

LEASE OF AIRPORT PROPERTY FOR AGRICULTURAL USE

This lease agreement (the "Lease") pertains to the agriculture use of certain lands, located at the San Marcos Regional Airport, situated in Caldwell County, Texas. The Lease is made and entered into by and between the City of San Marcos, a Texas municipal corporation (the "Lessor") and Curby D. Ohnheiser (the "Lessee").

I. DESCRIPTION OF LEASED PREMISES

The leased property consists of 975 acres of real property which are denoted by the accompanying map attached as Exhibit "A" and incorporated in this Lease and made a part for all purposes (the "Leased Premises"). Lessor leases the Leased Premises to the Lessee in accordance with this Lease.

II. LEASED PREMISES RESTRICTIONS

A. USES TO BE COMPATIBLE WITH AIRPORT PURPOSES. The site of the Leased Premises is within the boundaries of the San Marcos Regional Airport (the "Airport"). The Airport is an active, municipally sponsored, and federally funded public use airport. The FIRST and FOREMOST role of the Airport, including all lands and facilities, is as a public airport. Agriculture activities at the Airport are authorized on a non-interference basis with the primary aviation role of the Airport. The following restrictions to agriculture activity apply:

(1) SAFETY AREAS. Safety areas as indicated on Exhibit "A" are established adjacent to all active runways and taxiways ("Safety Area(s)"). These Safety Areas provide an unobstructed, prepared surface for aircraft use in case of emergency or other unusual situations. Safety Areas must be prepared and maintained in cleared, graded, compacted, and mowed conditions at all times. The production of hay, where compatible with the above considerations is permissible within the Safety Areas. All agriculture activity which is not compatible with the above considerations is specifically prohibited in the Safety Areas. Lessee agrees to return any Safety Area that has been disturbed by previous agricultural activity to Federal Aviation Administration ("FAA") acceptable conditions. Subsequent care and maintenance of Safety Areas will be Lessor's responsibility. Lessee shall not park or leave unattended any farm equipment, tractor, or vehicle within the Safety Areas.

Safety Areas adjacent to Runways 8-26 and 17-35 extend 150 feet from either side of the centerline of the runways and 300 feet from the ends of each runway. Safety Areas adjacent to Runway 13-31 extend 500 feet from either side of the centerline and 1,000 feet from each end. For all Airport taxiways, including those located on the parking aprons, Safety Areas extend 79 feet from either side of the centerline of the taxiways.

(2) CRITICAL AREAS. The Airport areas in the vicinity of several FAA facilities

require that special restrictions be imposed. These include the areas in front of the Instrument Landing System ("ILS") glide slope and localizer antennas ("Critical Areas"). Critical Areas are defined and marked by the FAA, and they must be maintained in a clear, unobstructed and closely mowed condition at all times. The Lessee agrees to return any Critical Areas that have been disturbed by previous agricultural activity to FAA acceptable conditions. Subsequent care and maintenance of Critical Areas will be Lessor's responsibility.

(3) AGRICULTURAL ACTIVITY WITH CERTAIN AREAS PROHIBITED. The Airport maintains three Precision Approach Path Indicators ("PAPI") at Runway 13, 31, and 17. The FAA maintains an Approach Lighting System ("ALS") at Runway 13. The areas adjacent to and in the vicinity of these fixtures, as well as the Airport wind cones, segmented circle, lights, and signs, and related fixtures and equipment, must be kept clear for their use by aircraft. Agricultural activity in these areas or other Airport management defined areas is PROHIBITED. The Lessee agrees to return any such areas that have been disturbed by previous agricultural activity to FAA acceptable conditions. Subsequent care and maintenance of such areas will be Lessor's responsibility.

(4) DRAINAGE IMPROVEMENTS. The Airport has a system of drainage improvements including a system of drainage-ways and storm drains that are required to assure that water does not pond or flow on the Airport in such a manner as to pose a hazard to either Airport operations or to erode Airport facilities. Agricultural activity in or in the vicinity of the Airport drainage improvements is restricted to the growing of turf-type grass that maintains and protects the drainage contours and prevents silting over the drains. Lessee agrees to plant and maintain, as required, a permanent turf-type protective grass cover in drainage-ways and in the vicinity of all storm drains. The Lessor agrees to reimburse Lessee for the reasonable costs, as determined by the Lessor, for the materials and supplies required specifically for the care and maintenance of the Airport drainage improvements on the Leased Premises.

(5) AIRPORT STREETS AND ROADS. The several Airport streets and service roads will be maintained with a MINIMUM 25 foot wide turf-type grass buffer on each side of the street or road. Any incompatible agricultural activity is PROHIBITED in these buffer areas. Maintenance of these areas is the Lessor's responsibility.

(6) CROP RESTRICTIONS. In the areas shaded in pink on Exhibit A, the crops are restricted to the making of natural grass hay and deep plowing for "roll crops" is prohibited. Livestock grazing and bird-attracting crops are prohibited in all tracts. The height of ALL VEGETATION must be maintained at no more than three feet above the runway and taxiways at ALL TIMES. The aforementioned exception will be with the approval of the Airport Manager (as defined in Article XVI, Paragraph H) of the use plan as referred to in Section XIV, below. At no time can the vegetation be allowed to interfere with the inner runway and taxiway vision of aircraft pilots on the ground.

(7) OTHER INCOMPATIBLE USES. All activities incidental to or in connection with the use of the Leased Premises shall be conducted in a manner so as to introduce no hazard to the landing, takeoff or moving of aircraft or otherwise limiting or interfering with the use of the Airport. Determinations made by the FAA and/or Lessor as to conditions or circumstances creating a hazardous, limiting or interfering situation shall be conclusive as to Lessee. Lessee agrees to reimburse Lessor for the repair or replacement of any runway or taxiway lights that may be damaged by Lessee.

(8) HOURS OF ACTIVITY. Lessee may conduct all activities authorized under this Lease only between the hours of 7:00 a.m. and 7:00 p.m. daily. Any activities of Lessee on the Leased Premises outside of said hours shall require the express written approval of the Airport Manager.

III. ACCESS

Lessee further agrees to limit equipment and machinery movements within the boundaries of the land comprising the Airport to those service roads and routes which may be designated by the Airport Manager from time to time. Lessee agrees to promptly clean-up and otherwise remove any dirt, mud, rocks, or other residue that is carried onto any paved surface designated for equipment and machinery movement.

IV. NOTIFICATION OF WORK AND MACHINERY MARKINGS

Lessee agrees to notify the Airport Manager and Air Traffic Control Tower prior to the start and at the termination of any agricultural operations on the Leased Premises involving farm equipment or machinery. Lessee's equipment and machinery must be distinctively marked or painted so as to be highly visible to pilots using the Airport. While Lessee is conducting activities on the Leased Premises, Lessee shall maintain direct contact with the Air Traffic Control Tower utilizing aviation radios provided by Lessee and approved by the Airport Manager.

V. STRUCTURES

No structures or installations of any type will be located on the Airport without the specific approval of the Airport Manager.

VI. TERM OF THE LEASE

This Lease shall commence effective on September 1, 2019 and continue until August 31, 2020 (the "Term").

VII. RENT

A. AMOUNT. The rental fee (the "Rent") to be paid by Lessee shall be \$70,000.00 per year. The total yearly Rent is to be paid in advance and shall be immediately due and payable in full for the first year upon execution of this Lease by both parties and, thereafter, be due and payable on or before the first day of each subsequent 12 month period.

B. ADJUSTMENT. If the total land area of the Leased Premises is reduced by reason of the sale, transfer of title, development or other event stated or permitted under this Lease preventing the continued use of any portion of the Leased Premises, then the Rent shall be reduced in proportion to the total reduction in land area at the rate of \$5.98 per acre per month.

VIII. SUB-LEASE OR LEASE TRANSFER

It is expressly understood and agreed that the Lessee may not sub-lease any part of the Leased Premises nor may the Lessee transfer this Lease to another party without the prior written consent of the Lessor. Consent to such sub-lease or transfer may be given by Lessor only if the third party agrees, in writing, to accept and abide by all of the provisions of this Lease.

IX. DEFAULT AND/OR RECAPTURE

A. LEASE SUBJECT TO RIGHTS OF UNITED STATES GOVERNMENT. It is understood and agreed that the United States Government has certain rights with respect to the Leased Premises, under which, through no fault of either party, it may be necessary that this Lease be terminated or temporarily suspended or the area of the Leased Premises be reduced. In such event, Lessor shall refund to Lessee the prorata share of any prepaid Rent at the same rate per acre provided in Section VII. In any such event, Lessor shall make reasonable efforts on behalf of Lessee to secure payment for the unrealized value of investments and/or of growing crops from the United States Government.

B. LEASE SUBJECT TO OTHER INSTRUMENTS. This Lease and all provisions shall be subject and subordinate to all the terms and conditions of any instruments, agreements and documents under which the Lessor acquired said Leased Premises from the United States of America, or under which the Lessor receives or received funding from the Federal Aviation Administration and/or Texas Department of Transportation and shall be given such effect and construction as will not conflict or be inconsistent with such terms or conditions.

C. DEFAULT. In the event either party should violate any term or provision of this Lease, the party not in default shall give the defaulting party notice, and if such default complained of shall, in fact, constitute default, and unless the same is not corrected within 15 days after the date of receipt of such written notice, then the party not in default shall have the option to terminate this Lease, and in the event of such termination, Lessee shall return the Leased Premises to Lessor in as good a condition as it was at

the beginning of this Lease except for any changes brought about by weather conditions, harvesting of crops and other conditions beyond Lessee's control. In the event Lessor terminates this Lease under the provisions of this paragraph, Lessor shall account to Lessee for the fair market value, as determined by the Lessor, of any agricultural products growing at the time of such termination less any damages or expenses incurred by Lessor in tending, harvesting and marketing same, such accounting to occur at the time any such crops are marketed, and Lessor agrees to market crops as promptly as it can reasonably be done. Lessor shall have, and is given and granted, a first and superior lien upon all agricultural crops raised and produced on the premises, to secure the payment and performance of all obligations to be paid and/or performed by Lessee.

D. FULL OR PARTIAL TERMINATION WITHOUT DEFAULT. It is further understood and agreed that Lessor may, with 60 days' notice in writing to Lessee, reduce the land area of the Leased Premises or terminate this Lease in respect to all or any part of the Leased Premises for sale, transfer or development or other, non-agricultural uses. Upon termination of this Lease as to any part of the Leased Premises for any reason other than default by Lessee, Lessee shall be reimbursed for that portion of the Rent paid which corresponds to the percentage of the annual period for which the Lease was terminated multiplied by the product of the number of acres as to which the Lease was terminated and the proportional annual Rent per acre as stated in Section VII of this Lease). Lessee shall also be reimbursed for the loss of standing crops other than grasses, or loss of fences or other improvements, resulting from such a reduction in land area or termination of the Lease by Lessor.

X. INSURANCE

Lessee shall maintain at its own cost and expense commercial general liability insurance on an occurrence basis with minimum limits of liability in an amount of \$1,000,000.00 for bodily injury, personal injury or death to any one person and \$1,000,000.00 for damage to property, and \$2,000,000.00 in the aggregate. Such insurance policy shall contain the endorsement that insurance may not be cancelled or amended with respect to Lessee without 30 days written notice by registered mail to Lessor by the insurance company, and that Lessor shall not be required to pay any premiums for insurance. Any insurance policy required and procured by Lessee shall contain an express waiver of any rights of subrogation by the insurance company against the Lessor. A copy of insurance policy or a certificate of insurance shall be delivered by Lessee to Lessor within ten days of the execution of this Lease. The minimum limits of any insurance coverage required shall not limit Lessee's liability under Part XI of this Lease.

XI. INDEMNIFICATION

Lessee agrees to indemnify, defend and hold harmless Lessor and Airport Manager, together with their respective officials, officers, employees, and agents in both their official and private capacities, from all damages, claims, losses, demands, suits, judgments, and costs, including reasonable attorney's fees, and expenses arising out of or resulting from the use of the Leased

Premises for agricultural purposes by Lessee, regardless of whether it is caused in part by Lessor or its officers or employees.

XII. CONSERVATION PRACTICES

Lessee agrees to conduct all activities on the Leased Premises in such a manner as to preserve, maintain and improve the structure and fertility of the soil by using only farming practices recommended by the Soil Conservation Service of the United States Department of Agriculture or some other governmental agency of equal stature. Fields will be kept clean at the end of the normal growing season and no crop shall be left in the field so as to lead to the infestation of birds.

XIII. ENVIRONMENTAL HAZARDS

A. Lessee shall not cause or permit any Hazardous Substance to be used, stored, generated or disposed of on or in the Leased Premises by Lessee, Lessee's agents, employees, contractors or invitees, without first obtaining Lessor's written consent. **If Hazardous Substances are used, stored, generated or disposed of on or in the Leased Premises except as permitted above, or the Leased Premises become contaminated in any manner for which Lessee is legally liable, Lessee shall indemnify and hold harmless Lessor and Airport Manager, together with their respective officials, officers, employees, and agents in both their official and private capacities, from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses including, without limitation, a decrease in value of the demises premises, damages due to loss or restriction of rentable of usable land, or any damages due to adverse impact on marketing of the land, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees, arising during or after the Lease Term and arising as a result of such contamination by Lessee. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision.** Without limitation of the foregoing, if Lessee causes or permits the presence of any Hazardous Substance on the Leased Premises and such results in contamination, Lessee shall promptly, at its sole expense, take any and all necessary action to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substance on the Leased Premises. Lessee shall first obtain Lessor's approval for any such remedial action.

B. As used herein, "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive, and which is regulated by any local government, the State of Texas, or the United States Government. "Hazardous Substance" includes any and all materials or substances which are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance," pursuant to state, federal or local governmental law.

XIV. USE PLAN

Lessee shall, by October 1 of each year present to Lessor, for review by the Airport Manager, a Use Plan detailing how Lessee proposes to utilize the premises in compliance with the Crop Restrictions as outlined in Section II above, for the ensuing year. The Use Plan shall include at a minimum the types of crops and the proposed dates of cutting and plowing of each crop.

XV. NON-DISCRIMINATION

The Lessee for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration, does covenant and agrees as a covenant running with the land, that:

(1) No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said Leased Premises;

(2) In the construction of any improvements on, over, or under such land, and the furnishing of services, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and,

(3) The Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to 49 Code of Federal Regulations Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation and as said regulations may be amended.

XVI. OTHER TERMS AND CONDITIONS

A. TAXES. The Lessee is responsible for all taxes and assessments due on the Leased Premises and shall pay such taxes and assessments when due, together with any penalties, interest and late fees as applicable. Upon execution of this Lease, Lessee shall be responsible for coordinating with the County Tax Appraisal District and Assessor-Collector having jurisdiction over the Leased Premises to add Lessee as a responsible party for receiving tax notices, statements, invoices and bills.

B. MOWING. The Lessee will maintain edges of farmed land and will not allow any grass to exceed a height of three feet.

C. NO WAIVER OF IMMUNITY. The Lessor's execution of and performance under this Lease will not act as a waiver of any immunity of the Lessor to suit or liability under applicable law.

D. ENTIRE AGREEMENT. This document constitutes the entire agreement between the parties and any modifications of this Lease shall be in writing and signed by the parties to this Lease.

E. RIGHT OF ENTRY. Lessor reserves the right to enter upon the Leased Premises covered by

this Lease to make inspections concerning Lessee's compliance with the terms of this Lease or to make repairs or improvements deemed by the Lessor or the United States Government to be necessary.

F. APPLICABLE LAW AND VENUE. The Parties agree that the laws of the State of Texas shall govern this Lease and that proper venue for enforcement of this Lease shall lie in Hays County, Texas, or, if in federal court, the United States District Court for the Western District of Texas, Austin Division.

G. NOTICES. Except for emergency notices, all notices required by this Agreement will be delivered to the following by certified mail or confirmed facsimile transmission:

LESSEE:

Curby D. Ohnheiser
19330 San Marcos Highway
San Marcos, Texas 78666
(512) 754-4800
Fax: (512) 357-0256
E-mail: curbydon@gmail.com

LESSOR:

Airport Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666
(512) 216-6042
Fax: (512) 216-6043
E-mail: admin@texasaviationpartners.com

In cases of emergency in which notice hereunder would be impossible or impractical under the circumstances, the notifying party shall provide notice as soon as reasonably possible or practical. Each party will notify the other party in writing of any change in information required for notice under this paragraph, including provision for notice by e-mail if so requested by the receiving party.

H. AIRPORT MANAGER. The term "Airport Manager" as used in this Lease shall mean Texas Aviation Partners or such other contractor, agent or employee of the Lessor as designated by the City from time to time to manage the Airport on behalf of Lessor.

I. TERMINATION OF CURRENT LEASE. Effective as of the Commencement Date, the Current Lease ("Lease of Airport Property for Agricultural Use" approved on May 3, 2016) is terminated and the parties shall have no further rights or obligations thereunder.

Executed in duplicate originals to be effective as of _____.

LESSOR:

City of San Marcos

By: _____
Bert Lumbreras, City Manager

Date: _____

LESSEE:

Curby D. Ohnheiser

Date: _____

ACKNOWLEDGMENTS

STATE OF TEXAS '

,

COUNTY OF HAYS '

This instrument was acknowledged before me on the ____ day of _____, 2019,
by Jared Miller, City Manager of the City of San Marcos, in such capacity on behalf of said entity.

Notary Public, State of Texas

STATE OF TEXAS '

,

COUNTY OF _____ '

This instrument was acknowledged before me on the ____ day of _____, 2019,
by Curby D. Ohnheiser.

Notary Public, State of Texas

EXHIBIT “A”

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