recommending minimum standards stems from the Airport Sponsor's grant assurances and similar property conveyance obligations to make the Airport available for public use on reasonable conditions and without unjust discrimination.

San Marcos Regional Airport Minimum Standards

1.3 Policy*

The Airport Sponsor of a federally obligated Airport agrees to make available the opportunity to engage in commercial aeronautical activities by persons, firms, or corporations that meet reasonable minimum standards established by the Airport Sponsor. The Airport Sponsor's purpose in imposing standards is to ensure a safe, efficient, and adequate level of operation and services is offered to the public. Such standards must be reasonable and not unjustly discriminatory.

1.4 Objective*

The FAA objective in recommending the development of minimum standards serves to promote safety in all Airport activities, protect Airport users from unlicensed and unauthorized products and services, maintain and enhance the availability of adequate services for all Airport users, promote the orderly development of Airport land, and ensure efficiency of operations. Therefore, Airport Sponsors should strive to develop minimum standards that are fair and reasonable to all on-Airport aeronautical service providers and relevant to the aeronautical activity to which it is applied.

The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public. Under certain circumstances, an Airport Sponsor could deny Airport users the opportunity to conduct aeronautical activities at the Airport for reasons of safety and efficiency. A denial based on safety must be based on evidence demonstrating that safety will be compromised if the applicant is allowed to engage in the proposed aeronautical activity. The FAA is the final authority in determining what, in fact, constitutes a compromise of safety. These standards should be tailored to the specific aeronautical activity and the Airport to which they are to be applied. Considerations for applying these standards may include the following:

1. Apply standards to all providers of aeronautical services, from full service FBOs to single service providers;
2. Impose conditions that ensure safe and efficient operation of the Airport in accordance with FAA rules, regulations, and guidance;
3. Ensure standards are reasonable, not unjustly discriminatory, attainable, uniformly applied and reasonably protect the investment of providers of aeronautical services to meet minimum standards from competition not making a similar investment;
4. Ensure standards are relevant to the activity to which they apply; and
5. Ensure standards provide the opportunity for newcomers to meet the minimum standards to offer their aeronautical services within the market demand for such services.

* Federal Aviation Administration Advisory Circular Number 150/5190-7, August 28, 2006

San Marcos Regional Airport Minimum Standards

1.5 Application of Minimum Standards

Any Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must comply with these Minimum Standards and any amendments thereto. If there is a conflict between a Minimum Standard and the provision of a lease, permit, or agreement, the provision in the lease, permit, or agreement governs.

Whenever an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant conducts multiple aeronautical activities under one lease, permit or agreement with the City, the Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant must comply with these Minimum Standards for each activity being conducted. If the Minimum Standards for one of the aeronautical activities are inconsistent with the Minimum Standards for another aeronautical activity, the City may apply the Minimum Standards that are most beneficial to Airport operations.

The City may waive or modify any Minimum Standard for the benefit of any governmental agency or when the City determines that a waiver or modification is in the best interest of Airport operations and will not result in unjust discrimination among Aeronautical Commercial Operators, Nonprofits, or Executive Hangar Tenants.

In addition to the requirements set forth in this document, an annual review of existing leases may be conducted for each tenant/lessee at any time to ensure compliance with these Minimum Standards.

1.6 Insurance

All individuals and entities providing commercial aeronautical activities shall protect the public generally, its customers or clients, and the City of San Marcos from any and all unlawful damages, claims, or liability and shall carry comprehensive general liability insurance with a company authorized to do business in the State of Texas with limits of not less than that specified herein; and such policies must be written with the City of San Marcos named as an additional insured; such policies must be approved by the Airport and a certificate of insurance furnished to same. It is further understood that as circumstances may justify in the future, the City may modify these insurance requirements.

All tenants will have three months, or until expiration date of current insurance policy, whichever is greater, to update their insurance coverage in order to comply with these Minimum Standards.

All insurance requirements can be found in Appendix A of this document.

1.7 Personnel

Each Aeronautical Commercial Operator must employ a sufficient number of trained, on-duty personnel to provide for the safe, efficient, and orderly conduct of all its operations utilizing the

San Marcos Regional Airport Minimum Standards

Airport, and for proper compliance with its obligations under its lease, permit, or agreement. Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must control the conduct and demeanor of its personnel, subtenants, invitees, and, upon objection by the City concerning the conduct or demeanor of any such person, the Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must immediately take all lawful steps necessary to remove the cause of the objection.

Each Aeronautical Commercial Operator, Nonprofit, and Executive Hangar Tenant must conduct its operations in a safe, orderly, efficient, and proper manner so as not to unreasonably disturb, endanger, or be offensive to others.

1.8 Common Rights and Privileges

All Aeronautical Commercial Operators, Nonprofits, and Executive Hangar Tenants shall have the right to use common areas of the airport (including runways, taxiways, and roadways).

The City reserves the right to take any actions it considers necessary to protect the aerial approaches to the Airport against obstructions.

The City reserves the right to enter upon any premises at reasonable times for the purpose of making such inspections as it may deem expedient to the proper enforcement of these Minimum Standards.

1.9 Land and Facility Use

The City reserves the right to lease an existing facility or any portion of an existing facility to an Aeronautical Commercial Operator, Nonprofit, or Executive Hangar Tenant in order to maximize facility use and business opportunities. A lease of this nature shall be at the City's sole discretion, and shall be considered to meet the minimum facility requirements as specified in these Minimum Standards.

1.10 Compliance

In the event modified or updated Minimum Standards create a situation whereby an existing tenant is not in compliance, the City has the sole right to establish a plan for correcting such non-compliance. The City will work with the tenant to help provide a fair and reasonable solution in a timely manner.

Section 2 Aeronautical Operators & Tenants

2.1 Authority

Airport Management reserves the right to adjust and/or combine the square footage of building space or area if more than one category of service is provided by one individual, firm, or corporation. Airport Management also reserves the right to make any changes to these Minimum Standards dictated by changing conditions or circumstances. The time of operations shown for each category is considered reasonable but may be adjusted from time to time as agreed on by Airport Management and the Lessee in writing.

2.2 Fixed Base Operator (FBO)

A Fixed Base Operator (FBO) is an Aeronautical Commercial Operator engaged in the sale of products, services, and facilities to aircraft operators including aviation fuels and lubricants; ground services and support; tie-down, hangar, and parking; aircraft maintenance, and aircraft rental/flight training.

A Fixed Base Operator shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with FBOs.
2. Provide at least one type of fuel for aircraft use (100LL or Jet A).
3. Maintain one metered and filter equipped dispenser, fixed or mobile, for dispensing each separate type of fuel offered.
 - For mobile fuel dispensing of each type of fuel offered, lessee shall furnish a separate fuel truck or fuel trailer with a minimum capacity of five hundred (500) gallons each. Mobile dispensing equipment shall be properly maintained, operated, and equipped in accordance with applicable Federal Aviation Administration, Airport Lessor, and National Fire Protection Association recommendations, requirements, and regulations.
 - For fixed fuel dispensing, lessee shall furnish separate dispensing pumps and meters for each type of fuel offered. Such fixed fuel dispensing equipment shall be attended or automated so that fuel is available to the public without discrimination, any unusual requirements, or any advance arrangements of any kind.

San Marcos Regional Airport

Minimum Standards

4. Furnish fuel storage tanks with a minimum capacity of ten thousand (10,000) gallons each for either 100LL or Jet A. Fuel storage tanks shall be ground mounted in properly bunkered and approved closures in a location approved by the Airport Lessor and shall comply with applicable uniform building code standards, fire codes and ordinances, and the recommendations of the National Fire Protection Association.
5. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.
6. Provide personnel on duty during normal business hours seven days a week.

2.3 Specialized Aviation Service Operation (SASO)

A Specialized Aviation Service Operation (SASO) is an Aeronautical Commercial Operator that is authorized to offer a single or limited service according to established Minimum Standards. Examples of a SASO include, but are not limited to, the following commercial aeronautical activities: aircraft maintenance, avionics maintenance, avionics sales, flight training, aircraft charter, aircraft sales, aircraft storage, specialized commercial aeronautical operations, and aircraft refurbishing.

A SASO shall:

1. Lease from the Airport adequate square footage for a balanced facility including but not limited to: office space, restrooms, lobby, and other activities traditionally associated with the intended facility use.
2. Ensure that customers, clients, and/or employees have the appropriate and current FAA pilot's license and current Airman Medical Certificate as necessary.
3. Have adequate facilities or arrangements for storing, parking, servicing, and repairing all of its aircraft.
4. Provide or make adequate arrangements for motor vehicle parking for its employees and customers.

2.4 Temporary Aeronautical Commercial Activity(TACA)

A Temporary Aeronautical Commercial Activity is a single aeronautical service offered on a temporary basis without an established place of business on the Airport. Examples of a TACA include, but are not limited to, mobile versions of Specialized Aviation Service Operations (SASO). The TACA must be permitted by San Marcos Airport and may be denied access to the Airport. San Marcos Airport may or may not allow this type of servicing to exist on the Airport.

San Marcos Regional Airport Minimum Standards

2.5 Executive Hangar

An Executive Hangar is a small to medium size hangar, owned or leased by an individual or business to store their own aircraft. The uses of an Executive Hangar shall be limited to the storage of wholly owned or leased aircraft and service and maintenance on wholly owned or leased aircraft. Executive Hangar Tenants may not hangar aircraft owned by others nor offer, nor provide, any services whatsoever to others, except however, other's aircraft may be temporarily hangared without compensation.

Executive Hangar Tenants shall:

1. Construct a hangar with a minimum structure size of 50' x 50'.
2. Determine the necessity of certain Development Design Standards, such as restroom facilities and vehicle parking, with the assistance of Airport Management prior to construction.

2.6 Nonprofit

A Nonprofit serves and/or educates the aviation community without the intent to distribute profits or dividends or without the intent to operate as a commercial business. The City may request articles of incorporation filed with the Secretary of State to ascertain nonprofit status.

Due to the variety of nonprofit aviation organizations, minimum leased area, building size, and insurance requirements will be determined on a case-by-case basis.

Section 3 Application Process

3.1 Improvements to Airport Property

Prospective tenants wishing to establish a permanent business on Airport property or to construct a hangar for personal use must first complete a Project Development Questionnaire.

All improvements constructed on Airport property are subject to the requirements of these Minimum Standards, the Airport's Development Design Standards, and all applicable municipal, state, and federal codes. Plans for construction will be approved by the City and Airport Management prior to the commencement of work.

A Project Development Questionnaire packet may be found at Airport Management office.

San Marcos Regional Airport Minimum Standards

3.2 Temporary Aeronautical Commercial Activities (TACA)

Temporary or mobile business activities are permitted after the proper Temporary Permit Application has been completed and approved by Airport Management, all applicable fees have been paid, and proper proof of insurance has been provided.

A Temporary Permit Application may be found in Appendix B of this document or online.

3.3 Additional Requirements

The City or designated representative may require the Applicant to provide additional information to ensure compliance with the City of San Marcos ordinances, Airport Standard Operating Procedures and Regulations, or these Minimum Standards.

Applicant shall satisfy the Airport that they are technically and financially able to perform the services associated with the proposed nature of their business. This may include the responsibility for demonstrating continued financial solvency and business ability by submitting financial statements, credit references, a business plan, and any other data that Airport Management and the City may require from time to time. In each instance, the City shall make the final determination as to qualifications and financial ability of the applicant.

3.4 Action on Application

All applications will be reviewed and acted upon by Airport Management within 30 days from the receipt of the application. Applications may be denied for one more of the following reasons:

1. The applicant does not meet qualifications, standards, and requirements established by these Minimum Standards.
2. The applicant's proposed operations or construction will create a safety hazard on the Airport.
3. The granting of the application will require the expenditure of local funds, labor, or materials on the facilities described in or related to the application, or the operation will result in a financial loss to the Airport.
4. There is no appropriate or adequate available space or building on the Airport to accommodate the entire activity of the applicant.
5. The proposed operation, development, or construction does not comply with the approved Airport Layout Plan (ALP).

San Marcos Regional Airport Minimum Standards

Appendix A: Insurance Requirements

San Marcos Airport Minimum Insurance Requirements

Basic airport operations minimum requirements:

CLASSIFICATION	COMPREHENSIVE AIRPORT LIABILITY	AIRCRAFT LIABILITY	HANGARKEEPERS
FBO	\$2,000,000	≥ \$1,000,000	Value of aircraft in care, custody, or control
SASO	\$1,000,000	≥ \$1,000,000	Value of aircraft in care, custody, or control
TEMPORARY AERONAUTICAL ACTIVITY	\$1,000,000	N/A	N/A
NONPROFIT	\$1,000,000	≥ \$1,000,000	N/A
EXECUTIVE HANGAR	N/A	≥ \$1,000,000	N/A
T-HANGAR/T-SHELTER	N/A	≥ \$1,000,000	N/A
REMARKS	All: CSL with coverage for Bodily Injury & Property Damage	All: CSL with coverage for Bodily Injury & Property Damage	

Other minimum requirements based on other miscellaneous activities:

ACTIVITY	COMPREHENSIVE AIRPORT LIABILITY	AIRCRAFT LIABILITY
AIR CHARTER	\$1,000,000	≥ \$2,000,000*
AIR CARGO	\$1,000,000	\$5,000,000
AIRCRAFT SALES	\$1,000,000	\$2,000,000
FUEL STORAGE TANKS	≥ \$1,000,000	N/A
PRODUCT LIABILITY	≥ \$1,000,000	N/A
REMARKS		* Minimums increase based on passenger capacity

Property Insurance:

All tenants who own or lease property at the Airport are required to carry Property Liability insurance. If the hangar/facility is owned, the lessee must carry insurance equal to the market replacement value of the building and underlying slab. If the hangar/facility is leased, lessee must insure the contents of the facility.

Auto Insurance:

Any vehicle operating in the Aircraft Operations Area (AOA), whether owned, not owned, or hired, must carry Automobile Liability of at least \$500,000.

San Marcos Regional Airport Minimum Standards

Appendix B: Temporary Permit Application

San Marcos Regional Airport Temporary Permit Application

Brief description of temporary business or activity, event, or signage:

Requested permit date(s): _____ to _____

These activities are governed by the Airport minimum standards.

Applicant: _____

Authorized Representative: _____ Title: _____

Address: _____

City, State, Zip: _____

Phone (work): _____ (fax): _____ (emergency): _____

Email Address: _____

The Applicant hereby requests the above action(s) from the city for the privilege of conducting commercial aeronautical activities on the Airport in consideration of this request being granted agrees to the following:

FEE PAYMENT: Based on requested activity and date range.

PERMIT LIMITATIONS: This permit may not be assigned or transferred, and is limited to only the approved business activity listed above for the approved date(s).

INFORMATION CHANGES: The Applicant shall notify Airport Management Office in writing within fifteen (15) days of any change to the information provided on this form.

COMPLIANCE WITH THE LAW: The Applicant shall comply with all applicable laws, ordinances, rules and regulations.

The undersigned representative certifies he/she is authorized to sign for the business and acknowledges receipt of copy of this permit.

Authorized Representative's Signature

Date

For office use only:

Application has been APPROVED.

Approved permit use:

Approved permit date(s): _____

Approved by: _____ On: _____

Application has been DENIED.

Reason for denial:

Denied by: _____ On: _____

EXHIBIT D

Chapter 10 - AVIATION^[1]

ARTICLE 1. - GENERAL

Sec. 10.001. - Minimum standards for commercial aeronautical activities.

- (a) The minimum standards for commercial aeronautical activities at the regional airport owned by the city are approved and adopted by resolution and filed in the office of the city clerk, the same as if set out fully in this section. The minimum standards govern the activities of all tenants at the airport including fixed base operators and operators of specialized aviation services. The adoption of minimum standards is recommended by Federal Aviation Administration Advisory Circular 150/5190-7.
- (b) Copies of the minimum standards adopted in subsection (a) of this section are maintained for public inspection in the office of the city clerk and airport management.

(Ord. No. 2015-46, § 1, 11-2-15)

Secs. 10.002—10.025. - Reserved.

ARTICLE 2. - STANDARD OPERATING PROCEDURES AND REGULATIONS

Sec. 10.026. - Definitions.

In this article:

Accident means an unintentional occurrence which results in property damage, personal injury or death.

Airport means all lands within the legal boundaries of the San Marcos Regional Airport under the control of the city.

Airport management means the company or entity contracted by the city to operate, maintain, manage and develop the airport on behalf of the city.

Commercial activities means the activities and operations of any aeronautical business or nonprofit organization with a valid lease agreement authorized by the city council including fixed-based operators, specialized aviation services, flight schools, flight clubs, and any other aeronautically related activity.

Federal Aviation Administration (FAA) means the federal agency established by the Federal Aviation Act of 1958 and reestablished in 1967 under the Department of Transportation.

Fixed base operator (FBO) means any person engaged in a business of an aviation nature under provisions, contracts or leases with the city and in accordance with applicable federal air regulations.

Motor vehicle means any self-propelled ground conveyance other than an aircraft.

Movement area means the area of the airport containing taxiways and runways separated from the ramp by two yellow lines, one solid and one dashed, requiring direct communication with the air traffic control tower during operating hours.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.027. - Authority.

The procedures and regulations in this article are promulgated under the power granted to the city under Federal Law (Title 49 of the Code of Federal Register) and State Law (Chapter 22 of the Texas Transportation Code) and the home-rule authority granted to the city under Article XI, Section 5 of the Texas Constitution.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.028. - Enforcement.

- (a) *Applicability.* All aircraft, pilots, operators, companies, business organizations, government agencies and all persons coming upon airport property for any purpose are subject to this article.
- (b) *Compliance.* The city council and airport management and its duly authorized representatives are empowered to enforce compliance with this article. In addition to the penalty prescribed in section 1.015, violators can be removed or evicted from the airport premises or denied use of the airport or its facilities if the action is determined by airport management or a city official charged with enforcing City code provisions to be reasonably necessary to protect public property or persons or ensure

safety.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.029. - Revisions; validity; liability.

- (a) *Revisions.* The city council reserve the right to revise, make changes to or waive the procedures and regulations in this article with only notice required by state law.
- (b) *Validity.* The voiding of any particular procedure or regulation in this article does not affect the validity of the remainder of these procedures and regulations.
- (c) *Liability.* The city assumes no responsibility for loss, injury or damage to persons or property because of fire, theft, vandalism, wind, flood, earthquake or collision, nor does it assume any liability for injury to persons while at the airport.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.030. - Safety.

- (a) *Policy.* The policy of the airport is that safety is of primary and overriding priority. All persons on the airport are required to comply with this policy. This article is intended to promote safety as well as good operating practices. If any deviation is required in the interest of safety, such deviation is both authorized and encouraged. However, any deviation shall be reported to airport management as soon as practical after the occurrence.
- (b) *Hazard identification.* Hazard identification and abatement are continuing programs at this airport. Any person with knowledge of a hazard at the airport shall immediately report this information to airport management.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.031. - Operations.

- (a) *Aeronautical activities.* All aeronautical activities at the airport shall be conducted in conformity with the current regulations of the Federal Aviation Administration and other laws and rules promulgated by applicable federal, state and local agencies with jurisdiction over airport matters. Only properly registered aircraft and legally certified pilots are authorized to operate at the airport.
- (b) *Tiedown of aircraft.* Aircraft not hangared will be tied down and secured. The aircraft owner and the owner's agent and the pilot are legally responsible for tiedown and security of the aircraft at all times including inclement weather. Inspection of tiedown equipment is the responsibility of the owner and the owner's agent and the pilot.
- (c) *Parking of aircraft.*
 - (1) Aircraft will not be parked in a manner that impedes the normal movement of other aircraft and traffic. It is the responsibility of the pilot when leaving a parked aircraft on the airport to ensure the brakes are set, the aircraft is properly chocked, and the aircraft is tied down.
 - (2) Aircraft will not park within or under a structure for which they are not the rightful lessee or owner. Any unauthorized aircraft may be towed, seized, impounded, and/or locked by airport management at the owner's expense. Airport management will not be held liable for any damage that may occur as a result.
- (d) *Unairworthy and/or abandoned aircraft.* Unairworthy aircraft shall not be parked or stored anywhere on the airport. Exception: aircraft awaiting repairs to return the aircraft to an airworthy condition may be parked or stored up to six months. Any parking or outside storage of unairworthy aircraft in excess of six months shall require written permission of airport management. In the event of failure to comply with this provision, such disabled aircraft and any abandoned or unairworthy aircraft may be removed by airport management at the owner's expense and without liability on the part of the airport for any damage which may result in the course of such removal. Airport management may recommend parking fees to the city council.
- (e) *Responsibility for disposal of disabled aircraft.* The owner of wrecked and disabled aircraft shall be responsible for the prompt removal and disposal of such aircraft after release by airport management and the Federal Aviation Administration or National Transportation Safety Board.
- (f) *Damage.* Any person damaging any light fixture, or other airport property will immediately report the damage to airport management. Persons causing damage to approach, runway and/or taxiway lights or fixtures, or other airport property as a result of negligent acts may be liable for the replacement or repair costs. Tenants shall be held fully responsible for any damage to any building, equipment, or real property owned by the airport. Any damage to or malfunctioning of buildings, structures, utilities or other property owned by the airport shall be reported to airport management.
- (g) *Taxiing aircraft.*
 - (1) *Speed.* Aircraft will be taxied at safe and prudent speed and under full control of the pilot at all times in accordance with Federal Aviation Administration Advisory Circular 120-74B.
 - (2) *Consideration.* No person will start or run an aircraft in a manner to risk damage to other aircraft or property or in a

manner to blow paper, debris or other objects across the taxiway or runway or in a manner to endanger any operations on the airport.

- (h) *Air traffic control tower and radio procedures.* All pilots are required to communicate with the tower during operating hours prior to entering the movement area. The airport frequencies are: tower 126.825 and ground 120.125. Pilots are encouraged to announce their intentions and communicate with other pilots via CTAF when the tower is closed, in accordance with Federal Aviation Administration Advisory Circular 90-66.
- (i) *Traffic patterns.*
 - (1) *Direction.* All VFR traffic is expected to make left traffic patterns to all runways when the tower is closed.
 - (2) *Altitude.* Recommended traffic pattern altitude for the airport is 1600 feet MSL/1000 feet AGL.
- (j) *Authority to suspend operations.* Airport management or its designated representative may suspend or restrict any or all operations on the airport whenever such action is determined necessary.
- (k) *Closing of airport.* In the event airport management believes conditions at the airport are unsafe, it is within its authority to close the entire airport or any part thereof. A notice to airmen (NOTAM) will be immediately filed with Federal Aviation Administrative Flight Safety Services.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.032. - Public and tenant usage.

- (a) *Commercial activities.* No person will use the airport for business or commercial activities without obtaining the approval of the city council through airport management.
- (b) *Advertisements.* No person shall post, distribute, or display signs, advertisements, circulars, or any other printed material on airport property without the prior approval of airport management. Airport management is authorized to rescind any permission granted if the advertisement does not remain in compliance with this ordinance and the minimum standards adopted by the city council.
- (c) *Demonstrations, shows and exhibitions.* No person will engage in any show, demonstration, or exhibition without prior written permission from airport management.
- (d) *Lost articles.* Any person finding lost articles on the airport will deposit them at the airport management office located at 4400 Airport Highway 21, San Marcos, TX 78666. Articles unclaimed after 60 days by the owner may be turned over to the finder or otherwise legally disposed of by the city as determined by the city manager or his designee.
- (e) *Right of entry.* Airport management has the right of entry at reasonable times for repairs, maintenance, modification or inspection of all rooms, areas and buildings on the airport.
- (f) *Construction or alteration.* No construction work or alterations to grounds or structures, other than minor repairs or maintenance, will be performed on the airport without written permission from the city as determined by the city manager or his designee. No person may modify any equipment or building, or change any mechanical, electrical, electronic, or plumbing equipment owned by the airport without first obtaining written permission from airport management. No person may move or install any equipment, signs, or other structure in the public areas of the airport without first obtaining written permission from airport management.
- (g) *Restricted areas.* No person shall enter any restricted area on the airport without the authorization of airport management.
- (h) *Sanitation.*
 - (1) *Disposal.* No person will dispose of garbage, papers, refuse or other waste materials on the airport, except as provided by city ordinance.
 - (2) *Burning.* No open fires are allowed on the airport without the approval of the city fire marshal or his designee. No trash or refuse will be burned on the airport at any time.
 - (3) *Use of sewers and drains.* No materials may be put in the sanitary sewer system, or any other drainage system, which do not conform to the regulations of the city.
- (i) *Alcohol and narcotics.*
 - (1) *Legal compliance.* All applicable local, state and federal laws pertaining to handling or use of alcoholic beverages, narcotics, and drugs apply on the airport.
 - (2) *Under the influence.* No person under the influence of alcohol or other substance shall operate a motor vehicle or aircraft on the airport. The city, through its appropriate law enforcement agency, reserves the right to remove or evict violators from the airport premises or deny use of the airport or its facilities by the violator.
- (j) *Disorderly conduct.* No person on the airport shall commit any disorderly, obscene, or indecent act or commit any act prohibited by Texas Penal Code § 42.01.
- (k) *Preservation of property.* It is unlawful for any person to:
 - (1) Destroy, injure, deface or disturb any building, sign, equipment, marker, structure, lawn, or public property on the airport.

- (2) Trespass on agricultural areas without the approval of airport management.
- (3) Abandon property on the airport.
- (4) Interfere with, tamper, or injure any part of the airport operation, or any aircraft on the airport.
- (l) *Hunting and firearms.* Except as authorized by state law, no person may carry firearms on the airport. No hunting or shooting is allowed on the airport.
- (m) *Storage.* No person shall use any property of the airport for outside storage without first obtaining written permission from airport management. No tenant or lessee of airport property shall store or stock material or equipment in such a manner as to constitute a hazard to any person or property, or in such a manner as to create an unattractive appearance.
- (n) *Pets and animals.* It is unlawful for the owner or person responsible for a pet or animal to permit same to be at large. The term "at large" means a dog or cat which is not restrained by leash and which is also off the premises of its owner or the person responsible for it. Pets and animals found running at large will be picked up and impounded.
- (o) *Drip pans.* Whenever oil leakage, dripping or spillage is possible, drip pans shall be placed under each engine of an aircraft.
- (p) *Authority to detain aircraft.* Airport management has the authority to detain any aircraft for non-payment of any debt due to the airport.
- (q) *Denial of use.* Airport management is authorized to deny use of the airport to any aircraft or pilot violating these or Federal Regulations at the airport or elsewhere.
- (r) *Special events.* Special event(s) means an activity which may not completely comply with these rules or which, although it may comply with these rules, will require an accommodation by other users of the airport. Special events include, but are not limited to, fly-ins, ramp space rentals, skydiving exhibitions, balloon operations, or similar events or activities. Any person wishing to sponsor a special event shall obtain the prior written approval of airport management. Airport management shall require such safeguards as deemed necessary to protect the airport, the city, the county, aircraft using the airport, and the general public. These requirements may include, but are not limited to, bonds, insurance policies, additional security personnel, facilities, special operating procedures, city permits, and any required waiver/authorization to the Federal Aviation Regulations issued by the FAA. Airport management is prohibited by the FAA from closing the airport for any activity which is not an aeronautical activity. The city council may establish, upon recommendation from airport management, general reasonable fees and requirements for special events. The fee schedule adopted by the city council will provide limited flexibility to allow airport management, with the approval of the city manager or his designee, to adjust fees for special events that may require specialized accommodations. Any signage for the special event must be approved by airport management.
- (s) *Unlawful to drop handbills or other matter.* It is unlawful for any person in any aircraft flying over the airport or over the territory within the boundaries of the airport to cause or permit to be thrown out, discharged, or dropped, any handbills, circulars, card or other matter whatsoever which falls upon the airport property.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.033. - Fire prevention.

- (a) *Applicability and compliance.* All persons, companies, and agencies engaged in any activity at the airport, whether occupying airport-owned facilities or otherwise, shall comply with fire regulations as issued by the city and shall comply with all applicable county, state and federal laws and regulations related to fire prevention or safety.
- (b) *Enforcement.* Airport management or other duly authorized officials may direct the removal of fire hazards, arrangement and modification of equipment, or alter operating procedures in the interest of fire prevention.
- (c) *Fire prevention.* All persons using the airport, or the facilities of the airport will exercise the utmost care to guard against fire and injury to persons and property.
- (d) *Cleaning of parts.* The cleaning of engine parts or other parts of aircraft will be with non-flammable liquids unless the engine or aircraft part being cleaned is located a safe distance away from other aircraft or airport facilities. If volatile liquids are employed, cleaning operations must be in open and clear areas or in a suitable room of the repair facility and separated from storage and operational areas by fire resistant partitions in compliance with the requirements of the National Board of Fire Underwriters.
- (e) *Hangar floors.* Floors will be kept clean and free from oil.
- (f) *Empty containers.* All empty oil, paint and varnish cans, bottles and other containers will be removed immediately from the premises and not allowed to remain on floors, wall stringers, or overhead storage areas in or about hangars, shops and other buildings. Empty containers must be disposed of in accordance with the stormwater pollution prevention plan for the airport.
- (g) *Trash.* No boxes, crates, rubbish, paper, or litter of any kind will be stored in or about hangars, except in proper receptacles provided for this purpose. Commercial operators shall be responsible for providing containers for all trash on their leased premises and shall arrange for the regular removal of the trash. Commercial operators will provide an appropriate receptacle for trash removal to be used by its contractors, employees, and invitees.
- (h) *Flammable, corrosive and toxic materials.* Containers of gasoline, kerosene or other flammable liquids, explosives, toxic or corrosive substances will not be stored in hangars.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.034. - Fueling and flammables.

(a) *Fueling and defueling procedures.*

- (1) *Hot refueling.* Hot refueling is the fueling of aircraft while the engine is running. Hot refueling shall be permitted only under special circumstances and then only when authorized by airport management. Hot refueling may be permitted only by appropriately trained and certified FBO personnel in accordance with generally accepted industry standards.
- (2) *Electrical storm.* No aircraft will be fueled or defueled during an electrical storm.
- (3) *Smoking.* No person will smoke within 100 feet of an aircraft being fueled or defueled.
- (4) *Radio operation.* No person will operate a radio transmitter or electrical systems in an aircraft while it is being fueled or defueled.
- (5) *Grounding.* During fueling and defueling, the aircraft and dispensing apparatus will both be properly grounded.
- (6) *Equipment status.* Fueling hoses and equipment will be maintained in a safe, operational, and non-leaking condition and will be approved by the National Board of Fire Underwriters, or equivalent standard.
- (7) *Spillage.* No person will start the engine where fuel spillage is on the ground in the vicinity of the aircraft. A person responsible for spillage will take proper measures to ensure removal of the spilled fuel pursuant to the stormwater pollution prevention plan for the airport.
- (8) *Fire extinguishers.* Adequate fire extinguishers will be within reach of all persons engaged in fueling or defueling operations. All extinguishers will be inspected and recertified as required by law. All persons engaged in fueling and defueling will be familiar with the proper use of fire extinguishers.
- (9) *Passengers.* No aircraft will be fueled or defueled while passengers are on board the aircraft unless the aircraft doors are in the open position.
- (10) *Location of aircraft.* No aircraft will be fueled while parked in a hangar.

(b) *Cleaning of aircraft.* No person will use volatile liquids in the cleaning of an aircraft, aircraft engines, propellers, parts, or for any other purposes, unless such operations are conducted in the open or in a facility specifically equipped and approved for that purpose.

(c) *Storage.*

- (1) *Flammables.* No person will keep or store any flammable liquids, gases, signal flares or other similar material in the hangars or in any building on the airport, unless such materials are kept in an aircraft in the proper receptacles installed in the aircraft for such purposes or in rooms or areas specifically approved for such storage.
- (2) *Waste oil.* No person will keep or store waste oils in or about the hangars unless stored in a proper receptacle pending removal. Waste oil must be disposed of in accordance with the storm water pollution prevention plan for the airport.

(d) *Liquid disposal.* No fuels, oils, dopes, paints, solvents, or acids will be disposed of or dumped on the ramp area, agricultural lands or elsewhere on the airport. All disposal will be in accordance with city ordinances, Environmental Protection Agency (EPA) rules, and FAA standards.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.035. - Motor vehicles.

(a) *General requirements.* Persons will operate motor vehicles on the airport in accordance with the procedures and regulations of this section and in full compliance with all state licensing, registration, and operating requirements.

(b) *Speed.* No person will operate a motor vehicle on the airport in a reckless or negligent manner, or in excess of a safe and prudent speed. Posted speed limits will not be exceeded. The posted speed limit for the ramp is 15 miles per hour and the posted speed limit for roadways is 35 miles per hour.

(c) *Parking.*

- (1) *Location.* No person will park a motor vehicle at the airport other than in areas specifically established for public and tenant parking. No persons shall park a motor vehicle so as to obstruct roadways or taxiways. No person shall park a motor vehicle in public aircraft parking areas.
- (2) *Abandoned vehicles.* No person shall park a motor vehicle on the airport for an extended period of time without prior notification to airport management.
- (3) *Towing for violation.* Airport management has the authority to tow or otherwise remove motor vehicles which are parked on the airport in violation of this section. The vehicle will be towed at the owner's expense and without liability for damage which may result in the course of such moving.

(d) *Vehicle repairs.* No person will clean or make any repairs to motor vehicles on the airport, except for airport support vehicles and minor emergency repairs.

(e) *Operation restrictions.*

- (1) *Ramp.* No motor vehicles, other than support vehicles, are permitted to operate on the airport parking ramp, except for the loading and unloading of aircraft occupants or cargo without the approval of airport management. Vehicle operators must utilize the ramp vehicle lane and will obey all markings pertaining to speed and stops.
- (2) *Runways and taxiways.* No person or motor vehicle is permitted within the movement area except as specifically authorized by airport management or air traffic control.
- (3) *Right-of-way procedures.* All motor vehicles will pass to the rear of taxiing aircraft and no vehicle will approach closer than 100 feet of any aircraft when an aircraft's engine is operating.
- (4) *Airport based support vehicles.* Support vehicles regularly using the ramp, such as fuel trucks or tugs, shall be equipped with a two-way radio that can communicate with air traffic control and an amber strobe, LED, or rotating beacon visible from at least 300 feet.

(Ord. No. 2015-46, § 1, 11-2-15)

Sec. 10.036. - Emergency procedures.

(a) *Emergency notification and response.* Emergency notification and response procedures are as follows:

- (1) *Generally.* The city provides emergency services of fire, police, and medical response to the airport.
- (2) *Notification procedures.* In addition to standard FAA emergency notification procedures, local emergency notification may be initiated during emergencies by contacting the air traffic control tower, operating hours through San Marcos Tower/CTAF on 126.825. During all hours, emergency notification can be initiated by calling San Marcos Police 911. Airport management can be notified at (512) 216-6039.

(b) *Volunteer assistance.* Volunteer assistance and/or access to the scene of any aircraft accident will be approved and controlled by the authorized emergency response personnel and the appropriate law enforcement authorities, and air traffic control if during operating hours.

(c) *Accident reporting.* In addition to required FAA notification and reporting actions, the operator of any aircraft involved in an incident or accident at the airport will notify airport management within 24 hours. When a written report is required by the FAA, a copy of such report will suffice for the airport requirement.

(Ord. No. 2015-46, § 1, 11-2-15)

EXHIBIT E

CITY OF SAN MARCOS, TEXAS

SAN MARCOS REGIONAL AIRPORT

COMMERCIAL AVIATION GROUND LEASE AGREEMENT

THIS COMMERCIAL AVIATION GROUND LEASE AGREEMENT ("*Lease*") is made between the City of San Marcos, a municipal corporation of the State of Texas ("*Lessor*" or "*City*"), and _____ ("*Lessee*").

AGREEMENT:

In consideration of the covenants and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

**ARTICLE 1: AIRPORT OWNERSHIP; DEMISE; ACCEPTANCE;
CERTAIN RULES AND OTHER MATTERS**

- 1.01. Airport. Lessor is the owner of the San Marcos Regional Airport (the "*Airport*"), situated in Caldwell County, Texas, by virtue of deeds from the United States of America.
- 1.02. Demise. For and in consideration of, and subject to, the terms, conditions and covenants herein, Lessor hereby demises and leases unto Lessee, and Lessee hereby leases from Lessor, the following described real property (hereinafter referred to as the "*Leased Premises*"), located at the Airport in Caldwell County, Texas:

_____ unimproved square feet as described in Exhibit A attached hereto;
- 1.03. Acceptance. Lessee acknowledges that, subject to Lessor's express obligations herein: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee's intended purpose or the presence of environmental, geologic or other site conditions that may affect Lessee's use of the Leased Premises; (ii) Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; (iii) Lessee has had the opportunity to inspect and perform tests and investigations of the Leased Premises for its intended purposes; and (iv) Lessee is accepting the Leased Premises in its present condition.
- 1.04. Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations (the "*Rules and Regulations*") and (ii) San Marcos Regional Airport Minimum Standards. Provided the same do not impair the material rights of Lessee hereunder or adversely affect Lessee's ability to use the Leased Premises for the Authorized Use (as defined below), Lessor has the right to amend and/or restate the Rules and Regulations and/or the Minimum Standards and Lessee shall comply with the same.
- 1.05. Airport Operation. During the Term, Lessor covenants and agrees to operate and maintain the Airport and appurtenant facilities as a public airport consistent with, at a minimum, current operations and the "sponsor" assurances given by Lessor to the United States of America and, as applicable, the State of Texas. In connection with such sponsor

assurances, Lessee agrees that this Lease and Lessee's rights and privileges hereunder shall be subordinate to such sponsor assurances.

- 1.06. Ingress and Egress. Lessor agrees that Lessee, its officers, directors, agents, representatives, contractors, employees, invitees and licensees shall have the right of ingress and egress to and from the Leased Premises by means of roadways owned by the City for automobiles and taxiways at the Airport for aircraft, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Such rights shall be consistent with the Rules and Regulations, applicable laws and regulations of the City, the Federal Aviation Administration ("*FAA*") and other governmental authorities with jurisdiction over the Airport and this Lease.

ARTICLE 2: COMMENCEMENT, TERM AND RENT

- 2.01. Commencement. Rental ("*Rent*") shall accrue commencing upon the Commencement Date (as defined below). Rent shall be payable at the place designated in Section 2.04.
- 2.02. Term. The term of this Lease ("*Term*") will commence on _____ (the "*Commencement Date*") and will terminate on _____ (the "*Expiration Date*"), subject to earlier termination or renewal as provided herein. As used herein, "*Lease Year*" means each period of twelve (12) full calendar months from and after the Commencement Date.
- 2.03. Rent. During the Term, Lessee hereby promises and agrees to pay Lessor Rent for the Leased Premises on a "per square foot per Lease Year" basis, as follows:

Rent shall be paid in equal monthly installments, initially in the amount of \$ _____; Rent will be prorated in the event of any partial month. Lessee, at its option, may make advance payments of Rent up to one (1) year in advance, but there will be no discount for advance payments.

Lessee agrees to pay the first (prorated, if applicable) Rent installment within three (3) business days after the Commencement Date. Such payment shall be credited against Rent due for the first month in the Term.

- 2.04. Form and Place of Payment. The monthly Rent shall be due on or before the first day of each calendar month. A payment shall be considered past due if, after the fifth (5th) day of the month in which the payment is due, Lessor has not received full payment by the end of such day (which shall end during normal working hours) physically at 4400 Airport Highway 21, San Marcos, Texas, or by mail to 1807 Airport Drive Suite 200, San Marcos, Texas 78666. Payments submitted via United States Postal Service or other means are considered paid when received, not on the date posted.
- 2.05. Late Charges. Payments not received in full by 5:00 p.m. San Marcos, Texas, time, on the fifth (5th) day of the month in which such Rent is due will be considered late, and a \$15.00 per day late charge will be assessed. In addition, Lessee shall reimburse Lessor for each check that is returned or not honored.
- 2.06. No Release. Except as expressly provided herein or in any written consent of Lessor, Lessee (i) will not be released from liability pursuant to this Lease for any reason, including, but not limited to, a change in business conditions, voluntary or involuntary job

transfer, change of marital status, loss of content, loss of employment, bad health or the sale or disposition of any aircraft; and (ii) *is obligated to the terms and conditions of this Lease, including the payment of Rent for the entire Term, subject to earlier termination (except due to an uncured event of default by Lessee) or renewal, as provided herein.*

- 2.07. Holdover. In the event Lessee holds over after the expiration of this Lease, such hold over status will create a month-to-month tenancy. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the month-to-month holdover rate. Holdover tenancy will be subject to all other terms and conditions of this Lease.
- 2.08. Other Fees and Charges. Provided all other tenants and users at the Airport are required to pay for tie-down and other public Airport Facilities (as defined below) use, Lessee agrees to pay for such use, in addition to Rent, in an amount equal to the lowest amount Lessor charges similar tenants and users at the Airport for use (and in no event shall Lessor charge Lessee for use unless all other tenants at the Airport are also required to, and do, pay for such use). New charges for Airport Facilities (including, without limitation, tie-down fees), if any, will be established by resolution hereafter adopted by Lessor.

ARTICLE 3: USE AND CARE OF PREMISES

- 3.01. Authorized Use: During the Term and any renewal thereof, the Leased Premises may be used and occupied by Lessee for the following, and for no other purpose: _____; and all other uses ancillary to any of the foregoing (herein, the “*Authorized Use*”). In addition to the Authorized Use, with the express consent of Airport Management (as defined below), Lessee may conduct incidental activities on the Leased Premises reasonably related to the Authorized Use. The Leased Premises may not be used for any other purpose without the prior written consent of Lessor, and any commercial use of the Leased Premises not expressly authorized under the terms of this Lease may, at Lessor’s election, be set forth in an amendment hereto or separate contract with Lessor.
- 3.02. Conduct of Business. Except as provided in Section 15.01.f., Lessee shall not fail to occupy and use the Leased Premises for Authorized Use and, subject to Applicable Laws, shall not fail to keep the Leased Premises open for business as required by the Minimum Standards.
- 3.03. Parking. Except during any period of construction of the Facilities (as defined below) or the Alterations (as defined below) approved by Lessor, during any period of repair or reconstruction following the occurrence of a casualty or eminent domain event, or as indicated on any Plans (as defined below) approved by Lessor, Lessee agrees that (i) neither it, nor any of its officers, directors, employees, contractors, subcontractors, licensees or invitees, will park or allow any non-aviation-related motor vehicle to be parked on the Leased Premises; and (ii) all aviation-related or business-related motor vehicles brought onto the Leased Premises in connection with Lessee’s business will be parked only in areas designated as motor vehicle parking areas.
- 3.04. No Unlawful Use. Lessee covenants and agrees that it shall not make any unlawful use of, nor shall it permit the unlawful use of, the Leased Premises by any person(s) and that such unlawful use shall result in the removal from the Leased Premises by Lessor of any person(s) using the same. Lessee’s unlawful use of the Leased Premises shall constitute a breach of this Lease.

- 3.05. No Insurance Invalidation; Risk of Lessee. Lessee shall not place or keep anything on the Leased Premises or conduct any unauthorized use of the Leased Premises which invalidates any insurance policy carried on the Leased Premises without Lessor's prior written consent. Lessee agrees that the risk of loss and damage for property kept, stored or maintained by it within the Leased Premises is that of Lessee.
- 3.06. No Waste or Nuisance; Compliance with Laws. Lessee shall not use or permit the use of the Leased Premises in any manner which results in waste of the Leased Premises or constitutes a nuisance. During the Term and any renewal thereof, Lessee shall comply with applicable laws and regulations of the City (except to the extent any of the same which are enacted after the Effective Date preclude or adversely affect Lessee's rights hereunder), the FAA and other governmental authorities with jurisdiction over the Leased Premises ("*Applicable Law*").
- 3.07. Trash and Debris. Lessee shall keep the Leased Premises and adjacent areas, together with any Lessee signage on or near the Airport, neat, clean and free from dirt and trash at all times; provided, except for the obligation to remove its debris therefrom, Lessee shall have no responsibility for any of the following which are located off of the Leased Premises and used in common with others: ramps, sidewalks, service ways, loading areas and other Airport Facilities. Lessee will provide a dumpster or other suitable trash receptacles for the Leased Premises for use by Lessee, its agents, contractors, employees, invitees or licensees. Lessee shall arrange for the regular removal of the trash at Lessee's expense.
- 3.08. Storage. Lessee shall store all equipment, materials and supplies within the confines of a building or other structure located on the Leased Premises. Outside storage is specifically prohibited without the advance written consent of Lessor.
- 3.09. Use of Airport Facilities. Lessor agrees that Lessee shall have access to the runways, taxiways, ramps and other Airport Facilities to the same extent as other Airport users.
- 3.10. Additional Airport Facilities. Notwithstanding any provision of this Lease, any element of the Approved Plans (as defined below) or otherwise, Lessee shall have no obligation to build or construct any improvements or facilities on or off the Leased Premises which constitute Airport Facilities, including, without limitation, offsite utility lines or other improvements, and any agreement to the contrary shall be made set forth in a writing signed and dated by Lessee and identifying the specific improvement(s). Except as provided in any such agreement, Lessor and Lessee that, in the event Lessee constructs Airport Facilities, Lessee shall be entitled to, and shall receive, a just and fair credit against Rent in consideration for such work and funds expended by Lessee related thereto. The foregoing provision shall survive expiration or earlier termination of this Agreement.

ARTICLE 4: CONSTRUCTION OF FACILITIES; ALTERATIONS AND FIXTURES

- 4.01. Facilities; Approvals.
- a. Lessee, at its sole cost and expense, shall provide for the construction of building improvements on the Leased Premises (the "*Facilities*"), and a parking lot adjacent thereto ("*Parking Lot*"), generally located as described in Exhibit B attached hereto and the total cost of which shall not exceed _____ (the "*Maximum Amount*"). Construction of the Facilities and the Parking Lot shall be in accordance with sealed plans prepared by an architect or structural engineer

licensed or registered in the State of Texas. The plans, together with the architect or engineer's estimated cost of construction of the Facilities (the "*Estimate*") and related construction schedule, based on time required and not on specific dates ("*Schedule*"), shall be submitted to the City through Airport Management for review and approval no later than sixty (60) days after the Effective Date. In addition to the plans for the Facilities, the City may review Lessee's proposed lighting, landscaping plan and exterior building façade, inclusive of material type(s) and color ("*Facilities Detail*"). The City shall reasonably approve or disapprove the plans, Facilities Detail, Estimate and Schedule (collectively, the "*Construction Documents*") and notify Lessee of the City's approval or disapproval in writing within thirty (30) days after receipt, and failure to approve or disapprove any of the Construction Documents within said thirty (30) day period shall constitute deemed approval. In the event of disapproval of any of the Construction Documents, the City shall state, in writing, the specific document(s), the reason(s) for disapproval and the requested change(s), in which event Lessee shall promptly revise the disapproved item(s) and resubmit the subject Construction Documents to the City through Airport Management. The City shall approve or disapprove such resubmittal within fifteen days after receipt, and failure to approve or disapprove the same within said fifteen day period shall constitute deemed approval. In the event the City again disapproves, the same process shall be followed until the City has approved all of the Construction Documents; provided, in the event the City fails to approve all such items within six (6) months after the Effective Date or if the cost of the Facilities and Parking Lot will exceed, in the aggregate, the Maximum Amount, Lessee shall have the right to terminate this Lease upon written notice to Lessor (in the case of the City's failure to approve all of Construction Documents, delivered to the City at any time prior to receipt of approval of all such items), in which event, except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder. Lessee is responsible for securing all necessary permits from the City's Planning and Development Department to complete the Facilities and Parking Lot.

- b. Lessee is prohibited from undertaking or allowing any party to undertake the construction or development of the Facilities, Parking Lot or any Alterations which require approval by the FAA without first submitting Form 7460-1, Notice of Proposed Construction of Alteration, or such other form as may be required by the FAA, to the FAA.
- c. Upon Lessor's approval of the Construction Documents, the same shall constitute the "*Approved Plans*", and the date of approval by Lessor shall constitute the "*Approval Date*".

4.02. Construction of the Facilities and Parking Lot. Subject to force majeure, Lessee shall commence construction of the Facilities and Parking Lot within ninety (90) days after the Approval Date and, thereafter, diligently and continuously pursue construction to completion in accordance with the Approved Plans. Subject to force majeure, substantial completion of the Facilities and Parking Lot shall occur on or before the date which is nine (9) months after the Approval Date.

4.03. As Built Survey; Confirmation of Construction Costs. Following completion of construction of the Facilities, Lessee shall (i) prepare as built plans, at its sole cost and

expense, and deliver a copy of the same to Lessor; and (ii) certify to Lessor in writing the actual amount of construction costs for the Facilities and Parking Lot (the “**Construction Costs**”).

- 4.04. Ownership. Except for onsite improvements owned by Lessor or third parties (such as, for example, utility improvements), (i) the Facilities, Parking Lot and all other improvements made to the Leased Premises by Lessee which constitute fixtures are owned by Lessee during the Term and any renewal thereof, and (ii) upon termination or expiration of the Term and any renewal thereof, title to the same shall vest in Lessor.
- 4.05. Alterations. Except for alterations required by Applicable Law and alterations which cost less than One Hundred Thousand and NO/100 Dollars (\$100,000.00) and do not affect the structural integrity of the Facilities, all alterations to the Leased Premises, including alterations made following a casualty or eminent domain event (“**Alterations**”) must be approved in writing by Lessor and constructed pursuant to plans approved by the City, such approval not to be unreasonably withheld, conditioned or delayed, and, if applicable, Lessee shall submit Form 7460-1, Notice of Proposed Construction of Alteration, or such other form as may be required, to the FAA. All such plans, specifications and work shall conform to Applicable Law, including, without limitation, applicable provisions of the Americans With Disabilities Act of 1990, as amended (the “**ADA**”). Notwithstanding the foregoing right of Lessee to construct alterations required by Applicable Law and certain alterations without first obtaining the City’s consent, to the extent permits or other authorizations are required by Applicable Law, Lessee shall comply with the same and, if plans are required to be submitted and approved, the process in Section 4.01.a. shall apply.
- 4.06. Exterior Lighting and Signage.
- a. Except as set forth in the Approved Plans or any Alterations plans approved by Lessor, Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any exterior lighting, shades or awnings, or any exterior decorations or paintings on any buildings, or (ii) erect, install or change any windows (but Lessee may replace windows with windows of the same size and dimensions), or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of any building. Notwithstanding the foregoing to the contrary, Lessee may install construction signage during construction of the Facilities and permitted or approved Alterations and “for sale” or “for lease” signs on the Leased Premises without the consent of Lessor, subject to compliance with applicable sign ordinances and rules.
 - b. Lessee shall, at its sole expense, be responsible for creation, installation and maintenance of all signs, posters or other similar devices. Further, Lessee will install a sign indicating that the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be approved by Lessor prior to installation. Lessee agrees to pay for the installation, maintenance and repair of any such signs, posters or other similar devices. Any signs, posters or other similar devices placed on the Leased Premises shall be maintained at all times in a safe, neat, sightly and good physical condition.

- 4.07. Condition on Surrender. Lessee shall surrender the Leased Premises at the expiration of the Term and any renewal thereof in good condition and repair, normal wear and tear excepted.
- 4.08. No Liens. Lessee shall not permit, or permit any contractor or other person or entity claiming by or through Lessee, to place a lien or similar obligation on the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and Lessee shall promptly (and in all events prior to foreclosure) discharge any such lien or similar obligations. In the event Lessee disputes the lien or obligation, however, Lessee shall have the right to promptly pursue the settlement or litigation thereof without paying the claim until the claim becomes final and subject to no further appeal by Lessee. LESSEE SHALL HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT, AND INDEMNIFY AND DEFEND THE LEASED PREMISES, FROM AND AGAINST ANY CLAIMS, DEMANDS OR SUITS RELATED TO ANY SUCH LIENS OR OBLIGATIONS.

ARTICLE 5: MAINTENANCE AND REPAIR OF PREMISES

- 5.01. Lessee Obligations. Lessee shall, at its sole cost and expense, maintain, repair and keep in good repair the Leased Premises, the Facilities, including routine maintenance and repair of the Parking Lot, vehicular driveway and ramp tie-in, landscaping, equipment, electrical, mechanical, plumbing and fire protection systems, roofs, floors, load-bearing and exterior walls and utilities on the Leased Premises and, subject to Section 6.01, all other fixtures constructed or installed on the Leased Premises by Lessee, including exterior lighting facilities (collectively, the “*Improvements*”). In addition, Lessee shall maintain landscaping on the Leased Premises. Lessee shall accomplish all repairs and maintenance for which it is responsible routinely and, in all events, within thirty (30) days of receipt of written notice from Lessor. If, within such thirty (30) day period, Lessee fails to make any necessary Improvements repairs or perform any necessary Improvements maintenance for which Lessee is responsible, Lessor may, as a result of such failure, perform or have such repairs or maintenance performed and notify Lessee of the same, together with evidence of the cost thereof, and the actual, reasonable cost of such work shall be payable by Lessee within thirty (30) days of Lessee’s receipt of such notice.
- 5.02. Lessor’s Right of Access. When no state of emergency exists and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, shall have the right to enter the Leased Premises following notice to Lessee during Lessee’s regular business hours for the purpose of (i) determining whether the Leased Premises are in good condition and repair, or (ii) performing any maintenance or repairs to the Improvements for which Lessor is responsible under this Lease. In an emergency and subject to compliance with Applicable Laws, Lessor and Airport Management, acting by and through their authorized representatives, may enter the Leased Premises at any time and without prior notice to Lessee (but written notice of entry and the time and reason therefor, together with the names and contact information of each individual who entered without notice, shall be provided by Airport Management to Lessee within twenty-four [24] hours of any such entry). Lessor and Airport Management shall minimize disruption to Lessee and operations at the Leased Premises resulting from any access thereto by Lessor or Airport Management.

ARTICLE 6: UTILITIES AND TAXES

6.01. Utilities. Lessee agrees and covenants that it will pay for all utilities used by it on the Leased Premises, including all costs charged or necessary for utility connection fees, impact fees, the installation of meters, any deposits and any other customary prerequisites for such utility service. Lessee further covenants and agrees that Lessee will pay all customary costs and expenses for initial service and any extension of the same to the Leased Premises and, if applicable, ***Lessee must first obtain, in writing, permission from Lessor before undertaking any utility improvements that impact Lessor's property.*** In addition, Lessee shall maintain and repair all utility service lines located on the Leased Premises, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service. Except for its gross negligence or willful misconduct operating in its capacity as a utility provider, Lessor shall not be liable for any interruption or impairment in utility services to the Leased Premises; provided, in the event utility service is not available to the Leased Premises for a period of forty-five (45) consecutive days or longer, shall be abated. Any such abatement shall be applicable to the period between the date of interruption and the date services are resumed.

6.02. Taxes.

- a. In entering into this Lease, Lessee understands that it will be solely responsible for the payment of ad valorem taxes, if any, that are assessed against all or any portion of (i) Lessee's leasehold interest in the Leased Premises, (ii) the Improvements, and (iii) Lessee's equipment, inventory and other personal property, including, but not limited to, Lessee's aircraft used for commercial purposes. Lessee shall deliver to Airport Management evidence of timely payment of all such taxes.
- b. Lessee may, at Lessee's expense, contest the validity or amount of any taxes for which Lessee is responsible, in which event, the payment thereof may be deferred, as permitted by Applicable Law, during the pendency of such contest. Notwithstanding the foregoing, no such taxes shall remain unpaid for such length of time as would permit the Premises, the Improvements or any part thereof to be sold or seized by any governmental authority for nonpayment of the same. If at any time, in Lessor's reasonable judgment, it shall become necessary to do so, Lessor may, after notice to Lessee, under protest, pay such amount of the taxes as may be required to prevent a sale or seizure of or foreclosure of any lien created thereon by such item. The amount so paid by Lessor shall be promptly paid on demand by Lessee to Lessor, and, if not so paid, such amount, together with interest thereon from the date advanced until paid, shall be deemed to be additional Rent. Lessee shall promptly furnish Airport Management with copies of all proceedings and documents with regard to any tax contest, and Lessor may, at its expense, participate therein.

ARTICLE 7: RIGHTS AND PRIVILEGES OF LESSEE

7.01. Grant of Rights. Lessor hereby grants to Lessee the following general rights and privileges, in common with others, all of which shall be subject to the terms, conditions and covenants hereinafter set forth and all of which shall be non-exclusive on the Airport:

- a. The use in common with the public generally of all public Airport Facilities for or in connection with the Authorized Use. For the purposes of this Lease, "***Airport***

Facilities” includes, but is not limited to, runways, taxiways, ramps, aprons, public automobile parking areas, public roadways, sidewalks, tie-down areas and tie-down facilities and terminal facilities of Lessor located at or near the Airport and used in conjunction therewith, which areas may be expanded following the Effective Date but, to the extent the same are extant on the Effective Date, shall not as to Lessee, unless otherwise expressly permitted herein or agreed in writing by Lessee, be materially diminished or extinguished unless the same are substituted with facilities which are equivalent or better in terms of location and quality. Subject to the express provisions of this Lease, said rights shall be subject to such rules, regulations and laws which now or may hereafter have application at the Airport.

- b. Nothing in this Lease shall be construed to grant Lessee a permanent right in any particular public Airport Facility should Lessor deem it advantageous to the operation of the Airport to close or relocate any such facility.

ARTICLE 8: RIGHTS, RESERVATIONS AND OBLIGATIONS OF LESSOR

- 8.01. Aerial Approaches. Subject to the provisions of this Lease, Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstructions, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure (exclusive of the Facilities) which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft or diminish the capability of existing or future avigational and/or navigational aids used on the Airport.
- 8.02. Temporary Closure. Lessor reserves the right, consistent with industry standard operations, to temporarily close the Airport or any of the facilities thereon for maintenance, improvement, safety or security of the Airport or the public, or for other aviation-related cause deemed reasonably necessary by Lessor, without being liable to Lessee for any damages caused by disruption of Lessee’s business operations or for any other reason; provided, Lessor shall take reasonable steps to avoid or mitigate interference with the operation of Lessee’s business at the Leased Premises.
- 8.03. Subordination. This Lease is subject to the provisions of any agreement made between Lessor and the United States of America and/or the State of Texas relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal or State of Texas rights or property to Lessor for the development, maintenance and repair of Airport infrastructure. Lessor covenants and agrees that it has no existing agreements with the United State of America or the State of Texas in conflict with the express provisions of this Lease and that it will not enter into any such agreements.
- 8.04. War; National Emergency. During time of war or national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States of America for military or naval use and, if such lease is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. All Rent or other payments owing under this Lease shall likewise be suspended until Lessee’s normal operations resume at the Leased Premises. In addition, if Lessee’s normal business operations are materially affected for a period in excess of one eighty (180) days, Lessee may terminate this Lease upon written notice to Lessor, in which event,

except for the obligations of the parties which expressly survive termination of this Lease, the parties shall have no further rights or obligations hereunder except to the extent permitted in, and in accordance with, Section 4.07, Lessee may remove its personal and other property within thirty (30) days after the date of Lessee's notice of termination (the exercise of which right shall not constitute a holdover). Nothing contained in this Lease shall prevent Lessee from pursuing any rights which Lessee may have for reimbursement from the United States of America for the taking of any part of Lessee's leasehold estate or for any loss or damage caused to Lessee by the United States of America.

- 8.05.** Operation as Public Airport. Lessor covenants and agrees that during the Term and any renewal thereof it will operate and maintain the Airport and its public Airport Facilities as a public use airport.

ARTICLE 9: OPERATION OF THE AIRPORT

- 9.01.** Non Discrimination Requirements.

- a. It is specifically understood and agreed that this Lease does not grant or authorize an exclusive right for conducting any aeronautical activity which is unlawfully discriminatory. Lessee specifically agrees not to discriminate in its use of the Leased Premises in any manner prohibited by applicable FAA regulations. Lessor agrees not to lease space to other tenants or users at the Airport on terms more favorable (including, without limitation, ground rents, other rents or fees, or length of term) than those contained in this Lease and, if Lessor enters into a lease or other agreement for the same or similar use, the material terms of which are more favorable terms than those contained herein, the more favorable material terms shall be offered to Lessee and, at Lessee's election, this Lease shall be modified to reflect the more favorable material terms.
- b. Lessee, for itself, its personal representative, successors in interest and assigns, as part of the consideration herein, agrees that no person shall be excluded from participation in or denied the benefits of Lessee's use of the Airport on the basis of race, color, national origin, religion, handicap or gender. Lessee further agrees for itself, its personal representatives, successors in interest and assigns that no person shall be excluded from the provision of any service on or in the construction of any improvements or alterations to the Leased Premises on grounds of race, color, national origin, religion, handicap or gender. In addition, Lessee covenants and agrees that it will at all times comply with any applicable requirements imposed by or pursuant to Title 49 of the Code of Federal Regulations, Part 121, Non-Discrimination in Federally Assisted Programs of the Department of Transportation, and with any applicable future amendments thereto.

IF ANY CLAIM ARISES FROM A VIOLATION OF THE FOREGOING NON-DISCRIMINATION COVENANT BY LESSEE, LESSEE AGREES TO HOLD HARMLESS AND INDEMNIFY LESSOR AND AIRPORT MANAGEMENT FROM ANY ACTUAL LOSS OR EXPENSE, BUT NOT CONSEQUENTIAL, SPECIAL OR EXEMPLARY COSTS, EXPENSES OR DAMAGES, INCURRED BY EITHER OF THEM IN CONNECTION WITH SUCH VIOLATION.

- 9.02. Airport Development.** The use of a portion of the Airport property for use of the Leased Premises is subordinate to the use of Airport property for aviation purposes. Lessor reserves the right to further develop and improve the Airport as it may see fit. If the future development of the Airport requires the relocation of Lessee's Improvements during the Term and any renewal thereof, Lessor agrees, prior to any such relocation, to (i) provide substitute leased premises comparable to the Leased Premises for the remainder of the Term and renewal thereof, plus any then permitted extensions, (ii) provide substitute leased premises a location which is consistent with and suitable for Lessee's current business operations at the Leased Premises at the time of such relocation, (iii) minimize disruptions to Lessee's business and operations at the Leased Premises to the extent possible, and (iv) to relocate (subject to Lessee's reasonable agreement, taking into account impacts on Lessee's use thereof) or promptly reconstruct the Improvements at no cost to Lessee.
- 9.03. Aeronautical Services Grant and Requirements.** The right to furnish aeronautical services to the public is granted to Lessee by Lessor, subject to the following:
- a. Lessee shall furnish such services on a fair, equal and nondiscriminatory basis to all users.
 - b. Any discounts, rebates or similar price reductions to volume purchasers shall be fair, reasonable and nondiscriminatory.

ARTICLE 10: INSPECTION AND PREMISES ACCEPTANCE

- 10.01. Fire Safety.** Lessee will permit the Fire Marshal to make inspection of the Leased Premises during regular business hours, except in the event of an emergency, and Lessee will comply with Applicable Laws as required to insure the Leased Premises comply with fire and building provisions regarding fire safety. Lessee shall maintain, in proper condition, accessible fire extinguishers in number and type required or approved by fire underwriters for the particular hazard involved.
- 10.02. Acceptance.** Lessee agrees and covenants that Lessee has inspected the Leased Premises and is fully advised of its own rights without reliance upon any representation made by Lessor as to the condition of the Leased Premises, and accepts same in their present condition.

ARTICLE 11: INSURANCE AND INDEMNITY

- 11.01. Required Insurance.** Lessee shall procure and maintain at all times, in full force and effect, a policy or policies of insurance as set forth in the Minimum Standards and related to Lessee's lease, use and occupancy of the Leased Premises. Such insurance shall be written so that Lessor must be notified in writing at least thirty (30) days in advance of cancellation or non-renewal, and Lessee shall not amend such insurance in any manner which fails to comply with the Minimum Standards. Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and at least once per calendar year during the Term. All required insurance shall be primary over any other insurance coverage Lessor may have, and shall name the City and Airport Management as additional insureds (as applicable, to the extent of their interests therein).
- 11.02. Lessee Responsibility.** In the event Lessee fails to obtain and maintain required insurance, Lessee shall nevertheless be responsible for related losses and, to the extent any obligation

of Lessee hereunder is uninsurable, Lessee shall nevertheless be responsible for such obligation. To the extent that Lessee maintains insurance which does not comply with the Minimum Standards, the same does not operate to release Lessee from its obligations pursuant to Section 11.01.

11.03. No Conflicts. Lessee shall not do or permit anything to be done on any portion of the Leased Premises, or bring or keep anything thereon, which (i) is in violation of any required insurance, (ii) operates to increase the rate of insurance upon the Leased Premises, or (iii) unreasonably interferes with the rights of other tenants at the Airport.

11.04. Casualty Coverage: Notwithstanding and, as applicable, in addition to the Minimum Standards, during the Term and any renewal thereof, Lessee shall, at its sole cost and expense, cause all Improvements on the Leased Premises to be insured to the full insurable value thereof against the perils of explosion, fire, extended coverage and the like.

11.05. Indemnity and Security.

a. **Indemnity.** LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND ITS OFFICERS, EMPLOYEES, AGENTS (INCLUSIVE OF AIRPORT MANAGEMENT) AND REPRESENTATIVES (COLLECTIVELY, THE "***INDEMNIFIED PARTIES***"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES AND COURT COSTS), LIABILITIES, DAMAGES (EXCLUSIVE OF CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES), CLAIMS, SUITS, ACTIONS AND CAUSES OF ACTIONS. ("***CLAIMS***"), TO THE EXTENT ARISING DIRECTLY OR INDIRECTLY, OUT OF (i) ANY BREACH OF THIS LEASE BY LESSEE AND ITS AGENTS, CONTRACTORS, EMPLOYEES, LICENSEES AND INVITEES, (COLLECTIVELY THE "***LESSEE PARTIES***"), (ii) ANY FALSE REPRESENTATION OR WARRANTY MADE BY LESSEE HEREIN, AND (iii) ANY NEGLIGENT ACT OR OMISSION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES IN CONNECTION WITH THIS LEASE, THE CONSTRUCTION, DEVELOPMENT, OPERATION AND USE OF THE LEASED PREMISES AND USE OF AIRPORT IMPROVEMENTS. LESSEE IS NOT EXCUSED OR RELIEVED OF ITS OBLIGATIONS UNDER THIS SECTION IF A CLAIM ARISES OUT OF, OR IS CAUSED BY, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSEE PARTIES CONCURRENT WITH THAT OF THE INDEMNIFIED PARTIES. LESSEE SHALL ASSUME ON BEHALF OF THE INDEMNIFIED PARTIES AND CONDUCT WITH DUE DILIGENCE AND IN GOOD FAITH THE DEFENSE OF ALL CLAIMS AGAINST ANY OF THE INDEMNIFIED PARTIES. LESSEE MAY CONTEST THE VALIDITY OF ANY CLAIMS, IN THE NAME OF THE INDEMNIFIED PARTIES OR LESSEE, AS LESSEE MAY IN GOOD FAITH DEEM APPROPRIATE, PROVIDED THE EXPENSES THEREOF SHALL BE PAID BY LESSEE. IN NO EVENT MAY LESSEE ADMIT LIABILITY ON THE PART OF LESSOR OR AIRPORT MANAGEMENT WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF LESSOR'S CITY ATTORNEY.

b. **Limitation of Liability.** The foregoing and any other indemnity of Lessee herein shall not be interpreted as requiring Lessee to indemnify any of the Indemnified

Parties from any liability arising solely out of willful misconduct, gross negligence, breach of this Lease or breach of any strict liability obligations.

- c. Waiver of Consequential Damages. EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING CLAIMS OF PERSONS AND ENTITIES CLAIMING BY OR THROUGH ANY OF THEM AND OTHER SIMILAR CLAIMS OR DAMAGES.
- d. Claims Against Lessee. If any claim, demand, suit or other action is made or brought by any person or entity against Lessee arising out of or concerning this Lease, Lessee shall give written notice thereof, to Lessor and Airport Management within ten (10) days after receipt of such claim, demand, suit or action.
- e. Notice. Lessee shall promptly (and in all events within three Business Days) notify Lessor and Airport if it is involved in any accident on the Leased Premises or Airport. To the extent Lessee's officers are aware of any defects in Airport runways, taxiways, lighting systems or other facilities which may require immediate attention, Lessee shall promptly notify Airport Management of the same (Lessor acknowledging that inspection and reporting is not Lessee's obligation, and that such notice is provided as a courtesy to Lessor).
- f. Security. Lessor does not guarantee police protection or security to Lessee or its property and, except as provided in subsection b above, (i) Lessor and Airport Management shall not be responsible for injury to any person on the Leased Premises or for harm to any property which belongs to Lessee or those claiming by or through Lessee, or which may be stolen, destroyed or damaged; and (ii) LESSEE SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR AND AIRPORT MANAGEMENT AND THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS FROM AND AGAINST ANY AND ALL SUCH CLAIMS.

ARTICLE 12: CONDEMNATION

- 12.01. Taking in Entirety. If the entire Leased Premises are taken by any public or governmental body by right of eminent domain, this Lease shall terminate as of the date the condemning authority takes possession.
- 12.02. Partial Taking. If less than all of the Leased Premises are taken by any public or governmental body by right of eminent domain, and in Lessee's reasonable judgment, the remainder lacks adequate area, location, configuration or improvements to carry out the purposes for which the Leased Premises were leased, Lessee shall have the right to terminate the Lease in its entirety, by giving Lessor written notice within thirty (30) days after the date the condemning authority takes possession. If Lessee does not terminate the Lease, the Lease shall continue in full force and effect as to the remainder of the Leased Premises.
- 12.03. Damage Award for Continuation of Lease. Subject to the terms and conditions of any subordination, attornment and non-disturbance agreement ("*SNDA*") executed by Lessor, Lessee and Lessee's lender, in the event of a partial taking pursuant Section 12.02 where

there is not a termination of this Lease, (i) an amount equal to (a) the amount awarded for the loss of Lessee's leasehold estate, plus (b) the amount awarded for the loss of Lessee's trade fixtures and other tangible personal property, plus (c) the amount awarded for the Improvements and Alterations so taken (which shall not be less than actual costs incurred by Lessee in development and construction of the same) multiplied by a fraction, the numerator of which is the total number of months from the date of the taking until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof, shall belong to Lessee, and Lessor assigns to Lessee all right, title and interest in and to any and all such compensation; and (ii) the remainder of amounts awarded as damages shall belong to Lessor and, subject to payment of an award to Lessee of amounts due pursuant to (i) above, Lessee assigns to Lessor all right, title and interest in and to any and all such compensation. Lessee is authorized to assert a claim for, and receive, an award and compensation based on (i) above for the taking of Lessee's property.

- 12.04.** Damage Award for Termination of Lease. Subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, in the event of a termination of this Lease pursuant to this Section 12, any condemnation award shall be determined and distributed in accordance with the provisions of Section 12.03. The termination of this Lease under this Article 12 shall not affect the rights of the respective parties to such awards and compensation, which rights shall survive termination.
- 12.05.** Definition of Taking. As used in this Article 12, a taking shall include a sale, transfer or conveyance in avoidance or in settlement of condemnation or a similar proceeding.

ARTICLE 13: DAMAGE BY CASUALTY

- 13.01.** Notice Required. Lessee shall give immediate verbal notice, followed by prompt written notice, to Lessor of any material damage caused to the Leased Premises by fire or other casualty.
- 13.02.** Restoration Upon Casualty Loss. Subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, if the Improvements are wholly or partially destroyed or damaged by fire or any other casualty ("*Casualty*"), Lessee shall cause the same to be restored and reconstructed with available insurance proceeds (and such other proceeds as are made available to Lessee), unless otherwise agreed by Lessor in writing, and subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, the following provisions shall apply:
- a. New Construction Requirements. The design of all portions of the Leased Premises to be restored and reconstructed shall meet the requirements of this Lease, and Lessor shall have the same rights of review, comment and approval with respect to such design as it has hereunder for new construction.
 - b. Commencement and Completion. Restoration and reconstruction shall commence by the later of six (6) months after the date of the Casualty or sixty (60) days after the plans for such construction are approved by Lessor and, as applicable, the FAA. Thereafter, construction shall be pursued with all due diligence to substantial completion.

- c. Construction Funding. Lessee shall use available proceeds of Lessee's casualty insurance for the restoration and reconstruction of the Improvements.

13.03. No Restoration Following Casualty Loss. Notwithstanding the provisions of Section 13.02, subject to the terms and conditions of any SNDA executed by Lessor, Lessee and Lessee's lender, the following provisions shall apply:

- a. By Agreement. If Lessee and Lessor agree not to restore and reconstruct the Improvements, either party may elect to terminate this Lease as to the portion of the Leased Premises affected by the Casualty upon thirty (30) days' written notice to the other, and the following provisions shall apply:

- 1) With available proceeds of Lessee's casualty insurance, Lessee shall establish reasonable security for the Leased Premises and, as soon as practicable, remove all debris resulting from the Casualty and bring the Leased Premises to a clean and safe condition.

- 2) The remainder of the available proceeds of Lessee's casualty insurance shall be divided between Lessor and Lessee, Lessee's portion thereof being an amount determined by multiplying the remaining amount by a fraction, the numerator of which is the total number of months from the date of the Casualty until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof.

- 3) In the event of termination, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder and available proceeds of Lessee's casualty insurance shall be distributed in accordance with 1 and 2 above.

- b. Cannot be Constructed Timely. If the Improvements cannot be reconstructed within two hundred forty (240) days following the date of the Casualty, Lessee may elect to terminate this Lease as to the portion of the Leased Premises affected by the Casualty or in its entirety upon thirty (30) days' written notice to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder; provided, the termination of this Lease under this Article 13 shall not affect the rights of the respective parties to available proceeds of Lessee's casualty insurance, which rights shall survive termination.. In such event, the available proceeds of Lessee's casualty insurance shall be divided between Lessor and Lessee, Lessee's portion thereof being an amount determined by multiplying the amount of available proceeds by a fraction, the numerator of which is the total number of months from the date of the Casualty until the scheduled expiration of the Term and any renewal thereof and the denominator of which is the total number of months in the Term and any renewal thereof.

13.04. Rent Abatement. During any period of reconstruction or repair of the Improvements on the Leased Premises, this Lease shall continue in full force and effect except that Rent shall be abated for the length of time necessary for the reconstruction or repairs based on the proportion of the Leased Premises rendered unusable as compared to the entire Leased Premises, but there shall be no abatement of any other amounts payable by Lessee under

the terms of this Lease.

- 13.05. Casualty During Last 60 Months.** Notwithstanding anything to the contrary herein, the parties further agree that Lessee shall have the right to decline to repair and restore the Leased Premises if the Casualty occurs within the last sixty (60) months of the Term and any renewal thereof unless Lessor and Lessee agree, on mutually agreeable terms, to an extension. If Lessee declines to repair and restore the Leased Premises, this Lease shall terminate upon delivery of Lessee's notice of termination to Lessor, in which event, except for obligations of the parties which survive termination, the parties shall have no further rights or obligations hereunder and available proceeds of Lessee's casualty insurance shall be distributed in accordance with Section 13.02.b. The termination of this Lease under this Article 13 shall not affect the rights of the respective parties to available proceeds of Lessee's casualty insurance, which rights shall survive termination.

ARTICLE 14: ASSIGNMENT AND SUBLETTING

- 14.01. Assignment by Lessee.** Except as otherwise provided herein with respect to Lessee's financing and with respect to a Permitted Assignment (as defined below), Lessee may not assign this Lease, or any of its rights or obligations hereunder, in whole or in part, including by operation of law, without the prior written consent of Airport Management; provided (i) no change in the direct or indirect control of Lessee or any ownership interests therein shall be considered an assignment, and (ii) Lessor shall not unreasonably withhold, condition or delay its consent to a proposed assignment. In connection with any request by Lessee for Lessor's consent to a proposed assignment, Lessor's denial of such consent shall be based upon the following:

- a. In the reasonable judgment of Lessor, the assignee (i) is of a character or engaged in a business or proposes to use the Leased Premises in a manner which is not in keeping with Airport standards or would diminish the value of the Airport, or (ii) in Lessor's reasonable opinion, is not creditworthy (provided, consent shall not be denied if Lessee agrees to remain liable under this Lease);
- b. The occupancy of the Leased Premises by the proposed assignee would cause Lessor's insurance to be cancelled (or increased, unless such costs will be reimbursed by the proposed assignee);
- c. The use is not a use generally in keeping with uses allowed at the Leased Premises;
or
- d. The use is prohibited at the Airport.

Such consent shall be deemed to have been granted if written notice of non-consent is not received by Lessee within thirty (30) days of a written request for consent.

- 14.02. Sublease.** Notwithstanding the provisions of Section 14.02, Lessee may sublease office, hangar and tie-down space to subtenants without Airport Management's prior consent provided that (i) the sublease or other use and occupancy agreement is expressly subject to and subordinate to this Lease, and (ii) the terms of the sublease or other use or occupancy agreement are consistent with the terms and conditions of this Lease. Additionally, Lessee shall provide Airport Management with a list of subtenants no more than two times per calendar year.

14.03. No Release. Except for a Permitted Assignment or assignment to a Qualified Lessee (as defined below) to which Lessor has consented pursuant to Section 14.01, no assignment, sublease or grant of use and occupancy rights shall relieve Lessee of its obligations to Lessor hereunder. Any assignment, transfer or sublease that is not permitted under this Lease and has not been authorized by Lessor in writing shall be void. As used herein:

1) “*Permitted Assignment*” means the transfer of all or part of Lessee’s interest in this Lease or all or part of the Leased Premises to the following types of entities without the written consent of Lessor:

a) Any transfer to a trust or other entity in connection with estate planning of Lessee’s principal shareholder(s);

b) Any transfer to an affiliate (by common ownership) or subsidiary of Lessee.

c) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity in which or with which Lessee, or its corporate successors or assigns, is merged, consolidated or reorganized, so long as Lessee’s obligations hereunder are assumed by the entity surviving such merger or created by such consolidation or reorganization.

d) Any transfer to a corporation, limited partnership, limited liability partnership, limited liability company or other business entity acquiring all or substantially all of Lessee’s or of Tenant’s business operations in the Leased Premises.

e) Any transfer to a Qualified Lessee.

2) “*Qualified Lessee*” means a person or entity with a net worth equal to or greater than an amount equal to three hundred percent (300%) of the then-unpaid Rent obligations of Lessee hereunder.

14.04. Assignment by Lessor. In the event of an assignment by Lessor of all of its interest in the Leased Premises to a person or entity that assumes all of Lessor’s obligations pursuant to this Lease, Lessee agrees to look solely to such assignee.

ARTICLE 15: EVENTS OF DEFAULT AND REMEDIES; TERMINATION

15.01. Events of Default by Lessee. The following shall constitute “events of default” by Lessee under this Lease:

a. Rent. Failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee under this Lease when due where such failure continues for a period of ten days after written notice by Lessor to Lessee; provided, after the second such failure in a calendar year, only the passage of time, but no further written notice, shall be required to establish an event of default in the same calendar year; or

- b. Other Breaches. Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in subsection a. above, where such failure continues for a period of thirty (30) days after written notice by Lessor to Lessee; provided, if the nature of Lessee's obligation which it has failed to perform is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed an event of default if Lessee commences such cure within the thirty (30) day period and, having so commenced, thereafter prosecutes with diligence and completes the curing of such failure or breach within a reasonable time; or
 - c. Certain Voluntary Acts. Lessee (i) files, or consents by answer or otherwise to the filing against it if, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, or (iii) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Lessee or of any substantial part of Lessee's property; or
 - d. Receivership; Bankruptcy. Without consent by Lessee, a court or government authority enters an order, and such order is not vacated within thirty (30) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Lessee or with respect to any substantial part of Lessee's property, or (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (iii) ordering the dissolution, winding up or liquidation of Lessee; or
 - e. Vacation or Failure to Operate. Except in connection with construction, alteration, casualty, eminent domain, act of Lessor, the United States of America or the State of Texas which precludes occupation and use of the Leased Premises or Force Majeure, Lessee vacates or fails to use all or any substantial portion of the Leased Premises for one hundred (120) consecutive days; or
 - f. Levy or Attachment. Except as permitted pursuant to a SNDA executed by Lessor, Lessee and Lessee's lender and/or any related loan documents, this Lease or any estate of Lessee hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within thirty (30) days.
- 15.02. Lessor Remedies.** If an event of default occurs and the applicable cure period has expired, at any time after such occurrence and prior to the cure thereof, with or without additional notice or demand and without limiting Lessor's rights or remedies as a result of the event of default, Lessor may do the following:
- a. Terminate this Lease. Lessor may terminate this Lease on written notice to Lessee. In such event, Lessee shall immediately surrender the Leased Premises to Lessor and, if Lessee fails to do so, Lessor may enter and take possession of the Leased Premises and remove Lessee and any other person occupying the Leased Premises, using reasonable force if necessary, without prejudice to any other remedy it may have for possession or arrearages in Rent and, except as provided in Section 11.05.b., without being liable for any resulting damages. Lessee agrees to pay to

Lessor the actual and reasonable amount of related costs and expenses incurred by Lessor, inclusive of reasonable attorney and court costs, within thirty (30) days of Lessor's request for payment, accompanied by evidence of such costs and expenses. If Lessor terminates this Lease, Lessee shall be deemed to have relinquished all right, title and interest in and to all Improvements, and such shall become the property of Lessor.

- b. Relet the Leased Premises and Receive the Rent. Lessor may terminate Lessee's right to possession of the Leased Premises and enjoyment of the rents, issues and profits there from without terminating this Lease or the estate created hereby. If Lessor retakes possession of the Leased Premises as provided herein, Lessor may lease, manage and operate the Leased Premises and collect the rents, issues and profits there from for the account of Lessee, and credit to the satisfaction of Lessee's obligations hereunder the net rental thus received, after deducting therefrom all reasonable, actual out-of-pocket third party costs and expenses of repossessing, leasing, managing and operating the Leased Premises.
- c. Enter and Perform. Lessor shall have the right, but not the obligation, to enter upon the Leased Premises and perform any obligation that Lessee has failed to perform. All reasonable and actual costs and expenses incurred by Lessor in performing such obligations of Lessee shall be deemed additional Rent payable by Lessee to Lessor.
- d. Other Remedies. Lessor may exercise any other right or remedy available to Lessor under this Lease or at law or in equity.

15.03. Default by Lessor. Lessor shall be deemed to be in default of this Lease (herein, a "***Lessor Default***") if Lessor shall fail to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Lease that are to be kept or performed by Lessor and Lessor shall fail to cure such failure within thirty (30) days after delivery by Lessee to Lessor of written notice specifying the failure; provided, so long as the subject default did not occur due to Lessor's breach of an affirmative covenant herein (e.g., pursuant to Sections 1.01, 1.05, 1.06, 3.09, 7.01(a), 9.02, and Article 8), if the failure is curable other than by the payment of money but cannot be cured within such thirty (30) day period, Lessor shall not be in default if Lessor commenced cure of the failure during such thirty (30) day period and thereafter diligently and continuously pursues the cure to its completion.

15.04. Lessee's Remedies. If a Lessor Default occurs, Lessee may at any time thereafter and prior to the cure thereof do any one or more of the following:

- a. Terminate this Lease. Lessee may terminate this Lease by giving Lessor written notice thereof, in which event this Lease and the leasehold estate hereby created and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date of such notice and, except for the obligations of the parties which survive closing and Lessee's rights under b. below (which shall survive termination), the parties shall have no further rights or obligations hereunder; or

- b. Other Remedies. Lessee may exercise any other right or remedy available to Lessee under this Lease or under Applicable Law, except as expressly limited by the terms of this Lease.

ARTICLE 16: LESSOR'S LIEN

- 16.01. Subordination of Lessor's Lien. Upon written request from Lessee, Lessor agrees to reasonably subordinate its statutory and contractual landlord's liens on the Improvements or Lessee's personal property and trade fixtures to the lien of a lender providing financing to the Lessee, consistent with the terms of this Lease.

ARTICLE 17: LESSEE'S MORTGAGE OF LEASEHOLD INTEREST

- 17.01. Mortgage of Leasehold Estate.

- a. Consent to Mortgage. Lessor grants permission to Lessee to mortgage of Lessee's leasehold interest in the Leased Premises for the sole purpose of obtaining funding for permanent improvements to the Leased Premises. Lessee will provide written notification to Lessor of each such mortgage within ten (10) days after it is executed. Lessor agrees that any lien in its favor arising under this Lease as to the Leased Premises will be subordinate to the lien of the mortgagee under each such mortgage. This clause is self-operative and no further instrument of subordination need be required by any mortgagee of Lessee. The mortgaging by Lessee of its leasehold interest for any other purpose, however, shall require the advance written approval of Lessor. *In no event, however, shall any lien be asserted against the underlying fee simple interest of Lessor in the Leased Premises.*

Lender Rights and Obligations. Lessee's lender may, in case of default by Lessee, assume the rights and obligations of Lessee under this Lease and become a substituted Lessee, with the further right to assign Lessee's interest to a third party, subject to the approval of the Airport Management. Lessee's lender's obligations under this Lease as substituted Lessee shall cease upon assignment to an Airport Management-approved third party. Lessor agrees to execute SNDAs as Lessee's lender may reasonably request consistent with this Lease. Lessor agrees to give Lessee's lender a duplicate copy of any notice of a breach of this Lease or potential event of default that Lessor gives Lessee. Except as otherwise provided in a SNDA executed by Lessor, Lessee, and Lessee's lender, the lender may then cure the breach or potential event of default, for the account of Lessee or the lender (as the lender may elect), in the same manner and in the same period of time as allowed Lessee.

ARTICLE 18: MISCELLANEOUS

- 18.01. Gender Neutral. When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.
- 18.02. Amendment. This Lease may be amended only by an instrument in writing signed by both parties. This Lease shall apply to and be binding upon the parties and their permitted successors in interest and legal representatives.

- 18.03.** Headings. The headings used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this lease.
- 18.04.** Nonwaiver of Rights. No waiver of default by either party of any terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.
- 18.05.** Force Majeure. Whenever a period of time is prescribed for action to be taken by Lessor or Lessee, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of Lessor or Lessee (herein, "*force majeure*") shall be excluded from the computation of any such period of time.
- 18.06.** Quiet Enjoyment. Lessor represents and warrants that it has the lawful authority to enter into this Lease and has title to the Leased Premises. Lessor further covenants that Lessee shall have and enjoy undisturbed possession of the Leased Premises as long as Lessee performs its obligations under this Lease. This Lease is subject, however, to the rights of the United States of America during periods of national emergency and its right to take all or a portion of the Airport for federal activities, as provided herein.
- 18.07.** No Partnership. This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of Lessor and Lessee.
- 18.08.** No Brokers. Lessee warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Lessee agrees to indemnify and hold Lessor and Airport Management harmless from and against any and all costs, expense or liability for commissions or other compensation charges payable to any broker or agent of Lessee with respect to this Lease.
- 18.09.** Governing Law; Venue. The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas.
- 18.10.** Permits. Lessee shall, at its sole expense, be responsible for obtaining and keeping in effect all licenses and permits necessary for the operation of its business at the Leased Premises.
- 18.11.** Entire Agreement. This Lease and the exhibits hereto constitute the entire understanding and agreement by the parties hereto concerning the Leased Premises, and any prior or contemporaneous agreement, oral or written, which purports to vary from the terms hereof shall be void.
- 18.12.** Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been included in the Lease.
- 18.13.** Charitable Immunity or Exemption. If Lessee is a charitable association, corporation, partnership, individual enterprise or entity and claims immunity to or an exemption from

liability for any kind of property damage or personal damage, injury or death, Lessee hereby expressly waives its rights to plead defensively any such immunity or exemption as against Lessor and Airport Management.

18.14. Action through Airport Management. All parties agree that Lessor may choose to exercise any of its non-delegable powers under this Lease through its Airport Management. Unless Lessor notifies Lessee in writing of new Airport Management, Airport Management is Texas Aviation Partners, LLC, a Texas limited liability company, with an address of 1807 Airport Drive, Suite 200, San Marcos, Texas 78666.

18.15. Notices. Notices required of either party pursuant to the provisions of this Lease shall be conclusively determined to have been delivered to the other party when (i) hand-delivered to the other party, or (ii) mailed in the United States Mail, postage prepaid, certified, with return receipt requested, to the address specified below:

If to Lessor:

City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

If to Lessee:

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.15.

18.16. Consent. In any instance in which the consent of one party, or the Airport Management, is required, consideration of the matter in question is to be promptly given, consent not to be unreasonably withheld, conditioned or delayed.

18.17. Attorney Fees. Each party will be required to pay its own attorneys' fees incurred in connection with the negotiation of this Lease or any action or proceeding arising between Lessor and Lessee regarding this Lease. Further, except as expressly provided herein, each party waives any and all rights under law or in equity to seek or recover attorney's fees from the other party in any civil or administrative litigation or dispute resolution proceeding for breach of this Lease or to enforce any provision of this Lease.

18.18. Recordation. Lessor and Lessee will, at the request of the other, promptly execute a memorandum of lease in recordable form constituting a short form of this Lease, which may be filed for record in the Official Public Records of Caldwell County, Texas. This Lease itself shall not be filed of record.

18.19. Reservation of Immunities. TO THE EXTENT PROVIDED IN TEXAS LOCAL GOVERNMENT CODE CHAPTER 271 SUBCHAPTER I, AND OTHER APPLICABLE LAW, LESSOR WAIVES ITS RIGHTS TO ASSERT GOVERNMENTAL IMMUNITY FROM SUIT FOR BREACH OF THIS LEASE BY LESSOR OR LIABILITY FOR CONTRACT CLAIMS ASSERTED BY LESSEE SEEKING THE REMEDIES OF LESSEE SET FORTH HEREIN, INCLUSIVE OF SECTION 15.04. EXCEPT AS PROVIDED IN THE PRECEDING SENTENCE, LESSOR DOES NOT WAIVE, AND EXPRESSLY RESERVES, ALL IMMUNITIES EXISTING UNDER APPLICABLE

LAW AVAILABLE TO LESSOR AS A TEXAS HOME-RULE MUNICIPAL CORPORATION. IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THE FOREGOING WAIVER IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CONTRACT CLAIMS UNDER THIS LEASE.

18.20. No Third Party Beneficiaries. This Lease is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entity other than the parties hereto and their assigns any legal or equitable rights hereunder.

18.21. Survival. Any terms and provisions of this Lease pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Lease shall survive the same.

18.22. Exhibits. The exhibits to this Lease are as follows:

- Exhibit A Description of Leased Premises
- Exhibit B Location of Facilities

IN WITNESS WHEREOF, the parties hereto have executed this Lease effective as of _____, 2017 (the "*Effective Date*").

LESSOR:

LESSEE:

CITY OF SAN MARCOS, TEXAS

By: _____
Name Printed: _____
Title: _____

By: _____

ATTEST:

EXHIBIT A

Description of Leased Premises

EXHIBIT B

Facilities Location