

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

**AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT  
FOR COMMERCIAL FBO USE**

**BY AND BETWEEN**

**CITY OF SAN MARCOS, TEXAS,**

**AS LESSOR**

**AND**

**BERRY AVIATION, INC.,**

**AS LESSEE**

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SAN MARCOS REGIONAL AIRPORT**

**AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT  
FOR COMMERCIAL FBO USE**

**THIS AMENDED AND RESTATED AIRPORT FACILITY LEASE AGREEMENT FOR COMMERCIAL FBO USE (“Lease”)** is made between the City of San Marcos, a municipal corporation of the State of Texas (“**Lessor**” or “**City**”), and Berry Aviation, Inc., a Texas corporation (“**Lessee**”), effective as of July 1, 2018 (the “**Effective Date**”).

**RECITALS:**

A. Lessor and Lessee entered into that certain Lease of Airport Property effective as of December 12, 1992, as amended by that certain Amendment Number One to Lease of Airport Property dated as of September 28, 2004, and Amendment Number Two to Lease of Airport Property dated as of June 7, 2006 (collectively, the “**Original Lease**”).

B. As an accommodation to Lessor, but expressly subject to the inclusion of the hangar facilities/premises described in the Original Lease in an amended and restated Hangar Lease (as defined below), Lessee has agreed that the hangar facilities leased to Lessee pursuant to the Original Lease will be excluded from this Lease and leased to Lessee pursuant to an amendment and restatement of that certain Revised Lease of Unimproved Airport Property for Construction and Operation of Business Facilities recorded in Volume 215, Page 593, of the Official Public Records of Hays County, Texas (the “**Hangar Lease**”).

C. Lessor and Lessee desire to amend and restate the Original Lease on the terms stated herein.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the Recitals, 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 amend and restate the Original Lease as follows:

**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.
- 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:

- a. a terminal building (the “**FBO Space**”), the location of which is more particularly described in Exhibit A attached hereto;
  - b. two (2) City-owned above ground fuel storage tanks and above ground appurtenances thereto (the “**Fuel Facilities**”), the location of which is more particularly described in Exhibit B attached hereto; and
  - c. a self-service 100LL fuel pump and above ground appurtenances thereto (the “**Self Service Facility**”), the location of which is more particularly described in Exhibit C 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 inspected and performed all desired tests and investigations of the Leased Premises for its intended purposes; and (iv) Lessee accepts the Leased Premises in their present condition.
- 1.04 Rules and Regulations; Minimum Standards. Lessee agrees to comply with the (i) San Marcos Regional Airport Rules and Regulations adopted November 2, 2015, pursuant to City Ordinance Number 2015-46 (the “**Rules and Regulations**”), a copy of which is attached hereto as Exhibit D, and (ii) San Marcos Regional Airport Minimum Standards last updated August 18, 2015, as amended with respect to the fuel flowage fee on June 5, 2018 (the “**Minimum Standards**”), a copy of which standards as of August 18, 2015, are attached hereto as Exhibit E. 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 (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, a list of which is set forth in Exhibit F attached hereto, 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 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 Effective Date. 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 Effective Date and will terminate on December 21, 2032 (the “***Expiration Date***”), subject to earlier termination or renewal as provided herein. Lessee shall have the option to extend the Term in accordance with Exhibit G attached hereto. As used herein, “***Lease Year***” means each period of twelve (12) full calendar months from and after the Effective Date.
- 2.03 **Rent.**
- a. Subject to the provisions of (b) below, Lessee hereby promises and agrees to pay Lessor (i) “fixed rent” for use of the FBO Space equal to \$2,295.00 per quarter, and (ii) a quarterly fuel flowage fee as approved by City Council on June 5, 2018, and stated in the Minimum Standards (e.g., nine cents [\$0.09] multiplied by the number of gallons of aviation fuel or gasoline for aircraft use delivered to Lessee at the Leased Premises for retail sales or other uses per quarter), which fuel flowage fee may be reviewed and updated by Council no sooner than February 28, 2032.
- Commencing on the first day of the calendar quarter immediately succeeding the Effective Date (the “***Rent Commencement Date***”), fixed Rent shall be paid, in advance, in quarterly installments. Commencing on the first day of the calendar quarter immediately succeeding the Rent Commencement Date, fuel flowage fees shall be paid quarterly, in arrears. Rent will be prorated in the event of any partial calendar quarter or Lease Year. 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.
- b. Notwithstanding the provisions of (a) above, Lessor and Lessee acknowledge and agree that (i) as of the Effective Date, the amount of rent credits approved by Lessor pursuant to the Original Lease equals \$562,011.72 (the “***Approved Credit***”); (ii) during the Term and any extension thereof, until such time as \$133,872.48 of the Approved Credit has been depleted, Lessee may receive a credit against fixed Rent from the Approved Credit, and (iii) the remaining \$421,872.48 of the Approved Credit shall be made available to Lessee as a credit against fixed rent due by Lessee pursuant to the amended and restated Hangar Lease; and (iv) in the event Lessee constructs additional capital improvements during the Term which are approved and a related rent credit is authorized by Lessor, Lessee shall receive a credit against fixed Rent equal to the related expenditures, such credit to commence immediately upon completion of construction or installation of the subject improvements and to continue during the Term and any extension thereof until such credit has been depleted. Notwithstanding Lessee’s right to a Rent credit hereunder, in no event shall Lessor be responsible for amounts in excess of Rent payable by Lessee during the Term and any extension thereof.
- 2.04 **Form and Place of Payment.** Rent shall be due on or before the first day of each calendar quarter. A payment shall be considered past due if, after the fifth (5<sup>th</sup>) day of the calendar quarter 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 (5<sup>th</sup>) day of the calendar quarter 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 tenancy from calendar quarter to calendar quarter. In such event, Lessee agrees to pay Rent equal to the amount payable on the Expiration Date plus fifty (50%) percent as the quarter-to-quarter 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 offsite of the Leased Premises, 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.
- 2.09 Records. To provide Lessor with evidence of fuel delivery, Lessee shall direct its fuel supplier to deliver copies of fuel delivery/sales invoices to Lessor contemporaneous with delivery of the same to Lessee.

### **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: aviation related activities and business, including, but not limited to, aviation fuel sales; commercial office space; fixed base operator; pilot's lounge; aviation-related office use; 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.
- a. Except during any period of repair, reconstruction or Alteration, Lessee shall not fail to occupy and use the Leased Premises for the Authorized Use and, subject to Applicable Laws, shall not fail to keep the FBO Space open for business during daylight hours as traffic requires.



- b. Lessee agrees to keep the FBO Space locked when Lessee is not present therein. If the FBO Space is found unlocked by Lessor or Airport Manager, Lessor may overlock the FBO Space until Lessee's lock is replaced and Lessee notifies Lessor that the FBO Space has been locked by Lessee. At all times during the Term, Lessee shall provide Lessor with a currently operative key to the FBO Space.
  - c. 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).
- 3.03 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.
- 3.04 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 (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.
- 3.05 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.
- 3.06 No Outside Storage. With respect to that portion of the Leased Premises described in Exhibit A, Lessee shall store all equipment, materials and supplies within the confines of the building located thereon, and outside storage is specifically prohibited without the advance written consent of Lessor.
- 3.07 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.
- 3.08 Parking. Lessee shall have nonexclusive use of the public parking lot adjacent to that portion of the Leased Premises described in Exhibit A for Lessee's employees and customers.
- 3.09 Additional Airport Facilities. Notwithstanding any provision of this Lease, 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 may be entitled to, and may 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: MAINTENANCE AND REPAIR OF PREMISES**

- 4.01 **Lessee Obligations.** So long as the FBO Space continues to be designated by Lessor as a city-owned, public terminal, Lessee shall, at its sole cost and expense, perform day-to-day repair and maintenance of the interior of the FBO Space, keeping the same in a safe condition and good state of repair, including, without limitation, items such as light bulbs and bathroom supplies, if applicable, and heating and ventilation equipment; provided, Lessor, and not Lessee, shall be responsible for Major Repairs (as defined below) to the FBO Space. In addition, from and after the Effective Date, Lessee shall (a) maintain the flower beds outside of the FBO Space, (b) be responsible for janitorial and pest control services interior of the FBO Space, (c) be responsible for fire alarm monitoring with respect to the FBO Space, and (d) maintain and repair the Fuel Facilities and Self Service Facility (exclusive of any property or improvements located below the surface of the Leased Premises [the “***Subsurface Property***”]) in a safe condition and good state of repair in accordance with Air Transport Association of America, Inc., ATA Specification 103 (Standards for Jet Fuel Quality Control at Airports), and shall conduct annual inspections of the same, with copies of the inspection reports to be delivered to Lessor annually; provided, in no event shall Lessee be responsible for (i) Major Repairs to the Fuel Facilities, (ii) the compliance of Subsurface Property with Applicable Laws, (iii) the replacement of any exterior sidewalk, or (iv) the cost of maintenance, repair and/or replacement occasioned by the gross negligence or willful misconduct of Lessor or any person or entity claiming by or through Lessor. Subject to the foregoing and Section 6.01, Lessee shall keep all fixtures constructed or installed on the Leased Premises by Lessee (collectively, the “***Improvements***”), in good condition and repair. In addition, Lessee shall be responsible for the cost of repair and/or replacement directly attributable to the gross negligence or willful misconduct of Lessee, its employees, sublessees, concessionaires, contractors, licensees and invitees. 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 repairs or perform any other necessary repair and/or 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. As used herein, “***Major Repairs***” means and refers to any required repair, maintenance or replacement which costs in excess of \$5,000.00.
- 4.02 **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 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 5: CONSTRUCTION, ALTERATIONS, AND FIXTURES**

- 5.01 Alterations. Except for alterations required by Applicable Law and alterations which do not affect the structural integrity of the Leased Premises, 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. 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.
- 5.02 Condition on Surrender. Subject to the provisions of Section 4.01, 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; provided, upon expiration or earlier termination of this Lease, Lessee will, at Lessor’s option exercised upon ninety (90) days advance written notice delivered to Lessee, remove the Self Service Facility, inclusive of removal of the fence and concrete slab.
- 5.03 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.
- 5.01 Exterior Lighting and Signage.
- a. Except as set forth in any Alterations plans approved by Lessor, Lessee shall not do any of the following without Lessor’s prior written consent: (i) install any 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 permitted or approved Alterations and “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.

- c. To the extent applicable, Lessee will install signage indicating that portions of the Leased Premises are included within an aircraft movement area, the location, size and wording of which must be reasonably approved by Lessor prior to installation.

## **ARTICLE 6: UTILITIES AND TAXES**

6.01 Utilities. Except as provided in Section 4.01, 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; provided, Lessor and Lessee acknowledge and agree that, with respect to electricity, (i) the only electricity for which Lessee is responsible from and after the Effective Date is metered by meters 142947 (relating to ramp lights), 314416 (relating to the fuel farm) and, subject to (ii) below, 346078 (relating to the Leased Premises and the adjacent parking lot), or replacements thereof; (ii) within thirty (30) days of the Effective Date, Lessee shall cause the electric utility provider to bill Lessee directly for electricity service metered by meters 142947 and 314416; and (iii) with respect to parking lot utilities, Lessee shall have no responsibility therefor (including connection fees, impact fees, the installation of meters, deposits and other costs and expenses), and Lessor shall, within thirty (30) days of the Effective Date, cause the electric utility provider to either (a) separate the billings for the Leased Premises and parking lot represented by meter 346078 and separately bill Lessee for electricity for the Leased Premises and Lessor for electricity for the parking lot, or (b) install a separate meter for the parking lot and separately bill Lessor for parking lot electricity. Until such time as billings for electric utility service are issued in Lessee's name pursuant to the above, Lessee will reimburse Lessor for electric utilities consistent with the above agreements. 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 and serving 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, Rent 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) the Improvements, and (ii) Lessee's equipment, inventory and other personal property, including, but not limited to, any Lessee aircraft used for commercial purposes.
- b. Lessee shall pay, when due, all sales, excise, income and other taxes levied upon its business operations at the Leased Premises.
- c. 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, any 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, landing areas, 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 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.
- 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 Liability Insurance: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of commercial general liability 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. To the extent not already in Lessor's possession, Lessee shall provide certificates of insurance which satisfy the

foregoing within three (3) Business Days of the Effective Date and, thereafter, 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 Casualty Coverage: Lessee shall procure and maintain at all times during the Term and any renewal thereof, in full force and effect, a policy or policies of fire and extended coverage for all contents, goods, stock and any personal property which is or may be situated upon the Leased Premises, to the extent the same are insurable by Lessee. 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 this section and the Minimum Standards. To the extent not already in Lessor's possession, Lessee shall provide certificates of insurance which satisfy the foregoing within three (3) Business Days of the Effective Date and, thereafter, 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).

11.03 Indemnity and Hold Harmless.

- 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, landing areas, 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 Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the condemning authority.
- 12.02 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the FBO Space, Fuel Facilities and/or Self Service Facility unsuitable for the business of Lessee, then this Lease shall terminate; provided, in the event the taking is of (i) the FBO Space but not of the Fuel Facilities and Self Service Facility, at Lessee's option, this Lease shall not terminate but shall be amended to exclude the FBO Space and continue the Lease in place with respect to the Fuel Facilities and Self Service Facility; and (ii) the Fuel Facilities and/or Self Service Facility, at Lessee's option, this Lease shall not terminate but shall be amended to substitute replacement facilities at a location reasonably approved by Lessee or to include the Fuel Facilities and/or Self Service Facility in the Hangar Lease or other leasehold of Lessee at the Airport. If the partial taking is not extensive enough to render the FBO Space, Fuel Facilities and/or Self Service Facility unsuitable for the business of Lessee, then this Lease shall continue in effect with respect to the remainder of the Leased Premises, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.

- 12.03 Rent. If this Lease is terminated as provided in this section, rent shall be paid up to the date that title vests in the condemning authority, and Lessor shall make an equitable refund of any rent paid by Lessee in advance.
- 12.04 Division of Award: Lessor and Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. Without limiting the generality of the preceding sentence, Lessor has no interest in any award made to Lessee for Lessee's moving and relocation expenses or for the loss of Lessee's leasehold interest, fixtures and other tangible personal property if a separate award for such items is made to Lessee. The termination of this Lease under this section shall not affect the rights of the respective parties to such awards.
- 12.05 Definition of Taking. As used in this Article 12, "taken" or "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.
- a. If the Leased Premises are totally destroyed by fire, tornado or other casualty not the fault (in whole or in part) of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, or if not totally destroyed, if the Leased Premises should be so damaged by such a cause that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) working days after the date of Lessor's receipt of insurance proceeds in connection with the casualty, this Lease shall terminate, and rent shall be abated from the date of the casualty; provided, in the event the casualty relates to (i) the FBO Space but not the Fuel Facilities and Self Service Facility, at Lessee's option, this Lease shall not terminate but shall be amended to exclude the FBO Space and continue the Lease in place with respect to the Fuel Facilities and Self Service Facility; and (ii) the Fuel Facilities and/or Self Service Facility, at Lessee's option, this Lease shall not terminate but shall be amended to substitute replacement facilities at a location reasonably approved by Lessee or to include the Fuel Facilities and/or Self Service Facility in the Hangar Lease or other leasehold of Lessee at the Airport; and, provided further, Lessee may waive termination, in which event Lessor shall rebuild or repair the Leased Premises with due diligence, and 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.
  - b. If the Leased Premises are damaged by fire, tornado or other casualty not the fault of Lessee or any person in or about the Leased Premises with the express or implied consent of Lessee, but not to such an extent that rebuilding or repairs cannot reasonably be completed within 180 working days after the date of Lessor's receipt of insurance proceeds in connection with the casualty, this Lease shall not terminate except as provided in subsection c below.
  - c. If such damage to the Leased Premises occurs, Lessor shall proceed to rebuild or repair the Leased Premises to substantially the condition in which they existed upon the

Effective Date. Lessee shall, at its sole cost and risk, be responsible for rebuilding or repairing any damaged Improvements made by Lessee. If the Leased Premises are untenantable in whole or in part following such damage, the rent payable during the period in which they are untenantable shall be adjusted 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. In the event that Lessor fails to complete such rebuilding or repairs within one hundred eighty (180) working days after the date of Lessor's receipt of insurance proceeds in connection with the casualty, Lessee may 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 under this Lease or, as applicable, with respect to the terminated portion of the Leased Premises as of the effective date of termination.

#### **ARTICLE 14: ASSIGNMENT AND SUBLETTING**

14.01 Assignment by Lessee. Except 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 Lessor; 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 14.01, Lessee may sublease or otherwise permit the use of office space to subtenants or other users without Lessor'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:

- a. **“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:
  - (i) Any transfer to a trust or other entity in connection with estate planning of Lessee’s principal shareholder(s);
  - (ii) Any transfer to an affiliate (by common ownership) or subsidiary of Lessee;
  - (iii) 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.
  - (iv) 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 Lessee’s business operations in the Leased Premises.
  - (v) Any transfer to a Qualified Lessee.
- b. **“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. 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.

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 (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.

15.03 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.

15.04 Acceptance of Rent. The acceptance by Lessor of Lessee's quarterly 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 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. Lessor grants permission to Lessee for the mortgaging 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.*

#### **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 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.
- 18.03 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.
- 18.04 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.
- 18.05 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.
- 18.06 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.
- 18.07 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.

- 18.08 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.
- 18.09 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.
- 18.10 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.
- 18.11 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.
- 18.12 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

If to Lessee:

Berry Aviation, Inc.  
1807 Airport Drive  
San Marcos, Texas 78666  
Attn: Harry M. Berry III, Chairman and CEO

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

- 18.13 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.
- 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 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.
- 18.16 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.
- 18.17 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.
- 18.18 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.
- 18.19 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.
- 18.20 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.
- 18.21 Exhibits. The exhibits to this Lease are as follows:
- |                  |                                   |
|------------------|-----------------------------------|
| <u>Exhibit A</u> | Location of FBO Space             |
| <u>Exhibit B</u> | Location of Fuel Facilities       |
| <u>Exhibit C</u> | Location of Self Service Facility |
| <u>Exhibit D</u> | Copy of Rules and Regulations     |
| <u>Exhibit E</u> | Copy of Minimum Standards         |
| <u>Exhibit F</u> | List of Sponsor Assurances        |
| <u>Exhibit G</u> | Renewal Option                    |

18.22 Termination of Original Lease. Effective as of the Effective Date, the Original Lease is terminated and, except for Lessor's obligation to credit any sums previously paid by Lessee to Lessor thereunder against sums due hereunder, the parties shall have no further rights or obligations thereunder.

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

**LESSOR:**

CITY OF SAN MARCOS, TEXAS

By:\_\_\_\_\_

Name Printed:\_\_\_\_\_

Title:\_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

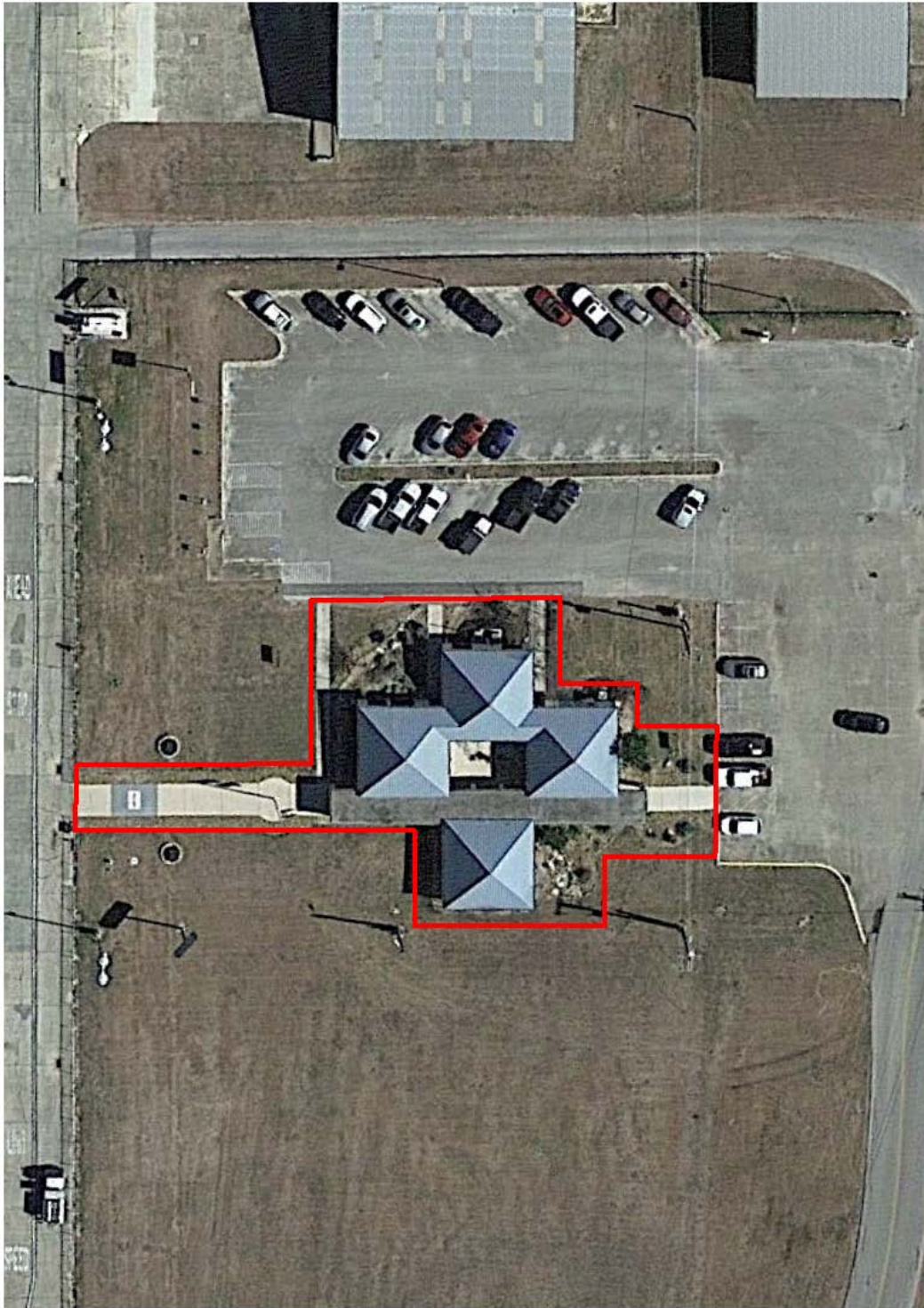
**LESSEE:**

BERRY AVIATION, Inc., a Texas corporation

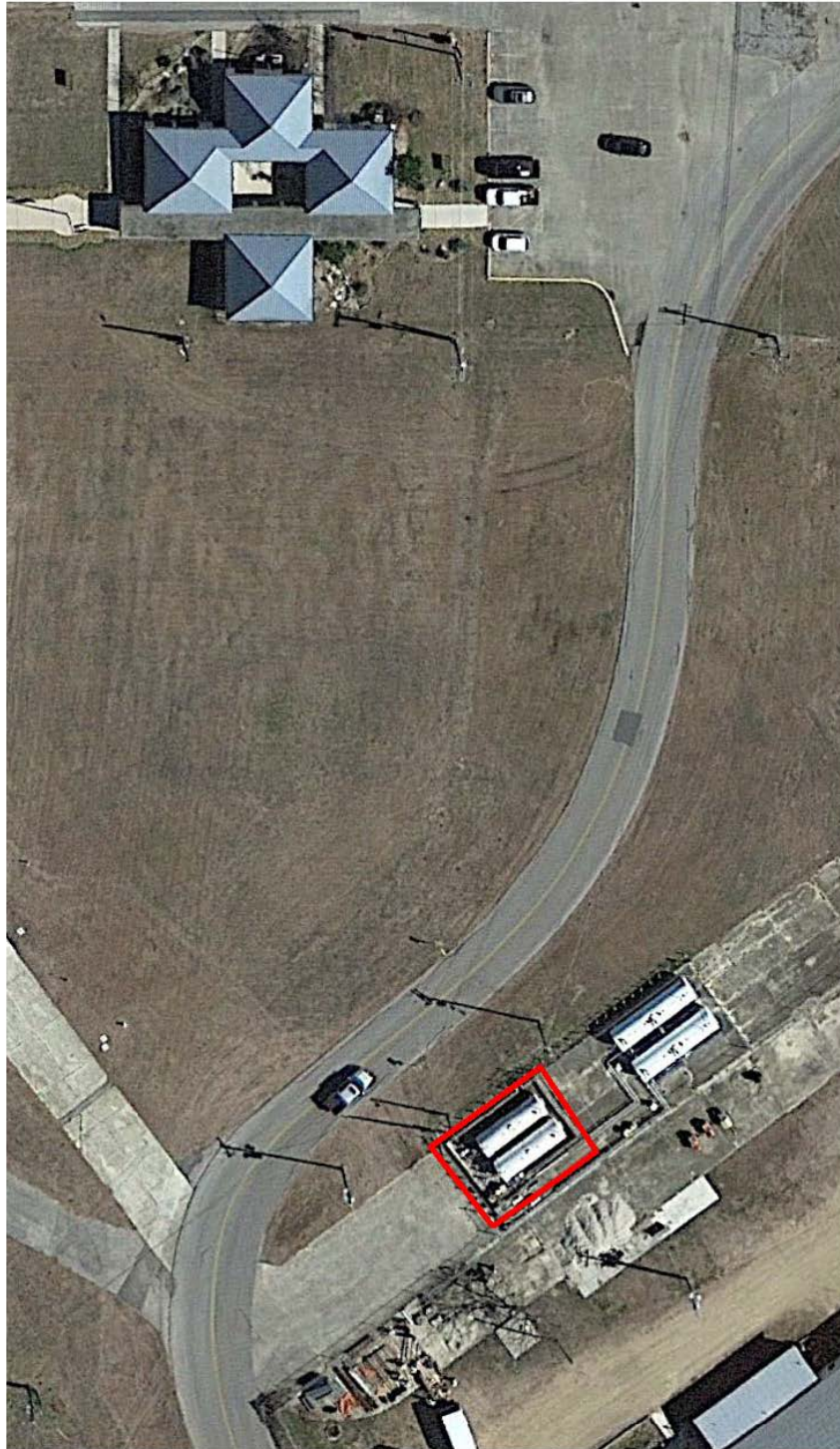
By:\_\_\_\_\_

Harry M. Berry III, Chairman and CEO

**EXHIBIT A**  
Location of FBO Space

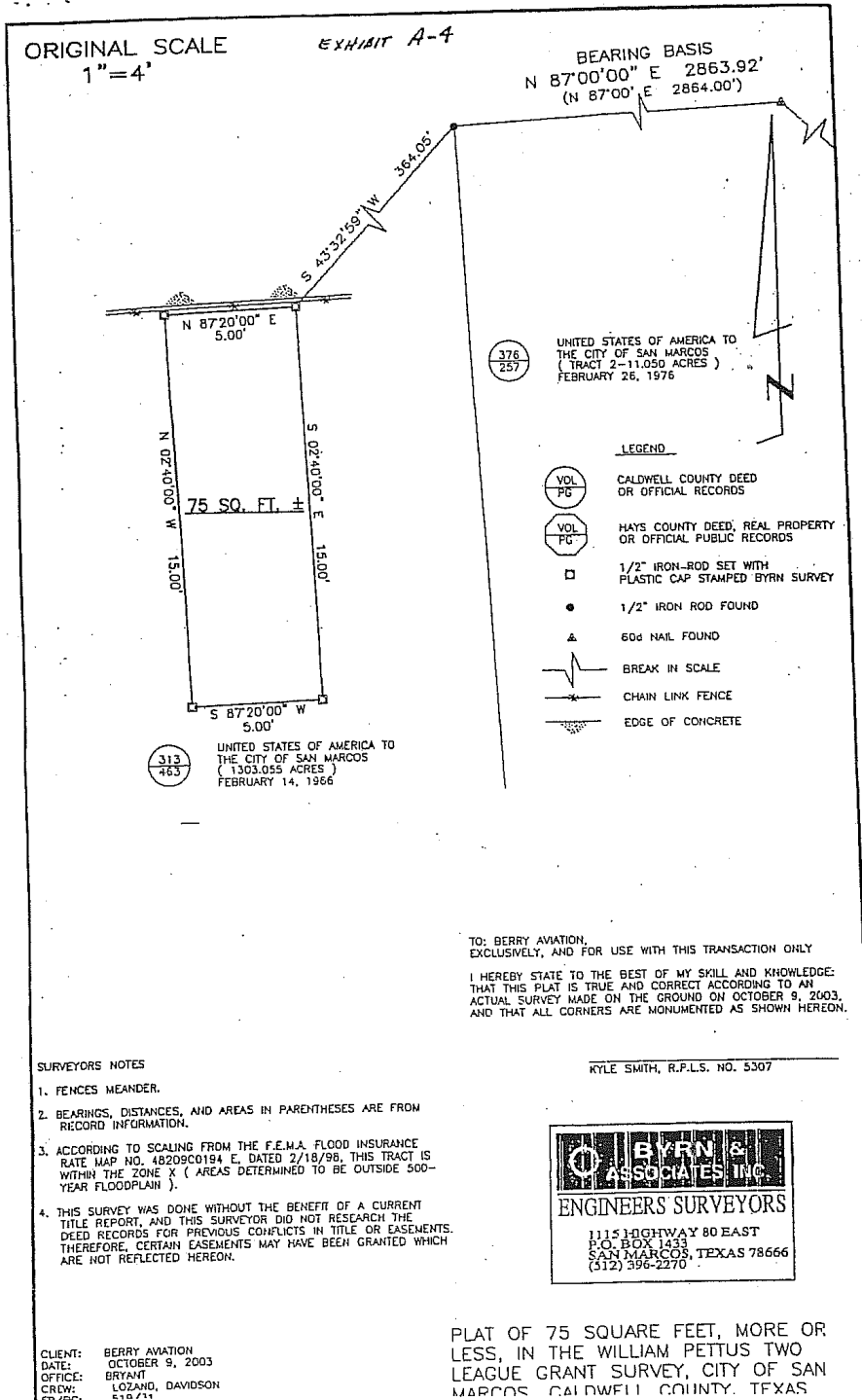


**EXHIBIT B**  
Location of Fuel Facilities





**EXHIBIT C**  
Location of Self Service Facility



**EXHIBIT D**

Copy of Rules and Regulations

## Chapter 10 - AVIATION<sup>[1]</sup>

### Footnotes:

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Editor's note— [Ord. No. 2015-46, § 1, adopted November 2, 2015](#), amended chapter 10 in its entirety to read as herein set out. Former chapter 10, §§ 10.001, 10.026—10.037, pertained to similar subject matter. See Code Comparative Table for complete derivation.

Cross reference— Airport commission, § 2.331 et seq.

### 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) *Taxiling 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**

Copy of Minimum Standards

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

Updated August 18, 2015



# Minimum Standards



## Revisions

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# San Marcos Regional Airport Minimum Standards

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# San Marcos Regional Airport Minimum Standards

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## 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

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### 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

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## 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

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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.



# San Marcos Regional Airport Minimum Standards

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## 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

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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

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## 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

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## 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

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### 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

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### Appendix B: Temporary Permit Application

## San Marcos Regional Airport Temporary Permit Application

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

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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:

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Approved permit date(s): \_\_\_\_\_

Approved by: \_\_\_\_\_ On: \_\_\_\_\_

Application has been ☐ DENIED.

Reason for denial:

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Denied by: \_\_\_\_\_ On: \_\_\_\_\_

**EXHIBIT F**

List of Sponsor Assurances  
(to be attached)



**EXHIBIT G**  
**RENEWAL OPTION**

This Renewal Option is attached to and a part of that certain Airport Facility Lease Agreement for Commercial FBO Use effective as of July 1, 2018 (the “**Lease**”), by and between the City of San Marcos, a municipal corporation of the State of Texas (“**Lessor**”), and Berry Aviation, Inc., a Texas corporation (“**Lessee**”). For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor grants to Lessee the option to extend the Lease, as hereinafter set forth.

Contingent upon satisfaction of all of the following conditions, Lessee is hereby granted the option to extend the Term (the “**Primary Term**”) for three (3) successive periods, the first containing approximately one hundred twenty (120) calendar months and expiring on April 18, 2042, the second containing one hundred twenty (120) full calendar months and expiring on April 18, 2052, and the third containing sixty (60) full calendar months and expiring on April 18, 2057 (such extension periods herein “**Renewal Term 1**”, “**Renewal Term 2**” and “**Renewal Term 3**”, respectively, and each a “**Renewal Term**”), said conditions being that:

(i) Lessee shall not be in default beyond any applicable cure period at the time it attempts to exercise an option hereunder; and

(ii) Lessee shall have given notice to Lessor not less than one hundred eighty (180) days prior to the expiration of the Primary Term, Renewal Term 1, or Renewal Term 2, as applicable, of Lessee’s exercise of such option.

Time is of the essence in the exercise of the options herein granted and should Lessee fail to exercise its right to any option by timely notice, such option and all successive options shall lapse and be of no further force or effect.

In the event that Lessee effectively exercises any option herein granted, then all of the terms and provisions of the Lease as are applicable during the Primary Term shall likewise be applicable during Renewal Term 1, Renewal Term 2 and Renewal Term 3, as applicable, except that fixed Rent per calendar quarter (subject to proration with respect to any partial calendar quarter) shall be payable as follows:

January 1, 2033 through April 18, 2037:	\$2,524.50
April 19, 2037 through April 18, 2042:	\$2,776.95
April 19, 2042 through April 18, 2047:	\$3,054.65
April 19, 2047 through April 18, 2052:	\$3,360.11
April 19, 2052 through April 18, 2057:	\$3,696.12

Other than as provided herein, Lessee shall have no further right to renew or extend the Term. Lessee’s rights under this Renewal Option shall immediately terminate if the Lease or Lessee’s right to possession of the Leased Premises is terminated.

References in this Renewal Option and the Lease to the “Term” or the “Lease Term” shall be understood to refer to both the Primary Term and (if Lessee’s option therefor is effectively exercised in accordance with the provisions hereof) also the stated Renewal Term(s), as applicable, unless such interpretation is expressly negated.