

**CITY OF SAN MARCOS, TEXAS  
SAN MARCOS REGIONAL AIRPORT**

**AIRPORT GROUND LEASE AGREEMENT  
FOR NON-AERONAUTICAL USE**

**THIS AIRPORT GROUND LEASE AGREEMENT FOR NON-AERONAUTICAL USE** (“*Lease*”) is made between the City of San Marcos, a municipal corporation of the State of Texas (“*Lessor*” or “*City*”), and City of San Marcos Fire Department (“*Lessee*”).

**ARTICLE 1: LEASE OF PREMISES; ACCEPTANCE OF EXISTING CONDITIONS;  
COMPLIANCE WITH REGULATIONS**

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. This Lease Agreement between the City of San Marcos as Lessor and the City of San Marcos Fire Department as Lessee is required by the Federal Aviation Administration based on regulations of non-aeronautical activity at the Airport. The development of the Leased Premises contemplated by this Lease Agreement was approved by the voters of the City of San Marcos during a 2017 Bond Election.

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:

723,096 unimproved square feet as described in Exhibit A attached hereto;

1.03 Acceptance. Lessee acknowledges that, subject to Lessor’s obligations under paragraph 1.05 below: (i) Lessor makes no representations or warranty regarding the suitability of the Leased Premises for Lessee’s intended purposes, 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 (the “*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. Lessor operates and maintains the Airport and appurtenant facilities (including, without limitation, runways, taxiways, landing areas, entrance roads, driveways and existing parking lots leading to and/or contiguous to the Leased Premises) 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 and gated entrances owned by the City for automobiles, including access during the construction phase of Airport improvements, unless otherwise agreed to in writing by both parties. Security codes for any gated entrances shall be provided to Lessee by Lessor. Such rights shall be consistent with the Rules and Regulations and applicable laws, rules and regulations ("***Applicable Law***") 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 \_\_\_\_\_ and will terminate in forty (40) years (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 Effective Date.
- 2.03 Rent. Lessee will develop the Leased Premises in multiple phases. Rent shall be adjusted during each phase of development ("***Development Phases***"). Phase I of development is equal to 241,032 square feet of the Leased Premises herein referred to as the Rentable Leased Premises (Exhibit B). Lessee hereby promises and agrees to pay Lessor for the Rentable Leased Premises equal to \$2,250.00 per month for the first five (5) years of the Term. The rental rate shall be increased by a flat ten percent (10%) for each subsequent five (5) year period of the Lease.
- Rent will be prorated in the event of any partial calendar 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.
- 2.04 Form and Place of Payment. Rent shall be due on or before the first day of each calendar month. The City of San Marcos Finance Department will process the rent payment each month by transferring the rent amount from the budget of the San Marcos Fire Department to the Airport Enterprise Fund.

## **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: fire training facilities, administrative offices, and fire station and related activities; 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 during any period of repair, reconstruction or Alteration, Lessee shall not fail to occupy and use the Leased Premises for the Authorized Use.
- 3.03 Parking. Lessee shall not allow any motor vehicles to be parked on the ramp or any grassy areas adjacent to its Leased Premises.
- 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 of the City, the FAA and other governmental authorities with jurisdiction over the Leased Premises.
- 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 No Outside Storage. Lessee shall store all equipment, materials and supplies within the confines of the Leased Premises, and 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 at the Airport to the same extent as other Airport users.

#### **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***"). Construction of the Facilities 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 through the City's permitting system, a copy of which shall be submitted to Airport Management. 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**”) in a timely manner. In the event the City fails to approve all original items or resubmittals within six (6) months after the original submission or if the cost will exceed, in the aggregate, the Maximum Amount, Lessee shall have the right to 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. Lessee is responsible for securing all necessary permits from the City's Planning and Development Department to complete the Facilities.

- 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. Subject to force majeure, Lessee shall commence construction of the Facilities 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 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 (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 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, 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. 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, 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***"). 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 reasonable 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 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. The Parties agree that municipalities in the State of Texas are exempt from the payment of property taxes and the Facility at issue in this Lease Agreement shall be tax exempt.

## **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 other non-aeronautical users, 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, public automobile parking areas, public roadways, and sidewalks, 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 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 in 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.



## **ARTICLE 10: FIRE SAFETY**

- 10.01 **Fire Safety.** The Lessee is uniquely qualified to provide that the Leased Premises will remain in proper condition to prevent any fire hazard and hereby agrees to take every reasonable step to ensure the safety of the Leased Premises.

## **ARTICLE 11: INSURANCE**

- 11.01 **Insurance:** The Parties acknowledge that the City of San Marcos will submit any claim for insurance coverage relating to damage to the Leased Premises in the same manner as it would for any other City-owned building/facility.

## **ARTICLE 12: DAMAGE BY CASUALTY**

- 12.01 **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.
- 12.02 **Restoration Upon Casualty Loss.** 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, 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.
- 12.03 **No Restoration Following Casualty Loss.** Notwithstanding the provisions of Section 13.02, 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:
    - (i) 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.
    - (ii) 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.

(iii) 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.
- 12.04 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.
- 12.05 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 13: EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

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

- a. Rent. Lessee fails to pay when due any rental or any other sums or charges due under this Lease, and such failure continues for ten (10) days following written notice thereof (provided, however, that Lessor shall be obligated to give only two such notices in any calendar year, and after such two notices, Lessor will no longer be obligated to give any other notice under this section within such calendar year).
- 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.

13.02 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 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 (exclusive of Lessee's removable trade fixtures and equipment), and the same 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.
  - e. 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, 3.08, 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.
- 13.03 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.
- 13.04 Acceptance of Rent. The acceptance by Lessor of Lessee's monthly payments subsequent to the occurrence of any event of default shall be considered to be compensation for Lessee's use and occupancy of the Leased Premises and shall in no way constitute a waiver by Lessor of its right to exercise any remedy provided for any event of default.

#### **ARTICLE 14: MISCELLANEOUS**

- 14.01 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.
- 14.02 Severability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, this Lease will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.
- 14.03 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.
- 14.04 Headings. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.
- 14.05 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.
- 14.06 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.
- 14.07 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.
- 14.08 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.
- 14.09 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.

- 14.10 Governing Law; Venue; Dispute Resolution. 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. In the event a claim, dispute, or controversy (defined for the purposes of this Lease as "Claim") arises out of or relates to this Lease, Lessor and Lessee agree that, as a condition precedent to litigation, Lessor (or, at Lessor's direction, Airport Manager) shall meet and attempt to resolve the matter within five (5) business days of a party's request.
- 14.11 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.
- 14.12 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

and

4400 Highway 21  
San Marcos, Texas 78666

If to Lessee:

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

A party hereto may change its address by giving notice thereof to the other party in conformity with this Section 18.12.

- 14.13 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.
- 14.14 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.

- 14.15 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.
- 14.16 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.
- 14.17 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.
- 14.18 Exhibits. The exhibits to this Lease are as follows:

<u>Exhibit A</u>	Leased Premises
<u>Exhibit B</u>	Phase I Improvements

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease effective as of the Effective Date.

**LESSOR:**

**LESSEE:**

CITY OF SAN MARCOS, TEXAS

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
Leased Premises



**EXHIBIT B**  
Phase I Development