



**Post Office Box 9010 Addison, Texas  
75001-9010  
5300 Belt Line Road  
(972) 450-7000 Fax: (972) 450-7043**

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## **AGENDA**

### **REGULAR MEETING OF THE CITY COUNCIL**

**AND / OR**

### **WORK SESSION OF THE CITY COUNCIL**

**6:30 PM**

**April 22, 2014**

### **ADDISON TOWN HALL**

**5300 BELT LINE RD., DALLAS, TX 75254**

**6:30PM WORK SESSION**

**7:30PM REGULAR MEETING**

**(REVISED)**

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### **WORK SESSION**

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WS1 Discussion regarding current staffing levels for the Addison jail.

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WS2 Presentation and discussion regarding an update on the Town of Addison's Website Redesign Project.

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### **REGULAR MEETING**

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**Pledge of Allegiance**

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R1 Announcements and Acknowledgements regarding Town and Council Events and Activities  
Discussion of Events/Meetings

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R2 Consent Agenda.

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R2a Approval of the Minutes for the April 8, 2014 Work Session and Regular Council Meeting.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**  
04/08 Minutes

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R2b Approval of the Minutes for the April 14, 2014 Work Session and Special Council Meeting.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**  
04/14 Minutes

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R2c Approval of a contract with SDB Contract Services for tenant improvements and construction finish-out at Office in the Park “TreeHouse” in an amount not to exceed \$250,000.

**RECOMMENDATION:**

Administration recommends approval.

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R2d Approval of a resolution authorizing the Town to designate representatives who can transact business with the Local Government Investment Cooperative.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

LOGIC Resolution

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- R2e Approval of a Wholesale Wastewater Contract between the City of Dallas and the Town for the purchase of wholesale wastewater services from Dallas and authorizing the City Manager to execute the Contract.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

DWU Proposed Contract

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Regular Items

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- R3 Discussion, consider and take action regarding appointment of a member to the Board of Zoning Adjustment.

- R4 Discussion regarding the assignment of Council Member Arfsten to the North Central Texas Council of Governments' Emergency Preparedness Council as an advisory board member.

- R5 Discussion and update regarding Town of Addison May 10, 2014 General Election processes and procedures.

**Attachments**

Memo

Exhibit A

Exhibit B

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- R6 Presentation, discussion, consider and take action to approve an Inter-Local Agreement between the Town of Addison, City of Carrollton, City of Coppell, City of Farmers Branch and the North Texas Emergency Communications Center, LGC that will authorize the North Texas Emergency Communications Center to sign a lease

agreement with CyrusOne, located at 1649 West Frankford Road, Carrollton, Texas 75007, for consolidated dispatch center purposes, and authorizing the City Manager to sign the Agreement.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

CyrusOne Lease

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- R7 Discussion, consider and take action regarding an agreement between the Town and Gradient Solutions Corporation, in an amount not to exceed \$31,000, to provide financial consulting services by performing a review and assessment of the Town's processes of risk identification and control monitoring, including a review of processes to assess business risks, a review of management systems and internal controls, including debt, investments, budget, internal financial reporting, payroll, cash handling, and purchasing card program, a review of audits, and to develop plans and recommend any corrective actions.

**Attachments**

Master Professional Services Agreement  
Work Authorization

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- R8 Discussion, consider and take action regarding an agreement with Kanter Financial Forensics, LLC, in the amount of \$12,000 plus expenses, for consulting services to perform a review of the Town's current financial and accounting practices (operations, policies, procedures, and internal control) and to evaluate potential changes to those practices that are consistent with public finance best practices.

- R9 Discussion regarding a status update and briefing on the Wind Turbine Energy System at the Surveyor Elevated Water Storage Tower.
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- R10 Presentation, discussion, consider and take action consenting to proposed structural improvements by 6200 GP, LLC to their hangar located at 4550 Jimmy Doolittle Drive at Addison Airport.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

6200 Hangar Memo

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- R11 Presentation, discussion, consider and take action awarding a contract to Trumble Construction, Inc., and authorizing the City Manager to enter into a contract with Trumble for roof repairs for certain city-owned facilities at Addison Airport, for an amount not to exceed \$127,165.

**RECOMMENDATION:**

Administration recommends approval.

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- R12 Presentation, discussion, consider and take action to (i) approve an agreement for a corporate hangar development that will be subject to a long-term ground lease at Addison Airport by and between the Town of Addison, as Landlord and Sky B&B, LLC, a Texas limited liability company, as Tenant (“Sky”), (ii) approve a Non-Public Fuel Dispensing License Agreement at Addison Airport between the Town, as Licensor, and Sky, as Licensee, (iii) authorize the expenditure of Utility, Stormwater, and Airport Fund monies for the relocation of city and franchise utilities at Addison Airport to include water, sanitary sewer, gas and electric for an estimated cost of \$255,000, and (iv) approve a ground lease agreement at Addison Airport between the Town, as Landlord, and Sky, as Tenant, regarding the construction and use of a temporary shelter for Sky's aircraft.

**RECOMMENDATION:**

Administration recommends approval.

**Attachments**

Sky B&B Recommendation Memo

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Executive Session

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- ES1 Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.
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Regular Items Continued

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- R13 Discussion, consider, and take action regarding a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or regarding the offer of a financial or other incentive to such business prospect or business prospects.
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Adjourn Meeting

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Posted:  
Matthew McCombs, April 18, 2014, 5:00pm

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS WITH DISABILITIES.  
PLEASE CALL (972) 450-7090 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

## **Combined Meeting**

**WS1**

**Meeting Date:** 04/22/2014

**Council Goals:** Enhance Public Safety

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### **AGENDA CAPTION:**

Discussion regarding current staffing levels for the Addison jail.

### **FINANCIAL IMPACT:**

N/A

### **BACKGROUND:**

In 1984, the Addison Police Department began operation of its municipal jail with police officers working as jailers. This model remained intact until 1991, when budget reductions required police officers to be reassigned to patrol operations. To staff the jail, investigators and officers rotated through the jail as part of their daily shift assignments. While the rotation schedule worked for a short time it became a strain on Patrol and Criminal Investigations Division (CID) operations. To relieve patrol and investigations from the burden of jail operations, the department began hiring part-time Dallas County jailers to staff the jail. As long as the manpower pool of County employees was strong, this staffing solution worked. However, over time, the pool of available part time employees began to shrink as Dallas County changed their own overtime policies. By 2000, the lack of sufficient part time employees forced the department to add full time employees to ensure the jail was staffed. Current staff now stands at three full-time equivalents and one supervisor, supplemented by part time employees. The pool of part time employees has continued to shrink to the point that full time employees are having to work excessive amounts of overtime, creating safety concerns.

### **RECOMMENDATION:**

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**Combined Meeting**

**WS2**

**Meeting Date:** 04/22/2014

**Council Goals:** Create raving fans of the Addison Experience.  
Maintain and enhance our unique culture of creativity and innovation.

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**AGENDA CAPTION:**

Presentation and discussion regarding an update on the Town of Addison's Website Redesign Project.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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**Combined Meeting**

**R2a**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Approval of the Minutes for the April 8, 2014 Work Session and Regular Council Meeting.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

04/08 Minutes

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# **DRAFT**

## **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION**

April 8, 2014

6:30 PM

Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254

6:30 PM Work Session | 7:30 PM Regular Meeting

Present: Arfsten; Clemens; DeFrancisco; Gunther; Meier; Moore; Resnik

## **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL REGULAR MEETING**

April 8, 2014

6:30 PM

Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254

6:30 PM Work Session | 7:30 PM Regular Agenda

Posted by: Matthew McCombs, April 4, 2014, 5:00pm

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### **WORK SESSION**

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WS1 Presentation by Mike Eastland regarding Vision North Texas.

Mike Eastland, Executive Director of the NCTCOG, discussed Vision North Texas.

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WS2 Discussion regarding the 2014 Summer events, including the 60th Anniversary Celebration, Summer Event Series, Kaboom Town, and Vitruvian Park.

Barbara Kovacevich, Director of Special Events, discussed the 2014 Summer events, including the 60th Anniversary Celebration, Summer Event Series, Kaboom Town, and Vitruvian Park.

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## REGULAR MEETING

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### Pledge of Allegiance

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Announcements and Acknowledgements regarding Town and Council Events and Activities

Discussion of Events/Meetings

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Consent Agenda.

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- R2a Approval of the Minutes for the March 25, 2014 Work Session and Regular Council Meeting.

**RECOMMENDATION:**

Administration recommends approval.

Motion made by Clemens to approve, as submitted,  
Seconded by Moore

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier,  
Moore, Resnik

Passed

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- R2b Approval of a unit cost annual contract with Stark Built, Ltd. for miscellaneous concrete demolition and installation work in an amount not to exceed \$150,000.

**RECOMMENDATION:**

Administration recommends approval.

Motion made by Clemens to approve, as submitted,  
Seconded by Moore

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier,  
Moore, Resnik

Passed

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R2c Approval of a unit cost annual contract with Artistic Painting Company totaling \$136,947 for painting of municipal buildings, light poles/fixtures, park structures and traffic signal poles.

**RECOMMENDATION:**

Administration recommends approval.

Mayor Meier pulled item R2c.

Slade Strickland, Director of Parks and Recreation, spoke regarding this item.

Motion made by Meier to approve, with the proviso to discuss with Artistic Painting Company alternatives methods in regard to painting the Wheeler Bridge,

Seconded by Clemens

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Passed

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R2d Approval of a contract with Dallas County through its Tax Assessor-Collector for the assessment and collection of ad valorem property taxes within the Town.

**RECOMMENDATION:**

Administration recommends approval.

Motion made by Clemens to approve, as submitted,

Seconded by Moore

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Passed

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Regular Items

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R3 **PUBLIC HEARING** Case 1688-SUP/Brick House. Public hearing, discussion, consider and take action regarding approval of an ordinance changing the zoning on property located at 4535 Belt Line Road, which property is currently zoned PD, Planned Development, through Ordinance 090-006, by approving for that property a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Ignite Restaurant Group represented by LuAron

McCormack.

#### COMMISSION FINDINGS:

The Addison Planning and Zoning Commission, meeting in regular session on March 27, 2014, voted to recommend approval of the request for approval of an ordinance changing the zoning on property located at 4535 Belt Line Road, which property is currently zoned PD, Planned Development, through Ordinance 090-006, by approving for that property a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Ignite Restaurant Group represented by LuAron McCormack, subject to no conditions.

Voting Aye: Doherty, Groce, Hewitt, Hughes, Oliver, Smith

Voting Nay: Wheeler

Absent: none

#### RECOMMENDATION:

Administration recommends approval.

Charles Goff, Assistant to the City Manager, Lea Dunn, City Manager, and John Hill, City Attorney, spoke regarding this item.

There were no individuals who spoke at the public hearing.

Motion made by Resnik to approve, as submitted,

Seconded by DeFrancisco

Warren Ince representing Ignite Restaraunt Group also spoke regarding this item and passed out a sample of the Brick House logo/sign.

Council Member Resnik amended his motion.

Motion made by Resnik to approve, subject to the sign reflecting the sample logo in which the letters are of the same proportion,

Seconded by DeFrancisco

**Voting** AYE: DeFrancisco, Gunther, Moore, Resnik

NAY: Arfsten, Clemens, Meier

Passed

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R4 **PUBLIC HEARING.** Case 1689-Z/Marriott Quorum Hotel. Public hearing, discussion, consider and take action regarding approval of an ordinance changing the zoning on property located at 14901 Dallas Parkway, which property is currently zoned PD – Planned Development for hotel and other uses, through Ordinance 666, by amending the currently approved development plans to convert the indoor pool area into a ballroom, on application from Dallas/Addison Marriott Quorum, represented by Michael Oyervides.

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on March 27, 2014, voted to recommend approval of the request for approval of an ordinance changing the zoning on property located 14901 Dallas Parkway, which property is currently zoned PD, Planned Development for hotel and other uses, through Ordinance 666, by amending the currently approved development plans to convert the indoor pool area into a ballroom, on application from Dallas/Addison Marriott Quorum, represented by Mr. Michael Oyervides, subject to no conditions.

Voting Aye: Doherty, Groce, Hewitt, Hughes, Oliver, Smith, Wheeler

Voting Nay: none

Absent: none

**RECOMMENDATION:**

Administration recommends approval.

Charles Goff, Assistant to the City Manager, and Lea Dunn, City Manager, spoke regarding this item.

Kirk Williams and Al Hatfield representing the Marriott Quorum also spoke regarding this item.

The following individuals spoke at the public hearing.

Lynn Stofer, 4002 Bobbin Lane

Mary Carpenter, 4606 Winter Park

Dave Marold, 3918 Winter Park

Motion made by DeFrancisco to approve, as submitted,

Seconded by Gunther

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier,  
Moore, Resnik

Passed

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- R5 Presentation, discussion, consider and take action regarding the First Amendment to the Harris Corporation System Purchase Agreement for the public radio system to be jointly owned and operated by the Town and the Cities of Carrollton, Farmers Branch, and Coppell, which amendment acknowledges the agreed allocation of the purchase price credit to the System Purchase Agreement with Harris.

RECOMMENDATION:

Administration recommends approval.

Paul Spencer, Police Captain, spoke regarding this item.

Motion made by Resnik to approve the acceptance of the amendment,

Seconded by Arfsten

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Passed

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- R6 Presentation, discussion, consider and take action to approve Change Order #3 to the System Purchase Agreement with Harris Corporation for the public safety radio system to be jointly owned and operated by the Town and the Cities of Carrollton, Farmers Branch, and Coppell, which Change Order reflects the increase in costs relating to the Town's change in the number and/or type of portable and/or mobile radios to be purchased under the Systems Purchase Agreement.

RECOMMENDATION:

Administration recommends approval.

Paul Spencer, Police Captain, spoke regarding this item.

Motion made by Arfsten to approve, as submitted,

Seconded by Resnik

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik

Passed

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- R7 Discussion, consider and take action regarding an agreement with Kanter Financial Forensics, LLC, in the amount of \$12,000 plus expenses, for consulting services to perform a review of the Town's current financial and accounting practices (operations, policies, procedures, and internal control) and to evaluate potential changes to those practices that are consistent with public finance best practices.

Mayor Meier pulled item R7.

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- R8 Presentation, discussion, consider and take action authorizing the City Manager to execute a Professional Services Agreement with Garver, LLC, to provide plans, specifications, and opinion of probable construction costs for prioritizing and replacing a portion of the existing asphalt surface on Addison Road from the railroad to the city limits, to include bidding phase services in an amount not to exceed \$89,850.

**RECOMMENDATION:**

Administration recommends approval.

Lisa Pyles, Director of Infrastructure Operations and Services, and Lea Dunn, City Manager, spoke regarding this item.

Motion made by Resnik to approve, as submitted,  
Seconded by Gunther

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier,  
Moore, Resnik

Passed

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- R9 Discussion, consider and take action regarding goals and performance objectives for the Town and City Manager.

City Council and Lea Dunn, City Manager, discussed the initiatives, goals, and performance objectives for the Town and City Manager.

Motion made by Meier to approve the initiatives submitted as a tool for the performance evaluation of the City Manager,  
Seconded by Clemens

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier,  
Moore, Resnik

Passed

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## Executive Session

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- ES1 Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

City Council entered Executive Session at 8:35 pm.  
City Council closed Executive Session at 9:13 pm.

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## Regular Items Continued

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- R10 Discussion, consider, and take action regarding a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or regarding the offer of a financial or other incentive to such business prospect or business prospects.

Motion made by Resnik to proceed as discussed in Executive Session,

Seconded by DeFrancisco

**Voting** AYE: Arfsten, Clemens, DeFrancisco, Gunther, Meier,  
Moore, Resnik

Passed

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Adjourn Meeting

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\_\_\_\_\_  
Mayor-Todd Meier

Attest:

\_\_\_\_\_  
City Secretary-Matthew McCombs

**Combined Meeting**

**R2b**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Approval of the Minutes for the April 14, 2014 Work Session and Special Council Meeting.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

04/14 Minutes

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# **DRAFT**

## **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL WORK SESSION**

April 14, 2014

6:30 PM

Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254

Work Session I Special Meeting

## **OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL SPECIAL MEETING**

April 14, 2014

6:30 PM

Addison Town Hall, 5300 Belt Line Rd., Dallas, TX 75254

Work Session I Special Agenda

Posted by: Matthew McCombs, April 11, 2014, 5:00pm

Present: Clemens; DeFrancisco; Gunther; Meier; Moore; Resnik

Absent: Arfsten

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### **WORK SESSION**

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WS1 Discussion and review of the Town Hall Meeting scheduled for April 15, 2014.

The City Council, Lea Dunn, City Manager, and Carrie Rice, Director of Marketing and Communications discussed and reviewed the Town Hall meeting scheduled for April 15, 2014.

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### **SPECIAL MEETING**

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S1 Discussion, consider and take action authorizing the City Manager to execute and record in the Dallas County Official Public Records a Notice of Modification of Means of Airport Ingress/Egress giving public notice of the existence and modification of Airport Parkway and Eddie Rickenbacker Drive (the “Notice”).

RECOMMENDATION:

Administration recommends approval.

Lisa Pyles, Director of Infrastructure Operations and Services, spoke regarding this item.

Motion made by Resnik to approve, as submitted,  
Seconded by Clemens

AYE: Clemens, DeFrancisco, Gunther, Meier, Moore, Resnik  
Passed

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Adjourn Meeting

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Mayor-Todd Meier

Attest:

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City Secretary-Matthew McCombs

## Combined Meeting

R2c

**Meeting Date:** 04/22/2014

**Council Goals:** Create raving fans of the Addison Experience.  
Maintain and enhance our unique culture of creativity and innovation.  
Attract new businesses to Addison  
Brand Protection and Enhancement  
Develop Next Great Idea

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### **AGENDA CAPTION:**

Approval of a contract with SDB Contract Services for tenant improvements and construction finish-out at Office in the Park “TreeHouse” in an amount not to exceed \$250,000.

### **FINANCIAL IMPACT:**

This item will require a mid-year budget adjustment. Council had previously approved \$200,000.

### **BACKGROUND:**

On February 28, a lease was executed with the landlord of Office in the Park for approximately 14,800 square feet of space to house the Economic Development Department, Baylor University’s Accelerated Ventures Program, an office of the North Texas Small Business Development Center and a business incubator operated by the Dallas Entrepreneur Center. The larger space will allow the Town to launch an expanded vision of the Town’s entrepreneurial development efforts. This location with these components will be branded as the TreeHouse. During the initial review and discussion with Council prior to lease execution authorization, it was mentioned that approximately \$300,000 would be needed for the improvements and construction, IT Network installation, and furniture for the space.

Cunningham Architects was hired to assist with the space design and layout. The plans were shared with SDB Contract Services to provide a cost estimate for the construction cost based on the plans developed by the architect. SDB feels confident that the improvements and construction costs will not exceed \$250,000. SDB is a registered general contractor with The Cooperative Purchasing Network (TCPN) which allows the Town to fulfill the purchasing policies. This allows the Town to expedite the construction process to meet a May 19, 2014 move-in target date.

It is important to note that the \$250,000 does not include IT Network costs. This item will be brought to council in the near future with a strong attempt to stay within the \$300,000 budget for the entire project.

**RECOMMENDATION:**

Administration recommends approval.

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**Combined Meeting**

**R2d**

**Meeting Date:** 04/22/2014

**Council Goals:** Mindful stewardship of Town Resources.

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**AGENDA CAPTION:**

Approval of a resolution authorizing the Town to designate representatives who can transact business with the Local Government Investment Cooperative.

**FINANCIAL IMPACT:**

This resolution creates no direct financial impact.

**BACKGROUND:**

The Local Government Investment Cooperative (“LOGIC”) is JP Morgan-affiliated investment group which the Town utilizes in order to gain interest on idle funds from Town revenues. This Resolution updates the authorized representatives for the LOGIC group. Currently, Addison is not utilizing the LOGIC group investment pool; however, it is important to keep the contracts with the pool updated since the need of the investment group may arise in the future.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

LOGIC Resolution

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**RESOLUTION CHANGING AUTHORIZED REPRESENTATIVES FOR LOCAL  
GOVERNMENT INVESTMENT COOPERATIVE**

WHEREAS, \_\_\_\_\_  
(the "Government Entity") by authority of that certain Local Government Investment Cooperative Resolution \_\_\_\_\_ (the "Resolution") has entered into that certain Interlocal Agreement (the "Agreement") and has become a participant in the public funds investment pool created thereunder known as Local Government Investment Cooperative ("LOGIC");

WHEREAS, the Resolution designated on one or more "Authorized Representatives" within the meaning of the Agreement;

WHEREAS, the Government Entity now wishes to update and designate the following persons as the "Authorized Representatives" within the meaning of the Agreement;

**NOW, THEREFORE, BE IT RESOLVED:**

The following officers, officials or employees of the Government Entity are hereby designated as "Authorized Representatives" within the meaning of the Agreement, with full power and authority to: deposit money to and withdrawal money from the Government Entity's LOGIC account or accounts from time to time in accordance with the Agreement and the Information Statement describing the Agreement and to take all other actions deemed necessary or appropriate for the investment of funds of the Government Entity in LOGIC:

1. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

2. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

3. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

4. Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**{REQUIRED}** PRIMARY CONTACT: List the name of the Authorized Representative listed above that will be designated as the Primary Contact and will receive all LOGIC correspondence including transaction confirmations and monthly statements

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

**{OPTIONAL}** INQUIRY ONLY CONTACT: In addition, the following additional Participant representative (not listed above) is designated as an **Inquiry Only** Representative authorized to obtain account information:

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

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Applicant may designate other authorized representatives by written instrument signed by an existing Applicant Authorized Representative or Applicant’s chief executive officer.

The foregoing supersedes and replaces the Government Entity’s previous designation of officers, officials or employees of the Government Entity as Authorized Representatives under the Agreement pursuant to paragraph 4 of the Resolution. Except as hereby modified, the Resolution shall remain in full force and effect.

PASSED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



\_\_\_\_\_  
(NAME OF ENTITY/APPLICANT)

SIGNED BY: \_\_\_\_\_  
(Signature of official)

\_\_\_\_\_  
(Printed name and title)

ATTESTED BY: \_\_\_\_\_  
(Signature of official)

\_\_\_\_\_  
(Printed name and title)

LOGIC strongly recommends that the Personal Identification Number (PIN) be changed if there is a change in “Authorized Representatives”. Please include a request to change the PIN number when sending the “Amending Resolution” to LOGIC.

**Combined Meeting**

**R2e**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Approval of a Wholesale Wastewater Contract between the City of Dallas and the Town for the purchase of wholesale wastewater services from Dallas and authorizing the City Manager to execute the Contract.

**FINANCIAL IMPACT:**

There is no direct financial impact associated with this contract. Wastewater rates are set annually by the City of Dallas ordinance, based on a cost of service study.

**BACKGROUND:**

The current wastewater contract expired on March 21, 2014. This proposed contract renewal is for a 30 year term. The city attorney has reviewed and commented on the contract. Those comments were taken into consideration by the DWU staff and changes were made to the original proposed contract. The city attorney has reviewed the proposed contract.

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

DWU Proposed Contract

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**PROPOSED**  
**WHOLESALE WASTEWATER CONTRACT BETWEEN**  
**CITY OF DALLAS AND TOWN OF ADDISON**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

THIS WHOLESALE WASTEWATER CONTRACT ("Contract") is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF DALLAS, a Texas home rule municipality (hereinafter called "Dallas"), and the TOWN OF ADDISON, a Texas home rule municipality (hereinafter called "Customer").

WHEREAS, Customer currently purchases wholesale wastewater services from Dallas, and Dallas currently provides wholesale wastewater services to Customer as set forth under the terms, covenants, and conditions stated in the Current Contract; and

WHEREAS, Customer desires to continue to contract with Dallas for wholesale wastewater treatment services and Dallas desires to continue to provide wholesale wastewater treatment service to Customer; and

WHEREAS, from time to time, both Dallas and Customer have need to request the other to furnish water and/or wastewater service to each other's customers along common boundary lines wherein only one of the parties has facilities available; and

WHEREAS, the Current Contract with Dallas will expire on March 21, 2014; and

WHEREAS, Dallas desires to enter into a new wholesale wastewater contract with Customer and reciprocal water and wastewater agreement;

NOW, THEREFORE, Dallas and Customer, in consideration of the mutual terms, covenants, and conditions contained in this Contract, agree as follows:

**1.0   DEFINITIONS**

1.1    "BOD" (BIOCHEMICAL OXYGEN DEMAND) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20 degrees centigrade, usually expressed as a concentration (e.g. mg/L).

1.2    "Calibration" means to check, adjust, or standardize instrumentation for accuracy using internal systems, specialized calibration equipment, or velocity tests.

1.3 “Current Contract” means that certain Wholesale Wastewater Contract effective March 21, 1984, by and between Dallas and Customer.

1.4 “Customer’s System” means the publicly-owned facilities of Customer for collection and transportation of wastewater to the Point of Entry and any publicly-owned facilities of Customer used exclusively or primarily for the pre-treatment of Industrial Waste.

1.5 “Dallas System” or “System” means the wastewater collection and treatment system, the Publicly Owned Treatment Works (sometimes referred to as the “P.O.T.W.”), owned and operated by Dallas.

1.6 “Delivery Facilities” means all publicly-owned facilities of Customer (transmission mains, valves, manholes, and other similar facilities and appurtenances) necessary for transmission of wastewater to the Dallas System. The term includes facilities which are on the Customer side of the metering facility which are constructed specifically to allow Dallas to serve Customer. The term excludes metering facilities.

1.7 “Director” means the Director of the Department of Dallas Water Utilities or the Director’s designated representative.

1.8 “Incompatible Waste” means substances that are not amenable to the treatment processes which will interfere with the operation of the Dallas System P.O.T.W., including interference with the use or disposal of municipal sludge, and pollutants that will pass through the treatment works unchanged by the treatment processes.

1.9 “Industrial Waste” means all wastewater or other water-borne solids, liquids, grease, sand, or gaseous substances resulting from an industrial, manufacturing, or food processing operation, from the operation of a food service establishment, from the development of a natural resource, or from any other nondomestic source, or any mixture of these substances with water or normal domestic wastewater.

1.10 “Industry” means a person or establishment that is recognized and identified in the 1972 Standard Industrial Classification Manual, Executive Office of the President: Office of Management and Budget.

1.11 “Infiltration Water” means water that has migrated from the ground into the wastewater system.

1.12 “Inflow” means water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewer catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

1.13 “Interference” means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the wastewater system, its treatment processes or operations, or its sludge processes, use, or disposal.

1.14 “Metering Facility” means the meter, meter vault, and all metering and telemetering equipment required to provide wastewater service to the Customer at the point of entry.

1.15 “Normal Domestic Wastewater” means wastewater normally discharged from the commodes or sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories and institutions, free from storm or ground water and Industrial Waste.

1.16 “Point of Entry” means the location of the metering facility or, where no metering facility is utilized, the Dallas city limits line, where wastewater leaves Customer’s System and enters into the Dallas System.

1.17 “Pretreatment Standards” means pollutant concentration discharge limitation requirements stipulated in Chapter 49 of the Dallas City Code and the Customer’s City Code as hereinafter amended, and national pretreatment standards, including but not limited to prohibitive discharge limits established pursuant to Title 40, Code of Federal Regulations, Part 403.5, as amended.

1.18 “Prohibited Substance” means substances that are prohibited from being discharged into Dallas’ System and Customer’s System as listed in Chapter 49 of the Dallas City Code and the Customer’s City Code as hereinafter amended, except that if more stringent pretreatment standards are promulgated for certain industrial users by the United States Environmental Protection Agency, the more stringent Federal regulations shall apply to that class of sewer users.

1.19 “Regulations Governing Connections” means all terms of this Contract and federal, state, and local civil, administrative and criminal statutes, ordinances, rules and regulations, however adopted or enacted, which relate to the installation and connection to the connections, meters and laterals of a wastewater system.

1.20 “Significant Industrial User” means an industrial user that is subject to categorical pretreatment standards under Title 40, Code of Federal Regulations, Part 403.6, as amended, and Title 40, Code of Federal Regulations, Chapter I, Subchapter N, as amended, or:

- (i) discharges ~~25,000~~ gallons per day or more of process wastewater into Dallas’ wastewater system, excluding sanitary, noncontact cooling, and boiler blowdown wastewater;
- (ii) contributes a process wastestream that makes up five percent or more of the average dry weather hydraulic or organic capacity of the treatment plant of wastewater system; or
- (iii) is designated as a significant industrial user by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the wastewater system’s operation or for violating any pretreatment standard or requirement in accordance with Title 40, Code of Federal Regulations, Part 403.8(f)(6), as amended.

**Comment [A1]:** Revised from 50,000 g/d to 25,000 g/d

**Comment [A2]:** New language to address pretreatment requirements

**Comment [A3]:** New language to address pretreatment requirements

1.21 "State Rules" means Texas Commission on Environmental Quality Rules, Chapter 217 - Design Criteria for Domestic Wastewater Systems, as amended.

1.22 "Surcharge Rate" means a rate calculated so as to include a charge for either BOD or TSS or both in excess of 250 milligrams per liter (mg/l) or limits as approved by the Dallas City Council.

Comment [A4]: New language

1.23 "TSS" (TOTAL SUSPENDED SOLIDS) means solids that either float on the surface of, or are suspended in, water, wastewater, or other liquids and that, in accordance with standard methods, are removable by a standard, specific laboratory filtration device.

1.24 "Wastewater" means water-carried waste.

1.25 "Winter Months" means the billing months of December, January, February, and March.

## **2.0 DELIVERY AND METERING FACILITIES**

**2.1 Delivery Point.** Dallas agrees to accept wastewater from Customer at the point(s) of entry delineated in Exhibit B, attached to and made a part of this Contract, and at such additional points as may later be mutually agreed upon by both parties.

**2.2 Cost of Delivery Facilities.** The cost of all delivery facilities necessary to convey wastewater to designated points of entry and connect Customer's System to the Dallas System whether delineated in Exhibit B or mutually agreed upon at a later date, shall be borne by Customer. Unless otherwise mutually agreed to by Dallas and Customer, Customer shall be responsible for the design, according to Dallas' standard requirements, contracting, construction, and financing of delivery facilities and acquisition of any necessary rights-of-way.

**2.3 Oversizing of Delivery Facilities – Dallas Request.** Dallas may elect to require oversizing of the delivery facilities for the benefit of Dallas or other parties. If Dallas elects to oversize delivery facilities, Dallas shall be responsible for the oversizing costs to the extent of the documented difference in costs between the size of Customer's required delivery facilities and the oversize specified by Dallas.

**2.4 Approval of Plans; Inspection.** All designs, materials, and specifications shall conform to Dallas requirements and shall be submitted to Dallas for written approval. Customer agrees that Dallas has the right to make periodic inspections during the construction phase of the delivery facilities. Final acceptance of completed delivery facilities is subject to the written approval of Dallas. Dallas agrees that any approval or consent of Dallas or the Director required by this section shall not be unreasonably withheld or delayed.

**2.5 Meters and Meter Vaults.** Unless otherwise agreed by both parties, Customer shall design and construct meter vaults, meters, and all associated facilities at each point of entry. Dallas shall obtain power and telemetry service in connection therewith, if needed. Replacement of metering facilities occasioned by obsolescence due to age or excessive maintenance, as determined by Dallas,

shall be the responsibility of Dallas. Replacement of metering facilities necessary due to growth or reasons other than obsolescence due to age or excessive maintenance, as determined by Dallas, shall be at the cost and the responsibility of Customer, and it will be subject to the approval of Dallas.

**2.6 Property and Rights-of-Way.** Customer shall acquire all property, easements, or rights-of-way necessary for construction of metering and delivery facilities located on the Dallas side of the metering facility.

**2.7 Conveyance of Facilities to Dallas.** Customer agrees that after final inspection and approval by the Director of metering and delivery facilities located on the Dallas side of the metering facility, Customer shall convey title to those facilities and property, easements, or rights-of-way in conjunction therewith to Dallas. Upon Customer's conveyance of title of the property and facilities by appropriate instrument and acceptance by Dallas of the property and facilities, Dallas shall be responsible for operation and maintenance of the metering facilities and any delivery facilities located on the Dallas side of the metering facility.

**2.8 Additional Delivery Points.** Customer may at any time during the term of this Contract request additional Delivery Points under this Contract. The additional Delivery Points are subject to approval by the Director and shall, when so approved in writing, be deemed to be made a part of this Contract, thereby amending Exhibit B of this Contract without need for a further written supplemental agreement or Dallas City Council approval.

**Comment [A5]:** New language

### **3.0 METER MAINTENANCE AND TESTING**

**3.1 Accuracy of Meters.** It shall be the duty of either party to this Contract to notify the other party in the event that a meter is registering inaccurately or malfunctioning so that the meter can be promptly repaired. Either party shall have the right to test a meter. Notification of a proposed test shall be provided at least 24 hours prior to conduct of the test, except in the case of emergencies. Either party shall have the right to witness meter tests. If Customer requires an independent testing service be used, Customer shall pay the cost of the testing service upfront. If the results of the independent testing reveal the meter was not measuring within a generally accepted accuracy rate (+ or - 10%) of the existing reading, Dallas shall reimburse the Customer for the cost of the testing service.

**3.2 Meter Calibration.** Dallas shall calibrate and routinely service the meters no less than once during each six-month period or as recommended by the meter manufacturer. Calibration shall be accomplished according to Dallas' standard methods. Customer shall be notified of proposed calibrations and may observe if so desired.

**3.3 Meter Registration.** If, for any reason, any meter is out of service or inoperative, or if, upon any test, any meter is found to be inaccurate, registration thereof shall be corrected. Correction of inaccurate meter registration will normally be based on the most recent correct registration, if such is reasonably ascertainable. Alternatively, Customer and Dallas may agree to use future meter registrations as the basis for correction. If future registrations are to be used as a basis for correction, Dallas shall be allowed to bill Customer based on estimated amounts prior to rendering a corrected

billing. In no event will corrected billings be made for periods in excess of three billing periods prior to notification of meter inaccuracy.

**3.4 Check Meter.** Customer may, at its option and its own expense, if approved by Dallas, install and operate a check meter to monitor the Dallas meter, but the measurement of wastewater flow delivered to the Dallas System for the purpose of this Contract shall be based solely on Dallas' meters, except as otherwise provided herein. Customer's installation of check meters shall not interfere with operation of the Dallas wastewater collection system or Dallas metering equipment. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of Dallas. The reading, calibration and adjustment of the check meter shall be made only by Customer, except during any period when a check meter may be used under specific written consent by Dallas for measuring the amount of wastewater delivered into the System, in which case the reading, calibration and adjustment thereof shall be made by Dallas with like effect as if such check meter or meters had been furnished or installed by Dallas.

#### **4.0 RATES AND PAYMENT**

**4.1 Setting of Charges by Dallas Ordinance.** Rates charged Customer shall be established by ordinance of Dallas. The capital costs contributed by the Customer for Delivery Facilities and metering facilities shall be excluded from the rate base.

**4.2 Rate Setting Method; Notice of Change.** Rates shall be established according to the "Wastewater Rate Guidelines" contained in Exhibit A, incorporated herein, as if copied word for word and made a part of this Contract. Customer understands that the Dallas City Council has the right to change, by ordinance, the rates charged as needed to cover all reasonable, actual and expected costs. Any change of rates shall be pursuant to principles set forth in the Wastewater Rate Guidelines. Dallas shall give Customer a minimum of six (6) months written notice of intent to change rates. Dallas will furnish Customer a draft copy of the Cost of Service Study for Proposed Rates thirty (30) days prior to Dallas submitting a rate increase request to its City Council.

When the Director of Dallas Water Utilities determines that wastewater metering is not feasible, Customer shall pay Dallas for wastewater service based on average winter month water consumption for those connections discharging into the Dallas wastewater system, at the rate provided in the prevailing ordinances of Dallas subject to increase or decrease without formal amendment of this Contract, as said ordinances might be amended from time to time. (Water consumption billings for the months of December, January, February, and March shall constitute the winter months.). The calculation of wastewater discharged shall be as follows:

100% water consumption for applicable connections for winter months divided by 4=  
Average Winter Month Water Consumption.

Average Winter Month Water Consumption multiplied by the infiltration and inflow adjustment factor as provided by the prevailing ordinances of Dallas as multiplied by the City of Dallas' prevailing Ordinance Rate = Amount Due Monthly

Customer understands and agrees that the wastewater entering the Dallas System emanating from any source whatsoever must be given treatment and handling, whether or not its source is revenue producing for Customer. Therefore, Customer agrees to pay for infiltration and inflow without abatement in the same manner and cost as other wastewater.

**4.3 Customer Protest.** Customer agrees to give Dallas a minimum of thirty (30) days notice of its intent to protest rates, or any other condition of service. Provided, however, that Customer is not required to give a thirty (30) day notice of intent to appear before Dallas City Council to protest cost of service studies.

**4.4 Monthly Invoice.**

Each month during the term of this Contract, Dallas agrees to deliver to Customer a statement of charges setting forth the amount of wastewater delivered to Dallas for treatment for the period covered by the statement and any past due amounts carried over from prior invoices (including accrued interest) ("the Monthly Statement"). Payment is due upon receipt of the Monthly Statement. Customer agrees to pay promptly.

**4.5 Late Payment.** Customer agrees that a payment is deemed late if received by Dallas more than 30 days after the date of the Monthly Statement. Late payments shall accrue interest at the interest rate provided in Section 2-1.1 of the Dallas City Code, as amended, or as authorized by Ch. 2251 of the Texas Government Code, as amended, whichever applies. If any money due and owing by Customer to Dallas is placed with an attorney for collection, Customer agrees to pay to Dallas, in addition to all other payments provided for by this Contract, including interest, Dallas' collection expenses, including court costs and reasonable attorney's fees.

Comment [A6]: New provision

**4.6 Malfunctioning Meter; Estimated Payments.** In the event a meter(s) is discovered to be malfunctioning, the amount of Wastewater that has passed through the meter will be estimated for each day the meter was not functioning correctly. The last correctly measured monthly flow, or estimated flow, as set forth in Section 3.3 of this Contract, will be used as a basis for computing the amount of Wastewater treated on behalf of the Customer during the time the meter was not functioning correctly.

**4.7 Disputed Charges.** Dallas and Customer agree that any disputed charges on the Monthly Statement shall be protested and resolved in accordance with Texas Government Code Section 2251.042, as amended. Customer agrees that in the event it disputes any portion of the charges on a Monthly Statement, Customer will timely pay any undisputed amount in accordance with Section 4.4.

**5.0 WASTEWATER QUALITY**

**5.1 Industrial Wastes and Prohibited Substances.**

Customer agrees that Dallas has the responsibility and authority to establish:

- (i) the types and quantities of discharges that are prohibited for entry into the Dallas System;
- (ii) discharge prohibitions for certain substances, as may be amended from time to time; and
- (iii) pretreatment requirements for industries that discharge prohibited substances.

Customer shall require all Significant Industrial Users that ultimately discharge into the Dallas System to obtain an industrial waste discharge permit. The permit shall require Significant Industrial Users to abate prohibited substances from their waste stream and pretreat wastewater and process wastewater where necessary as a condition of allowing the discharge of the wastewater into Customer's System. The permit application shall, at a minimum, contain the following information:

- (i) a description of the activities, structures, equipment, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility that are, or could be, discharged into the wastewater system;
- (ii) the site plans, floor plans, and mechanical and plumbing plans of the facility with sufficient detail to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;
- (iii) the number and type of employees and proposed or actual hours of operation of the facility;
- (iv) a list of each product produced by type, the amount of the product produced, the process or processes used to produce the product, and the rate of production;
- (v) the type and amount of raw materials processed (average and maximum per day);
- (vi) the time and duration of discharges;
- (vii) a certification statement complying with the requirements of Section 49-51(m) of the Dallas City Code, as amended, and signed by a designated authorized representative of the applicant;
- (viii) self-monitoring, sampling, reporting, notification, and record-keeping requirements, including an identification of the pollutants to be monitored, sampling location and frequency, and sample type, based on the applicable general pretreatment standards, categorical pretreatment standards, local limits, and the regulations of state law and Chapter 49 of the Dallas City Code, as amended; and
- (ix) best management practices if required by the pretreatment standards.

**Comment [A7]:** New provisions to address pretreatment requirements. Includes updated application requirements

Dallas shall be provided with a copy of the application and permit within thirty (30) days after permit issuance.

**Comment [A8]:** Revised to 30 days from 14 days.

Customer agrees to conform to the water quality and pretreatment regulations contained in Exhibit D, attached to and made a part of this Contract.

Customer agrees to seek injunctive or other appropriate relief against industrial discharge sources whose discharge causes Interference, poses an imminent danger to public health, or when the specific industry is not making sufficient progress toward completing a required and approved pretreatment system.

Dallas Water Utilities' Pretreatment and Laboratory Services Division (or another division as designated by the Director) shall be provided with copies of all industrial monitoring data and pretreatment enforcement actions by Customer each fiscal quarter.

## **5.2 Sampling and Testing**

For the purpose of determining the type and strength of discharges, Customer agrees that Dallas shall have the right to sample wastewater discharges at:

- (i) the site of the discharge;
- (ii) the point or points of entry of the discharge into Customer's System; and
- (iii) other locations as required.

Customer shall provide all possible assistance to Dallas in obtaining access to sampling points.

Customer agrees that any individual customer found in violation of allowable discharges or any individual customer who refuses access for the purpose of sampling shall be disconnected from Customer's System and the Dallas System. Provided however, that the violating individual customer shall be afforded the same rights, privileges of appeal, and deficiency cure periods as are customers operating within Dallas boundaries and under authority of Dallas ordinances.

In addition to other samples taken and tests made on an as-required basis, Dallas shall regularly take twenty-four (24) hour composite samples of wastewater discharges at points of entry no less frequently than semiannually. Costs of sampling and testing shall be borne by Customer. Customer may request that Dallas perform other tests in addition to those tests required by Dallas. Should Customer request additional testing and Dallas agrees to provide the additional testing, Customer shall reimburse Dallas for the cost of those tests.

Customer shall be provided with a copy of each sample test within thirty (30) days after the date of taking of the sample.

All samples shall be analyzed in accordance with the latest edition of Standard Methods of Examination of Water and Wastewater, published by the American Public Health Association, Inc., or the U.S. EPA (40 CFR Part 136) approved methods.

## **6.0 RATES FOR EXCESS STRENGTH DISCHARGES**

### **6.1 Additional Charge**

If the Customer's wastewater discharge at the Point of Entry is determined to contain concentrations of BOD and/or TSS in excess of the allowable discharge strengths, the Customer shall be required to pay a wastewater surcharge fee in addition to the wholesale wastewater treatment fee assessed under Section 4.0 "RATES AND PAYMENT" of this Contract.

At the effective date of this Contract, the allowable discharge strength is 250 mg/l for BOD and 250 mg/l for TSS. Customer agrees that the Dallas City Council has the right to revise, by ordinance, the allowable discharge strengths.

BOD and TSS strength determination will be based on a minimum of seven (7) days of averaged lab data.

Customer shall pay Dallas for concentrations of BOD and TSS exceeding 250 mg/l at the rate provided in the prevailing ordinances of the City of Dallas, subject to increase or decrease without formal amendment of this Contract, as said ordinance might be amended from time-to-time. The wastewater surcharge fee will be calculated every month based on the BOD and TSS lab test results for that month. The surcharge fee will be assessed for the entire month in which the Customer's BOD or TSS exceeded 250 mg/l.

### **6.2 Calculation of Additional Amounts Due for Excess Strength**

The wastewater surcharge fee shall be calculated in accordance with the Dallas City Code Chapter 49. Any future ordinance changes related to the calculation of wastewater surcharges shall apply to this Contract as if in effect at the effective date of this Contract. Provided, however, that Customer shall be provided copies of future applicable ordinances and shall have an opportunity to review and comment on same before the ordinances are formally adopted by the Dallas City Council.

**Comment [A9]:** Revised language. Existing contracts include the actual formula for calculating additional amounts due for excess strength.

## **7.0 QUANTITY AT POINT OF ENTRY**

It is understood and agreed that Dallas and Customer have an obligation to prevent entrance of infiltration and inflow into Customer's System and thence into the Dallas System. Customer therefore agrees that all wastewater connections to Customer's System which ultimately bring the flow of Customer's wastewater into the Dallas System will be constructed with a permanent type material, carefully bedded to prevent over-stressing of the material and utilizing a joint which will provide a permanent water-tight connection. Customer agrees that each such installation shall pass an air test performed in accordance with applicable A.S.T.M. Standards and shall be done under the supervision of Customer's authorized representative at the time of installation. All tests shall be at

Customer's expense. Each building lateral which interconnects private property to Customer's System shall be excluded from the air test requirements.

Customer agrees that the physical connection of each service line to Customer's System shall be the responsibility of Customer and shall not be left to the discretion of the plumber or contractor unless the plumber or contractor is under the direct supervision of, or whose work is inspected by, Customer's authorized representative. Customer further covenants that all future trunk wastewater lines added to Customer's System which ultimately discharge into the Dallas System shall be:

- (i) built in accordance with appropriate State of Texas design criteria, including infiltration/exfiltration limitations; and
- (ii) subjected, in representative sections of each new line, to an air test or infiltration or exfiltration test at the time of installation, at the option of Dallas and at the sole expense of Customer, to assure the State design criteria standards are met.

Customer also covenants that it will maintain strict supervision and maintenance of the Customer's System to prevent connections such as all roof drains or any other means by which surface drainage can enter Customer's System and thence the Dallas System.

## **8.0 PROTECTION OF WASTEWATER SYSTEM**

It is mutually understood and agreed that only employees, agents, or contractors of Customer shall be permitted to work on or make connections to those elements of the Customer's System which ultimately discharge into the Dallas System. Only qualified plumbers licensed by the State of Texas shall be permitted to work on building laterals entering into those elements of the Customer's System which discharge into the Dallas System. It is further mutually understood and agreed, however, that this provision shall be waived in the event that personnel of Dallas Water Utilities Department find it necessary to enter Customer's jurisdiction while performing their duties. Free access shall be provided to those Dallas personnel in the pursuit of their duties.

It is mutually understood and agreed that Customer will maintain a careful inspection of Customer's System and will exercise diligence and care in the maintenance of Customer's System and in the installation of connections and laterals that may be connected with Customer's System in order that the Dallas System not be burdened with excess discharge during rainy and wet weather. Customer shall provide Dallas with annual reports regarding implementation of the maintenance plan, as provided in Section 12 of this Contract, and copies of any reports required to be filed with a state or federal agency relating to Customer's System.

**Comment [A10]:** New requirement related to maintenance plan.

Laterals to private dwellings and public, commercial, or industrial buildings constructed in Customer's wastewater drainage area after the effective date of this Contract shall be of materials jointly approved by Dallas and Customer. Each building lateral which interconnects private property to Customer's System shall pass a water test meeting minimum standards of the State Rules for wastewater collection systems.

Customer understands, agrees and acknowledges that it has a continuing duty to provide for and enforce the Regulations Governing Connections. Failure of Customer to comply with this duty shall be sufficient grounds for Dallas, at its sole option, to restrict, limit, or terminate receipt of wastewater flow from Customer to the extent Dallas deems necessary in order to protect the Dallas System from damage due to excessive flows or flows containing a high concentration of Incompatible Wastes. Dallas shall provide thirty (30) days written notice to Customer outlining the specific violation(s) prior to such restriction, limitation or termination, unless immediate action is necessary as set forth below, if Customer fails to correct all such violation(s) within thirty (30) days of the date of the notice. In the event of an emergency that imminently threatens Interference or damage to any portion of the Dallas System, or otherwise imminently threatens Dallas' employees or the general public health and safety, Dallas may restrict, limit, or terminate wastewater flow by telephone notice to Customer.

Comment [A11]: New requirement

## **9.0 LIABILITY FOR DAMAGES AND RESPONSIBILITY FOR TREATMENT AND DISPOSAL OF WASTEWATER**

Liability for damages arising from the reception, transportation, delivery, and disposal of all wastewater discharged by Customer under this Contract shall remain with Customer up to and through the Customer side of the Point of Entry. With exception of Incompatible Wastes or wastewater deemed to be a cause of Interference, upon passage through the Point of Entry into the Dallas side, liability for damages and the handling and treatment of the wastewater discharged by Customer shall belong to Dallas. As between the parties and to the extent allowed by law, without waiving any sovereign governmental immunity available to each party, Dallas and Customer agree to release, save, and hold the other party harmless from all claims, demands, and causes of action which may be asserted by any person on account of the reception, transportation, delivery, and disposal while wastewater is in the respective control of either Dallas or Customer. Dallas takes the responsibility, as between the parties, for the proper reception, transportation, treatment, and disposal of all wastewater received by Dallas from Customer at the Point of Entry. The provisions of this Section 9 are solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **10.0 ACCESS**

**10.1 Access to Dallas Facilities.** Customer agrees to provide ingress and egress to Customer's property located within Customer's incorporated city limits for employees, contractors, and agents of Dallas to install, operate, inspect, test, and maintain facilities and read meters owned or maintained by Dallas; provided, however, Dallas' employees, contractors, and agents shall at all times comply with Customer's policies regarding security and safety as may be adopted from time to time by Customer for the purpose of safeguarding Customer's System.

**10.2 Access to Customer Facilities.** Dallas agrees to provide ingress and egress to Dallas' property located within Dallas' incorporated limits for employees, contractors, and agents of Customer to install, operate, inspect, test, and maintain facilities and read meters owned or maintained by Customer; provided, however, Customer's employees, contractors, and agents shall at all times comply with Dallas' policies regarding security and safety as may be adopted from time to

time by Dallas for the purpose of safeguarding the Dallas System.

## **11.0 CUSTOMER TO PROVIDE DATA**

### **11.1 Classification of Customers.**

Customer shall provide the following data to Dallas not later than January 15<sup>th</sup> of each year during the term of this Contract:

- (A) Actual number of Customer accounts feeding into the Dallas System.
- (B) Classification, by number and percentage, of accounts feeding into the Dallas System according to the following:
  - (i) Residential;
  - (ii) Multi-family;
  - (iii) Business/Commercial/Industrial (class and entity type shall be specified, e.g., restaurant, chemical manufacturer, etc.); and
  - (iv) Other

**11.2 Water Consumption.** Customer shall provide data and supporting documentation on total water consumption for accounts feeding into the Dallas System during the four winter billing months (December, January, February and March) to Dallas not later than the 15<sup>th</sup> of April of each year. Billing months need not be calendar months. Where available, this total consumption should be separated into consumption by type of account as listed in Section 11.1 (B) (i-iv) of this Contract.

**11.3 Additional Data Requirements.** Customer may be required to provide additional data as revised methodology for cost of service studies is developed. Provided, however, that Dallas shall not request data that will require Customer to incur unreasonable expenses in providing such data, except as otherwise provided in this Contract.

**Comment [A12]:** New language

## **12.0 WASTEWATER MASTER AND MAINTENANCE PLANS**

(A) Master Plan. Customer agrees to provide a comprehensive wastewater master plan to Dallas within three years of the effective date of this Contract. The master plan shall include, but shall not be limited to:

- (i) population data, present and projected;
- (ii) geography and topography data;
- (iii) current and proposed treatment processes;

- (iv) treatment alternatives;
- (v) existing and projected discharge flows into the Dallas System;
- (vi) existing and planned wastewater collection system maps in digital format;
- (vii) existing and projected treated water usage for area which discharges into the Dallas System;
- (viii) existing and projected zoning (Residential, Industrial, Commercial) for area which discharges into the Dallas System;
- (ix) future development plans; and
- (x) other data or information as is deemed necessary by the Director.

**Comment [A13]:** New requirements

Customer agrees that the initial plan shall be for a twenty-year period. Customer further agrees that the plan shall be reviewed jointly by Dallas and Customer and, if necessary, revised by Customer at five year intervals.

The initial submittal requirement is waived if Customer has provided a plan acceptable to Dallas within the last five years.

(B) Maintenance Plan. Customer agrees to provide a comprehensive wastewater operations and maintenance plan to Dallas within three years of the effective date of this Contract. The operations and maintenance plan must be updated not less than every five (5) years, or as necessary to ensure compliance with the terms of this Contract. The operations and maintenance plan should be based on best management practices for capacity, management, operations and maintenance (CMOM) and may include the following:

- (i) Wastewater Collection System Map in digital format
- (ii) Wastewater Collection System Inventory and Identification of Physical Attributes
- (iii) Wastewater Collection System Condition Assessment
- (iv) Wastewater Collection System Capacity Evaluation under wet and dry weather flow conditions
- (v) Capital Improvement Program (CIP) Plan to repair, replace, rehabilitate and improve wastewater system components based on condition and performance
- (vi) Annual goals for TV inspection and cleaning efforts.
- (vii) Identification of the chemical(s) used for cleaning mains
- (viii) Description of public outreach program to reduce grease and illegal connections

- (ix) Description of program(s) to reduce inflow and infiltration (I/I) in the Customer's system since I/I eventually outfalls to the City of Dallas
- (x) Description of program to identify illegal connections (e.g., roof and street drainage which is connected to the wastewater collection system)
- (xi) Pretreatment program to inspect the discharge of large industrial users

Comment [A14]: New requirement.

### **13.0 PAYMENTS TO CONSTITUTE OPERATING EXPENSES BY CUSTOMER**

Customer represents and covenants that the services to be obtained pursuant to this Contract are essential and necessary to the operation of Customer and its local wastewater facilities, and that all payments to be made hereunder by it will constitute reasonable and necessary "operating expenses" of City's waterworks and wastewater systems, within the meaning of Chapter 1502, Texas Government Code, and the provisions of all ordinances authorizing the issuance of all revenue bond issues of Customer which are payable from revenues of Customer's waterworks and sewer systems. Customer agrees throughout the term of this Contract to continuously operate and maintain its waterworks and sewer system and to fix and collect such rates and charges for wastewater services to be supplied by Customer's waterworks and sewer system as will produce revenues in an amount equal to at least (i) all of its payments under this Contract and (ii) all other amounts as required by the provisions of the ordinances or resolutions authorizing its revenue bonds or other obligations now or hereafter outstanding.

### **14.0 RIGHTS TO RETURN FLOWS**

Customer understands, acknowledges, and agrees that Customer shall acquire no water rights or title or right to the use, reuse, or recycling of wastewater diverted, entering or delivered to Dallas' wastewater system.

Comment [A15]: New language.

### **15.0 FORCE MAJEURE; INDEMNITY; REMEDIES; NO WARRANTIES**

**15.1 Force Majeure.** Neither party shall be liable to the other party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Contract due to causes beyond their respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

**15.2 Indemnification.** To the extent allowed by Texas law, Customer agrees to defend, indemnify and hold Dallas, its officers, agents and employees, harmless from any liability in claims, administrative proceedings or lawsuits for judgments, penalties, fines, costs, expenses and attorney's fees for personal injury (including death), property damage, or other harm for which recovery of damages is sought or suffered by any person or persons for violations of state or federal laws or regulations, that may arise out of or be occasioned by: (i) a breach of this Contract by Customer; (ii)

the negligent act or omission of Customer in the performance of this Contract or in Customer's day-to-day wastewater utility operation; or (iii) the conduct of Customer that constitutes a violation of state or federal laws or regulations. Provided, however, that the indemnity stated above shall not apply to any liability resulting from Dallas' sole violation of a state or federal law or regulation or from the sole negligence of Dallas, its officers, agents, employees or separate contractors, and in the event of the joint and concurring responsibility of the Customer and Dallas, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without waiving governmental immunity or any other defenses of the parties under applicable Texas law. The provisions of this paragraph are solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

**15.3 Equitable Remedies.** Recognizing that Dallas' and Customer's undertakings as provided in this Contract are obligations, the failure in the performance of which cannot be adequately compensated in money damages, Dallas and Customer agree that, in the event of any default, the other party shall have available to it the equitable remedy of specific performance in addition to other legal or equitable remedies which may be available to such party.

#### **16.0 COMPLIANCE WITH LAWS AND REGULATIONS; REGULATORY BODIES**

This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Dallas and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Dallas and Customer shall, during the course of performance of this Contract, comply with all applicable State and Federal laws, rules and regulations, as amended.

Dallas must comply with all Federal, State and local government requirements to obtain grants and assistance for system construction, studies, and other similar activities. Customer is required to assist Dallas in compliance by setting adequate rates and complying with governmental requirements, including, but not limited to, the requirements set forth in this Contract.

#### **17.0 PUBLICATIONS, REFERENCE WORKS, GOVERNMENTAL REGULATIONS**

In each instance herein where reference is made to a publication, reference work or Federal or State regulation, it is the intention of the parties that, at any given time, the then current edition of any such publication or reference work or Federal or State regulation shall apply. If a publication or reference work is discontinued or ceases to be the generally accepted work in its field or if conditions change or new methods or processes are implemented by Dallas, new standards shall be adopted which are in compliance with State and Federal laws and any valid rules and regulations pursuant thereto.

#### **18.0 TERMINATION**

Should Customer desire to partially or totally discontinue using the Dallas System, Customer shall, for five (5) years or the balance of this Contract, whichever is less, remain liable for

wastewater charges at the billing level in effect at such cessation.

This obligation, once established, shall serve as liquidated damages and is intended to compensate Dallas for the expenditures incurred on Customer's behalf for the cost to provide additional wastewater transmission, treatment, and disposal facilities. Provided, however, that Dallas may waive Customer's obligation in the event of nominal reductions based on Customer's plans if Dallas has received prior notice of the plans and concurred in the reduction. It is agreed by the parties that such liquidated damages are a reasonable substitute for compensatory damages which are difficult or impossible to calculate herein. This obligation is intended by the parties not to be a penalty, but instead, a reasonable measure of damages.

Dallas shall have the right to terminate this agreement if Customer is more than six (6) months delinquent in any payments required to be made to Dallas under this Contract, or is in material breach of any obligation Customer has under this Contract.

**19.0 TERM OF CONTRACT**

The term of this Contract shall commence as of the date of its execution, which is also the date of the resolution of the Dallas City Council approving this Contract, and shall remain in effect for a period of thirty (30) years.

**20.0. CONTRACT ADMINISTRATION**

This Contract shall be administered on behalf of Dallas by the Director and on behalf of Customer by its authorized official or designated representative.

**Comment [A16]:** New provision

**21.0 NOTICES**

Except as otherwise provided in Section 22.0, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If to Dallas:

Director of Water Utilities  
City of Dallas  
1500 Marilla Street, Room 4/A/North  
Dallas, Texas 75201

If to Customer:

City Manager  
Town of Addison  
5300 Beltline Road  
Dallas, Texas 75254

**22.0 NOTICE OF CONTRACT CLAIM**

**This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as**

amended, relating to requirements for filing a breach of contract claim against Dallas. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Purchaser shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

Comment [A17]: New provision

### **23.0 VENUE**

The parties agree that this Contract shall be enforceable in Dallas County, Texas, and if legal action is necessary to enforce it, exclusive venue shall lie in Dallas County, Texas.

### **24.0 GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of any other state.

### **25.0 LEGAL CONSTRUCTION**

In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

### **26.0 CONFLICT OF INTEREST**

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Contract, to wit:

“CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED --

(a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

(b) The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

(c) The prohibitions of this section shall not apply to the participation by City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law.”

For purposes of this Section 26.0, the word "City" means "City of Dallas."

**27.0 GIFT TO PUBLIC SERVANT**

This Contract shall be subject to the following additional provisions:

(A) Dallas may terminate this Contract immediately if Customer has offered, or agreed to confer any benefit upon a Dallas employee or official that the Dallas employee or official is prohibited by law from accepting.

(B) For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

(C) Notwithstanding any other legal remedies, Dallas may require Customer to remove any officer or employee of Customer from the administration of this Contract or any role in the performance of this Contract who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a Dallas employee or official.

**28.0 COUNTERPARTS**

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

**29.0 CAPTIONS**

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

**30.0 SUCCESSORS AND ASSIGNS**

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and, except as otherwise provided in this Contract, their assigns.

**31. AUTHORIZATION TO ACT**

By their signature below, the representatives of Dallas and Customer state that they are authorized to enter into this Contract. Dallas and Customer shall each provide documentation that this Contract has been authorized by its respective governing body.

**32.0 ENTIRE AGREEMENT; NO ORAL MODIFICATIONS**

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

**Comment [A18]:** New provisions to incorporate Legal Boilerplate Language

EXECUTED and effective as of the \_\_\_ day of \_\_\_\_\_, 2014, on behalf of Dallas by its City Manager, duly authorized by City Council Resolution No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2013, and approved as to form by its City Attorney; and on behalf of Customer by its duly authorized officials.

**APPROVED AS TO FORM:**  
**WARREN M.S. ERNST**  
City Attorney

**CITY OF DALLAS**  
**A. C. GONZALEZ**  
Interim City Manager

BY \_\_\_\_\_  
Assistant City Attorney

BY \_\_\_\_\_  
Assistant City Manager

**APPROVED AS TO FORM:**

**CUSTOMER:**  
**TOWN OF ADDISON**

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
City Manager

**EXHIBIT A  
WASTEWATER RATE GUIDELINES**

**BASIS FOR RATES:**

Revenue requirements will be determined by Cost-of-Service Study on a utility basis at original cost.

**RATE OF RETURN:**

Dallas is to receive a rate of return on rate base, equal to the embedded interest rate on wastewater revenue bonds, plus 1.5%.

**RATE BASE:**

The rate base shall include original cost plant investment (excluding contributed capital), construction work in progress, and a reasonable allowance of working capital, less accumulated depreciation. Working capital shall consist of an allowance for operation and maintenance (45 days or up to 1/8 annual operation and maintenance costs) and a reasonable inventory of materials and supplies necessary for the efficient operation of Dallas Water Utilities.

The rate base (common-to-all) shall include mains 18" and above, excluding all mains below this size, unless built exclusively to serve a particular city.

**TEST PERIOD (OR TEST YEAR):**

Normally, a recently concluded 12-month operating period adjusted for known changes, selected to be representative of the period of time over which the new rates are expected to be in effect.

**DATA BASIS:**

Rate period projections shall be based on operating results during the most recent fiscal year for which actual data is available.

**FREQUENCY OF COST OF SERVICE STUDIES:**

Adequacy of rates shall be reviewed on an annual basis. Thirty (30) days in advance of a proposed rate change, cost of service information shall be made available to Customer for review and comment.

**REVISIONS TO WASTEWATER RATE GUIDELINES:**

Subject to the review of the existing contracting Customers, Dallas reserves the right to revise the Wastewater Rate Guidelines.

**Comment [A19]:** New provision

**EXHIBIT B**  
**POINTS OF ENTRY AND METERING FACILITIES**  
**(TO BE UPDATED BY DWU AND CUSTOMER)**

**Description:** Customer is connected to the Dallas System at five points of entry. Three points are metered and are located along the east side of Dallas Parkway. The fourth point is unmetered and is located at the south side of Belt Line Road at White Rock Creek. The fifth point of entry is unmetered and is located south of Celestial Road and east of Montfort Drive.

Meter vaults, metering equipment, site locations and associated rights-of-way are owned and maintained by Dallas.

Each of the three metering stations is currently equipped with an \_\_\_\_ wastewater flow meter on a 6 inch throat venture tube and other related equipment. Each of the metering stations includes an unmetered bypass for emergency use should the meter be disabled for repairs.

A general diagram of locations and sizes of the connections is contained on the second page of this Exhibit. A description of the points of entry and metering stations follows.

**POINT 1:**

**Location:** The metered point of entry is located at 4800 Sojourn Drive at the east side of the intersection of Dallas Parkway and Sojourn Drive in the City of Dallas.

**Schematic:** At the point of entry, Customer's 18 inch wastewater main connects to Dallas' 18 inch wastewater main at the metering station. The metering facility is designed to measure a maximum flow of 2.5 MGD with the ability to measure future increased flows through equipment and pipe modifications.

**POINT 2:**

**Location:** The metered point of entry is located at 16220 Dallas Parkway at the east side of Dallas Parkway approximately 1,205 feet north of Keller Springs Road in the vicinity of Keller Springs Branch in the City of Dallas.

**Schematic:** At the point of entry, Customer's 21 inch wastewater main connects to Dallas' 20 inch wastewater main at the metering station. The metering facility is designed to measure a maximum flow of 2.5 MGD with the ability to measure future increased flows through equipment and pipe modifications.

**POINT 3:**

**Location:** The metered point of entry is located at 15652 Dallas Parkway at the east side of Dallas Parkway approximately 675 feet south of Bent Tree Forest Drive in the City of Dallas.

Schematic: At the point of entry, Customer's 21 inch wastewater main connects to Dallas' 21 inch wastewater main at the metering station. The metering facility is designed to measure a maximum flow of 2.5 MGD with the ability to measure future increased flows through equipment and pipe modifications.

**POINT 4:**

Location: The unmetered point of entry is located at a manhole on the south side of Belt Line Road at White Rock Creek approximately 600 feet east of Winnwood Road in the City of Dallas.

Schematic: At the point of entry, Customer's 12 inch wastewater main, which is located along the south side of Belt Line Road, connects to Dallas' 30 inch wastewater main along White Rock Creek.

**POINT 4:**

Location: The unmetered point of entry is located at a manhole on Dallas' 8 inch wastewater main south of and generally parallel to Celestial Road approximately 1,200 feet east of Montfort Drive in the City of Dallas.

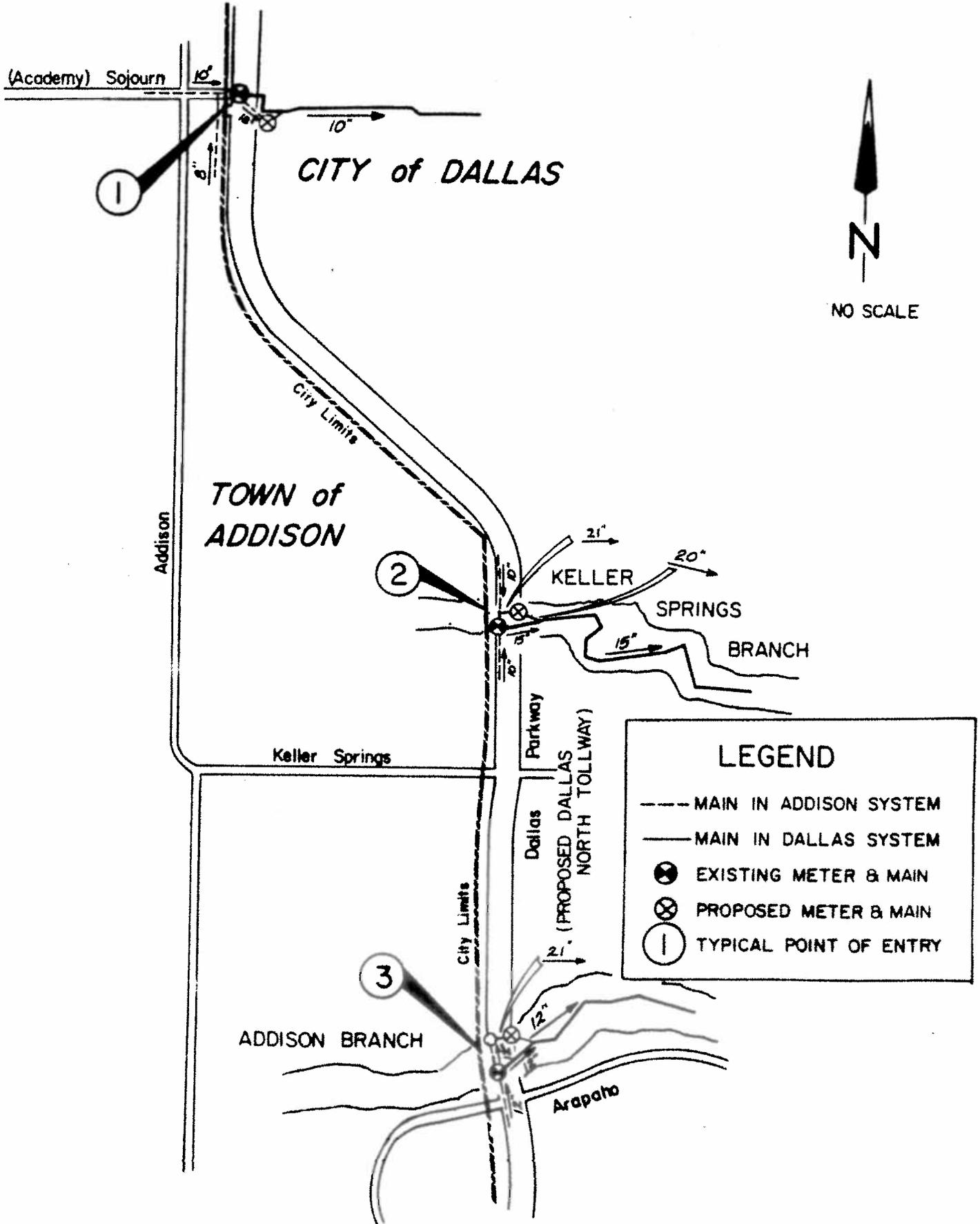
Schematic: At the point of entry, Customer's 8 inch wastewater main extending southeastward from Celestial Place connects to Dallas' 8 inch wastewater main south of and generally parallel to Celestial Road.

**Future Facilities:** Should additional points of entry be agreed upon in the future, this Exhibit B will be revised to recognize these facilities. Revisions to this Exhibit B in order to add, delete, or modify points of entry or metering facilities may be authorized by the Director of DWU and do not require city council approval.

**Comment [A20]:** New provision.

EXHIBIT B  
POINTS OF ENTRY AND METERING FACILITIES

GENERAL DIAGRAM OF CONNECTIONS:



**EXHIBIT C**

**SPECIAL CONTRACT CONDITIONS/AGREEMENTS**  
**SUPPLEMENTAL AGREEMENTS CONCERNING STANDARD CONDITIONS**  
**(TO BE UPDATED BY DWU TO INCORPORATE EXISTING SPECIAL CONDITIONS**  
**AND WASTEWATER TRANSMISSION PROVISIONS)**

**EXHIBIT D**  
**PRETREATMENT REGULATIONS**

1. Dallas, which is the municipal entity that owns and operates the wastewater plant that the Customer is serviced by, is recognized as the Control Authority.
2. If Customer has an established pretreatment program approved by Dallas or TCEQ, then Customer agrees to enact and enforce rules requiring those users within that portion of its service area connected to the Dallas system to comply with the provisions of all applicable State and Federal regulations, as amended, as well as those portions of the Dallas Ordinances, as amended, regarding wastewater discharged substances and prohibited discharges. Customer shall perform service area surveys to maintain a current listing of industries which could have the potential to be Significant Industrial Users within that portion of Customer' service area connected to the Dallas system. The surveys should encompass field inspections, a review of building, plumbing and occupancy permits, a review of telephone or business directories for new industries, and the sampling for pollutants at industries which could have the potential of being Significant Industrial Users. Customer shall annually provide the listing of industries to Dallas. The listing should include each industry's name, address, discharged substances, pretreatments performed and violations recorded during the year.
3. If Customer does not have a pretreatment program approved by Dallas or TCEQ, then Customer agrees to enact and enforce rules or ordinances requiring those users within that portion of its service area connected to the Dallas System to comply with the provisions of Article IV, "Water Quality," of Chapter 49 of the Dallas City Code, as amended, and all applicable State and Federal regulations, as amended, including, but not limited to: (1) compliance with the requirements of a Pretreatment Program; (2) prohibited discharges; (3) discharged substances; (4) industrial discharge permit system and fact sheets; (5) industrial self-monitoring reports; (6) pretreatment plans; (7) Baseline Monitoring Reports (BMR); (8) Report on Compliance (ROC); (9) periodic compliance reports; and (10) other reports as may be required by EPA and TCEQ. Customer shall perform service area surveys to maintain a current listing of industries which could have the potential to be significant industrial users within that portion of Customer' service area connected to the Dallas System. The Industrial User Surveys or Industrial Waste Survey (IWS) should encompass field inspections, a review of building, plumbing and occupancy permits and a review of telephone or business directories for new industries. Customer shall annually provide to Dallas the listing of potential Significant Industrial Users, including their address and substances discharged during the year. At Customer's request, Dallas will perform the surveys and listing of industries, and the sampling of pollutants from industries which could have the potential to be Significant Industrial Users, and Customer shall compensate Dallas for its actual cost to provide these services. Dallas will review the IWS and inspect the businesses to determine Significant Industrial User status. Within 30 days of determining Significant Industrial User status, Dallas will notify Customer and each affected Significant Industrial User. Dallas will also provide all Pretreatment Standards and Requirements applicable to the Significant Industrial User as a result of such status.
4. Customer agrees that Dallas, as the Control Authority, has the authority to approve Customer's pretreatment program. Customer, therefore, recognizes that Dallas will follow procedures to ensure compliance with the requirements of a Pretreatment Program, including:

- (a) identifying and locating all possible industrial users subject to the Pretreatment Program;
- (b) identifying the character and volume of pollutants discharged by Significant Industrial Users;
- (c) notifying identified industrial users of applicable Pretreatment Standards;
- (d) receiving and analyzing self-monitoring reports and other notices as specified in 40CFR 403.12;
- (e) analyzing sampling data for compliance with applicable limits;
- (f) inspecting and randomly sampling the effluent from industrial users;
- (g) evaluating whether each Significant Industrial User needs a plan or other action to control slug discharges;
- (h) investigating instances of noncompliance with Pretreatment Standards and Requirements; and
- (i) complying with significant noncompliance publication.

5. Customer also recognizes that Dallas will require the enforceability of pretreatment permits, each permit containing, at a minimum, the following requirements:

- (a) Statement of duration (in no case more than five years).
- (b) Statement of non-transferability.
- (c) Effluent limits, including Best Management Practices.
- (d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, the sampling location, the sampling frequency, the sample type, and the applicable general Pretreatment Standards in 40 CFR Part 403.
- (e) Statement of applicable civil and criminal penalties for violation of the Pretreatment Standards and requirements, and any applicable compliance schedule.
- (f) Requirements to control Slug Discharges, if determined by the Control Authority to be necessary.

6. Customer understands and agrees that Dallas, as the Control Authority, will establish procedures for the receipt, review, and approval of permit applications for new and existing Significant Industrial Users. Dallas will send permit applications to new Significant Industrial Users and renewal applications to existing Significant Industrial Users for completion. Applications for

new Significant Industrial Users must be returned to Dallas within 30 days of receipt. An application for renewal of an existing Significant Industrial User permit must be received by Dallas 90 days prior to the expiration of the existing permit. Dallas will review the applications, prepare the permits with the appropriate pretreatment standards, including alternate categorical pretreatment standards where applicable, and submit the permits to Customer for approval. Each permit will include a fact sheet and the description of pollutants discharged by a Significant Industrial User. Upon approval, Customer will send the permit to the Significant Industrial User. Customer may add additional requirements to the permit to insure the permit holders' compliance with applicable laws and regulations. Customer may suspend or revoke a permit if it determines that the permit holder is in violation of the applicable pretreatment regulations.

7. Customer agrees that Dallas has the authority to take enforcement actions, including the right to disconnect, against specific industries violating Dallas' or Customer's industrial waste regulations and agrees to assist Dallas with enforcement actions, should enforcement by Dallas be necessary. To the extent that such authority is subject to Texas law, Customer agrees to allow Dallas to perform enforcement functions Customer could otherwise perform under applicable law on Customer's behalf, where necessary, pursuant to Article 26.175 of the Texas Water Code. Dallas shall afford Customer a reasonable amount of time to take enforcement actions itself before commencing enforcement as the "Control Authority". Dallas shall notify Customer at least 10 days prior to commencing enforcement activity as the "Control Authority", unless imminent danger or NPDES/TPDES permit violation occurs, in which case Customer will be notified of enforcement within 24 hours. Enforcement actions may include any of the following actions: issuance of a notice of violation; the halting of discharges; the termination of service; the suspension or revocation of the permit; criminal or civil enforcement actions; publication of the name of the industrial user determined to be in significant noncompliance; the issuance of administrative, consent, compliance, and cease and desist orders; and an order requiring attendance at a show cause hearing. Customer agrees to comply with the procedures outlined in Dallas' Enforcement Response Plan.

8. If Customer has an established pretreatment program approved by Dallas or TCEQ, then Customer shall perform inspections of industrial users within that portion of its service area connected to the Dallas System no less frequently than annually, and sampling at least once every six (6) months (once in the months of July through December and once in the months of January through June) and provide the results to Dallas within 30 days of the date the sampling and inspection are performed. Categorical industries must be inspected no less frequently than annually and must be monitored at least once every six (6) months (once in the months of July through December and once in the months of January through June) for at least four (4) consecutive days. Significant Industrial Users not determined to be categorical must be inspected no less frequently than annually and must be monitored at least once every six (6) months (once in the months of July through December and once in the months of January through June) for at least two (2) consecutive days. If violations occur, monitoring frequency must increase. Monitoring is to continue until three consecutive months of sampling indicate compliance.

9. If Customer does not have a pretreatment program approved by Dallas or TCEQ, then Dallas shall perform the inspection of industrial users within that portion of Customer's service area connected to the Dallas System no less frequently than annually and sampling at least once every six (6) months (once in the months of July through December and once in the months of January through

June) for at least two (2) consecutive days for Significant Industrial Users regulated under local limits. For categorical industries, Dallas will inspect no less frequently than annually and sampling at least once every six (6) months (once in the months of July through December and once in the months of January through June) for at least four (4) consecutive days. Dallas will provide the sampling results to Customer within 30 days of the date of performing the sampling and inspection. Customer shall compensate Dallas for its actual cost of providing this service. Customer will follow procedures for handling anticipated bypass according to provisions outlined in Customer's wastewater regulations codified in **(INFO TO BE PROVIDED BY CUSTOMER)**.

10. Customer agrees that if an industrial user is seeking a categorical determination concerning the applicability of a particular subcategory under the national categorical pretreatment standards, the final determination issued under Title 40, Code of Federal Regulations, Part 403.6, as amended, shall control the application of the appropriate subcategory. There shall be no right or procedure implied under contract for an industrial user or Customer to seek such a categorical determination from Dallas, other than through the procedures and requirements outlined in Title 40, Code of Federal Regulations, Part 403.6, as amended.

11. Customer agrees to require that industrial users meet the following reporting requirements of Title 40, Code of Federal Regulations, Part 403, as amended: (1) baseline monitoring reporting, (2) 90-Day ROC; (3) compliance schedule progress reports, (4) reports on compliance with categorical pretreatment standard deadlines; (5) periodic compliance reports in July and January; (6) notification of changed conditions; (7) reports of accidental (slug) discharges; (8) reports from non-permitted users; (9) submission of self-monitoring reports and violations based on self-monitoring; (10) notification of the discharge of hazardous waste; (11) analytical requirements; (12) sample collections; (13) adherence to the date reports deemed received; and (14) certification and signatory requirements. All reports must be submitted to Dallas for review and approval. Customer and industrial users will comply with the record keeping requirements contained in the pretreatment regulations and, at a minimum, retain all records for a minimum of three (3) years.

12. All samples shall be taken and analyzed in accordance with the latest edition of Title 40, Code of Federal Regulations, Part 136, as amended, or other methods approved by TCEQ if not found in Title 40, Code of Federal Regulations, Part 136, as amended. Customer and industrial users' sampling and self-monitoring data shall comply with Dallas' Standard Operating Procedures for sampling which includes quality assurance/quality control procedures and chain-of-custody requirements. In addition, Customer and industrial users may use National Environmental Laboratory Accreditation Conference's (NELAC) certified water and wastewater analytical laboratories for the sampling and analysis of samples.

13. Customer and Dallas agree to maintain confidentiality of industrial user information as specified in state and federal law. An industrial user who asserts the trade secret exception to disclosure under Chapter 552 of the Texas Government Code (the Public Information Act) must clearly mark "confidential business information" on each page that contains proprietary information. Documents submitted with words stamped "confidential business information" will be treated in accordance with the procedures of Title 40 Code of Federal Regulations, Part 403.14, as amended. However, information not stamped "confidential business information" and effluent data will be available to the public without restriction.

EXHIBIT E

RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT

1. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR SINGLE FAMILY RESIDENCES OR DUPLEXES – WHEN SERVICING ENTITY HAS MAINS IN PLACE

The City of Dallas, Texas, hereinafter called “Dallas” and the Town of Addison, hereinafter called “Customer”, hereby mutually agree, that when mains of the servicing entity are currently in place, to provide water and/or wastewater service to customers along the public streets, roadways, alleys and easements forming a common city limit boundary of Dallas and Customer upon written request of either party to the other, provided that neither party will be required to provide such service to customers of the other party if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said entity.

The class of service contemplated by this Paragraph 1 anticipates a temporary connection until such time as the entity requesting service will have water and/or wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the entity in which the potential customer is located.

Nothing contained in this Agreement shall require that either entity will be compelled to accept a customer classed under this Paragraph 1 after a determination by the servicing entity that service is not economical or otherwise not in the best interest of the servicing entity.

- A. Service will be provided to single family residences or duplexes situated on no more than one acre of land located immediately adjacent to the common boundary.
- B. The entity providing the water and/or wastewater service contemplated under this Paragraph shall charge the customer so served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries and who are in the same category of service.
- C. The customer being served will be required to pay all applicable fees related to the services provided including a connection service charge to the entity furnishing service. The connection service charge shall be the then current amount established by the servicing entity's ordinances. If a service charge is not specified by the current ordinances for the size or type service to be provided, the service charge shall be the servicing entity's actual cost for rendering the service.

2. RECIPROCAL WATER AND/OR WASTEWATER SERVICE AGREEMENT FOR: (1) SINGLE FAMILY RESIDENCES OR DUPLEXES WHERE MAINS ARE NOT IN PLACE, (2) COMMERCIAL AND INDUSTRIAL COMPLEXES, (3) RESIDENTIAL SUBDIVISIONS, APARTMENTS OR TOWNHOUSES AND OTHER MULTI-DWELLING RESIDENTIAL UNITS.

Dallas and Customer hereby mutually agree to provide temporary water or wastewater service, or both, to customers along the public streets, roadways, alleys and easements forming a common city limit boundary of Dallas and Customer upon written request of either entity to the other, provided that neither entity will be required to provide such service to customers of the other entity if doing so would result in a need for substantial construction or diminution of the level of service being provided to other customers of said entity.

The class of service contemplated by this Paragraph 2 anticipates a temporary connection until such time as the entity requesting service will have water and/or wastewater mains available. This category of service requires consideration on an individual case basis. Determination will be rendered upon written request being made by the entity in which the potential customer is located. Nothing contained in this Agreement shall require that either entity will be compelled to accept a customer classed under this Paragraph 2 after a determination by the servicing entity that service is not economical or otherwise not in the best interest of the servicing entity.

- A. Service will be provided to the following type customers whose properties are located immediately adjacent to or in reasonable proximity of the common boundary:
- (1) Single family residences or duplexes where mains are not in place.
  - (2) Individual commercial and industrial properties containing no more than 200,000 square feet of building floor space, provided that commercial or industrial facilities in excess of 200,000 square feet consuming only nominal amounts of water or contributing only nominal amounts of wastewater may be considered as an exception to this provision.
  - (3) Specific residential subdivisions consisting of no more than 20 single family units and apartment complexes, townhouses or other types of multiple dwelling units consisting of no more than 35 single family units in the immediate area for which service is being requested.
- B. The entity providing the water and/or wastewater service contemplated under this Paragraph shall charge the customer served the same rates and associated charges as charged customers whose property lies within its own areas and boundaries and who are in the same category of service.
- C. As a precondition of receiving service, the customer being served may also be required to pay all or part of the costs determined to be necessary to extend service and to pay the normal service charges for the type service being offered. Applicability of costs of extending service

shall be determined by the officials designated in Paragraph 4.B. of this Agreement. Normal service costs will be determined as contemplated by Paragraph 1.C. All construction work shall meet the specifications of the entity within whose boundaries the facilities are constructed.

3. TEMPORARY RECIPROCAL SERVICES PROVIDED (1) DIRECTLY TO BORDERING CITIES AND (2) TO COMMERCIAL, INDUSTRIAL OR OTHER COMPLEXES NOT CONTEMPLATED BY PARAGRAPH 2.

When services are requested and it is determined by the entity from which service is requested that the service is appropriate and can be offered without diminution of the level of service being provided to other customers of the servicing entity, Dallas and Customer hereby mutually agree to provide temporary water and/or wastewater service on a reciprocal basis when (1) the service to be furnished is to be provided directly to the reciprocating entity as the customer or, (2) the service to be furnished is for a commercial, industrial, or other customer not meeting the criteria for service consideration in Paragraph 2.

The class of service contemplated by this Paragraph 3 shall be offered at the option of the servicing entity. Determination of service feasibility will be rendered upon written request being made by the entity requiring service. Nothing contained in this Agreement shall require that either entity will be compelled to offer service after a determination by the servicing entity that service is not economical or otherwise not in the best interest of the servicing entity.

The entity providing the water or wastewater service contemplated under this Paragraph shall charge the customer served the same rate and associated charges as charged customers whose property lies within its own areas and boundaries.

The entity requesting the service shall pay full cost of any extension, facilities or improvements required to make the service available. The amount of the charges shall be determined by the officials designated in Paragraph 4.B. of this Agreement. All construction work shall meet the specifications of the entity within whose boundaries the facilities are constructed.

4. GENERAL TERMS AND CONDITIONS

Service will be provided from mains in the public streets, roadways, alleys and easements existing along the common boundaries of Dallas and Customer under the following terms and conditions, which shall apply equally to either entity:

- A. Neither party to this Agreement is obligated to provide water or wastewater service to the other party, and each party has the right to refuse to provide water or wastewater service, under this Agreement, to the other party.
- B. The entity requiring services shall initiate the request for reciprocal services by forwarding a written request for service. The request shall be accompanied by a map which identifies the

location of the proposed properties. Approval of requests for service shall be in writing and will be forwarded or approved by the following:

If for Dallas:

Dallas Water Utilities  
Director of Utilities  
1500 Marilla Street, Room 4/A/N  
Dallas, Texas 75201

If for Customer:

Town of Addison  
Attn: City Manager  
5300 Beltline Road  
Dallas, Texas 75254

- C. Meter boxes, service lines, laterals and other facilities necessary to provide service shall, upon installation, become the property of the entity furnishing service if accepted or agreed to by said entity.
- D. The customer to be served will sign a contract with the entity furnishing service, agreeing to abide by all the ordinances of that entity which relate to the furnishing of said service.
- E. The entity requesting service under this Agreement hereby grants to the entity providing such service authorization to go upon the public streets, roadways, alleys and easements of the former entity for the purpose of installing, maintaining and removing such facilities as are necessary to provide service.

Customer agrees that, with prior written approval of Customer, Dallas may use streets, alleys and public rights-of-way within Customer's boundaries for the purposes detailed in this Agreement to provide retail water and wastewater service to Customer or to other customers without charges or tolls, provided that Dallas makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of the conveyance or license Customer duly grants for such purposes.

Dallas agrees that, with prior written approval of Dallas, Customer may use streets, alleys and public rights-of-way within Dallas' boundaries for the purposes detailed in this Agreement to provide retail water and wastewater service to Customer or to other customers without charges or tolls, provided that Customer makes the necessary repairs to restore the streets, alleys or public rights-of-way used to their original condition. Such use and repairs shall be pursuant to the terms and conditions of a license duly granted by the Dallas City Council.

- F. If at any time the entity requesting service under this Agreement shall construct a main capable of providing water and/or wastewater service to any customer being served under the terms of this Agreement, then upon request, the entity so providing the service shall terminate same, reserving the right to remove its meters and materials from the property previously served; provided, the customer shall have a reasonable time, not to exceed one month, to connect to the new service.

G. In the cases where a customer receives water service from one entity and wastewater service from the other, the entity furnishing water service will provide the other entity with monthly meter readings and water consumption information on such customers and will permit appropriate employees of the entity furnishing wastewater service to read and examine the meters serving such customers to determine the accuracy of readings so furnished and to permit appropriate employees of the entity furnishing wastewater service to examine water consumption records of such customers, provided that no meter shall be removed or adjusted except by the entity furnishing water service.

5. CLAIMS OF LIABILITY

It is further mutually agreed by Dallas and Customer that insofar as the services contemplated hereunder are performed by either entity within the jurisdiction of the other entity and to that extent only, Dallas and Customer hereby mutually agree that they will release, hold harmless and defend the other entity from all claims of liability which result from damage to property (real or personal) or persons arising directly or indirectly from the performance of the services provided for under this Agreement.

6. TERMINATION OR MODIFICATION

This Agreement is to remain in force for the term of the Contract to which it is attached.

**Combined Meeting**

**R3**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Discussion, consider and take action regarding appointment of a member to the Board of Zoning Adjustment.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

This appointment belongs to Council Member Arfsten.

**RECOMMENDATION:**

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**Combined Meeting**

**R4**

**Meeting Date:** 04/22/2014

**Council Goals:** Enhance sense of community for all stakeholders/Expand  
Volunteer Opportunities

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**AGENDA CAPTION:**

Discussion regarding the assignment of Council Member Arfsten to the North Central Texas Council of Governments' Emergency Preparedness Council as an advisory board member.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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**Combined Meeting**

**R5**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Discussion and update regarding Town of Addison May 10, 2014 General Election processes and procedures.

**FINANCIAL IMPACT:**

There is no financial impact associated with this item.

**BACKGROUND:**

See attached memo.

**RECOMMENDATION:**

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**Attachments**

Memo

Exhibit A

Exhibit B

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## May 10, 2014 General Election Processes and Procedures Update

### General Information

All voting information for the May 10, 2014 General Election can be found on the Dallas County Elections website ([www.dallascountyvotes.org](http://www.dallascountyvotes.org)).

Early voting is held from Monday, April 28 through Tuesday, May 6. Early voting hours are generally 8:00 am to 5:00 pm, except for Sunday, May 4 (1:00 pm – 6:00 pm), and Monday and Tuesday, May 5 and 6 (7:00 am – 7:00 pm). Addison Fire Station #1 is an early voting location, though residents may vote at any early voting location in Dallas County. A full list of these locations is available on the County website above.

Polls open on Election Day (May 10) at 7:00 am and close at 7:00 pm. A resident's precinct number determines their polling location. Residents can locate their precinct on their voter registration card, or through the Dallas County Precinct Lookup Page on the Elections website. Precincts 2900 and 2901 will vote at Fire Station #2. Precincts 2902, 2903, 2904, and 2905 will vote at Fire Station #1.

### Early Voting

Approximately six weeks before the start of early voting, election judges are selected and appointed for each voting location. They are chosen by the Dallas County Commissioners Court from a list provided by both political parties in accordance with Section 32.001 of the Texas Election Code. Judges must be Dallas County registered voters, and attend several training sessions on the use of voting equipment and election law prior to serving.

The duties of an election judge derive from Section 32.071 of the Texas Election Code. They are generally responsible for the management and conduct of the election at their assigned location. To that end, they are charged with issuing ballots, maintaining order, administering Oaths of Office to clerks and poll assistants, and ensuring accurate election records at the precinct level. Throughout the day, they maintain a running tally of the number of voters, which is posted beginning at 9:30 am and updated at subsequent two hour intervals. They are allowed to give information regarding the election process to voters, but are forbidden from promoting, influencing, or compelling action towards any item.

Approximately one week prior to the start of Early Voting, all voting machines (called Direct-Recording Electronics, or DRE) are put through a series of calibration, logic, and accuracy tests. These tests must occur no later than 48 hours prior to the date when they are used. The testing must be open to the public, and is therefore noticed in a paper of record at least 48 hours beforehand. A hardware diagnostic is also performed to ensure that mechanical components are working correctly.

Once Early Voting begins, a running count of voters is kept by the Election Judge, and reported each night after the polls close to the Central Counting Station. The number reported is simply a voter count, and does not indicate voting counts for any item on the ballot. This process continues consistently all throughout the Early Voting period.

After Early Voting ends, all ballot boxes are taken back to the Central Counting Station, where they are subjected to a 26 step quality control process designed to ensure security, accuracy, and integrity of the ballot count. A summary of this QC system can be found as Exhibit A, attached.

### Election Day

Operations during Election Day are very much like they are during early voting. As with Early Voting, Election Day judges are on hand to ensure compliance with all regulations. The City Secretary will be stationed at Central Fire throughout the day to address any questions or issues which may arise.

After polls close at 7:00 pm, an unofficial vote count is obtained from the County website, and written down on a 38x30 laminated poster board. This Election board also holds spaces for final vote counts from Fire Station #1 and #2 (a proof is attached as Exhibit B). Unofficial results tape from voting machines are also printed off from both voting locations. The City Secretary will obtain preliminary results from Fire Station #1 and populate the appropriate spaces on the Election Results Board. The Assistant City Secretary will obtain results from Fire Station #2, return to Fire Station #1, and populate the appropriate spaces on the Election Results Board.

Following Election Day, all ballots are subjected to the same QC process as Early Voting. Once all provisional and overseas ballots have been counted, a final count will be made available to the Town.

We are required by the Town Charter to canvass results of the election at the next Regular Council Meeting following the election date. However, since the final count will not be ready until May 16 at the earliest, results will be canvassed at a special meeting on Monday, May 19. Any new Council Members will be sworn in at that time.

## COUNTING STATION OPERATIONS

Counting Process for CCS (Central Counting Station) and Accumulating Process for CAS (Central Accumulation Station)

- A central count optical scan voting system uses a counting process.
- An electronic voting system that does not entail the counting of ballots at a central location uses an accumulating process.
- If a political subdivision (including counties) uses both optical scan ballots counted at CCS and electronic precinct counters or DREs, it will need to follow both a counting process and an accumulating process, as appropriate to the voting system.

What is the Counting Process?

- All Central Count Optical Scan Systems must use pre-locked, pre-sealed ballot boxes (§§ 127.061-.066)
  - Complete sort and hand audit at CCS
  - Provisional ballots accumulated and secured and the Summary of Provisional ballots prepared for delivery to voter registrar
  - Run ballots through tabulator
  - Compare total ballots tabulated with number of voters casting ballots by precinct (election day and early voting) from combination form (§§ 127.069, 127.125-.1311)

What is the Accumulating Process?

- CAS is subject to the same general rules as CCS, but votes are actually counted at the precinct and then accumulated electronically.
- After polls close on election day, precinct election officials verify and document the public count on all applicable devices (DREs, precinct scanners, and affiliated equipment)
- Precinct election officials verify that public count matches the number of voters who voted from the combination form or poll list.
- Precinct election officials print out a minimum of two copies of the results tape from each applicable device, with two election officials and no more than two watchers, if watchers are present, signing each tape.
- Precinct election officials secure the voting devices against unauthorized use.
- If DREs are used at the precinct polling place, precinct election officials must secure the media in the same manner that an election judge would secure the voted ballots.
- Special bags that have a lock and seal have been approved by SOS for purposes of transporting the electronic media from the DREs or precinct scanners to CAS.
- Alternatively, electronic media may remain secured in the applicable device.
- The presiding election judge or his/her designated election clerk transports the secured electronic media (as well as all the election records, unused election supplies, and election equipment if directed by the county elections officer) to CAS.
- Electronic media is handled and processed in the same manner that CCS would handle receipt and processing of voted ballots in ballot boxes.
- In the case of precinct scanners, if a discrepancy of more than 3 exists between the number of ballots recorded on the ballot and seal certificate and the number of ballots cast on the tape, the official tabulation of those ballots shall be conducted at CCS. (§ 127.156)

### TESTING TABULATORS AND ACCUMULATORS

CCS Automatic Tabulating Equipment

- Automatic tabulating equipment used for counting ballots at CCS must be tested three times:
  - First test is open to public and notice of test must be given in newspaper 48 hours before date of test. Test must be conducted at least 48 hours before tabulating equipment is used.
  - Second test must be conducted immediately before counting of ballots with tabulating equipment begins.

- Third test must be conducted immediately after counting of ballots with equipment is completed. (§ 127.093)

#### Precinct Automatic Tabulating Equipment

- Each unit of automatic tabulating equipment that does not entail the counting of ballots at CCS, such as precinct scanners, must be tested, using all applicable ballot formats, in accordance with the testing procedures described above for automatic tabulators at CCS. The general custodian of election records conducts the first test. (§ 127.152)

#### DRE Voting Systems (§ 129.022-.023)

- Not later than 48 hours before voting begins on a DRE voting system, the general custodian of election records must conduct a logic and accuracy test.
- The test must be open to the public and notice of the test must be published at least 48 hours before test begins.
- As part of the logic and accuracy test, the central accumulator system will be tested to determine whether the system accurately tabulates results from the electronic files used to count ballots voted in the election. The electronic files created from the logic and accuracy testing for the election must be used in the process of this test.
- A hardware diagnostic, or functionality, test is also required to verify that the mechanical components are working correctly. This should include the testing system screen displays, verifying and adjusting the correct date and time, if necessary, and verifying and adjusting calibration, if applicable.

#### CHECKS AND BALANCES - CCS

- All ballot boxes are delivered and comparison of serial numbers of seal and log is made to be sure the correct seal has been placed on the box, according to the log of distributed seals. Wire hasp seals are properly kept.
- Compare the number of voters who signed the combination form to the overall vote count from the election returns. House Bill 2817, 82<sup>nd</sup> Legislature. Making this comparison allows one to determine if there are any missing votes or duplicated votes
- ALL election records are received at CCS.
- Ballot and seal certificate is located in each ballot box.
- Ballots are sorted and resolved or duplicated before delivery to Tabulation Supervisor. (typically done by CCS clerks)
- Provisional ballots are delivered to the general custodian of records with the list of provisional voters. (Note: a summary of provisional ballots is prepared by the custodian of records before the provisional ballot affidavits are given to the county voter registrar.)
- All voted ballots are carefully tracked as they move through CCS. Some counties create "tracking sheets" that follow each precinct's ballots, and a clerk signs off on the sheet at each stage in the counting process (sorting, duplication when necessary, beginning counting, and finishing counting, to storage area).
- This ensures that all ballots are counted and that none are counted twice.
- Duplicated ballots are properly noted and the serial number of the original ballot is written on the duplicate ballot and vice versa.
- Original ballots that are duplicated are placed in an envelope designated for such purpose and are locked in the appropriate ballot box with other ballots from the same precinct. (very important for recounts)
- All ballots are counted and verified against the ballot and seal certificate.
- Status report is printed and it is verified that all precincts had been counted.
- Precinct report is printed showing the number of ballots counted for each precinct.
- Cumulative report is printed indicating all votes from all precincts are included.
- The continuous feed real time audit log is examined for counting interruptions, unauthorized equipment tampering, or any other activity that might make the vote totals questionable.

- All reports are printed in the number of copies statutorily-required.
- Keys to ballot box locks are properly distributed.
- All ballot boxes containing voted ballots are properly locked, with an indication on the outside of each box showing which precinct's ballots are contained in that box.
- For ballot boxes that have a flap to cover the slot for the deposit of ballots, a log recording the serial number of the wire hasp seal used to seal slot is kept and signed by two election officials.
- Precinct returns are backed up to disk or tape, as applicable to system.
- The third test is successful and results are verified with test results. (If no successful test after retry, ballots must be counted manually or secure another tabulator from vendor or neighboring county.)
- For precinct ballot counters, including DREs, precinct returns printed from the device at CAS are compared to the precinct returns printed at the precinct level, to ensure that precinct totals match. (If discrepancy, precinct totals control)
- For precinct ballot counters using modem transfer, a comparison of returns transferred via modem to CAS is made with precinct returns printed at the precinct level. (If discrepancy, precinct totals control)
- Proper logic and accuracy testing of the accumulation software is required before the election night results may be accumulated. The test must be designed to determine whether the CAS accurately tabulates results from the electronic files used to count ballots voted in the election. Electronic files created from the first logic and accuracy test for the election must be used in the process of this test.
- After uploading the precinct results to the CAS, the election official must verify and document that the central accumulator's record of number of votes cast matches the number of signatures on the combination form or ballot and seal certificate for that precinct. If there is a discrepancy, CCSM determines if a further audit is necessary.
- Prior to local canvass, the election official must verify that the vote total(s) printed at the precinct match the reports generated by the central accumulating system.

# ADDISON MUNICIPAL ELECTION

## MAY 10, 2014

### COUNCILMEMBER (FULL TERM)

CANDIDATE	EARLY VOTING	FIRE 1	FIRE 2	TOTALS
		2902-2905	2900-2901	
Mary Carpenter				
Diane Mallory				
Margie Gunther				
Janelle Moore				
David Heape				
Neil Resnik				

**Combined Meeting**

**R6**

**Meeting Date:** 04/22/2014

**Council Goals:** Enhance Public Safety

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**AGENDA CAPTION:**

Presentation, discussion, consider and take action to approve an Inter-Local Agreement between the Town of Addison, City of Carrollton, City of Coppell, City of Farmers Branch and the North Texas Emergency Communications Center, LGC that will authorize the North Texas Emergency Communications Center to sign a lease agreement with CyrusOne, located at 1649 West Frankford Road, Carrollton, Texas 75007, for consolidated dispatch center purposes, and authorizing the City Manager to sign the Agreement.

**FINANCIAL IMPACT:**

Lease payments for the CyrusOne/NTECC facility are within the current Emergency Communications budget.

Addison's estimated cost:

Fiscal Year 2014: \$9,332

Fiscal Year 2015: \$58,516

Per Year minimum annual lease after 2015: \$60,540

(\$ 318,000 total with Addison's portion (19%) \$5,045 per month)

**BACKGROUND:**

Selected as part of the business case analysis completed by iXP Corporation, CyrusOne is the approved site of the North Texas Emergency Communications Center (NTECC). The governing board consisting of all four city managers who negotiated the lease on behalf of the NTECC as it currently does not have the staff or funds of its own to complete these functions. The approval and signing of this lease by the NTECC is the next critical step in the consolidated dispatch project as the center needs to begin construction on the lease space as soon as possible. As part of this agreement, the City of Carrollton will make the lease payments on behalf of the cities and NTECC, with Addison, Farmers Branch and Coppell reimbursing the City of Carrollton.

**RECOMMENDATION:**

Administration recommends approval.

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CyrusOne Lease

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## **INTERLOCAL AGREEMENT REGARDING CONSOLIDATED DISPATCH CENTER LEASE**

This **INTERLOCAL AGREEMENT REGARDING CONSOLIDATED DISPATCH CENTER LEASE** (“Agreement”) is entered into as of the Effective Date by and among the **TOWN OF ADDISON, TEXAS**, (“Addison”), the **CITY OF CARROLLTON, TEXAS** (“Carrollton”), the **CITY OF COPPELL, TEXAS** (“Coppell”), and the **CITY OF FARMERS BRANCH, TEXAS**, (“Farmers Branch”), all of whom are Texas home rule municipalities operating under the authority of their respective governing bodies (Addison, Carrollton, Coppell, and Farmers Branch, are hereinafter sometimes referred to collectively as “the Cities”) and **NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.** (“NTECC”), a Texas non-profit local government corporation (the Cities and NTECC hereafter referred to as the “Parties” or individually as a “Party”).

### **RECITALS**

**WHEREAS**, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of its citizens; and

**WHEREAS**, NTECC is a Texas local government corporation organized by the Cities pursuant to Subchapter D of Chapter 431 of the Texas Transportation Code to assist the Cities in the performance of their governmental functions to promote the common good and general welfare of the Cities, including without limitation, financing, constructing, owning, managing and operating a regional public safety communications center (the “Center”) on behalf of the Cities; and

**WHEREAS**, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the “Act”) provides authority for local governments of the State of Texas to enter into interlocal agreements with each other and with local government corporations for the purpose of performing governmental functions and services as set forth in the Act; and

**WHEREAS**, the Parties have identified the Leased Premises (as defined in Section I, below) as the preferred site for the location of the Center; and

**WHEREAS**, prior to, but in anticipation of, the creation of NTECC as an existing corporate entity, the City Managers of the Cities negotiated, but did not sign, the Lease Agreement; and

**WHEREAS**, the Cities desire for NTECC to proceed with signing the Lease Agreement so that finish out work on the Leased Premises necessary for the Center and its operations may commence; and

**WHEREAS**, in consideration of the direct benefits to be derived by the Cities from the construction and maintenance of the Center by NTECC, the Cities desire to pay the rent and other expenses to be owed by NTECC under the Lease; and

**WHEREAS**, NTECC, as of the Effective Date of this Agreement, has not yet established its own bank accounts, nor entered into a operations agreement with the Cities to provide for the funding of NTECC's functions necessary to provide the services to be provided by NTECC to the Cities; and

**WHEREAS**, the Parties desire to enter this Agreement for the purpose of establishing the agreement of the Parties regarding the Lease Agreement, the payment of rent under the Lease Agreement, the temporary payment of rent payments by Carrollton for NTECC, and the reimbursement by Addison, Coppell, and Farmers Branch of their respective shares of the rent payments to Carrollton.

**NOW, THEREFORE**, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Cities agree as follows:

## **I. DEFINITIONS**

Unless the context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Agreement:

**"Business Day"** means any day other than a Saturday, Sunday, or official city holiday in which Carrollton's city hall offices are closed for business.

**"CyrusOne"** means CyrusOne, LLC, a Delaware limited liability company, whose address is 1649 West Frankford Road, Carrollton, Texas, 75007, or its successors or assigns.

**"Effective Date"** means the date this Agreement has been approved by the governing bodies of all of the Cities and the Board of Directors of NTECC and signed by the authorized representatives of each Party.

**"Lease"** means an Office Lease between CyrusOne and NTECC for the lease of the Leased Premises.

**"Lease Term"** means the period commencing on or about May 1, 2014, and ending April 30, 2029, unless NTECC and CyrusOne agree to extend the term of the Lease for the option period set forth in the Lease, in which case the Lease Term will end April 30, 2034.

**"Leased Premises"** means approximately 11,800 gross square feet of the building owned by CyrusOne located at 1649 West Frankford Road, Carrollton, Texas.

**"Leasehold Improvements"** means the improvements to the Leased Premises to be made by CyrusOne as "Landlord Improvements" pursuant to the Lease.

**"Leasehold Improvement Costs"** means the costs for construction of the improvements to the Leased Premises to be made by CyrusOne as "Landlord Improvements" pursuant to the Lease which costs are estimated to be \$1,800,000.00.

**“Operations Agreement”** means an agreement among the Cities and NTECC to be negotiated and entered subsequent to the Effective Date of this Agreement relating to the operations and maintenance of the Center, which agreement shall, among other things, describe the services to be provided by NTECC to the Cities, the procedures for adoption of an annual budget for the operations of the Center, and the allocation to the Cities of the costs for NTECC’s services.

**“Rent”** shall have the meaning assigned to that term under the Lease. The amount of Rent shall be as set forth in Exhibit “A,” attached hereto and incorporated herein by reference.

**“Term”** means the term set forth in Section 2.01.

## II. TERM

**2.01 Term.** This Agreement shall commence on the Effective Date and end at 11:59:59 p.m. Central Time on the last day prior to the end of the Lease Term, unless extended or terminated earlier as provided in this Agreement.

**2.02 Early Termination During Initial Term.** Notwithstanding anything to the contrary herein, a City may terminate without cause its participation as a Party to this Agreement prior to the end of the Term subject to the following:

- A. The termination date must fall on September 30 of the year of termination;
- B. The City desiring to terminate its participation in this Agreement must deliver notice to the other Cities and NTECC not later than two (2) years prior to the date of termination;
- C. The City terminating its participation in this Agreement shall not be entitled to reimbursement from the non-terminating Cities or NTECC for expenditures related to the purchase, installation, or maintenance of furniture, fixtures, equipment or leasehold improvements related to construction, maintenance, repair, or use of the Leased Premises or the Center paid by the terminating City prior to the date of termination;
- D. The City terminating its participation in this Agreement shall have given notice of termination of its participation in all other agreements among the Parties relating to operation of the Center and the receipt of benefits from the services provided by the Center; and
- E. Prior to the date of termination, the terminating City must pay any remaining financial obligations related to its share of Rent or the Leasehold Improvement Costs incurred or accrued prior to the date of the termination of the terminating City’s participation in this Agreement.

The terminating City shall have no obligation to pay any amounts which come due under this Agreement following the effective date of said City's termination of its participation in this Agreement.

### III. EXECUTION OF LEASE; PAYMENT OF RENT

**3.01 NTECC Execution of Lease as Tenant is Public Purpose.** The Parties understand, acknowledge, and agree that NTECC shall be the tenant in the Leased Premises under the terms of the Lease, shall be the only Party executing the Lease, and shall be the only Party contractually liable to CyrusOne for the obligations of the tenant as set forth in the Lease. Notwithstanding the foregoing, the Cities acknowledge and agree that (i) NTECC's execution of the Lease and the performance of the tenant's obligations pursuant to the provisions of the Lease are in furtherance of the public purpose for which the Cities formed NTECC, and (ii) payment of Rent and the Leasehold Improvements Cost to CyrusOne, whether paid directly by the Cities or through NTECC, benefits the Cities and their respective residents.

**3.03 Execution of Lease by NTECC; Reliance on the Cities Performance.** Pursuant to this Agreement, NTECC agrees to sign the Lease as "Tenant." The Cities understand and acknowledge that NTECC would not have signed the Lease but for the agreements by the Cities including but not limited to the Cities' agreement to pay their shares of the Rent and the Leasehold Improvements.

**3.04 Current Funds Appropriated.** The Cities hereby warrant and represent they have each identified and appropriated current funds as of the Effective Date to pay their respective share of the Rent for the first twelve (12) months of the Lease Term and the costs of the Leasehold Improvements. NTECC and the Cities understand, acknowledge, and agree that, unless the Cities agree among themselves subsequent to the Effective Date of this Agreement to prepay NTECC and/or CyrusOne the amounts due to CyrusOne for Rent for the entire Lease Term, the funds for the Rent for the second and later years of the Lease Term will be subject to annual appropriations by each of the Cities.

**3.05 Share of Rent.** The Cities agree that their shares of Rent and Leasehold Improvements Cost to be paid pursuant to the Lease shall be allocated as follows:

- |    |                 |     |
|----|-----------------|-----|
| A. | Addison:        | 19% |
| B. | Carrollton:     | 36% |
| C. | Coppell:        | 21% |
| D. | Farmers Branch: | 24% |

The Cities understand and acknowledge that, with respect to Rent, the above allocation may be altered from time to time after the Effective Date of this Agreement in accordance with the adjustment of the Cities allocation of costs for operating and maintaining the Center pursuant to the provisions of the Operations Agreement.

**3.06 Responsibility for Payment of Rent to CyrusOne.**

A. The Cities understand and acknowledge that NTECC is a newly formed corporate entity which, as of the Effective Date of this Agreement, has not established its own bank accounts and has no funds of its own from which to pay the Rent. Until such time as NTECC has established its own funded bank accounts from which to pay Rent, Carrollton agrees to pay Rent directly to CyrusOne. The other Cities agree to pay Carrollton for their respective shares of Rent:

(1) with respect to the Rent installment due on May 1, 2014, not later than May 15, 2014; and

(2) with respect to all subsequent Rent installments, not later than the last Business Day of the calendar month prior to the due date of the Rent, with the first such payment being made not later than May 30, 2014.

Unless otherwise agreed by Carrollton, Carrollton's obligation to make direct payments of Rent to CyrusOne on behalf of NTECC shall terminate after the twelfth (12<sup>th</sup>) monthly Rent installment. Carrollton agrees to pay Rent installments to CyrusOne when due under the provisions of the Lease.

B. Upon NTECC's establishment of a funded bank account from which it is able to pay Rent to CyrusOne, which account shall be established not later than one (1) year after the Effective Date of this Agreement, the Cities agree to pay their respective shares of Rent to NTECC not later than the last Business Day of the calendar month prior to the due date of the Rent installment. NTECC agrees to pay the Rent to CyrusOne when due under the provisions of the Lease.

C. Nothing in this Section 3.06 shall prohibit a City from pre-paying its share of Rent to NTECC on a quarterly, annual, or other basis as may be agreed by the City and NTECC. In the event of such pre-payment of Rent, NTECC agrees that such funds shall be held and used only for the payment of later installments of Rent as they come due and credited toward the obligations of the City paying such advance amounts.

**3.07 Payment for Leasehold Improvement Cost.** The Cities agree to pay to Carrollton their respective shares of the installments of the Leasehold Improvement Costs not later than five (5) business days prior to the date they are due pursuant to the provisions of the Lease. Carrollton agrees to timely pay CyrusOne the full amount of the installment of the Leasehold Improvement Costs due.

**3.08 Appropriations of Rent.** Each City understands and acknowledges that the payment of Rent pursuant to the Lease is of significant public importance and agrees to use its best efforts to appropriate funds each fiscal year to pay the City's share of Rent under the Lease. If a City determines that it does not have funds available to appropriate its share of Rent commencing after the beginning of the City's fiscal year, the City agrees to notify the other

Cities and NTECC of its intent to not appropriate such funds not later May 1 prior to the commencement of the City's next fiscal year.

## VIII. MISCELLANEOUS

**4.01 Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or facsimile transmission and addressed to the respective City at the following address:

If intended for Town of Addison:

Town of Addison  
Attn: City Manager  
5300 Belt Line Road  
Dallas, Texas 75254

With copy(ies) to:

City Attorney  
Town of Addison  
5300 Belt Line Road  
Dallas, Texas 75254

If intended for City of Carrollton:

City of Carrollton  
Attn: City Manager  
1945 E. Jackson Road  
Carrollton, Texas 75006

With copy(ies) to:

City Attorney  
City of Carrollton  
1945 E. Jackson Road  
Carrollton, Texas 75006

If intended for City of Coppell:

City of Coppell  
Attn: City Manager  
255 E. Parkway Boulevard  
Coppell, Texas 75019

With copy(ies) to:

Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

If intended for City of Farmers Branch:

City of Farmers Branch  
Attn: City Manager  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

With copy(ies) to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 N. Akard, Suite 1800  
Dallas, Texas 75201

**4.02 Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

**4.03 Party Responsibility.** To the extent allowed by law, and without waiving any governmental immunity available to the Cities under Texas law, or any other defenses the Cities

are able to assert under Texas law, each City agrees to be responsible for its own negligent or otherwise tortious acts or omissions in the course of performance of this Agreement.

**4.04 Immunity.** It is expressly understood and agreed that, in the performance of this Agreement, none of the Cities waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Cities do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement.

**4.05 Entire Agreement.** This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

**4.06 Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

**4.07 Recitals.** The recitals to this Agreement are incorporated herein.

**4.08 Amendment.** This Agreement may be amended by the mutual written agreement of all Cities.

**4.09 Place of Performance.** Performance and all matters related thereto shall be in Dallas County, Texas.

**4.10 Authority to Enter Agreement.** Each City has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each City has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective City.

**4.11 Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

**4.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

**4.13 Assignment.** No City may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Cities.

**4.14 Consents.** Unless expressly stated otherwise, whenever the consent or the approval of a City is required herein, such City shall not unreasonably withhold, delay or deny such consent or approval.

**4.15 Good Faith Negotiation; Dispute Mediation.** Whenever a dispute or disagreement arises under the provisions of this Agreement, the Cities agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Cities shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Section 4.15 shall survive termination.

**4.17 Survival of Covenants; No Third Party Beneficiaries.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination. This Agreement and all of its provisions are solely for the benefit of the Cities and NTECC, and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

**4.18 Source of Payment.** Each City paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying City or from funds otherwise lawfully available to the City for use in the payment of the City's obligations pursuant to this Agreement.

**4.19 Force Majeure.** No City shall be liable to any or all of the other Cities for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the City's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected City's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the City shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

(Signatures on Following Pages)

SIGNED AND AGREED this \_\_\_\_\_ day of April, 2014.

TOWN OF ADDISON

By: \_\_\_\_\_  
Lea Dunn, City Manager

ATTEST:

\_\_\_\_\_  
Chris Terry, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

SIGNED AND AGREED this \_\_\_\_\_ day of April, 2014.

CITY OF CARROLLTON

By: \_\_\_\_\_  
Leonard Martin, City Manager

ATTEST:

\_\_\_\_\_  
Ashley D. Mitchell, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

SIGNED AND AGREED this \_\_\_\_\_ day of April, 2014.

CITY OF COPPELL

By: \_\_\_\_\_  
Clay Phillips, City Manager

ATTEST:

\_\_\_\_\_  
Christel Pettinos, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

SIGNED AND AGREED this \_\_\_\_\_ day of April, 2014.

CITY OF FARMERS BRANCH

By: \_\_\_\_\_  
Gary D. Greer, City Manager

ATTEST:

\_\_\_\_\_  
Angela Kelly, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

SIGNED AND AGREED this \_\_\_\_ day of April, 2014.

**NORTH TEXAS EMERGENCY  
COMMUNICATIONS CENTER, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_, President

**EXHIBIT "A"**  
**AMOUNT OF RENT PURSUANT TO LEASE**

Section 4(a) of the Lease relating to the amount of Rent to be paid reads as follows:

(a) Minimum Annual Rental. Subject to any periods of beneficial occupancy or ramps set forth in this Section, Tenant agrees to pay to Landlord minimum annual rental in the amount of \$318,600.00, payable in monthly installments of \$26,550.00 each, calculated at \$2.25 per square foot (the "Base Rent"), in advance on the first day of each month during the Term. On the first anniversary of the Commencement Date, and each anniversary of the Commencement Date thereafter, the Base Rent shall increase by an amount equal to three percent (3.0%) of the Base Rent for the prior twelve months of the Term. All Base Rent and other charges payable hereunder by Tenant to Landlord shall be made to Landlord at the address set forth above, or other address provided by Landlord to Tenant. Tenant shall commence payment of Base Rent for the period beginning May 1, 2014 and shall have ramped billing for Base Rent in accordance with the following schedule through January 31, 2015:

**Ramped Billing Schedule**

<b>Months During the Ramp Period</b>	<b>Monthly Base Rent</b>
Commencement Date – May 1, 2014	\$0
May 1, 2014 – June 30, 2014	\$ 3,982.50 (15% of Base Rent)
July 1, 2014-October 31, 2014	\$7,965.00 (30% of Base Rent)
November 2014	\$13,275.00 (50% of Base Rent)
December 2014	\$18,585.00 (70% of Base Rent)
January 2015	\$23,895.00 (90% of Base Rent)
February 2015 and thereafter	\$26,550.00 (100% of Base Rent)(subject to adjustment pursuant to this Section 4(a))

**Combined Meeting**

**R7**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

Mindful stewardship of Town Resources.

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**AGENDA CAPTION:**

Discussion, consider and take action regarding an agreement between the Town and Gradient Solutions Corporation, in an amount not to exceed \$31,000, to provide financial consulting services by performing a review and assessment of the Town's processes of risk identification and control monitoring, including a review of processes to assess business risks, a review of management systems and internal controls, including debt, investments, budget, internal financial reporting, payroll, cash handling, and purchasing card program, a review of audits, and to develop plans and recommend any corrective actions.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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**Attachments**

Master Professional Services Agreement

Work Authorization

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## **MASTER PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made between the Town of Addison (“Client”) and Gradient Solutions Corporation (the “Consultant” or “Contractor”), of Arlington, Texas, a Texas corporation, to be effective as of the 22<sup>nd</sup> day of April, 2014 (“Effective Date”) with respect to certain consulting services detailed herein to be performed by the Consultant for Client.

### **ARTICLE I RETENTION OF THE CONSULTANT**

The Consultant is being retained to provide services described below to Client based on the Consultant’s demonstrated competence and requisite qualifications to perform the scope of the services described herein. Client agrees to and hereby does retain the Consultant, as an independent contractor, and the Consultant agrees to provide the services to Client, upon the terms and conditions provided in this Agreement.

### **ARTICLE II SCOPE OF SERVICES**

The Consultant covenants and agrees to provide those services listed in the Scope of Services, as detailed in Appendix A, attached hereto and incorporated herein for all purposes (the “Services”) as may be agreed upon in a Work Authorization, as later defined. The Consultant agrees that the Services provided will be performed in a professional manner in accordance with the standards of the consulting industry and complete in all respects. Client will issue a Work Authorization as shown in Appendix B (“Work Authorization”) to Consultant as may be necessary from time to time to engage the Services. Each Work Authorization and each term therein are hereby incorporated into the Agreement verbatim as if specifically set out herein.

Client acknowledges and agrees that it shall be its responsibility to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in the Services delivered to Client. Client agrees to accept full and exclusive responsibility for any and all implementation decisions and other actions taken to effect the adoption or execution of recommendations identified and developed through the Services, and for the results of those decisions and actions.

Consultant is retained only for the purposes set forth in the Agreement. As a prerequisite to Consultants’ delivery of Services, Client shall (i) fulfill the client responsibilities and ensure that all Assumptions are accurate; (ii) provide Consultant with reliable, accurate and complete information, as required; (iii) make timely decisions and obtain required management approvals; and (iv) furnish Consultant’s personnel with a suitable office environment and adequate resources and supplies, as needed. In addition, Consultant shall be entitled to rely on all Client decisions and approvals made independently of this Agreement and/or prior to its execution by the parties. If such responsibilities are not met, Consultant may not be able to perform the engagement or to do so in a timely fashion. Nothing in this Agreement shall require Consultant to evaluate, advise on, modify, confirm, or reject such decisions and approvals, except as expressly agreed to in the Work Authorization.

**ARTICLE III  
TERM**

The Consultant shall commence work immediately upon receipt of a written Notice to Proceed issued by Client. This Agreement shall remain in effect until the completion of the Services,(the "Termination Date"), unless earlier terminated as provided herein. However, this agreement can be renewed by the parties executing a new Work Authorization as shown in Appendix B, and attaching it to a copy of this agreement. This Agreement shall be deemed terminated, and the independent contractor relationship between the Consultant and the Client severed, by either party by providing ninety (90) days written notice to the other party subject to termination provisions in any Work Authorization.Upon any termination Client shall promptly pay Consultant for fees and reimbursable expenses incurred to the Effective Date of termination.

**ARTICLE IV  
COMPENSATION**

1.**Compensation.** As sole and sufficient compensation for the Services under this Agreement, the Client agrees to pay and the Consultant agrees to accept the compensation as reflected on the executed individual Work Authorization as shown in Appendix B. Except as otherwise provided in this Agreement, said compensation shall constitute full payment for all services, liaison, products, materials, and equipment required to provide and/or deliver the Services, including materials, training, equipment used, and overhead expenses. The compensation quoted in the Work Authorizations does not include taxes. Consultant shall bill the Client for all applicable sales, use, excise, value added and other taxes associated with your receipt of the services and deliverables hereunder, excluding taxes on Consultant's income.

2.**Reimbursement.** The Consultant shall be entitled to reimbursement for reasonable, ordinary and necessary business expenses incurred in the performance of Consultant's duties hereunder for such items as travel, lodging, meals and other out-of pocket, including parking, mileage and tolls, reasonable report production, printing cost, duplication costs and direct supplies used during the course of performing the Services.

3.**Invoicing.** The Consultant shall document the Services rendered and the expenses which may be reimbursed hereunder by providing Client with invoices dated approximately the last day of each month. Each invoice shall describe the Services performed and reimbursable expenses incurred by the Consultant from the first day of the month through the last day of that month.Consultant shall invoice Client in accordance with the billing schedule in the Work Authorization and Client shall pay invoices within thirty (30) days of receipt.

If Client disputes any invoice Client shall timely pay the undisputed portion and promptly notify Consultant in writing of the nature of the dispute as to the remainder, and the parties will use their best efforts to resolve the dispute expeditiously. In the event the dispute is not resolved within thirty (30) days after receipt by Consultant of the notice of such dispute, Consultant may suspend performance of the Services, without limitation or waiver of any other right or remedy available under this Agreement or at law.

**ARTICLE V  
RELATIONSHIP BETWEEN THE PARTIES**

The parties hereto recognize that the governing body and executive management team shall manage the business and affairs of Client and that the relationship between Client and Consultant shall be one of independent contractor. The Consultant acknowledges and agrees that it and its staff shall not be considered an employee of Client for any purpose.

Neither party shall have any authority to enter into any contract with or otherwise obligate the other to any third party without the express written authorization of the other party. Under no circumstances shall the Consultant represent to suppliers, contractors or any other parties that it or its employees are employed by Client or that they serve Client in any capacity other than as an independent contractor.

In the performance of any and all Services under this Agreement, the Consultant as an independent contractor has the sole right to supervise, manage, operate, control, delegate, and direct the performance of the details incident to the Services. Neither the Consultant, nor its staff, shall be entitled to any insurance, pension, vacation, sick leave or other benefits customarily afforded to employees of Client. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create the relationship of employee-employer or principal-agent, or to otherwise create any liability for Client whatsoever with respect to the liabilities, obligations or acts of the Consultant or any other person. Client acknowledges that the services to be rendered by Consultant are not exclusive to Client, and Consultant may provide similar services to other clients.

Client shall accept deliverables which conform to the requirements of the Work Authorization. Client will promptly give Consultant notification of any non-conformance of the deliverables with such requirements ("Non-conformance"), and Consultant shall have a reasonable period of time, based on the severity and complexity of the Non-conformance, to correct the Non-conformance. If Client uses the deliverable before acceptance, fails to promptly notify Consultant of any Non-conformance, or unreasonably delays the acceptance of deliverables, then the deliverable shall be considered accepted by the Client.

While Consultant shall attempt to comply with Client's request for specific individuals, Consultant shall be responsible for assigning and re-assigning its personnel, as appropriate, to perform the Services. During the term of this Agreement, and for a period of six (6) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder without prior written consent of such other party.

## **ARTICLE VI REPRESENTATION AND WARRANTIES**

The Consultant represents and warrants to Client that (a) it is under no contractual or other restriction or obligation, the compliance with which is inconsistent with the execution of this Agreement, the performance of its obligations hereunder or the rights of Client hereunder; (b) it has no business or familial relationship with a Client staff or governing body member; and (c) it nor its staff is under any financial, physical or mental disability that would hinder the full performance of its obligations under this Agreement. Consultant further warrants that it shall perform the Services in a good and professional manner. Client shall be relying upon Consultant's competence, impartiality, thoroughness and professionalism in performance of the Services. As a result, Consultant shall be accountable and responsible to Client under the foregoing warranty for the compliance of the Services with such standards. Consultant's responsibility and accountability under the foregoing warranty is not intended to apply to the negligence or failures of Client or factors outside of the control of Consultant. Notwithstanding anything to the contrary, Client agrees, acknowledges and understands that Consultant's performance of its Services under this Agreement is subject to and conditioned upon the timely cooperation, willingness, responsiveness and skill level of Client and its applicable employees

and the fulfillment of the responsibilities of Client, if any, set forth in the Agreement. THE WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF, AND CONSULTANT HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Consultant cannot and does not warrant the products or services of third parties, except to the extent that said "third party" is an agent or subconsultant of Consultant.

## **ARTICLE VII CONFIDENTIAL INFORMATION**

**Confidential Information.** All materials developed in the course of providing and in relation to the Services provided in whole or in part by the Consultant, its employees and subcontractors are proprietary and confidential information and shall, upon payment of Consultant's invoices therefore, be owned by Client. Client will retain ownership of all work-in-progress, upon payment of Consultant's applicable invoices therefore. In addition the Consultant acknowledges that any information it or its employees, agents or subcontractors obtain regarding the operation of Client, its products, services, policies, customer, personnel and any other aspect of its operation ("Confidential Information") is proprietary or confidential, and shall not be revealed, sold, exchanged, traded or disclosed to any person, company or other entity during the period of the Consultant's retention hereunder or at any time thereafter without the express written permission of Client. The parties agree that, during the course of the engagement, communication between the parties may be by e-mail with each other and with outside specialists or other entities engaged for this Agreement. The parties acknowledge and accept that neither can guarantee, and does not warrant, that e-mail transmissions will not be intercepted and read, disclosed or used by a third party or will be delivered to each of the parties to whom they are addressed and only to such parties. Consultant specially disclaims, and Client expressly acknowledges and agrees that Consultant shall not have, responsibility or liability in connection with e-mail transmissions. Nonetheless, the parties will use due diligence to secure the privacy and proper transmission of e-mails, including any attached document.

The parties hereby agree that each of the provisions in this Article VII are important and material, and significantly affect the successful conduct of the business of Client, as well as its reputation and goodwill. Any breach of the terms of this Article VII is a material breach of this Agreement, from which the Consultant may be enjoined without waiver of any other right or remedy to which Client may be entitled as a result of said breach.

The Consultant understands and acknowledges that the Consultant's responsibilities under this Article VII of this Agreement shall continue in full force and effect after the Consultant's contractual relationship with Client ends for any reason.

Notwithstanding anything in this Agreement to the contrary, Consultant shall have no obligation of confidentiality with respect to information that (i) is or becomes part of the public domain through no act or omission of Consultant; (ii) was in Consultant's lawful possession prior to the disclosure and had not been obtained by Consultant either directly or indirectly from Client; (iii) is lawfully disclosed to Consultant by a third party without restriction on disclosure; (iv) is independently developed by Consultant without use of or reference to the Client's Confidential Information; or (v) is required to be disclosed by law or judicial, arbitral or governmental order or process, provided Consultant gives Client prompt written notice of such requirement to permit Client to seek a protective order or other appropriate relief.

## ARTICLE VIII

### OWNERSHIP

**Ownership of Documents, Information, Materials, Notes, Etc.** All final reports developed and provided by Consultant (the “Documents”) are and shall at all times be and remain, upon payment of Consultant’s invoices therefore, the property of Client and shall not be subject to any restriction or limitation on their further use by or on behalf of Client, except as otherwise provided herein. Subject to the foregoing exception, if at any time demand be made by Client for any of the Documents, whether after termination of this Agreement or otherwise, the same shall be turned over to Client without delay, and in no event later than thirty (30) days after such demand is made. Consultant shall have the right to retain copies of the Documents and other items for its archives. If for any reason the foregoing Agreement regarding the ownership of the Documents is determined to be unenforceable, either in whole or in part, Consultant hereby assigns and agrees to assign to Client all rights, title and interest that Consultant may have or at any time acquire in said Documents and other materials, provided that Consultant has been paid as aforesaid.

Consultant’s work papers shall remain the sole and exclusive property of Consultant. “Work papers” shall mean those documents prepared by Consultant during the course of performing Services including, without limitation, schedules, analyses, transcriptions, memos, designed and developed data visualization dashboards and working notes that serve as the basis for or to substantiate the Services. In addition, Consultant shall retain sole and exclusive ownership of its know-how, concepts, techniques, methodologies, ideas, templates, dashboards, code and tools discovered, created or developed by Consultant during the performance of Services that are of general application and that are not based on Client’s Confidential Information hereunder (collectively, “Consultant’s Building Blocks”). To the extent any deliverables incorporates Consultant’s Building Blocks, Consultant gives the Client a non-exclusive, non-transferable, royalty-free right to use such Building Blocks solely in connection with the deliverables. Subject to the confidentiality restrictions contained in Article VII, Consultant may use the deliverables and the Building Blocks for any purpose. Except to the extent required by law or court order, Client will not otherwise use, or sublicense or grant any other party any rights to use, copy or otherwise exploit or create derivative works from Consultant’s Building Blocks.

## ARTICLE IX

### GENERAL PROVISIONS

**1. Compliance with Laws.** Consultant shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules, codes and regulations, and with the orders and decrees of any courts, administrative bodies, or tribunals in any matter affecting its performance under this Agreement, including, without limitation, workers’ compensation laws, antidiscrimination laws, minimum and maximum salary and wage statutes and regulations, health and safety codes, and licensing laws and regulations.

**2. Notices.** In each instance under this Agreement in which one party is required or permitted to give notice to the other, such notice shall be deemed given (i) when delivered in hand, (ii) one (1) business day after being deposited with a reputable overnight air courier service, or (iii) three (3)

business days after being mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and, in all events, addressed as follows:

In the case of Consultant:

Gradient Solutions Corporation  
Attn: Calvin E. Webb II  
711 Crowley Road  
Arlington, Texas 76012

In case of the Client:

Town of Addison  
**Attn:**

Either party hereto may from time to time change its address for notification purposes by giving the other party prior written notice of the new address and the date upon which it will become effective.

**3. Controlling Law, Venue.** This Agreement, and all of its provisions, shall be governed by and construed in accordance with the law of the state of Texas without reference to its conflicts of law principles. The parties hereto consent and submit to the personal jurisdiction and venue of the state and federal courts in the state of Texas, county of Tarrant for purposes of any action permitted by subsection 10 below.

**4. Entire Agreement.** This Agreement, including these terms and conditions and any other appendices or attachments, is the entire agreement of the parties, and supersedes all prior oral representations, warranties, understandings, stipulations, agreements, negotiations, initial statements of work, or promises pertaining to this Agreement or the expressly mentioned extrinsic documents not incorporated in writing in this Agreement.

**5. Invalidity.** If any part of this Agreement is declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement. Those portions not declared invalid shall remain in full force and effect as if this Agreement had been executed without the inclusion of the invalid portion. The invalid portion, if any, shall be modified by the court to the extent necessary to become enforceable.

**6. Modification.** This Agreement constitutes the entire agreement between the Client and the Consultant and may not be changed, altered, or modified unless in writing and signed by a duly authorized representative of the parties.

**7. Binding Effect.** The rights and benefits of the Consultant under this Agreement are personal to the Consultant and shall not be subject to voluntary or involuntary alienation, assignment, subletting, or transfer. This Agreement may be assigned by Client upon prior written consent of Consultant, which shall not be unreasonably withheld, and shall inure to the benefit of any such assignee.

**8. Waiver.** Waiver by either party of any breach of this Agreement by the other party shall not be effective unless in writing signed by a representative of the party to be charged, and no such waiver shall operate or be construed as a waiver of any subsequent breach.

**9. Acknowledgment.** The Parties agree by their signatures to this Agreement before signing it they fully understand its terms and provisions and hereby expressly acknowledge receipt of a copy of this Agreement.

**10. Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration in Tarrant County, Texas, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. Notwithstanding the above, Client shall be entitled to seek a restraining order or injunction in any court of competent jurisdiction to prevent the continuation or occurrence of any violation of Article VII hereof. Each party shall bear its own attorneys' fees and costs, including its share of the costs of the arbitration, provided that the prevailing party (as designated by the arbitrators in their award) shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

**11. INDEMNIFICATION AND NON-PARTIES.** THE CONSULTANT SHALL INDEMNIFY, DEFEND AND SAVE HARMLESS CLIENT AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS, COSTS, OR LIABILITIES OF ANY TYPE OR NATURE, AND BY OR TO ANY PERSONS WHOMSOEVER, TO THE EXTENT ARISING FROM (a) THIRD PARTY CLAIMS FOR PERSONAL INJURY OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY RESULTING FROM THE CONSULTANT'S NEGLIGENT PERFORMANCE OF OR FAILURE TO PERFORM THE WORK TO BE ACCOMPLISHED UNDER THIS AGREEMENT, WHETHER SUCH CLAIM OR LIABILITY IS BASED IN CONTRACT, TORT, OR STRICT LIABILITY OR (b) ACTUAL OR ALLEGED INFRINGEMENT BY THE DELIVERABLES OF THE PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT OF A THIRD PARTY ("IP CLAIM"). CONSULTANT SHALL HAVE NO OBLIGATION OR LIABILITY FOR ANY IP CLAIM BASED UPON OR RESULTING FROM (i) MODIFICATION OF THE DELIVERABLES, UNLESS THE MODIFICATION WAS MADE BY CONSULTANT; (ii) THE USE, OPERATION OR COMBINATION OF THE DELIVERABLES WITH NON-CONSULTANT PROGRAMS, DATA, EQUIPMENT OR DOCUMENTATION IF SUCH INFRINGEMENT WOULD HAVE BEEN AVOIDED BUT FOR SUCH USE, OPERATION OR COMBINATION; (iii) THE NON-COMPLIANCE WITH CONSULTANT'S USER DOCUMENTATION, IF ANY; OR (iv) OTHERWISE BY CLIENT'S OR THIRD PARTY PRODUCTS OR SERVICES. THIS SECTION 11 STATES THE ENTIRE LIABILITY OF CONSULTANT AND THE EXCLUSIVE REMEDY OF THE CLIENT WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, WHETHER UNDER THEORY OF INDEMNITY, BREACH OF CONTRACT, WARRANTY OR OTHERWISE. CONSULTANT SHALL HAVE NO OBLIGATION UNDER THIS SECTION 11 FOR CLAIMS TO THE EXTENT ARISING FROM THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CLIENT OR ANY OTHER INDEMNIFIED PARTY HEREUNDER. CONSULTANT'S OBLIGATIONS UNDER THIS SECTION 11 ARE CONDITIONED UPON THE FOLLOWING: (a) THE PARTY SEEKING INDEMNIFICATION HEREUNDER SHALL PROVIDE CONSULTANT WITH PROMPT WRITTEN NOTICE OF ANY CLAIM FOR WHICH INDEMNIFICATION IS SOUGHT; (b) CONSULTANT SHALL CONSULT WITH AND SEEK THE APPROVAL OF CLIENT PRIOR TO THE SETTLEMENT OF SUCH CLAIM; AND (c) THE INDEMNIFIED PARTY OR PARTIES SHALL REASONABLY COOPERATE WITH CONSULTANT IN SUCH DEFENSE AND SETTLEMENT. THE

**PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR ANY REASON PROVIDED FOR OR ALLOWED HEREUNDER.**

12. **Benefits Inured.** This Agreement is solely for the benefit of the parties hereto and their successors and assigns. Nothing contained in this Agreement is intended to, nor shall be deemed or construed to, create or confer any rights, remedies, or causes of action in any person or entities that are not parties to this Agreement or the successors or assigns of the parties hereto.

13. **Survival.** Articles IV, VII, VIII, IX and X shall survive expiration or termination of this Agreement for any reason.

14. **General.** Notwithstanding anything herein to the contrary, Consultant may reference or list Client's name and/or a general description of the Services/project. Client also agrees that upon reasonable prior notice from Consultant, Client will be willing to provide a reference for Consultant (e.g. in the form of client telephone calls, presentations, and the like).

**ARTICLE X  
RISK ALLOCATION**

This Article is overriding and controlling over any provision in this Agreement or any Work Authorization that is in conflict with, contrary to or ambiguous with the provisions of this paragraph, unless specifically addressed in a Work Authorization.

(1) Neither party's liability, in contract, tort (including negligence) or any other legal or equitable theory, (a) shall exceed the professional fees paid or due to Consultant pursuant to the particular individual Work Authorization out of which the claim or cause arises or (b) include any indirect, incidental, special, punitive or consequential damages, even if such party has been advised of the possibility of such damages. Such excluded damages include, without limitation, loss of data, loss of profits and loss of savings of revenue.

(2) As Consultant is performing the Services solely for the benefit of Client, Client will indemnify Consultant against all costs, fees, expenses, damages and liabilities (including defense costs) associated with any third party claim, relating to or arising as a result of the Services, Client's use of the deliverables, or this Agreement.

*IN WITNESS WHEREOF*, the parties have executed this Agreement effective on the date and year first written above.

CONSULTANT:  
Gradient Solutions Corporation

CLIENT:  
Town of Addison

By: \_\_\_\_\_  
Calvin E. Webb II  
President & CEO

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

## APPENDIX A

### SCOPE OF SERVICES

This Appendix A is attached to and made a part of that certain Master Professional Services Agreement between the Town of Addison and Gradient Solutions Corporation hereinafter Consultant, (the "Agreement"). Any term used in this appendix shall have the meaning given to that term by the Agreement.

The Scope of Services under the Agreement is described as follows:

1. Under the direction and coordination with (name of primary contact or contacts) designees, the Consultant shall perform services along the lines of:

- Business Risk Assessment and related services,
- Compliance and Internal Control Assessments / Monitoring,
- Consultation surrounding the Committee of Sponsoring Organization Framework,
- Data Analytics (Dashboards, Business Intelligence, Reporting,etc.),
- Data mining techniques,
- Training Programs,
- Business process improvement
- Management consulting, and
- Software hosting related to applicable service offerings.

2. Work to be performed shall be procured through a Work Authorization form, a sample of which is attached hereto.

3. Any performed engagement will not constitute procedures, work, examinations, or any other similar steps in accordance with Generally Accepted Auditing Standards, the Institute of Internal Audit Standards, Government Accountability Office Standards, or any other authoritative body. Thus Gradient's engagements will not constitute an audit, compilation, review, attestation service, or fraud examination. Gradient is not a public accounting firm. In addition, none of our engagements will entail assessment of the employees' capabilities in performing their identified tasks.

**APPENDIX B**

**SAMPLE**

**WORK AUTHORIZATION**

This Work Authorization is made as of this \_\_\_\_ day of \_\_\_\_\_ 201\_, under the terms and conditions established in the MASTER PROFESSIONAL SERVICES AGREEMENT dated as of \_\_\_\_\_, 201\_ between the \_\_\_\_\_ (“Client”) and Gradient Solutions Corporation (Gradient). This Work Authorization is made for the following purposes consistent with the services defined in the Master Professional Services Agreement:

**Section A. – Scope of Services**

**Description of Services**

**Key Tasks**

**Deliverables and/or Other Results of Services**

**Section B. – Schedule**

**Section C. – Compensation, Expenses and Billing Terms**

**Section D. – Client’s Responsibility**

**Section E. – Other Provisions**

**Town of Addison**

**Gradient Solutions Corporation**

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

By: Calvin E. Webb II

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: President& CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**WORK AUTHORIZATION  
Town of Addison  
Transition Process Assessment**

This Work Authorization is made as of this 22<sup>nd</sup> day of April 2014, under the terms and conditions established in the MASTER PROFESSIONAL SERVICES AGREEMENT dated as of 22<sup>nd</sup> day of April, 2014, between the Town of Addison (“Client”) and Gradient Solutions Corporation (Gradient). This Work Authorization is made for the following purposes consistent with the services defined in the Master Professional Services Agreement:

**Section A. – Scope of Services**

**Description of Services-** Client executive management change presents an opportunity to assess processes of Risk Identification and Control Monitoring. .

**Key Tasks**

1. Gain an understanding as to how the Town identifies, prioritizes, and mitigates entity-wide business risks.
2. Gain an understanding as to how the Town monitors its key internal controls.
3. Interview key staff and City Council documenting any concerns about the current management systems and internal controls.
4. Gain an understanding of processes and controls relied on in managing debt, investments, budget, internal financial reporting, payroll, cash handling, and purchasing card program, noting any concerns or findings about the sufficiency of controls. This will include discussions with key third party advisors and service providers.
5. Review results of prior three years’ external audits and auditor’s letters with management to gain an understanding of their assessment of the control environment and efforts by management to respond.
6. Review the results of any State or Federal grant audits over the prior three years.
7. Collaborate with the City Manager and Finance Committee in developing a plan to follow up on the interviews and internal control reviews.
8. Recommend any immediate corrective actions supported by the facts.
9. Advise the Finance Committee on options and approaches for continuous monitoring of compliance and controls.

**Deliverables and/or Other Results of Services**

1. Periodic oral status reports to the Finance Committee
2. Summary report of findings and recommendations to the City Council.

**Section B. – Schedule**

The project is estimated to begin in early May and conclude by the end of June, 2014.

**Section C. – Compensation, Expenses and Billing Terms**

The project is expected to require 80-120 hours. Work will be billed at \$250 per hour. The total amount authorized for the project is \$30,000, plus normal out of pocket expenses. Consulting work and related out of pocket expenses for travel, and other approved expenses, will be billed monthly.

**Section D. – Client’s Responsibility**

Client will assign a project assistant to help part-time in scheduling and logistics, gathering data, etc., and will make key Town leaders available for interviews and documentation. Client will make third party service providers for services mentioned in tasks above available to confer with Gradient.

**Section E. – Other Provisions**

This engagement does not entail assessment of Client employees’ capabilities in performing their identified tasks

This engagement does not constitute procedures, work, examinations, or any other similar steps in accordance with Generally Accepted Auditing Standards, the Institute of Internal Audit Standards, Government Accountability Office Standards, or any other authoritative body. Thus Gradient’s engagement does not constitute an audit, compilation, review, attestation service, or fraud examination. Gradient is not a public accounting firm. Had additional work been performed, other matters of significance beyond those noted in this assessment might have been identified.

**Town of Addison**

**Gradient Solutions Corporation**

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

By: Calvin E. Webb II \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: President & CEO \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Combined Meeting**

**R8**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

---

**AGENDA CAPTION:**

Discussion, consider and take action regarding an agreement with Kanter Financial Forensics, LLC, in the amount of \$12,000 plus expenses, for consulting services to perform a review of the Town's current financial and accounting practices (operations, policies, procedures, and internal control) and to evaluate potential changes to those practices that are consistent with public finance best practices.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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**Combined Meeting**

**R9**

**Meeting Date:** 04/22/2014

**Council Goals:** Implement bond propositions

---

**AGENDA CAPTION:**

Discussion regarding a status update and briefing on the Wind Turbine Energy System at the Surveyor Elevated Water Storage Tower.

**FINANCIAL IMPACT:**

There is no direct financial impact.

**BACKGROUND:**

Staff will provide an update on the status of the wind energy system at the Surveyor Elevated Water Storage Tower.

**RECOMMENDATION:**

---

## Combined Meeting

R10

Meeting Date: 04/22/2014

Council Goals: Infrastructure improvement and maintenance

---

### **AGENDA CAPTION:**

Presentation, discussion, consider and take action consenting to proposed structural improvements by 6200 GP, LLC to their hangar located at 4550 Jimmy Doolittle Drive at Addison Airport.

### **FINANCIAL IMPACT:**

There is no financial impact.

### **BACKGROUND:**

The ground tenant, 6200 GP, LLC, at 4550 Jimmy Doolittle Drive is requesting the Town's consideration and consent to certain structural improvements to be made to their existing hangar, in order to accommodate higher tail height aircraft than can be currently accommodated. The current hangar door system has an open clearance height of 28'. The improvement will allow aircraft with tail heights of 38' to be accommodated. This requires modifications to the roof support and door track system. The modified fascia at the building centerline above the hangar doors will be equipped with two doors, which can be remotely operated. As designed and engineered, the proposed modification will not require any change to the overall building elevation.

Section 6 of the Ground Lease, as amended, requires the Landlord to give its prior written consent before any structural modifications are made to the Building Improvements.

Airport Management requested that Garver Engineers review the proposed structural design and engineering prepared by Shearer, Monk, & Voigt Architects and Engineers, who are licensed in the state of Texas. Garver's review found the proposed plans and calculations to appear adequate and appropriate.

### **RECOMMENDATION:**

Administration recommends approval.

---

## **Attachments**

6200 Hangar Memo

---



William M. Dyer  
Real Estate Manager  
16051 Addison Road  
Suite #220  
Addison, Texas 75001

Main: 972-392-4850  
Direct: 972-392-4856  
Fax: 972-788-9334  
bill.dyer@addisonairport.net

## - M E M O R A N D U M -

To: Lisa Pyles, Director of Infrastructure, Operations and Systems  
From: Bill Dyer, Real Estate Manager  
CC: Joel Jenkinson, Airport Director  
Date: 4/15/2014  
Re: Request from 6200 GP, LLC for the Town's Consideration and Consent to Structural Improvements to their Leasehold Improvements at Addison Airport

---

6200 GP, LLC is requesting the Town's consideration and consent to certain structural improvements to be made by the ground tenant to their existing building improvements. Airport Management is recommending the Town give its consent pursuant to the terms of the underlying ground lease.



The ground tenant is proposing to make modifications to their existing hangar structure located at 4550 Jimmy Doolittle Drive at Addison Airport so their hangar can receive taller aircraft sections than can now be accommodated. The current hangar door system has an open clearance height of 28'. The proposed improvements require structural modifications to the roof support and door track system. The modified fascia at the building centerline above the

hangar doors will be equipped with two doors, which can be remotely operated to allow up to 38' foot high aircraft tail sections when necessary. As designed and engineered, the proposed modification will not require any change to the overall building elevation, which could otherwise penetrate existing building height restrictions along the airport's flight line.

Section 6 of the Ground Lease, as amended, requires the Landlord to give its prior written consent before any structural modifications are made to the Building Improvements.

Airport Management requested its consulting engineer, Garver Engineers, to review the proposed structural design and engineering prepared by Shearer, Monk, & Voigt Architects and Engineers, who are licensed in the state of Texas. Garver's review found the proposed plans and calculations to appear adequate and appropriate.

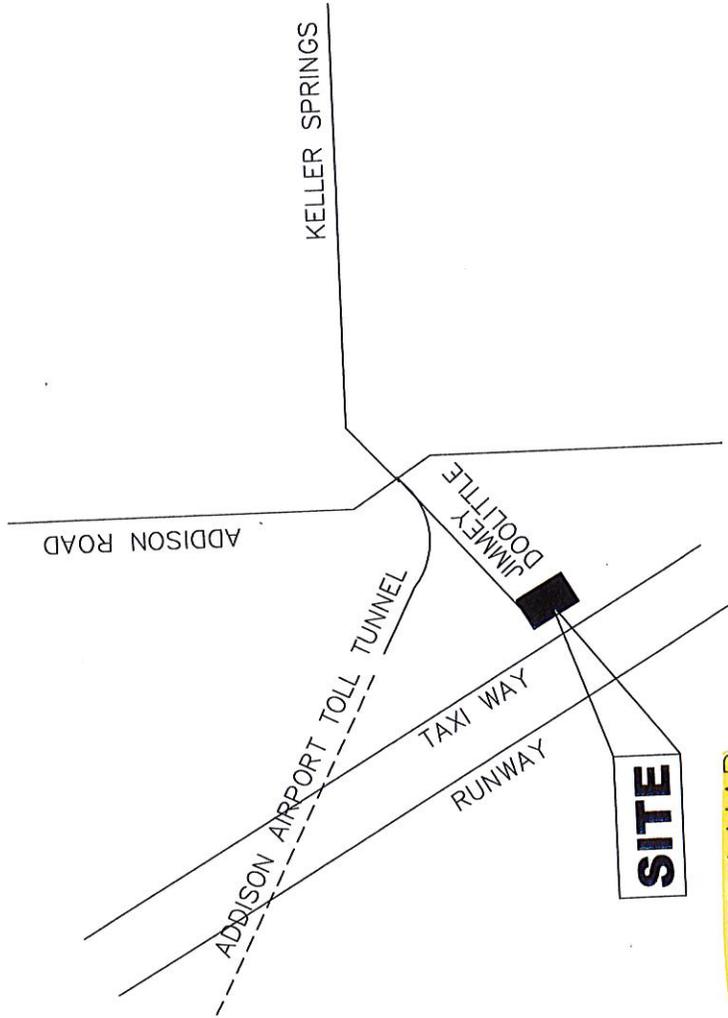
### **Conclusion and Recommendation**

The proposed structural modifications appear to be reasonable and appropriate for the existing structure. These modifications will allow the ground tenant to accommodate larger aircraft which is ideal for those properties abutting the airport's flight line. This opportunity corresponds to the strategic initiative for Addison Airport of enhancing the airport's overall value.

Airport Management is recommending the Town to give its consent to the proposed modifications provided the improvements are made materially consistent to the design plan provided to Airport Management.

PLAN AT MODIFICATION

SCALE 3/8" = 1'-0"



**SITE**

VICINITY MAP

Date Issued 01-7-14

Project No. 2013-13

Sheet Title

Sheet Number

S101

Sequence of

INTERIOR PARTIAL ELEVATION

EXISTING OVERHEAD DOOR TRACKS TO BE REMOVED AFTER ALL FRAMING IN PLACE

35'-4" EXISTING

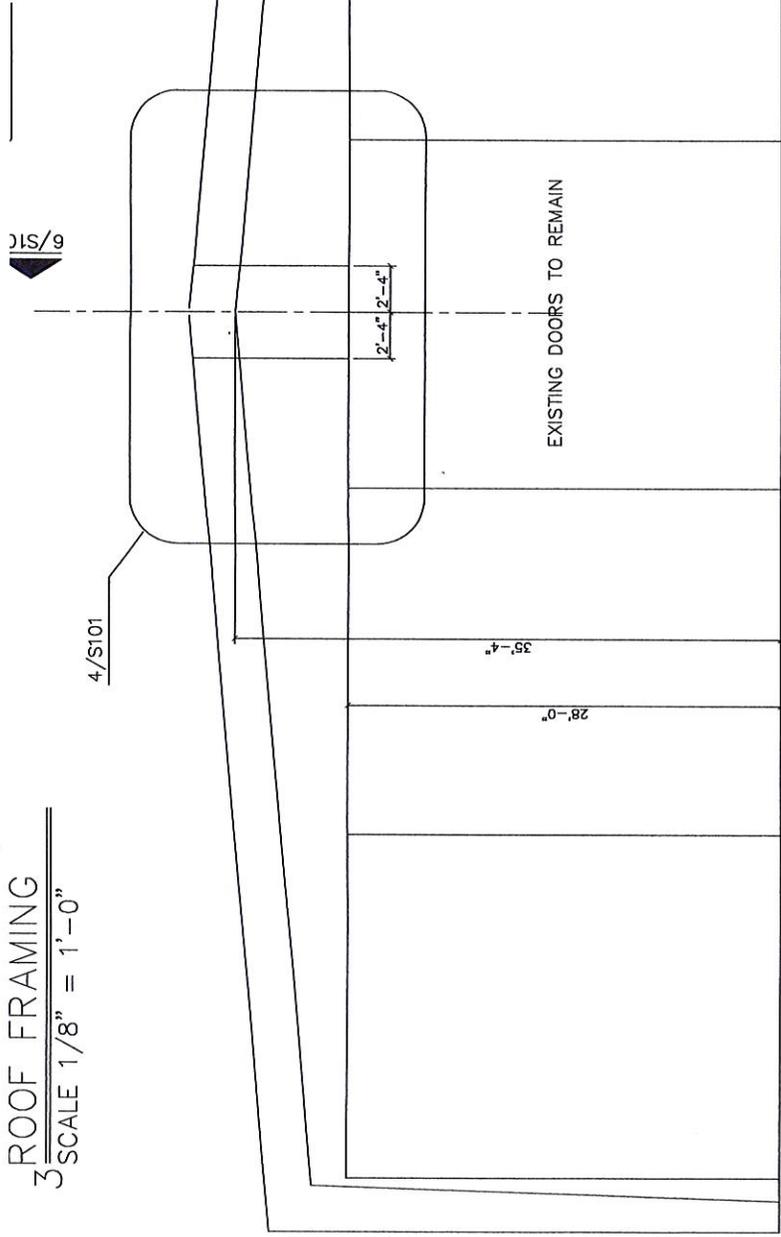
38'-0"

EXISTING HORIZONTAL TO REMAIN

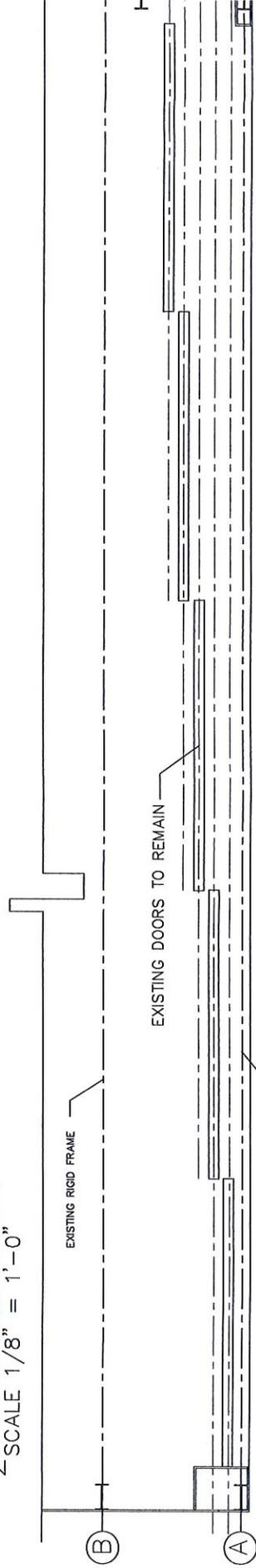
EXISTING HORIZONTAL TO REMAIN

NEW UPON SYSTEM PROVIDE NEW DOOR FRAMING TO BE ELECTRICALLY CONTROLLED

3 ROOF FRAMING  
SCALE 1/8" = 1'-0"

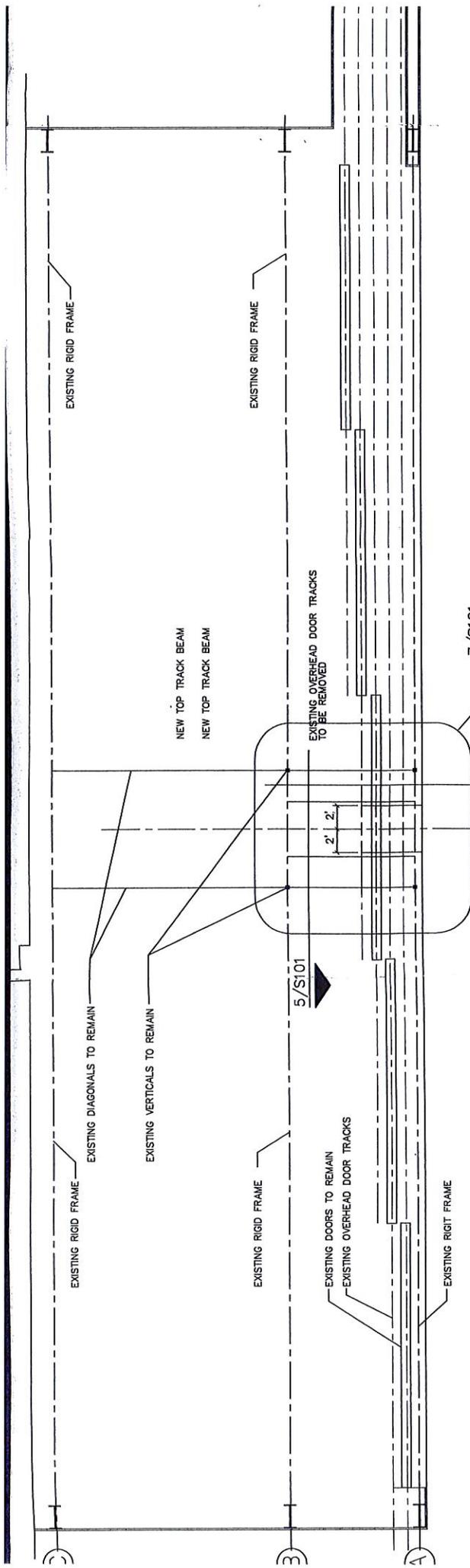


2 ELEVATION  
SCALE 1/8" = 1'-0"

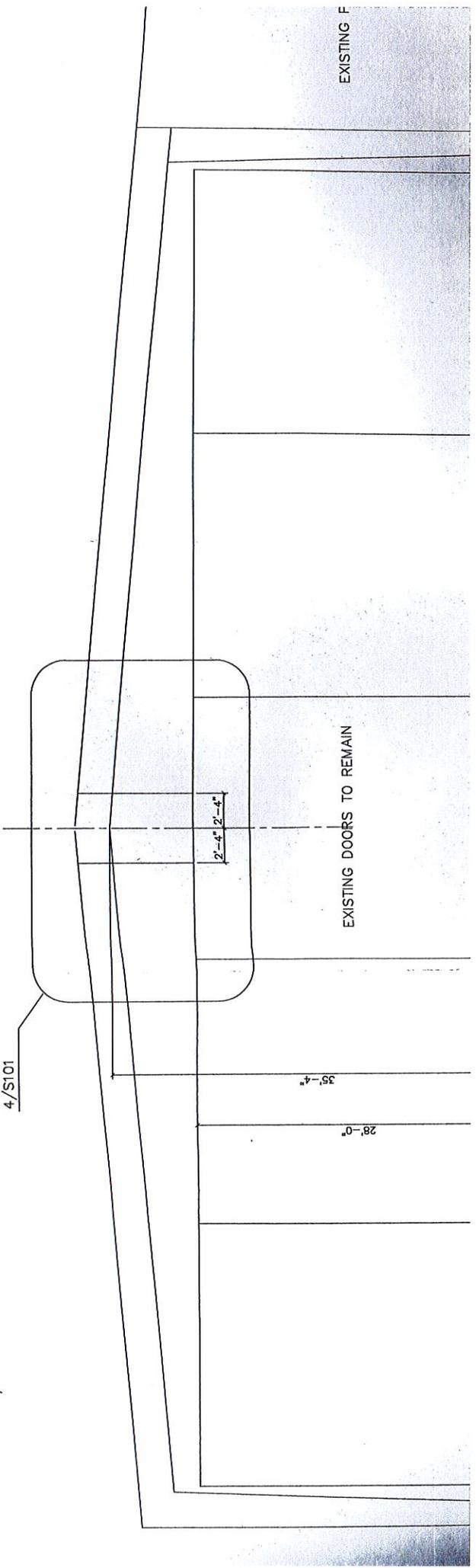


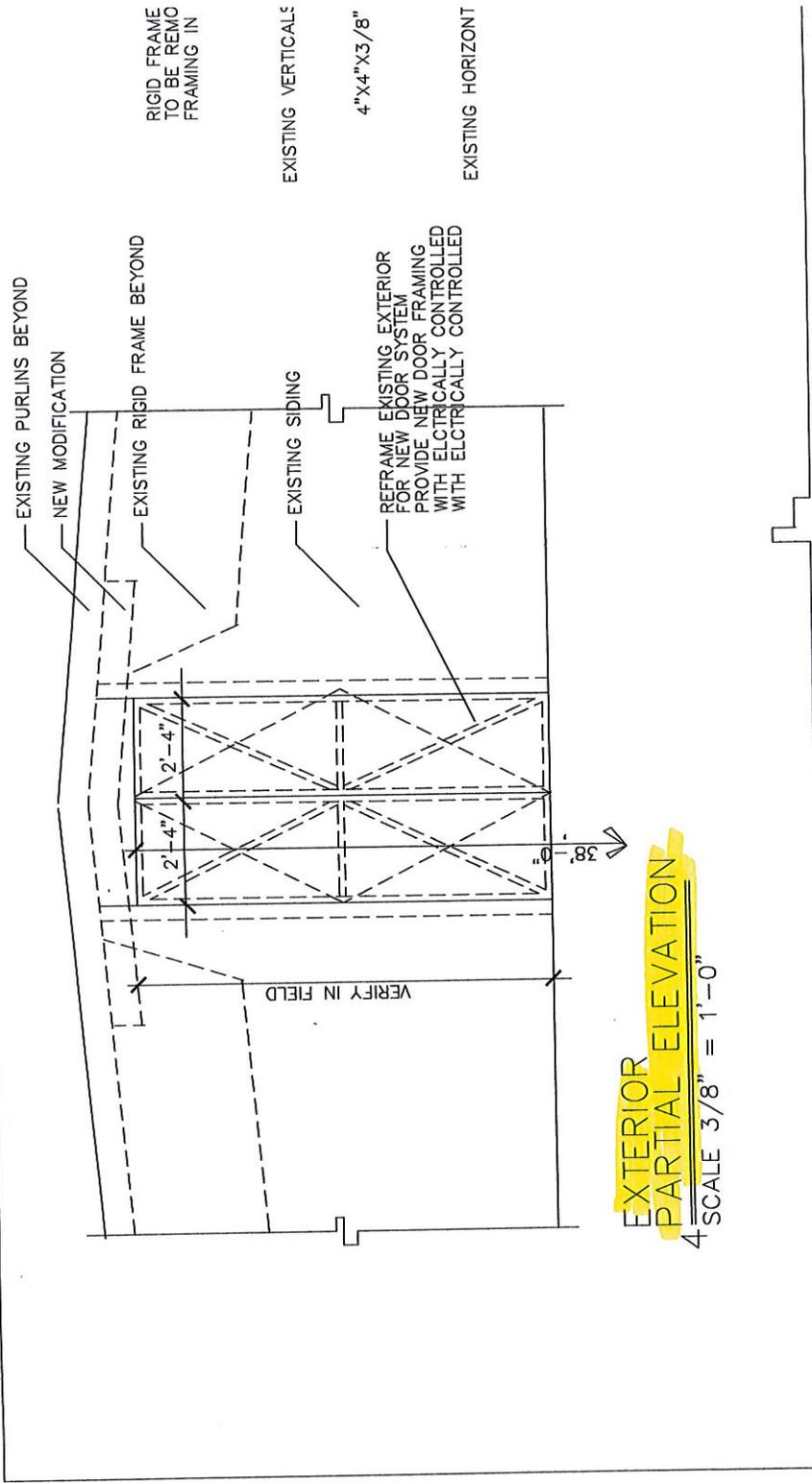
1 SCALE 1/8" = 1'-0"  
PARTIAL PLAN





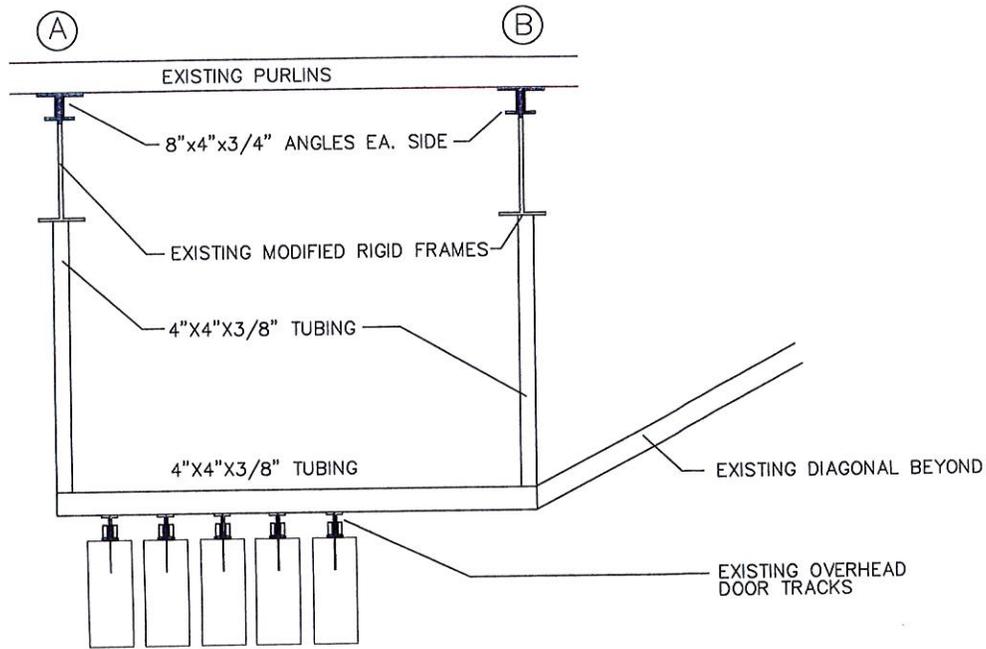
**ROOF FRAMING**  
 SCALE 1/8" = 1'-0"



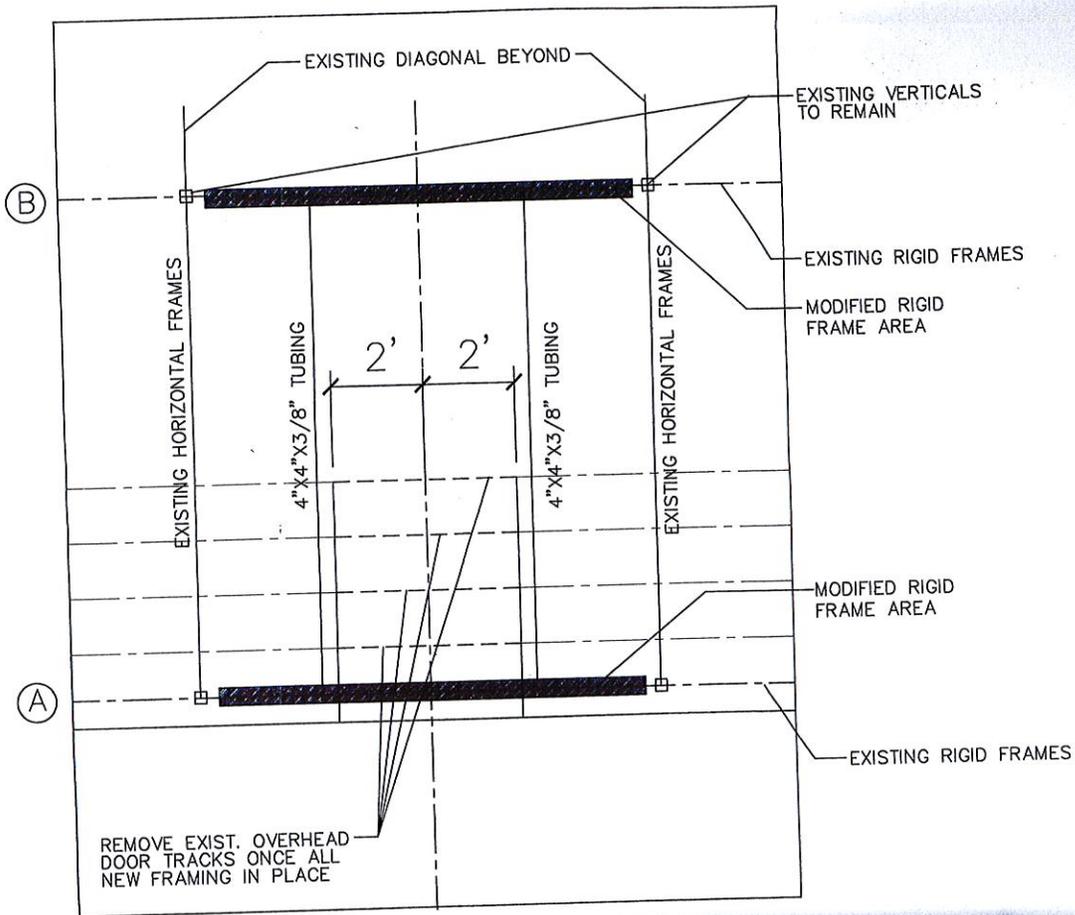


**EXTERIOR**  
**PARTIAL ELEVATION**  
 SCALE 3/8" = 1'-0"





6 SECTION



Chorner Monk & Vniot

PROJECT DOOLITTLE HANGERLOCATION ADDISON, TXDATE FEB. 2014 BY J. BARLOW

TX REG.# F-11091

FROM RISA MODEL - MAX BENDING:

$$\oplus M_u = 61.8 \text{ K}\cdot\text{ft} \quad 157.6 \text{ K}\cdot\text{ft}$$

$$\ominus M_u = 151.4 \text{ K}\cdot\text{ft} \quad 243.8 \text{ K}\cdot\text{ft}$$

YIELDING:

$$M_n = M_p = F_y Z_x = \frac{M_u}{\phi_b} = \frac{243.8(12)}{0.90} = 3250.7 \text{ K}\cdot\text{in}$$

$$F_y = 50 \text{ KSI}$$

$$Z_{x \text{ REQ'D}} = \frac{3250.7 \text{ K}\cdot\text{in}}{50 \text{ KSI}} = 65.0 \text{ in}^3$$

$$\text{TRY W14}\times\text{43} \quad Z_x = \underline{69.6 \text{ in}^3}$$

LATERAL TORSIONAL BUCKLING:

$$L_b = 6'-0" = 72"$$

$$L_p = 1.76 r_y \sqrt{\frac{E}{F_y}} = 1.76 (1.89) \sqrt{\frac{29 \times 10^3}{50}} = 20.1"$$

$L_b < L_p \therefore$  LATERAL TORSIONAL BUCKLING  
DOES NOT APPLY

**USE W14x43**

PROJECT DOOLITTLE HANGER

LOCATION ADDISON, TX

DATE APRIL 2014 BY J. BARLOW

## CONNECTION DESIGN

$3/4"$   $\phi$  A325 BOLTS

SHEAR  $\phi V_n = 15.9$  KIPS/BOLT

TENSION  $\phi T_n = 29.8$  KIPS/BOLT

USE BOLT SHEAR TO TRANSFER AXIAL LOAD

$P_u = 18.1$  K

# BOLTS REQ'D =  $\frac{18.1 \text{ K}}{15.9 \text{ K/BOLT}} = 1.13$  TRY (2) BOLTS

BEARING STRENGTH  $\phi R_n = 0.75 (1.5 L_t F_u \leq 3.0 d t F_u)$   
 $= 0.75 (1.5 (23) (0.25) (65) \leq 3.0 (0.25) (0.25) (65))$   
 $= 0.75 (560.6 \leq \underline{36.6})$   
 $= \underline{27.42 \text{ KIPS/BOLT}} > 15.9$  OK

TRANSFER BENDING FORCES THROUGH BOLT TENSION

$R_u = \frac{M_u}{l} = \frac{243.8 \text{ K-Ft}}{8'} = 30.5 \text{ K.}$   
 ↖ lever arm

# BOLTS REQ'D =  $\frac{30.5 \text{ K}}{29.8 \text{ K/BOLT}} = 1.02$  TRY (2) BOLTS

FLANGE LOCAL BENDING:

$\phi R_n = 0.90 (6.25 t^2 F_{yt}) = 0.90 (6.25 (0.25)^2 (36 \text{ ksi})) = 12.66 \text{ kips}$

USE TRANSVERSE STIFFENER

$\phi R_n = 0.90 (36) A_{g2} = 0.90 (36) (1/4) (2+2) = 32.4$

$1/4 \times 2"$  STIFF  
ER. SIDE

THIS ASSUMES ALL TENSION TO TRANSFER  
THROUGH THE STIFFENERS

PROJECT DOOLITTLE HANGER

LOCATION ADDISON, TX

DATE APRIL 2014 BY J. BARLOW

TX REG # F-11091

COMPRESSION: (IGNORE MAINFRAME PIECE REMAINING)

W14x43:

$$b_f / t_f = 7.54$$

$$0.56 \sqrt{\frac{29 \times 10^6}{50000}} = 13.49$$

∴ SECTION IS  
NONCOMPACT

CONSERVATIVE  
ASSUME 6' MAX

$$\frac{KL}{r} = \frac{(1.0)(72)}{1.89} = 38.1$$

$$4.71 \sqrt{\frac{E}{F_y}} = 4.71 \sqrt{\frac{29 \times 10^6}{50000}} = 113.43$$

$$\frac{KL}{r} < 4.71 \sqrt{\frac{E}{F_y}}$$

$$F_c = \frac{\pi^2 E}{\left(\frac{KL}{r}\right)^2} = \frac{\pi^2 (29 \times 10^6)}{(38.1)^2}$$

$$= 197.2 \text{ ksi}$$

$$F_{cr} = \left[ 0.658 \frac{F_y}{F_c} \right] F_y$$

$$= \left[ 0.658 \frac{50}{197.2} \right] 50 = \underline{44.97 \text{ ksi}}$$

$$P_n = F_{cr} A_g = 44.97 \text{ ksi} (12.6 \text{ in}^2) = \underline{566.6 \text{ kips}}$$

$$\phi_c P_n = 0.9 (566.6 \text{ kips}) = 509.9 \text{ kips}$$

COMBINED FLEXURE & COMPRESSION

$$\frac{P_r}{P_c} = \frac{18.1 \text{ kips}}{509.9 \text{ kips}} = 0.035$$

CHECK HI-1b  $\frac{P_r}{2P_c} + \left( \frac{M_{rx}}{M_{cx}} + \frac{M_{ry}}{M_{cy}} \right) \leq 1.0 \rightarrow \frac{18.1}{2(509.9)} + \frac{243.8}{0.9(50)(62.6)}$

$$= 0.952 \leq 1.0 \quad \underline{\text{OK}}$$

# J I BARLOW ENGINEERING P.C.

PO BOX 2636 160 W. TOWNSHIP AVE  
COLORADO CITY, AZ 86021 435-656-9530

SHEET NO. \_\_\_\_\_

PROJECT DOOLITTLE HANGER

LOCATION ADDISON, TX

DATE APRIL 2014 BY J. BARLOW

TX REG. # F-11091

WELD REQ'D AT STIFFENER

(FLANGE)

$\frac{3}{16}$ " FILLET WELD:

$$\phi R_n = 0.75(0.60)(70 \text{ ksi})(0.707)(0.1875) = 4.17 \text{ k/in}$$

$$2" \text{ EA. SIDE: } l_w = 4(2) = 8" \rightarrow \phi R_n = 8(4.17) = 33.36 \text{ k}$$

$\phi R_n > R_u \therefore \frac{3}{16}$  FILLET  
WELD OK

## **Combined Meeting**

**R11**

**Meeting Date:** 04/22/2014

**Council Goals:** Infrastructure improvement and maintenance

---

### **AGENDA CAPTION:**

Presentation, discussion, consider and take action awarding a contract to Trumble Construction, Inc., and authorizing the City Manager to enter into a contract with Trumble for roof repairs for certain city-owned facilities at Addison Airport, for an amount not to exceed \$127,165.

### **FINANCIAL IMPACT:**

This expense is budgeted in the Airport's FY2014 budget.

### **BACKGROUND:**

Four city-owned maintenance hangar facilities require roof repair resulting from normal wear and tear and minor storm damage. The Texas Municipal League Intergovernmental Risk Pool (TML) excluded these building from the casualty adjustment sought by the Town at the time of the 2011 storm due to the already deteriorated condition of the roofs. The repair was included in the FY2014 Airport budget.

The roof repairs are for hangars:

- **Building R1a – 4700 Airport Parkway; Conventional Hangar**
- **Building R5 – 4768 Airport Parkway; T-Hangar**
- **Building T5 – 4540 Glenn Curtiss; Conventional Hangar**
- **Building T11- 4680 Glenn Curtiss; Conventional Hangar**

The project was advertised and bids were received from 6 qualified contractors. Bids were opened on March 31, 2014. Trumble Construction, Inc., was the low bidder at \$123,738 plus an additional \$3,427 to include a 20-year extended warranty for each building offered by the Duro-Last manufacture, for a total cost of \$127,165.00.

If approved, Notice to Proceed will be issued, with the work beginning in early May and completed in approximately four weeks.

### **RECOMMENDATION:**

Administration recommends approval.

---



## **Combined Meeting**

**R12**

**Meeting Date:** 04/22/2014

**Council Goals:** Create a vision for the airport to maximize the value  
Raise property values  
Attract new businesses to Addison

---

### **AGENDA CAPTION:**

Presentation, discussion, consider and take action to (i) approve an agreement for a corporate hangar development that will be subject to a long-term ground lease at Addison Airport by and between the Town of Addison, as Landlord and Sky B&B, LLC, a Texas limited liability company, as Tenant ("Sky"), (ii) approve a Non-Public Fuel Dispensing License Agreement at Addison Airport between the Town, as Licensor, and Sky, as Licensee, (iii) authorize the expenditure of Utility, Stormwater, and Airport Fund monies for the relocation of city and franchise utilities at Addison Airport to include water, sanitary sewer, gas and electric for an estimated cost of \$255,000, and (iv) approve a ground lease agreement at Addison Airport between the Town, as Landlord, and Sky, as Tenant, regarding the construction and use of a temporary shelter for Sky's aircraft.

### **FINANCIAL IMPACT:**

Funds needed to relocated the utilities are available in the Airport, Utility, and Stormwater Funds.

### **BACKGROUND:**

Sky B&B, LLC is a Texas limited liability company expressly formed to take title of the proposed building improvements and the leasehold interests created by the ground lease agreement at Addison Airport. The stated purpose for the development is to construct and operate a corporate hangar facility in support of Sky's ongoing flight department needs including FAA Part 135 and FAA Part 91 aircraft charter and aircraft management operations.

Sky has proposed to construct a new 33,671 square-foot facility consisting of a 27,021 square-foot hangar designed to accommodate multiple aircraft including a Boeing Business Jet (BBJ), and an attached 6,650 square-foot flight-department terminal and office. The proposed site is 3.03 acres of unimproved airport land fronting Taxiway Alpha, located between Airport Parkway and Eddie Rickenbacker Drive. The landside access to the property will be from Airport Parkway through a controlled access gate leading into a private landscaped parking lot. The site plan provides for sufficient private parking, freight and delivery access and limited covered parking adjacent to the building.

The Ground Lease Agreement proposed for Sky is a 40-year term agreement, which follows the discussion with Council, including but not limited to the following terms:

1. **Commencement Date:** The Ground Lease is to commence the earlier of (i) the day immediately following the date the Town issues a Certificate of Occupancy for the hangar structure or (ii) 48 full calendar months after the effective date of the Ground Lease, whichever occurs first.
2. **Expiration Date:** The statutory limit of 40 years (480 full calendar months) following the Commencement Date, unless otherwise earlier terminated.
3. **Base Rental:** Sixty-five cents (\$.65) per gross square foot of the leased premises (\$85,791 per year), subject to biennial CPI adjustments.
4. **Permitted Use of Demised Premises:** Primarily for constructing, owning and operating an aircraft hangar and office facilities used in direct support of, and in connection with, Sky's corporate flight department operations and their FAA Part 135 and Part 91 aircraft charter and management operations.
5. **Right to Early Terminate:** After the third anniversary date of the Ground Lease, and if Sky is not then in default, Sky has the right to early terminate the Ground Lease provided (i) Sky gives the Town 180 days' prior written notice of its intent to early terminate the lease, at which time the ownership of the building improvements will revert, if not already so, to the Town of Addison free and clear of any liens.
6. **Building Improvements:** To include a 27,021 square-foot hangar designed to accommodate multiple aircraft including a Boeing Business Jet (BBJ), and an attached 6,650 square-foot flight terminal/office. The improvements are to have a minimum construction value of \$3,000,000. Construction is to commence 120 days after mutual approval of the Design Plans, to be completed within 24 calendar months once construction commences. Proposed improvements are to meet or exceed the design criteria necessary to accommodate Sky's intended based aircraft fleet, but not less than that typical for Design Group III corporate jet aircraft (i.e. Gulfstream IV, V, VI) with a minimum hangar door height of 28' and a clear span of no less than 110' in the hangar. Aircraft apron must meet or exceed tenant's critical design weight but not less than 100,000 gross pounds of take-off weight.
7. **Title to Improvements:** Sky shall expressly hold title to the Building Improvements and any additions made thereto over the Term. Upon completion of construction and the issuance of a Certificate of Occupancy, Sky may elect to deed the Building Improvements to the Town free and clear of all liens and encumbrances.
8. **Property Taxes and Assessments:** Tenant is to pay all property taxes, assessments, and other governmental charges assessed by a taxing authority on the Demised Premises and, if applicable, upon the leasehold estate of Tenant. Notwithstanding the foregoing, if the Town should hold title to the Building Improvements and Tenant is assessed ad valorem property taxes on its leasehold interests, Landlord agrees to reimburse Tenant any ad valorem tax paid by Tenant expressly for the benefit of the Town of Addison

for the first ten (10) years of the Term. Tenant is obligated to pay, at its sole cost and expense, all other taxes assessed to Tenant.

In consideration of Sky entering into the Ground Lease and constructing the building improvements, the Town has agreed to:

1. Relocate city and franchise utilities (water, sewer, gas and electric) as may be needed to accommodate the proposed development and to provide services to the hangar structure at the estimated cost of \$255,000.
2. Diligently and in good faith expedite approval of the plans and specifications for the Building Improvements.
3. Reimburse Sky of any ad valorem taxes paid by Sky on its leasehold interests expressly for the benefit of the Town for the first ten (10) years after such assessment provided the Town is holding title to the Building Improvements. Cost undeterminable.
4. Accept title to the Building Improvements should Sky elect to deed them to the Town free and clear of all liens and encumbrances once a Certificate of Occupancy has been issued.
5. Provide Sky a temporary site, rent free, at the Addison JetPort for Sky to construct a canopy hangar (or shade-port) as an interim aircraft storage facility to protect its aircraft from the elements until the permanent hangar is built and available to occupy (See Summary of Interim Hangar Ground Lease Agreement). Conceded rent estimated to be \$16,000 per year.
6. Extend to Sky non-public fuel dispensing privileges pursuant to the terms of the proposed Fuel Farm License Agreement (see Summary of Non-Public Fuel Dispensing License Agreement).

In consideration of Sky entering into the proposed Ground Lease for the permanent hangar structure, the Town has also agreed to allow Sky to construct, at its own cost and expense, a temporary shelter for their aircraft while the permanent structure is under construction. The temporary structure will be a pre-engineered metal structure approximately 130' wide by 120' deep and nearly 50 feet tall at its highest elevation. The structure will be exposed on all sides without any walls or doors. Once the construction of the permanent hangar is completed and available for occupancy, Sky has the option to remove the interim structure and return the site to a condition similar to prior to their occupancy, or abandon the structure in good condition and repair with the improvements becoming the property of the Town.

The terms of the Interim Hangar Ground Lease Agreement are similar to the Ground Lease Agreement and summarized as follows:

1. **Demised Premises:** Approximately .75 acres of the Addison JetPort aircraft apron.

2. **Term:** Commences upon the Effective Date of the Agreement and expires the earlier of 90 days after the Town issues a Certificate of Occupancy for the Permanent Hangar, or 30 months after the Commencement Date.
3. **Rental:** Base Rent is \$0.00.
4. **Property Taxes & Assessments:** Tenant shall pay any all property taxes assessed on the improvements and any personal property owned by Sky.
5. **Utilities:** The Town shall provide conventional electrical power and water to the site at its own negligible cost.
6. **Title to Improvements:** All improvements constructed by Sky are to be owned by Sky during the term. Upon expiration of the Term, Sky shall remove the improvements above the existing grade level and structural piers. If Sky elects to abandon the improvements, the improvements shall become the property of the Town, free and clear of any and all liens and encumbrances.

### **Summary of the Proposed Non-Public Fuel Farm License Agreement**

Sky has requested a non-public fueling permit expressly for the purpose of fueling its owned aircraft or aircraft under Sky's operational control. The Agreement is the form agreement currently used by the Town for such arrangements, which the salient terms are summarized as follows:

1. **Fuel Tanks:** Two 25,000 gallon Jet A-rated tanks.
2. **Term:** To commence upon the earlier of the date upon which Sky commences use of the Fuel Tanks or upon the Commencement Date of the [Permanent Hangar] Ground Lease and to continue for 60 months subject to any Term Extension Option Periods provided for in the Agreement.
3. **Tank Rental:** Base Fee of \$.2786 plus an Additional Fee of \$.3290 per gallon of tank capacity or \$30,380.00 per year, subject to the adjustment of the Additional Fee provided for in the Agreement.
4. **Non-public Operator:** For the purpose of fueling owned aircraft or aircraft under Sky's operational control as recognized by the FAA. Sky is expressly prohibited from dispensing aircraft fuel to, and/or allowing the fueling of any non-owned, leased aircraft or aircraft in the operational control of Sky.
5. **Minimum Standard to Operate Fuel Tanks:** 75,000 gallons of jet aviation fuel per any consecutive six-month period as required under the Agreement.
6. **Fuel Flowage Fee:** Twenty cents (\$.20) per gallon received into the Fuel Tanks paid one-month in arrears as set forth in the agreement.
7. **Term Extensions:** Four (4) consecutive terms of sixty (60) months each with stepped up Base Rate as set forth in the Exhibit "D" of the Agreement.

### **Economic Impact of the Proposed Development:**

The proposed project provides significant value to Addison Airport and the Town as outlined below:

1. **Construction Value of Permanent Hangar: Est. \$3,000,000 +**
2. **Construction Value of Interim Hangar: Est. \$350,000**

3. **Stabilized Annual Airport Revenue: \$146,000**
4. **Stabilized Town Tax Revenue: \$58,140**
5. **Total Combine Annual Revenue: \$204,311**
6. **Net Present Value of Combined Cash Flow over Lease Term: \$3,340,000**

**RECOMMENDATION:**

Administration recommends approval.

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**Attachments**

Sky B&B Recommendation Memo

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William M. Dyer  
Real Estate Manager  
16051 Addison Road  
Suite #220  
Addison, Texas 75001

Main: 972-392-4850  
Direct: 972-392-4856  
Fax: 972-788-9334  
bill.dyer@addisonairport.net

## - M E M O R A N D U M -

To: Lisa Pyles, Director of Infrastructure, Operations and Systems  
From: Bill Dyer, Real Estate Manager  
CC: Joel Jenkinson, Airport Director  
Date: April 14, 2014  
Re: Action Requested of the Town of Addison by Airport Management  
Consideration and Consent of a New Corporate Hangar Development at  
Addison Airport and Related Agreements

---

Addison Airport Management herein presents to the Town of Addison for its consideration and consent a new corporate hangar development subject to a long-term ground leased arrangement by and between the Town of Addison, as Landlord and Sky B&B, LLC, a Texas limited liability company (“Sky”). In connection therewith, please find attached:

1. Sky’s proposed site plan (Exhibit “A”);
2. The proposed Ground Lease Agreement (Exhibit “B”);
3. A proposed Interim Hangar Ground Lease Agreement (Exhibit “C”);
4. A proposed Non-Public Fuel Dispensing License Agreement (Exhibit “D”).

Each of these agreements is to be agreed to and entered into by and between the Town of Addison and Sky B&B, LLC.

The city attorney has reviewed each of these agreements and finds them acceptable for the Town’s purpose. Airport Management recommends the City Council approve the proposed development and authorize the City Manager to enter into each of the referenced agreements and execute any other documents which may be necessary (subject to the city attorney’s prior review) to consummate the proposed transaction on behalf of the Town.

**Summary of the Proposed Development and Ground Lease Agreement:**

Sky B&B, LLC is a Texas limited liability company expressly formed to take title of the proposed building improvements and the leasehold interests created by the ground lease agreement. Timothy A. Mack is named Manager of this special asset entity.

The stated purpose for the development is to construct and operate a corporate hangar facility in support of Sky’s ongoing flight department needs including FAA Part 135 and FAA Part 91 aircraft charter and aircraft management operations.

Sky has proposed to construct a new 33,671 square-foot facility consisting of a 27,021 square-foot hangar designed to accommodate multiple aircraft including a Boeing Business Jet (BBJ), and an attached 6,650 square-foot flight-department terminal and office (see Exhibit “A” proposed Site Plan). The proposed site for the new corporate hangar development consists of a certain 3.03 acres of unimproved airport land fronting Taxiway Alpha, located between Airport Parkway and Eddie Rickenbacker Drive.



**Figure 1: Proposed Site of Sky B&B, LLC Hangar**

The site will have nearly 42,000 square feet of dedicated high-strength aircraft apron to accommodate Sky’s intended aircraft fleet-mix. The landside access to the property will be from Airport Parkway through a controlled access gate leading into a private landscaped parking lot. A circle drive leads Sky’s personnel and guests to a porte-cochere at the terminal entry to protect them from the elements. The site plan provides for sufficient private parking, freight and delivery access and limited covered parking adjacent to the building.

Directly south of the proposed site is PepsiCo's Corporate Flight Department. To the east, at the Addison Road and Airport Parkway intersection, are the Addison Police and Fire Department headquarters. Immediately to the north is an additional 2.91 acres of land recently cleared of an antiquated hangar to make room for future redevelopment similar to the Sky development.

The Ground Lease Agreement proposed for Sky is a 40-year term agreement with some of the more salient terms as follows:

1. **Commencement Date:** The Ground Lease is to commence the earlier of (i) the day immediately following the date the Town issues a Certificate of Occupancy for the hangar structure or (ii) 48 full calendar months after the effective date of the Ground Lease, whichever occurs first.
2. **Expiration Date:** The statutory limit of 40 years (480 full calendar months) following the Commencement Date, unless otherwise earlier terminated.
3. **Base Rental:** Sixty-five cents (\$.65) per gross square foot of the leased premises (\$85,791 per year), subject to biennial CPI adjustments.
4. **Permitted Use of Demised Premises:** Primarily for constructing, owning and operating an aircraft hangar and office facilities used in direct support of, and in connection with, Sky's corporate flight department operations and their FAA Part 135 and Part 91 aircraft charter and management operations.
5. **Prohibited or Restricted Use of Demised Premises:** Included but not limited to third-party aircraft maintenance and repair, third-party brokerage of aircraft or aircraft parts; third-party fixed-base operations or services for the benefit, directly or indirectly, of transient or itinerant aircraft (retail or wholesale) at the Airport; flight school or flight training.
6. **Right to Early Terminate:** After the third anniversary date of the Ground Lease, and if Sky is not then in default, Sky has the right to early terminate the Ground Lease provided (i) Sky gives the Town 180 days' prior written notice of its intent to early terminate the lease, at which time the ownership of the building improvements will revert, if not already so, to the Town of Addison free and clear of any liens.
7. **Building Improvements:** To include a 27,021 square-foot hangar designed to accommodate multiple aircraft including a Boeing Business Jet (BBJ), and an attached 6,650 square-foot flight terminal/office. The improvements are to have a minimum construction value of \$3,000,000. Construction is to commence 120 days after mutual approval of the Design Plans, to be completed within 24 calendar months once construction commences. Proposed improvements are to meet or exceed the design criteria necessary to accommodate Sky's intended based aircraft fleet, but not less than that typical for Design Group III corporate jet aircraft (i.e. Gulfstream IV, V, VI) with a minimum hangar door height of 28' and a clear span of no less than 110' in the hangar. Aircraft apron must meet or exceed tenant's critical design weight but not less than 100,000 gross pounds of take-off weight.

8. **Title to Improvements:** Sky shall expressly hold title to the Building Improvements and any additions made thereto over the Term. Upon completion of construction and the issuance of a Certificate of Occupancy, Sky may elect to deed the Building Improvements to the Town free and clear of all liens and encumbrances.
9. **Property Taxes and Assessments:** Tenant is to pay all property taxes, assessments, and other governmental charges assessed by a taxing authority on the Demised Premises and, if applicable, upon the leasehold estate of Tenant. Notwithstanding the foregoing, if the Town should hold title to the Building Improvements and Tenant is assessed ad valorem property taxes on its leasehold interests, Landlord agrees to reimburse Tenant any ad valorem tax paid by Tenant expressly for the benefit the Town of Addison for the first ten (10) years of the Term. Tenant is obligated to pay, at its sole cost and expense, all other taxes assessed to Tenant.

In consideration of Sky entering into the Ground Lease and constructing the building improvements, the Town has agreed to:

1. Relocate city and franchise utilities (water, sewer, gas and electric) as may be needed to accommodate the proposed development and to provide services to the hangar structure at the estimated cost of \$250,000.
2. Diligently and in good faith expedite approval of the plans and specifications for the Building Improvements.
3. Reimburse Sky of any ad valorem taxes paid by Sky on its leasehold interests expressly for the benefit of the Town for the first ten (10) years after such assessment provided the Town is holding title to the Building Improvements. Cost undeterminable.
4. Accept title to the Building Improvements should Sky elect to deed them to the Town free and clear of all liens and encumbrances once a Certificate of Occupancy has been issued. Cost undeterminable
5. Provide Sky a temporary site, rent free, at the Addison JetPort for Sky to construct a canopy hangar (or shade-port) as an interim aircraft storage facility to protect its aircraft from the elements until the permanent hangar is built and available to occupy (See Summary of Interim Hangar Ground Lease Agreement). Conceded rent estimated to be \$16,000 per year.
6. Extend to Sky non-public fuel dispensing privileges pursuant to the terms of the proposed Fuel Farm License Agreement (see Summary of Non-Public Fuel Dispensing License Agreement).
7. Grant Sky limited number of annual BBJ operations at weights in excess of the airport's published load limit of 120,000 pounds pursuant to a Letter Agreement dated August 23, 2013.

**Summary of Proposed Interim Hangar and Interim Hangar Ground Lease Agreement:**

In consideration of Sky entering into the proposed Ground Lease for the permanent hangar structure, the Town has also agreed to allow Sky to construct, at its own cost and

expense, a temporary shelter for their aircraft to help protect them from the elements while the permanent structure is under construction. The temporary structure will be a pre-engineered metal structure approximately 130' wide by 120' deep and nearly 50 feet tall at its highest elevation. The structure will be exposed on all sides without any walls or doors. Once the construction of the permanent hangar is completed and available for occupancy, Sky has the option to remove the interim structure and return the site to a condition similar to prior to their occupancy, or abandon the structure in good condition and repair with the improvements becoming the property of the Town.



Figure 2: Proximity of Permanent Hangar and Interim Hangar at the Airport

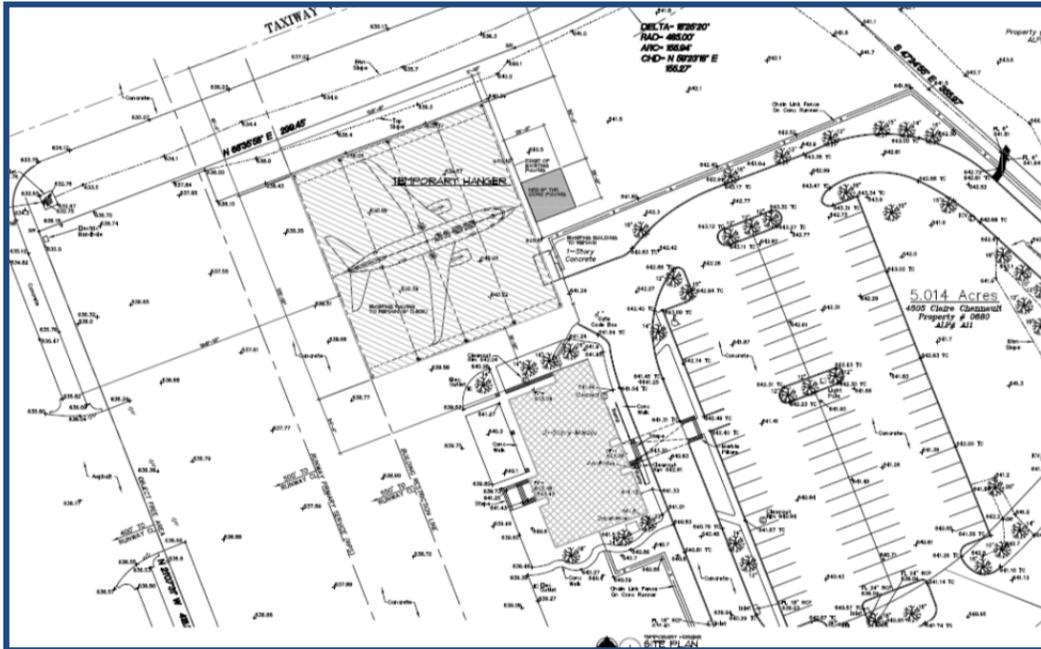


Figure 3: Site Plan for Interim Hangar

The terms of the Interim Hangar Ground Lease Agreement are similar to the [Permanent Hangar] Ground Lease Agreement and summarized as follows:

1. **Demised Premises:** Approximately .75 acres of the Addison JetPort aircraft apron.
2. **Term:** Commences upon the Effective Date of the Agreement and expires the earlier of 90 days after the Town issues a Certificate of Occupancy for the Permanent Hangar, or 30 months after the Commencement Date.
3. **Rental:** Base Rent is \$0.00.
4. **Permitted Use:** To construct a temporary shade-hangar to be used for the storage of aircraft and incidental support and services in connection with the aircraft being stored.
5. **Construction of Improvements:** The Town is to give its prior approval of the Design Plan.
6. **Assignment and Subletting:** No assignment or subletting permitted without the prior written consent of the Town.
7. **Property Taxes & Assessments:** Tenant shall pay any all property taxes assessed on the improvements and any personal property owned by Sky.
8. **Insurance:** Sky is responsible for providing multi-peril hazard insurance together with commercial general liability, hangars keepers legal liability, business owned and non-owned liability as required under the Agreement with the Town and Airport Manager named as loss payee or additional insured as the case may be.

9. **Utilities:** The Town shall provide conventional electrical power and water to the site at its own negligible cost.
10. **Title to Improvements:** All improvements constructed by Sky are to be owned by Sky during the term. Upon expiration of the Term, Sky shall remove the improvements above the existing grade level and structural piers. If Sky elects to abandon the improvements, the improvements shall become the property of the Town, free and clear of any and all liens and encumbrances.

### **Summary of the Proposed Non-Public Fuel Farm License Agreement**

Sky advised the Town that as a condition to induce it to enter into the [Permanent Hangar] Ground Lease Agreement and build the proposed Building Improvements, among other things, Sky would require a non-public fueling permit expressly for the purpose to fuel only its owned aircraft or aircraft under Sky's operational control as recognized by the FAA. The Town agrees to extend to Sky two 25,000 gallon fuel tanks at the Addison Airport Bulk Fuel Facility for this purpose, subject to the terms and conditions of the proposed Non-Public Fuel Farm License Agreement. The Agreement is the form agreement currently used by the Town for such arrangements, which the salient terms are summarized as follows:

1. **Fuel Tanks:** Tanks #09 & #10 consisting of two 25,000 gallon Jet A-rated tanks.
2. **Licensee's Proportionate Share:** For the purpose of the Additional Fee allocation Sky share is 15.873%.
3. **Term:** To commence upon the earlier of the date upon which Sky commences use of the Fuel Tanks or upon the Commencement Date of the [Permanent Hangar] Ground Lease and to continue for 60 months subject to any Term Extension Option Periods provided for in the Agreement.
4. **Tank Rental:** Base Fee of \$.2786 plus an Additional Fee of \$.3290 per gallon of tank capacity or \$30,380.00 per year, subject to the adjustment of the Additional Fee provided for in the Agreement.
5. **Non-public Operator:** For the purpose of fueling owned aircraft or aircraft under Sky's operational control as recognized by the FAA. Sky is expressly prohibited from dispensing aircraft fuel to, and/or allowing the fueling of any non-owned, leased aircraft or aircraft in the operational control of Sky.
6. **Minimum Standard to Operate Fuel Tanks:** 75,000 gallons of jet aviation fuel per any consecutive six-month period as required under the Agreement.
7. **Fuel Flowage Fee:** Twenty cents (\$.20) per gallon received into the Fuel Tanks paid one-month in arrears as set forth in the agreement.
8. **Term Extensions:** Four (4) consecutive terms of sixty (60) months each with stepped up Base Rate as set forth in the Exhibit "D" of the Agreement.

**Economic Impact of the Proposed Development:**

The proposed project contemplates Sky entering into a long-term ground lease arrangement with the Town to, among other things, construct a new corporate hangar/office facility at the Airport. As a condition to induce Sky to enter into the Ground Lease, the Town agrees to extend non-public fueling privileges to Sky and a temporary site at no cost to Sky for the Interim Hangar Facility. Additionally, the Town agrees to relocate city and franchise utilities at its own cost necessary to accommodate the proposed development.

1. **Construction Value of Permanent Hangar: Est. \$3,000,000 +**
2. **Construction Value of Interim Hangar: Est. \$350,000**
3. **Stabilized Annual Airport Revenue: \$146,000**
4. **Stabilized Town Tax Revenue: \$58,140**
5. **Total Combine Annual Revenue: \$204,311**
6. **Net Present Value of Combined Cash Flow over Lease Term: \$3,340,000<sup>1</sup>**

	<b><u>Airport Revenue</u></b>	<b><u>TOA Revenue</u></b>	<b><u>Totals</u></b>
Ground Rental	\$85,791	-	\$85,791
Fuel Tank Rental	\$30,380	-	\$30,380
Fuel Flowage	\$30,000	-	\$30,000
TOA RE Tax	-	\$12,240 <sup>2</sup>	\$12,240
TOA Bus PP Tax	-	\$45,900 <sup>3</sup>	\$45,900
<b>Total</b>	<b>\$146,171</b>	<b>\$58,140</b>	<b>\$204,311</b>

**Conclusion and Recommendation:**

Airport Management herein presents to the Town Council for its consideration and consent a new corporate hangar development subject to a long-term ground lease arrangement by and between the Town of Addison, as Landlord, and Sky B&B, LLC, a Texas limited liability company as Tenant (“Sky”). In addition to the \$3,000,000 in new corporate hangar/office property improvements at the Airport, the project also offers nearly \$150,000 in increased annual revenue for the Airport and another \$60,000 in potential tax revenue for the Town.

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<sup>1</sup> Assumes 6% discount rate

<sup>2</sup> Provided Sky holds title to the building improvements

<sup>3</sup> Assumes \$9,000,000 assessed tax value of based aircraft excluding BBJ as reported by Sky in 2013 at TOA’s current tax rate.

The proposed development achieves the Town's strategic objectives for Addison Airport by enhancing the overall value of the airport with new development, increased revenue and enhanced tax base. Furthermore, the project brings to the Airport a first-class business operation and a state-of-the art aeronautical facility.

Airport Management recommends the City Council approve the proposed development and authorize the City Manager to enter into each of the referenced agreements and execute any other documents which may be necessary (subject to the city attorney's prior review) to consummate the proposed transaction on behalf of the Town.

The city attorney has reviewed each of these agreements and find they are acceptable for the Town's purpose.

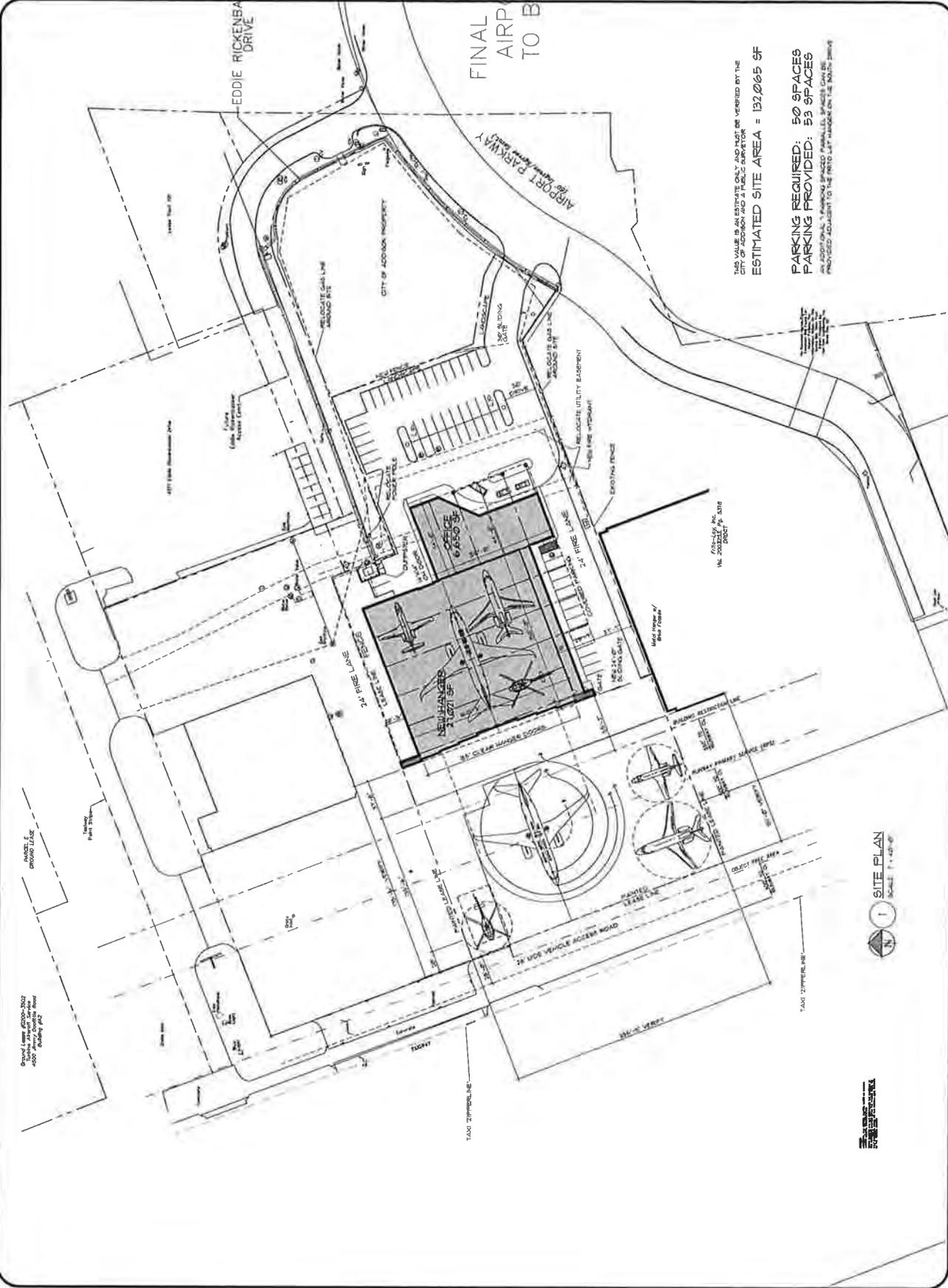
# **EXHIBIT “A”**

## **Site Plan**



REVISIONS

NO.	DATE	DESCRIPTION
1	08/11/2010	ISSUED FOR PERMITTING
2	08/11/2010	ISSUED FOR PERMITTING



ESTIMATED SITE AREA = 132,065 SF  
 PARKING REQUIRED: 50 SPACES  
 PARKING PROVIDED: 53 SPACES  
 IN ADDITIONAL PARKING SPACES PROVIDED ADJACENT TO THE INTD. LOT W/IN ON THE NORTH SIDE

**1 SITE PLAN**  
 SCALE 1"=40'-0"



Ground Level: 4000'-0"±  
 4000'±  
 4000'±  
 4000'±

ANCHOR E  
 GROUND LEVEL

ANCHOR F  
 GROUND LEVEL

ANCHOR G  
 GROUND LEVEL

ANCHOR H  
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# **EXHIBIT “B”**

## **Ground Lease**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS   §

- |   |
|---|
| <p style="text-align: center;"><b>Summary of Exhibits</b></p> <ul style="list-style-type: none"><li>• Exhibit 1: ADS Legal Description</li><li>• Exhibit 2: Description of Demised Premises</li><li>•</li><li>• Exhibit 3: Survey, including Metes and Bounds Description of Demised Premises</li><li>• Exhibit 4: Description of Building Improvements</li><li>• Exhibit 5: Adjacent Properties #1 &amp; #2 Depicted</li></ul> |
|---|

**GROUND LEASE AGREEMENT**

This Ground Lease Agreement (“Lease” or “Agreement”) is made and entered into as of April \_\_\_\_, 2014 (the “Effective Date”), by and among the **Town of Addison, Texas**, a Texas home-rule municipality (hereinafter sometimes referred to as “Landlord” or the “City”), and **Sky B&B, LLC**, a Texas limited liability company (hereinafter referred to as “Tenant”) (Landlord and Tenant are sometimes referred to herein together as the “Parties”).

**WITNESSETH:**

**WHEREAS**, the City is the record title owner of the Addison Airport, a description of which is set forth in Exhibit 1 attached hereto and incorporated herein (the “Airport”); and

**WHEREAS**, the Airport is operated and managed for and on behalf of the City by URS Energy & Construction, Inc., an Ohio corporation and SAMI Management, Inc., a Texas corporation (collectively the “Airport Manager”), pursuant to their respective management agreements each effective October 1, 2010 by and between the City and Airport Manager, and such Airport management may be changed by the City from time to time; and

**WHEREAS**, Tenant desires to lease from the City, and the City desires to lease to Tenant, a portion of the Airport generally described as a certain approximately 3.03 acre (approximately 131,987 gross square feet) parcel of improved and unimproved land located at 4641 Airport Parkway Drive within the Airport, as shown on Exhibit 2 and being more particularly described on Exhibit 3, each attached hereto and incorporated herein, together with the non-exclusive right to use the Common Facilities as defined in Section 17 hereinbelow (which parcel is referred to herein as the “Demised Premises”) according to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

**Section 1. Demise of the Premises:** In consideration of and subject to the terms, covenants and conditions set forth in this Agreement, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal

Aviation Administration, and the Texas Department of Transportation) whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances, the Rules and Regulations, and the Minimum Standards, now existing or as hereafter agreed to, adopted or imposed, (ii) all restrictive covenants affecting the Demised Premises, (iii) all restrictions, easements, and other encumbrances on or matters affecting the Demised Premises, whether of record or not or which could be revealed by a survey of the Demised Premises, and (iv) and all of the terms, conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust or monetary liens affecting the Demised Premises which are not filed of record.

## **Section 2. Term:**

Subject to the termination and all other provisions of this Lease, the term hereof (the "Term") shall commence on the earlier of (i) the day immediately following forty-eight (48) full calendar months after the Effective Date, or (ii) the first day of the first calendar month after Substantial Completion of the Building Improvements (as such term is defined in Section 6.H. below) (the "Commencement Date"), and shall end the last day of the four-hundred and eightieth (480<sup>th</sup>) full calendar month following the Commencement Date (and including the month of the Commencement Date). The period of time beginning upon the Effective Date and ending upon the Commencement Date is herein referred to as the "Preliminary Period". Any entry upon and/or use of occupancy of the Demised Premises by Tenant during the Preliminary Period shall be subject to all of the terms and conditions of this Lease.

After the third anniversary date of the Commencement Date (i.e., commencing in the fourth year of this Lease), and if Tenant is not then otherwise in default of this Lease, Tenant shall have the right to early terminate this Lease, subject to all of the provisions herein regarding the condition of the Demised Premises (and including any improvements thereon) at the time of expiration or termination of this Lease and all other applicable provisions, provided Tenant gives the Landlord at least one-hundred eighty (180) days prior written notice of its intent to early terminate this Lease specifying therein the Effective Date of Termination (herein so called). Upon the Effective Date of Termination, Tenant shall immediately vacate the Demised Premises, at which time the ownership of the Building Improvements and any other improvements shall revert automatically to Landlord pursuant to Section 28.C. below, without further action on the part of Landlord.

## **Section 3. Rental; Security Deposit**

**A.** Subject to adjustment as hereinbelow provided, Tenant agrees to and shall pay to Landlord, without notice, demand, offset or deduction, rental each month over the Term for the Demised Premises as set forth below:

1. **Base Rent:** Tenant agrees to and shall pay Landlord annual rental for the Demised Premises in the amount of Eighty-five Thousand, Seven Hundred and Ninety-One Dollars (\$85,791.00) (Note: Base Rent is calculated at \$0.65 per gross square foot located within the Demised Premises as determined by the Survey accepted by the parties) which amount shall be paid by Tenant in twelve equal monthly installments in advance on the first day of each calendar month (the "Base Rent", which shall be adjusted as set forth herein). The first monthly payment or

installment of Base Rent in the amount of Seven Thousand, One Hundred Forty-Nine and 25/100 (\$7,149.25) is due and payable on or before the Commencement Date. Thereafter, another payment or installment of the Base Rent, subject to adjustment as set forth below, shall be due and payable on the first day of each calendar month during the term hereof. All Rent is due on the first of each month and is delinquent after the 10<sup>th</sup> day of each month and subject to the provisions of Section 39.

2. In the event the Commencement Date is a date other than the first day of a calendar month, the monthly Base Rent for any partial month at the beginning of the Term shall equal the product of the Base Rent multiplied by a fraction, the numerator of which is the number of days in the partial month (beginning with the Commencement Date and ending with the last day of the partial month) and the denominator of which is the number of days in such full calendar month. Payment of Base Rent for any fractional calendar month at the end of the Term shall be similarly prorated.

3. For purposes of this Lease, the term “Rent” means Base Rent, additional rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under this Lease. Landlord shall have the same rights and remedies for nonpayment of any Rent as for nonpayment of Base Rent.

**B. Security Deposit:** No Security Deposit required.

#### **Section 4. Adjustment of Rental:**

A. Commencing on the second anniversary of the Commencement Date and on every second anniversary thereafter (hereinafter referred to as the “Adjustment Date”), the monthly rental due under Section 3.A.1. (Base Rent) shall be adjusted as follows:

1. Annual Rent (including Base Rent) shall be adjusted to reflect changes in the Consumers’ Price Index - All Items for Dallas, Texas Metropolitan Area (hereinafter referred to as the “Consumer Price Index”), as quoted in the publication *Consumer Price Index for All Urban Consumers (CPI-U)* for the Dallas-Fort Worth Consolidated Metropolitan Statistical Area which is issued by the U.S. Department of Labor, Bureau of Labor Statistics. The basic index (“Basic Index”) is the Consumer Price Index existing as of the Commencement Date. The current index (“Current Index”) is the Consumer Price Index on the first day of the calendar month preceding the then applicable Adjustment Date.

2. Beginning with the first full month following the then applicable Adjustment Date, the annual Rent (including the Base Rent)) shall be adjusted so that it equals the product of the annual Rent (including the Base Rent) multiplied by a fraction, the numerator of which is the Current Index and the denominator of which is the Basic Index (the “Adjusted Rental”), but in no event shall such annual Rent (including the Base Rent) ever be decreased below the Base Rent set forth in Section 3.A.1..

3. In the event that the Consumer Price Index is unavailable for whatever reason for the computations set forth hereinabove, another index approximating the Consumer Price Index as closely as feasible (as determined by Landlord) shall be substituted therefor.

**Section 5. Use of Demised Premises:**

During the Term the Demised Premises shall be used and occupied by Tenant as set forth hereinbelow:

**A. Permitted Uses:** The Demised Premises may be used and occupied by Tenant only for the following uses:

1. Constructing, owning and operating office and hangar facilities used directly in support of and in connection with corporate flight operations, FAA Part 135 and FAA Part 91 aircraft charter and aircraft management operations;
2. Office or administrative space used in support of aeronautical operations or services, namely corporate flight operations offices and/or charter and corporate aircraft management services;
3. The storage of corporate aircraft owned, leased or exclusively controlled (i.e. the right to fly or possession of the power to directly or indirectly sell or otherwise dispose of said aircraft) by Tenant;
4. The storage of corporate aircraft owned, leased or exclusively controlled (i.e. the right to fly or possession of the power to directly or indirectly sell or otherwise dispose of said aircraft) by any sub-tenant under separate written agreement with Tenant;
5. Incidental support, services, and materials in connection with the aircraft stored or based at the Demised Premises, including maintenance and repair.

**B. Prohibited or Restricted Use of Demised Premises:** The following uses are expressly prohibited:

1. Third-party aircraft maintenance and repair, including but not limited to airframe, power plant and avionics;
2. Third-party brokerage of aircraft or aircraft parts;
3. Primary flight school or training other than Part 145 training;
4. Ground transportation for rent or hire (including taxi and limousine service);
5. Retail services including food sales; barber and valet services, alcoholic beverage sales, sales of pilot supplies; newsstands and gifts;
6. Any illegal purpose or any other activity (federal, state, county and municipal laws, rules, regulations, standards and policies) that, in Landlord's reasonable opinion, would create a nuisance, unreasonably disturb other tenants of the Airport, or which may cause an increase in Landlord's insurance costs, whether or not such increased costs are actually incurred;

The Tenant shall in good faith continuously throughout the Term of this Lease conduct and carry on in the entire Demised Premises the type of business for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or reasonable periods for repairs and alterations of the

Building Improvements to the Demised Premises, all such repairs and alterations to be diligently pursued to completion.

C. Tenant acknowledges that Landlord is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms or any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to take any action or refrain from taking any action in relation to the Demised Premises that would cause Landlord to be in violation of such regulations or standards.

D. The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

E. The Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

## **Section 6. Construction of Improvements:**

A. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the "Building Improvements"), at Tenant's sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant) and as up-front Rent, in accordance with the Design Plans (as defined below) which shall be approved in writing by Landlord. The term "Building Improvements" shall mean those improvements described in Exhibit 4 attached hereto and incorporated herein. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord. The construction cost or value (separate and apart from the cost of design) of the Building Improvements shall exceed Three Million Dollars (\$3,000,000.00) (the "Construction Value"), and Tenant shall submit to Landlord upon request evidence of such Construction Value (the "Construction Value Evidence"); such Construction Value Evidence shall include true and correct copies of all receipts or other documents or records indicating the nature of the construction work performed, the cost thereof and the amount paid for such construction work.

**B.** The Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected by Tenant (the “Design Plan”), which Design Plan shall be submitted to Landlord and approved in writing by Landlord by the issuance of a Building Permit or other means as determined by Landlord. Any architect or engineer shall be duly licensed to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and Tenant **SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS** LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE “INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE “DAMAGES”), **INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE OF ANY OF THE INDEMNIFIED PARTIES (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES), OR CONDUCT BY THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, OR THE VIOLATION OF ANY TERM OF THE LEASE WITHOUT LIMITATION. NOTWITHSTANDING THE FOREGOING, TENANT’S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PARTIES’ PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES. LIKEWISE, TENANT’S LIABILITY FOR THE INDEMNIFIED PARTIES’ DEFENSE COSTS AND ATTORNEYS’ FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS’ FEES EQUAL TO THE INDEMNIFIED PARTIES’ PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO THE STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES.** It is expressly understood and agreed that Tenant’s construction of the Building Improvements shall include the finish-out in accordance with the plans and specifications for the finish-out of the Building Improvements as submitted by Tenant to Landlord and approved in writing by Landlord, such approval not to be unreasonably withheld.

**C.** Landlord’s approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.

**D.** Construction of the Building Improvements shall commence within One Hundred Twenty (120) calendar days after Landlord gives its approval of the Design Plans and Tenant obtains all pre-construction permits and approvals (the date of such commencement, as described in subsection D.1. of this Section, below, being the “Construction Commencement Date”). If Tenant fails to commence construction as required herein within twenty-four (24) calendar months after the Effective Date (e.g., if the Construction Commencement Date does not occur within the said 24 calendar month period), Landlord may terminate this Agreement by giving written notice to Tenant and this Agreement shall be and become null and void and, except for the obligation to pay any accrued but unpaid Rent, any provisions of this Lease regarding the condition of the Demised Premises (including all improvements thereon) upon the expiration or termination of this Lease, and any provisions of this Lease regarding any obligations or provisions that survive the Lease expiration or termination (including obligations regarding indemnity and environmental matters), neither party to this Agreement shall have any further rights one against the other, except that Landlord shall return to Tenant, if any, any deposits made to Tenant within five (5) business days following such termination.

1. For purposes hereof, the Construction Commencement Date shall be deemed to be the date when all of the following events have occurred: (i) approval of the Design Plan by Landlord, (ii) Tenant has been issued the required building permit(s) or licenses necessary to construct the Building Improvements on the Demised Premises, (iii) Tenant shall have received (and shall have provided a true and correct copy to the Town of) the Federal Aviation Administration’s (“FAA’s”) determination to Tenant’s filing of Form 7460 Notice of Proposed Construction or Alteration, (iv) execution of a contract with a qualified general contractor, (v) proof of required Builder’s Risk Insurance Policy and Payment and Performance Bond required under Section 13 herein [OPEN ISSUE], and (vi) the initiation of actual mobilization of construction equipment on the Demised Premises (and evidence of each of such items has been provided to Landlord that is reasonably satisfactory to Landlord).

2. After the Construction Commencement Date, Tenant shall complete construction of the Building Improvements with reasonable diligence, without material deviation from the Design Plan, and any deviation from the Design Plan shall be subject to the review and approval of Landlord. If (i) construction of the Building Improvements is not Substantially Complete (“Substantial Completion” being defined in subsection H. of this Section) on or before twenty-four (24) full calendar months after the Construction Commencement Date (the “Substantial Completion Date”) [save and except for force majeure as described in Section 42.B. and provided, further, if construction of the Building Improvements is seventy-five percent (75%) or more complete based on Construction Value (i.e., if the costs incurred and paid by Tenant to construct the Building Improvements equals or exceeds \$2,250,000.00) as of the Substantial Completion Date as substantiated by Construction Value Evidence presented by Tenant to Landlord, then the Substantial Completion Date shall be extended for up to an additional six (6) months so long as Tenant is diligently and continuously pursuing completion of construction], or if construction of the Building Improvements is not Finally Complete (“Final Completion” being defined in subsection H. of this Section) no later than ninety (90) days after the Substantial Completion Date (save

and except for force majeure as described in Section 42.B. and the extension of the Substantial Completion Date as aforesaid), or if (ii) the Construction Value of the Building Improvements does not exceed Three Million Dollars (\$3,000,000.00) as established by the Construction Value Evidence, which Tenant shall submit to Landlord on or before the Final Completion date, then:

(a) Tenant shall pay Landlord One Hundred Dollars (\$100.00) as additional Rent for each and every day thereafter until such completion is achieved; and

(b) Landlord may terminate this Lease by providing written notice to Tenant and the same shall become null and void and, except for the obligation to pay any accrued but unpaid Rent, any provisions of this Lease regarding the condition of the Demised Premises (including all improvements thereon) upon the expiration or termination of this Lease, and any provisions of this Lease regarding any obligations or provisions that survive the Lease expiration or termination (including obligations regarding indemnity and environmental matters), neither party to this Agreement shall have any further rights one against the other, except that Landlord shall return to Tenant any deposits made to Tenant within five (5) business days following such termination and Tenant shall at Landlord's request remove any portion of the Building Improvements requested by Landlord and the applicable provisions of Section 28.C., below, shall apply to such removal.

**E.** Tenant agrees that any construction or modification of the Building Improvements or any other improvements which may be authorized by Landlord, which authorization, if any, shall be in writing, on or within the Demised Premises shall comply with all standards, codes, and rules adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, shall further comply with the Town of Addison, Texas building and related codes and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building and related codes and zoning requirements, and all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the approved Design Plan.

**F.** Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental authority, entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

G. Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

H. "Substantial Completion of the Building Improvements" or "Substantial Completion" shall be deemed to have occurred upon the issuance by the Town of Addison, Texas of a certificate of temporary or final occupancy for the Building Improvements. "Final Completion" of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant's architect who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant's architect reflecting all approved changes and modifications to the originally approved Design Plan.

I. Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

**Section 7. Acceptance of Demised Premises: TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE**

**DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.**

In accepting the Demised Premises, Tenant acknowledges that this Lease shall be construed to provide rent to Landlord on a Net Return Basis, as set out in Section 32, below.

**Section 8. Securing Governmental Approvals and Compliance with Law; Noise Abatement:**

**A.** Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed. Landlord agrees to diligently and in good faith review and consider approval of the Design Plan, and once the Design Plan has been finally approved, to prosecute and expedite issuance of the associated permits.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by the Airport Manager (as of the Effective Date, the Airport Manager is as set forth in the Recitals, above,

but the Airport Manager may be changed or modified by the City, and for purposes of this Lease the Airport Manager shall also mean any person or entity authorized by Landlord to manage and/or operate the Airport), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building and related codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the Design Plan..

**B.** Tenant shall comply with all noise abatement standards at the Airport at all times, shall notify any employee, guest or invitee of Tenant, including any aircraft operator, using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

**Section 9. Assignment, Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:**

**A.** Without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole and absolute discretion and opinion), Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise, (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder (except to a leasehold mortgagee as hereinbelow provided and in accordance with and subject to all of the terms and conditions of this Lease) nor sublet in whole or in part any portion of the Demised Premises, and any such assignment or any subletting shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) an event of default under Section 23 of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlord-approved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such transferee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall

not act as an election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.

**B.** Notwithstanding the foregoing, Landlord hereby acknowledges and consents to Tenant's subletting of the Demised Premises for the purpose of renting aircraft storage only, provided that each sublease is evidenced by written agreement, signed and executed by Tenant and sublessee and fairly states:

1. Each sublessee agrees to be bound by the terms and provisions of the Ground Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises, and in the event of any conflict between the terms of the Ground Lease and the terms of the sublease, the terms of the Lease shall control;
2. Such subletting shall not constitute a novation;
3. In the event of occurrence of an event of default while the Demised Premises are sublet, Landlord, in addition to any other remedies provided herein or by law, may at Landlord's option, collect directly from such subtenant all rents becoming due under such subletting and apply such rent against any sums due to Landlord hereunder;
4. Sublessee shall be obligated to obtain Landlord's consent to any action as to which Tenant is obligated to obtain such consent under the Lease;
5. Any such sublease is to automatically terminate upon termination of this Lease notwithstanding any other provision of the sublease to the contrary;
6. Landlord shall have no responsibility or obligation for the performance by Tenant of its obligations under the sublease;
7. Neither this consent, the exercise by Landlord of its rights and remedies hereunder, nor the sublease or any other instrument shall give sublessee any rights directly or indirectly against Landlord or create or impose any obligation, duty, responsibility, or liability of Landlord in favor of or for the benefit of sublessee.

Furthermore, Tenant agrees that in no way does any sublease release Tenant from any of its covenants, agreements, liabilities and duties under this Lease; that this consent does not constitute approval by Landlord of the terms of any such sublease; that nothing herein contained shall be deemed a waiver or release of any of the Landlord's rights or remedies under this Lease or pursuant to law, in equity, or otherwise; that Tenant shall remain fully liable for the performance of each and every term, provision, covenant, duty and obligation of the Tenant under this Lease, including, without limitation, the duty to make any and all payments of Rent; and that any violation of any terms and conditions of this Lease by a sublessee may constitute a default under this Lease.

**C.** If consent by Landlord to an assignment is required hereunder, Tenant shall request, in writing, Landlord's consent to a proposed assignment and such request must include, in addition to any other information or materials that Landlord may request: (i) the name of the proposed assignee; (ii) the nature and character of the assignee's business; (iii) all material terms of the

proposed assignment; and (iv) financial statements prepared or reviewed by an independent CPA, or other evidence of the proposed assignee to perform its obligations under this Lease.

For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of more than 50% of Tenant on the Effective Date cease to own or have voting control of more than 50% of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership of voting securities or voting control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities,

**D.** Tenant shall have the right to mortgage the leasehold estate of Tenant created hereby in order to secure a mortgage loan for the purpose of (i) obtaining funds for the construction of the Building Improvements described in Section 6, or to reimburse Tenant for funds advanced by Tenant for such purpose or to refinance any such loan, or (ii) other construction upon the Demised Premises approved from time to time by Landlord in writing, or (iii) for any other purpose which may be approved from time to time by Landlord in writing. In the event that Tenant, pursuant to mortgages or deeds of trust, mortgages the leasehold estate of Tenant created hereby, the leasehold mortgagee shall in no event become personally liable to perform the obligations of Tenant under this Lease unless and until said mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, transfer in lieu of foreclosure, or otherwise, and thereafter said leasehold mortgagee shall remain liable for such obligations only so long as such mortgagee remains the owner of the leasehold estate. Notwithstanding the foregoing, it is specifically understood and agreed that no such mortgaging by Tenant and/or any actions taken pursuant to the terms of such mortgage shall ever relieve Tenant of Tenant's obligation to pay the rent due hereunder and otherwise fully perform the terms and conditions of this Lease.

**E.** All mortgages or deeds of trust whereby Tenant mortgages the leasehold estate of Tenant created hereby shall contain provisions (i) requiring the leasehold mortgagee to give Landlord at least fifteen (15) days written notice prior to accelerating the debt of Tenant to such mortgagee and/or initiating foreclosure proceedings under said mortgages or deeds of trust, and (ii) allowing Landlord during such fifteen (15) day notice period to cure Tenant's default and prevent said acceleration and/or foreclosure proceedings, and thereafter at Landlord's option to assume Tenant's position under said mortgages or deeds of trust.

**F.** Landlord agrees, if and so long as the leasehold estate of Tenant is encumbered by a leasehold mortgage and written notice to such effect has been given to Landlord, to give the holder of such leasehold mortgage at such address or addresses as may be specified in such written notice to Landlord for the giving of notices to the leasehold mortgagee, or as otherwise may be specified by the leasehold mortgagee to Landlord in writing, written notice of any default hereunder by Tenant, simultaneously with the giving of such notice to Tenant, and the holder of any such leasehold mortgage shall have the right, for a period of fifteen (15) days after its receipt of such notice or within any longer period of time specified in such notice, to take such action or to make payment as may be necessary or appropriate to cure any such default so specified, it being the intention of the parties hereto that Landlord shall not exercise Landlord's right to

terminate this Lease without first giving any such leasehold mortgagee the notice provided for herein and affording any such leasehold mortgagee the right to cure such default as provided for herein.

**G.** Landlord further agrees to execute and deliver to any proposed leasehold mortgagee of Tenant a “Non-Disturbance Agreement” wherein Landlord agrees that Landlord will (i) recognize such mortgagee after foreclosure, or transfer in lieu of foreclosure, as Tenant hereunder, and (ii) continue to perform all of Landlord’s obligations hereunder so long as such mortgagee performs all of the obligations of Tenant hereunder; provided, however, that notwithstanding the foregoing or any other provision of this Lease, such mortgagee shall not and does not have the right and shall not and does not have the power to assign (as defined in subsection A. of this Section above) this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, without the prior written approval of Landlord, and any such assignment shall be null and a cause for immediate termination of this Lease by Landlord, it being the intent of this provision that such mortgagee shall have no greater right to assign or sublet this Lease, or any right, interest, obligation, or liability hereunder, or any part of the Demised Premises, than the Tenant has as set forth in this Section. Landlord also agrees to consider the execution and delivery to such proposed leasehold mortgagee of any other documents which such proposed leasehold mortgagee may reasonably request concerning the mortgaging by Tenant of the leasehold estate created hereby; provided, however, that Landlord shall never be required to subordinate Landlord’s interest in the Demised Premises to the mortgage of such proposed leasehold mortgagee.

**H.** Upon request by Landlord, Tenant shall provide to Landlord a complete and accurate roster of any subtenants which shall include, but not be limited to, name, mailing address, email address, daytime telephone number, 24-hour emergency contact information, together with the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes a default of this Lease.

#### **Section 10. Property Taxes and Assessments:**

**A.** Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant shall fail to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 39 of this Lease shall be paid by Tenant on demand. Subject to the payment of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to effect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises (if Tenant has title to and owns the same) and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the

Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense, Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof.

**B.** If Landlord holds title to the Building Improvements, after conveyance of the same by Tenant (which conveyance shall be in form and content acceptable to Landlord), and DCAD thereafter assesses ad valorem property tax thereon, Landlord will either, at Landlord's option, (i) credit the amount of such tax that may be due and owing to the City ("City Tax") against Rent thereafter due, which credit may be applied by Landlord during the six (6) months after the City levies the City Tax against the Building Improvements, or (ii) pay to Tenant an amount equal to the City Tax, which payment shall be made by Landlord not later than 30 days after the date Tenant pays the City Tax (and such payment or credit, if any, is agreed to as a part of this Lease in order to promote the economic development of the City and to stimulate business and commercial activity within the City and the Airport). The said credit or payment is conditioned upon Tenant's timely (non-delinquent) payment of the City Tax; if the City Tax is delinquent at the time it is paid by Tenant, Landlord shall have no obligation to provide such credit or payment. Such credit or payment shall occur only for the 10 year period that begins in the year that the City Tax is first levied against the Building Improvements as described in this subsection B.

#### **Section 11. Maintenance and Repair of Demised Premises:**

**A.** Tenant shall, throughout the term hereof, maintain in good repair and in a first class condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas) all the Demised Premises and all buildings, improvements, fixtures, equipment and personal property (excluding aircraft stored in the Building Improvements) on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas), with all fixtures and equipment situated in the Demised Premises in good working order, reasonable wear and tear excepted. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Demised Premises.

**B.** Tenant's failure to keep the Demised Premises and all buildings, improvements, fixtures, equipment and personal property situated thereon in good repair and condition required by this Section is a default under this Lease. In the event Tenant shall fail to so maintain the Demised Premises and the buildings, improvements, fixtures, equipment and personal property (excluding aircraft stored in the Building Improvements) situated thereon, in addition to its other rights and remedies, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefore expended by Landlord plus interest thereon as provided in Section 39 shall be paid by Tenant on demand.

**Section 12. Alterations, Additions and Improvements:** After completion of the Building Improvements described in Section 6, Tenant shall not create any openings in the roof or exterior walls, or make any alterations, additions or improvements to the Demised Premises or any improvements thereon or modifications thereto without the prior written consent of Landlord or Manager. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord or Manager. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations (including, without limitation and as may be required by law, obtaining a building permit).

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a first class, workmanlike manner, shall comply with all the standards and requirements set out above, and in Section 6 and Section 8, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, special, and consequential damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in Section 6).

**Section 13. Insurance and Bonds:**

**A.** At all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(ii) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.

(iii) Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

(v) In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and construction managers, including design/build contractors used by Tenant, shall carry professional liability insurance at minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.

(vi) Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

(vii) Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000 and medical expense coverage with a limit of \$5,000 for any one person.

(viii) Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$1,000,000 for bodily injury and property damage.

(ix) If Tenant is fueling aircraft at the Airport pursuant to a fueling permit or license issued by the City, Tenant shall maintain a minimum of \$1,000,000 in Pollution Liability Insurance coverage.

(x) Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of building improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.

**B.** Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

(i) The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds except with respect to the professional liability policies and workers compensation insurance;

(ii) All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance;

(iii) A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;

(iv) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.);

(v) All insurance policies shall be endorsed to require the insurer to immediately notify the City and the Airport Manager of any material change in the insurance coverages;

(vi) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;

(vii) Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and

(viii) Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.

C. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

(ii) Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.

**D.** In connection with any construction on the Demised Premises:

(i) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$5,000.

(ii) Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the construction costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto. Tenant and Landlord shall be named as joint obligees of all such bonds. Alternatively, and at Tenant's election, Tenant shall cause to be issued in favor of Landlord an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the amount of one hundred percent (100%) of the construction costs, such stand-by letter of credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred under this Lease with respect to the construction of the Building Improvements. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the stand-by letter of credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Tenant during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord.

**E.** Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

**Section 14. Casualty Damage or Destruction:**

**A.** In case of any damage to or destruction of the buildings, structures, equipment, or any other improvements on or at the Demised Premises (including the Building Improvements), or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

**B.** In case of any damage to or destruction of any building, structure, equipment, or other improvements (including the Building Improvements) on or at the Demised Premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said building, structure, equipment, or other improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure, equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the "Restoration"). Notwithstanding the foregoing, in the event the Building Improvements or any other improvements on the Demised Premises shall be destroyed or substantially damaged during the last five (5) years of the Lease Term, then Tenant shall have no obligations for Restoration and shall notify Landlord in writing within thirty (30) days of such substantial damage or destruction whether Tenant elects to undertake Restoration or terminate this Lease. Tenant's failure to timely make such election as aforesaid shall be deemed an election by Tenant to terminate this Lease. Tenant's termination of this Lease pursuant to this Section 14 shall otherwise be in accordance with the terms and provisions of this Lease. For purposes of the foregoing, "substantial" shall mean such damage to the Building Improvements as shall render the Building Improvements unfit for their intended purpose. For purposes of this Section 14.B. and Section 14.E., the term "promptly" shall mean within ninety (90) days after Landlord and Tenant have mutually agreed upon the plans and specifications for the Restoration, provided Tenant shall in good faith and with reasonable diligence cooperate with Landlord in first proposing and then agreeing upon plans and specifications for the Restoration. All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction. All such design and construction shall comply with other Sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6, 8, and 13 hereof.

**C.** All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected, and fully indemnified in accordance with Sections 6 and 21 hereof and other relevant provisions of this Lease, in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon and Landlord shall be under no duty to take any action other than as set forth in this Section 14.

**D.** Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster's and attorney's fees and expenses ("Net Insurance Proceeds")) shall be applied as follows:

- (i) Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.
- (ii) Upon receipt by Landlord of the certificate and opinion required by the foregoing clauses (i) (a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialman's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

**E.** In the event that Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, Landlord shall have the right to commence or complete Restoration. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.

**F.** In the event of termination of this Lease by Landlord as a result of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the term of this Lease, and all insurance proceeds shall be paid to Landlord.

#### **Section 15. Condemnation:**

**A.** If during the term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the Demised Premises, and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.

**B.** If after such taking by or sale to said condemning authority the remainder of the Demised Premises is susceptible to efficient and economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment due hereunder, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the Demised Premises.

**C.** If this Lease is not terminated pursuant to Section 15.A., above, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant, as their interest may appear. If this Lease is terminated pursuant to Section 15.A, condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

**Section 16. Utilities:** Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services. Notwithstanding the foregoing, the City agrees to relocate or cause to relocate, at its sole cost and expense, all City or franchise utilities (water, sewer, gas and electrical service) as may be needed to provide service to the respective meter or terminal point as shown in the Design Plans for the Building Improvements and to do so no later than \_\_\_\_\_ (subject to force majeure as described in Section 42.A.).

**Section 17. Common Facilities:** Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the Demised Premises, other Airport installations, and all other reasonable services which may be provided with or without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall at all times be under the exclusive control, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

**Section 18. Rules and Regulations:** Landlord has adopted *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* (also commonly

referred to as the “Minimum Standards” or “Airport Minimum Standards”) and *Addison Airport Rules and Regulations* (also commonly referred to as the “Rules and Regulations” or “Airport Rules and Regulations”), which shall govern Tenant in the use of the Demised Premises and all Common Facilities, a copy of which has been furnished to Tenant. The Minimum Standards and Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with these governing documents. Landlord, in its sole discretion, shall have the right to amend, modify and alter these Minimum Standards and Rules and Regulations from time to time in a reasonable manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience and protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

**Section 19. Signs and Equipment:** After first securing Landlord’s approval, Tenant shall have the right from time to time to install and operate signs depicting Tenant’s name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Demised Premises that may be reasonably necessary for the operation of Tenant’s business, provided such signs and equipment are installed and maintained in compliance with all applicable governmental laws, rules, and regulations, including the City sign ordinance, and do not interfere with the operation of any navigation facilities or Airport communications (including, without limitation, navigation facilities or Airport communications used or operated by the Federal Aviation Administration).

**Section 20. Landlord’s Right of Entry:** Landlord and Landlord’s authorized representatives shall have the right, during normal business hours and upon one (1) day notice (not counting Saturdays, Sundays or holidays), except in the case of emergencies, to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Demised Premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose.

During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord’s authorized representatives shall have the right to erect and maintain on or about the Demised Premises customary signs advertising the Demised Premises for lease.

**Section 21. Indemnity and Exculpation:**

**A. Exculpation.** Landlord and the elected officials, the officers, employees, representatives, agents, and volunteers of Landlord, individually or collectively, in both their official and private capacities, (each a “Landlord Person” and collectively the “Landlord Persons”), and Airport Manager and Airport Manager’s owner’s, officers, employees, representatives, and agents, in both their official and private capacities, (each a “Manager Person” and collectively the “Manager Persons”), shall not be liable to Tenant or to any of Tenant’s owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, subcontractors, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, and subcontractors, (each a “Tenant Person” and collectively

**“Tenant Persons”), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or any Tenant Persons and/or the conduct of Tenant’s business thereon, or arising out of any breach or default by Tenant in the performance of Tenant’s obligations hereunder.**

**B. TENANT’S INDEMNITY OBLIGATION. Tenant shall DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS Landlord and all other Landlord Persons and Airport Manager and all Manager Persons (Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, being collectively the “Indemnified Persons”) from and against any and all claims, actions, proceedings, causes of action, demands, losses, harm, damages, penalties, fines, liability, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any of the Indemnified Persons, whether directly or indirectly (collectively for purposes of this Section, “Damages”), that result from, relate to, are based upon, or arise out of, in whole or in part, (I) any condition of the Demised Premises caused in whole or in part by Tenant or by any Tenant Persons; (II) any act or omission of Tenant or any Tenant Persons under, in connection with, or in the performance of, this Lease; (III) any representations or warranties by Tenant under this Lease; (IV) any personal injuries (including but not limited to death) to any Tenant Persons and to any third persons or parties arising out of or in connection with Tenant’s use and occupancy of the Demised Premises under this Lease; and/or (V) the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons for any reason, including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling. THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PERSONS (OR ANY OF THEM), OR CONDUCT BY THE INDEMNIFIED PERSONS (OR ANY OF THEM) THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND. However, Tenant’s liability under this indemnity obligation shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Indemnified Person’s or Indemnified Persons’ proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Tenant’s liability for Indemnified Person’s or Indemnified Persons’ defense costs and attorneys’ fees shall be limited to a portion of the defense costs and attorneys’ fees equal to the Indemnified Person’s or Indemnified Persons’ proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.**

Tenant shall promptly advise Landlord and Airport Manager in writing of any claim or demand against any Indemnified Persons, Tenant, or any Tenant Persons related to or arising out of

Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's sole cost and expense. The Indemnified Persons shall have the right, at the Indemnified Person's or Indemnified Persons' option and own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

**C. Release. Tenant hereby RELEASES Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, (i) for any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and (ii) any loss or damage that may result from or be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public, or quasi-public work, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE [BUT EXCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.**

**D. THE PROVISIONS OF THIS SECTION 21 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.**

## **Section 22. Environmental Compliance:**

**A. No Storage or Disposal:** Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant, its directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised Premises or any portion of the Common Facilities, any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq, as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation.

(The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as “Hazardous Materials”).

**B.** Cleanup Laws: Tenant shall, at Tenant’s own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, “Cleanup Laws”); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date. In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant’s own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the “Authority”) under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant, during the Term of this Lease, Tenant shall, at Tenant’s own expense, prepare and submit the required plans and financial assurances and carry out the approved plans in accordance with such Cleanup Laws and to Landlord’s satisfaction. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the Common Facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

**TENANT’S FURTHER INDEMNITY OBLIGATION. TENANT SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FROM AND AGAINST, AND REIMBURSE LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FOR, ANY AND ALL OBLIGATIONS, DAMAGES, INJUNCTIONS, FINES, PENALTIES, DEMANDS, CLAIMS, COSTS, FEES, CHARGES, EXPENSES, ACTIONS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, SUITS, PROCEEDINGS AND LOSSES OF WHATEVER KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS’ FEES AND COURT COSTS), AND ALL CLEANUP OR REMOVAL COSTS (COLLECTIVELY FOR PURPOSES OF THIS SUBSECTION, “DAMAGES”) AND ALL ACTIONS OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH, (I) THE GENERATION, INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN OR ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE AIRPORT, INCLUDING THE COMMON FACILITIES, OR ANY PROPERTY ADJACENT TO THE AIRPORT, BY TENANT OR ANY TENANT PERSONS, AND (II) ALL FINES, SUITS, PROCEDURES, CLAIMS AND ACTIONS OF ANY KIND ARISING OUT OF TENANT’S FAILURE TO PROVIDE ALL INFORMATION, MAKE ALL SUBMISSIONS AND TAKE ALL STEPS REQUIRED BY THE AUTHORITY UNDER THE CLEANUP LAWS OR ANY OTHER ENVIRONMENTAL LAW, RULE, STANDARD, REGULATION, OR POLICY. SUCH DEFENSE, INDEMNITY, AND**

**HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE [BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF THE LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION OF LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT MAY GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TENANT'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, TENANT'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.** In addition to and not in limitation of Landlord's other rights and remedies, Tenant's failure to abide by the terms of this Section shall be restrainable by injunction.

**C. Environmental Notices:** Tenant shall promptly supply Landlord with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

**D.** Prior to the Commencement Date of this Lease, the Tenant, at Tenant's sole cost and expense, shall be entitled to conduct a Phase I Environmental Site Assessment ("ESA") with respect to the Demised Premises. If the Phase I ESA indicates the likely presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled to conduct a Phase II ESA at Tenant's sole cost and expense. If the Phase II ESA indicates the presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled, as its sole remedy, to disaffirm this Lease, in which case this Lease shall become null and void and no further obligation shall be borne by either party hereto. A copy of a Phase I ESA and Phase II ESA, if any, shall be delivered promptly to Landlord upon completion.

**E. Survival:** Tenant's defense and indemnity and hold harmless obligation and Tenant's liability pursuant to the terms of this Sections 6, 21 and 22 shall survive the expiration or earlier termination of this Lease.

**Section 23. Default by Tenant:** Each of the following events, inclusive of those events of default otherwise referenced herein, shall be deemed to be an Event of Default (herein so called) by Tenant under this Lease:

**A.** Failure of Tenant to pay any installment of rent or any other sum payable to Landlord hereunder, or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is to make under this Lease, on the date that same is due and such failure shall continue for a period of ten (10) days after the date on which such payment is to be made.

**B.** Failure of Tenant to comply with any term, condition or covenant of this Lease (other than the payment of rent or other sum of money, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A. of this Section 23) and such failure shall not be cured within thirty (30) days after written notice thereof to Tenant; provided, however, in the event such failure is not susceptible of cure within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty [60] days) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

**C.** INTENTIONALLY DELETED.

**D.** Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

**E.** Filing of a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor and same is not dismissed within sixty (60) days of filing.

**F.** Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations and same is not dismissed within sixty (60) days of filing.

**G.** Abandonment or cessation of use of the Demised Premises or any substantial portion thereof for the purpose leased by Tenant for a period of thirty (30) consecutive days.

**H.** Tenant is in default of any other lease or agreement with the Town of Addison after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing permit or license issued by the Town of Addison, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

**Section 24. Remedies of Landlord:** Upon the occurrence of any of Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following rights or remedies using lawful force if necessary or appropriate, without notice or demand whatsoever:

**A.** Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant.

Landlord may also terminate this Lease at any time after a termination of occupancy or possession as described in subsection B. of this Section.

**B.** Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.

**C.** Recover unpaid Rent and any Damages (as defined below);

**D.** Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.

**E.** Remove and store (at Tenant's sole cost) any property (other than aircraft) on the Demised Premises.

**F.** Sue for eviction, specific enforcement, equitable relief, rent, damages, or any other available remedy.

**G.** INTENTIONALLY DELETED.

**H.** Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within 30 days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.

**I.** Withhold or suspend any payment that this Lease would otherwise require Landlord to make.

**J.** [INTENTIONALLY DELETED].

Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).

For purposes of this Section, "Damages" includes, without limitation, all actual, incidental, and consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease, including, without limitation, the cost of (A) recovering possession of the Demised Premises, (B) removing and storing Tenant's and any other occupant's property, (C) re-letting the Demised Premises, including, without limitation, the costs of brokerage commissions and cleaning, decorating, repairing, or altering the Demised Premises for a substitute tenant or tenants, (D) collecting any money owed by Tenant or a substitute tenant, (E) repairing any damage caused by any Tenant Persons, (F) performing any obligation of Tenant under the Lease, and (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.

Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including, without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).

Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or remedy herein provided constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

**Section 25. Default by Landlord:** No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential damages) or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recovery or entitle Tenant to take any action whatsoever with regard to the Demised Premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right as its sole and exclusive remedy to:

**A.** Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder;

**B.** Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum; or

**C.** Seek, through judicial action, a declaratory judgment action, and limited equitable remedies of injunction and specific performance, as well as actual damages directly resulting from such default (but subject to the provisions of subsection B. of Section 26, below).

If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the

time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

**Section 26. Mitigation of Damages:**

A. In lieu of any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than 90 days after Tenant physically vacates the Demised Premises and continuing until the Demised Premises have been relet (but subject to the provisions of this subsection A. set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in Section 24, above).

Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:

(1) Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Demised Premises until and unless Landlord obtains full and complete possession of the Demised Premises, including without limitation, the final and unappealable legal right to relet the Demised Premises free of any claim of Tenant.

(2) Landlord will not be obligated to offer the Demised Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other premises located at Addison Airport.

(3) Landlord will not have any obligation to lease the Demised Premises for any rental less than the current rate then prevailing for similar space at Addison Airport (or if no similar space is available, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Demised Premises) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.

(4) Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment and opinion.

(5) Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's commercially reasonable judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.

(6) Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant.

If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and **Tenant hereby waives and releases**, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No rent collected from a substitute tenant for any month in excess of the rent due under the Lease for that month will be credited or offset against unpaid rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. **TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT WAIVES ANY OTHER OBLIGATION BY LANDLORD TO MITIGATE ITS DAMAGES AFTER TENANT FAILS TO PAY RENT OR VACATES OR ABANDONS THE PREMISES.**

**B.** Tenant's right to seek actual damages as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

**Section 27. Waiver of Subrogation:** Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of, the Demised Premises, which loss or damage is covered by valid and collectible casualty, fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

**Section 28. Title to Improvements:**

**A.** Any and all improvements on the Demised Premises, including, without limitation, any buildings constructed on the Demised Premises by or for Tenant, shall be owned by Tenant

during the term of this Agreement. The term “improvements” shall mean the improvements from time to time on the Demised Premises (including, without limitation, the Building Improvements).

**B.** Provided Tenant is not then in default of this Lease, Tenant may, at any time after the Commencement Date, deed or otherwise convey (in form and content acceptable to Landlord, and free and clear of any and all claims and any and all liens or other encumbrances) ownership of the Building Improvements constructed upon the Demised Premises to Landlord, and upon such conveyance the same shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord with all other terms and conditions of the Lease remaining the same (e.g., following such conveyance, Tenant shall continue to be responsible and liable for all maintenance, repair, and upkeep of, and all other provisions of this Lease relating to, the Building Improvements, shall continue to carry insurance with respect to the Building Improvements, shall have the Restoration obligations set forth in Section 14, etc., as if the Building Improvements had not been deeded or otherwise conveyed to Landlord). In the event of such conveyance, Landlord agrees, subject to the provisions of this subsection, to accept title and ownership of the Building Improvements provided there are no pending casualty claims against the Building Improvements. As a condition to accepting a conveyance of the Building Improvements, Landlord reserves the right at its sole cost, expense and discretion, to procure a Phase I environmental site assessment (and a Phase II, if such is indicated as necessary by the Phase I report) and an property condition assessment report pursuant to ASTM E2018 to establish the condition of the Building Improvements at time of conveyance; if Landlord, in its sole and absolute discretion, finds something objectionable in any such assessments, Landlord may decline to accept the conveyance. Further, the Building Improvements, at the time of such conveyance, shall be in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas); if the Building Improvements are not in such good repair and condition, Landlord may decline to accept the conveyance.

**C.** Upon the termination of this Agreement, whether by expiration of the term hereof or by reason of default on the part of Tenant, or for any other reason whatsoever, the improvements (including, without limitation, the Building Improvements), and all parts thereof, shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord; provided, however: (i) Tenant shall have the right to remove all personal property (including aircraft stored in the Building Improvements) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal in a good and workmanlike manner and at Tenant’s sole cost and expense; and (ii) Landlord may elect to require Tenant to remove all improvements from the Demised Premises and restore the Demised Premises to the condition in which the same existed on the date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant’s sole cost and expense. Upon such termination, Tenant shall deliver the Demised Premises to Landlord in good condition, reasonable wear and tear excepted, and shall, at Landlord’s request, execute a recordable instrument evidencing the termination of this Agreement and stating the termination or expiration date.

**Section 29. Mechanics' and Materialmen's Liens; Lien for Rent:**

**A.** Tenant agrees to DEFEND, INDEMNIFY and HOLD HARMLESS to the full extent as provided in this Lease, Landlord and all Landlord Persons, and Airport Manager and all Manager Persons, from and against all liability arising out of the filing of any mechanics' or materialmen's liens against the Demised Premises by reason of any act or omission of Tenant or anyone claiming under Tenant (including, without limitation, any Tenant Persons), and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Section 39 as additional Rent; provided, however, that Landlord shall not so satisfy such liens until thirty (30) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such thirty (30) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the Demised Premises, unless a shorter period of time is dictated by applicable law.

**B.** To secure payment of Rent and other sums of money coming due hereunder, Tenant grants to Landlord a continuing security interest in all of Tenant's equipment, fixtures and furniture, and its other personal property, expressly including any and all aircraft owned by Tenant and stored in the Building Improvements ("Collateral") situated in or on the Demised Premises.

**C.** Tenant will not remove, or allow others to remove, the Collateral from the Demised Premises without Landlord's prior written consent. But Tenant may remove Collateral in the ordinary course of business before a default. If a default occurs, Landlord will be entitled to exercise any or all rights and remedies under the Uniform Commercial Code or otherwise provided in this Lease or by law. Landlord may sell any or all of the Collateral at public or private sale upon 10 days notice to Tenant, and Tenant stipulates that this notice is adequate and reasonable. This contractual lien supplements any statutory or contractual lien in favor of Landlord.

**D.** At Landlord's request, Tenant will sign and deliver to Landlord a financing statement in form sufficient to perfect Landlord's security interest in the Collateral, and Tenant irrevocably appoints Landlord as Tenant's attorney-in-fact to sign and deliver a financing statement to Landlord if Tenant fails or refuses to do so. This power-of-attorney is coupled with an interest.

**E.** Tenant warrants and represents that (a) the Collateral has not been purchased or used for personal, family, or household purposes; and (b) the lien in the Collateral constitutes a first and superior lien. Tenant will not allow any other lien in the Collateral without Landlord's prior written consent.

Pursuit of any one or more of the foregoing remedies shall not preclude the simultaneous or subsequent pursuit of any other remedy provided herein or any other remedy provided by law or in equity, nor shall the pursuit of any one or more remedies constitute a forfeiture or waiver of any rent or other amount payable by lessee hereunder or of any damages (including incidental,

special, and consequential damages) accruing to or suffered by Landlord by reason of any event of default.

**Section 30.** INTENTIONALLY DELETED.

**Section 31. Quiet Enjoyment and Subordination:** Landlord represents that Tenant, upon payment of the Rent and performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Demised Premises during the full term of this Lease. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien hereafter placed on the Demised Premises; provided, however, any such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

**Section 32. Rent on Net Return Basis:** The rent provided for in this Lease shall be an absolutely net return to Landlord for the term of this Lease, free of any loss, expenses or charges with respect to the Demised Premises, including, without limitation, maintenance, repairs, replacement, insurance, taxes and assessments, and this Lease shall be construed in accordance with and to effectuate such intention.

**Section 33. Holding Over:** Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised Premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental equal to one hundred twenty-five percent (125%) of the Base Rent paid for the last month of the term of this Lease.

**Section 34. Waiver of Default:** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or

payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

**Section 35. Release of Landlord Upon Transfer:** All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the Demised Premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the Demised Premises.

**Section 36. Attorneys' Fees:** If, on account of any breach or default by either Party to this Lease, it shall become necessary for either Party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

**Section 37. Financial Information:** Tenant agrees that Tenant will from time to time upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

**Section 38. Estoppel Certificates:** Tenant agrees that from time to time, upon not less than ten (10) days prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

**A.** This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

**B.** The dates to which Rent and other charges have been paid.

**C.** Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

**D.** If requested by Landlord, Tenant will not pay rent for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to be furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:

(i) This Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications).

(ii) The dates to which Rent and other charges have been paid.

(iii) Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

**Section 39. Interest on Tenant's Obligations and Manner of Payment:** All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

**Section 40. Special Events:** Landlord may sponsor certain special events, including, but not limited to, air shows, to be conducted on portions of the Airport, which may limit or obstruct access to the Premises and/or to the Airport ("Special Events"), and Tenant agrees and consents to the same. As a material inducement to Landlord to enter into this Lease, and notwithstanding anything to the contrary contained herein, Tenant, on behalf of Tenant and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, subtenants, licensees or concessionaires of Tenant and on behalf of any other party claiming any right to use the Demised Premises by, through or under Tenant, hereby: (i) agrees that Landlord has the right to sponsor any or all Special Events and to allow use of portions of the Airport therefor even if the same limit or obstruct access to the Demised Premises and/or to the Airport; (ii) **releases, waives and discharges** Landlord and Manager, and Landlord Persons and Manager Persons, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or obstruction of access to the Demised Premises and/or to the Airport from the conduct of Special Events and/or activities relating or pertaining thereto, including, without limitation, death, injury to person or property or loss of business or revenue (the "Released Claims"); (iii) **covenants not to sue** the Landlord or Manager, or any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section are intended and shall be construed to be as broad and inclusive as possible under the laws of the State of Texas; and (v) agrees that if any portion of this Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

**Section 41. Independent Contractor:** It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

**Section 42. Force Majeure:**

**A.** In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

**B.** In the event performance by Tenant of any term, condition or covenant in this Lease is delayed or prevented by an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or hindered.

**Section 43. Exhibits:** All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

**Section 44. Use of Language:** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

**Section 45. Captions:** The captions or headings, sections, or paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

**Section 46. Successors; No Third Party Beneficiaries; No Waiver of Immunity; No Tax Representation:** The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

Notwithstanding any provision of this Lease, Landlord makes no representation that this Lease or any provision hereof will entitle or allow Tenant to receive any federal income or other federal tax benefit whatsoever.

**Section 47. Severability:** If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give effect (to the fullest extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable. It is the parties intent that the term of this Lease not exceed 40 years (480 months); if it should be determined that the term of this Lease exceeds such period of time, the term hereof shall be reformed so as to make the term hereof not exceed such period of time.

**Section 48. Notices:** Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, and (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above. Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas  
c/o City Manager  
5300 Belt Line Road  
Dallas, Texas 75254  
Email: \_\_\_\_\_

*and*

Town of Addison, Texas  
c/o Addison Airport Manager  
16051 Addison Road, Suite 220  
Addison, Texas 75001  
Attn: Real Estate Manager  
Email: \_\_\_\_\_

TO TENANT:

Sky B&B, LLC  
Mr. Timothy A. Mack, Manager  
3738 Oak Lawn Avenue  
Dallas, Texas 75219  
Email: [tmack@mackmatheson.com](mailto:tmack@mackmatheson.com)

With Copy to:  
Holmes Firm PC  
14911 Quorum Drive  
Suite 340  
Dallas, Texas 75254  
Attn: Ronald L. Holmes  
Email: [ron@theholmesfirm.com](mailto:ron@theholmesfirm.com)

**Section 49. Fees or Commissions:** Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such party agrees to indemnify and hold the other party harmless from the payment of any such fees or commissions.

**Section 50. Counterparts:** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 51. Consent; "Includes" and "Including"; Recitals:** Where Landlord consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

**Section 52. Governing Law and Venue; Survivability of Rights and Remedies:** This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper. Any rights and remedies either party may have with respect to the other arising out of the performance of or failure to perform this Lease during the term hereof shall survive the cancellation, expiration or termination of this Lease.

**Section 53. Entire Agreement and Amendments; Authorized Persons:** This Lease, consisting of fifty-four (54) Sections and Exhibits 1- 6 attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

**Section 54. Notice of Proposal.**

A. If at any time during the term of this Lease (while Sky B&B, LLC is the Tenant hereunder), Landlord receives a written proposal from a third party or entity (the "Third Party Proposal") to enter into a new ground lease of all or any portion of the real property shown on Exhibit 5 attached hereto (the "Adjacent Property #1"), which proposal is deemed by Landlord to be bona fide and credible, Landlord shall notify Tenant in writing (the "Notice") of its receipt of the Third Party Proposal (and such Notice shall include a description of the portion of the Adjacent Property which is the subject of the Third Party Proposal). Upon Tenant's receipt of such notice,

Tenant shall be entitled to submit to Landlord, on or before 5:00 p.m. of the fifth business day following such receipt, Tenant's written proposal to ground lease such Adjacent Property (or portion thereof) as described in the Notice ("Tenant's Proposal"), it being the intent of this provision to allow Tenant an opportunity to submit Tenant's Proposal for consideration by Landlord prior to Landlord entering into good faith negotiations with such third party or entity regarding such ground lease. For purposes of this Lease, "business day" means any day other than a Saturday, Sunday, or holiday; "holiday" means New Year's Day, Memorial Day, U.S. Independence Day, Labor Day, Thanksgiving Day and the day (Friday) following Thanksgiving Day, Christmas Eve, and Christmas Day.

B. If at any time during the term of this Lease (while Sky B&B, LLC is the Tenant hereunder), Landlord receives a written proposal from a third party or entity (the "Third Party Proposal") to enter into a new ground lease of all or any portion of the real property shown on Exhibit 6 attached hereto (the "Adjacent Property #2"), which proposal is deemed by Landlord to be bona fide and credible, Landlord shall first give notice to Frito-Lay, Inc. or its Affiliate of its receipt of the Third Party Proposal. If Frito-Lay, Inc. elects to submit a Tenant's Proposal, Landlord shall give the Frito-Lay proposal consideration first. If Landlord elects to accept the Frito-Lay proposal, Tenant has no further claims with respect to Adjacent Property #2. If Landlord elects not to accept Frito-Lay or its Affiliate's proposal in Landlord's sole discretion or, Frito-Lay or its Affiliate elects not to submit a Tenant's Proposal pursuant to the terms of their ground lease, Landlord shall then give Tenant notice in writing (the "Notice") of its receipt of the Third Party Proposal (and such Notice shall include a description of the portion of the Adjacent Property which is the subject of the Third Party Proposal). Upon Tenant's receipt of such notice, Tenant shall be entitled to submit to Landlord, on or before 5:00 p.m. of the fifth business day following such receipt, Tenant's written proposal to ground lease such Adjacent Property (or portion thereof) as described in the Notice ("Tenant's Proposal"), it being the intent of this provision to allow Tenant an opportunity to submit Tenant's Proposal for consideration by Landlord prior to Landlord entering into good faith negotiations with such third party or entity regarding such ground lease.

**EXECUTED** as of the day, month and year first above written.

**LANDLORD:**

**TENANT:**

TOWN OF ADDISON, TEXAS

**SKY B&B, LLC**

By: \_\_\_\_\_  
Lea Dunn, City Manager

By: \_\_\_\_\_  
Printed Name: Timothy A. Mack,  
Its: Manager

**ACKNOWLEDGEMENTS**

**STATE OF TEXAS  
COUNTY OF DALLAS**

This instrument was acknowledged before me on \_\_\_\_\_, 200\_ by Lea  
Dunn, City Manager of the Town of Addison, Texas, a home-rule municipality, on behalf of the  
said municipality.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS  
COUNTY OF DALLAS**

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by  
Timothy A. Mack, Manager of Sky B&B, LLC, a Texas limited liability company, on behalf of the  
said limited liability company.

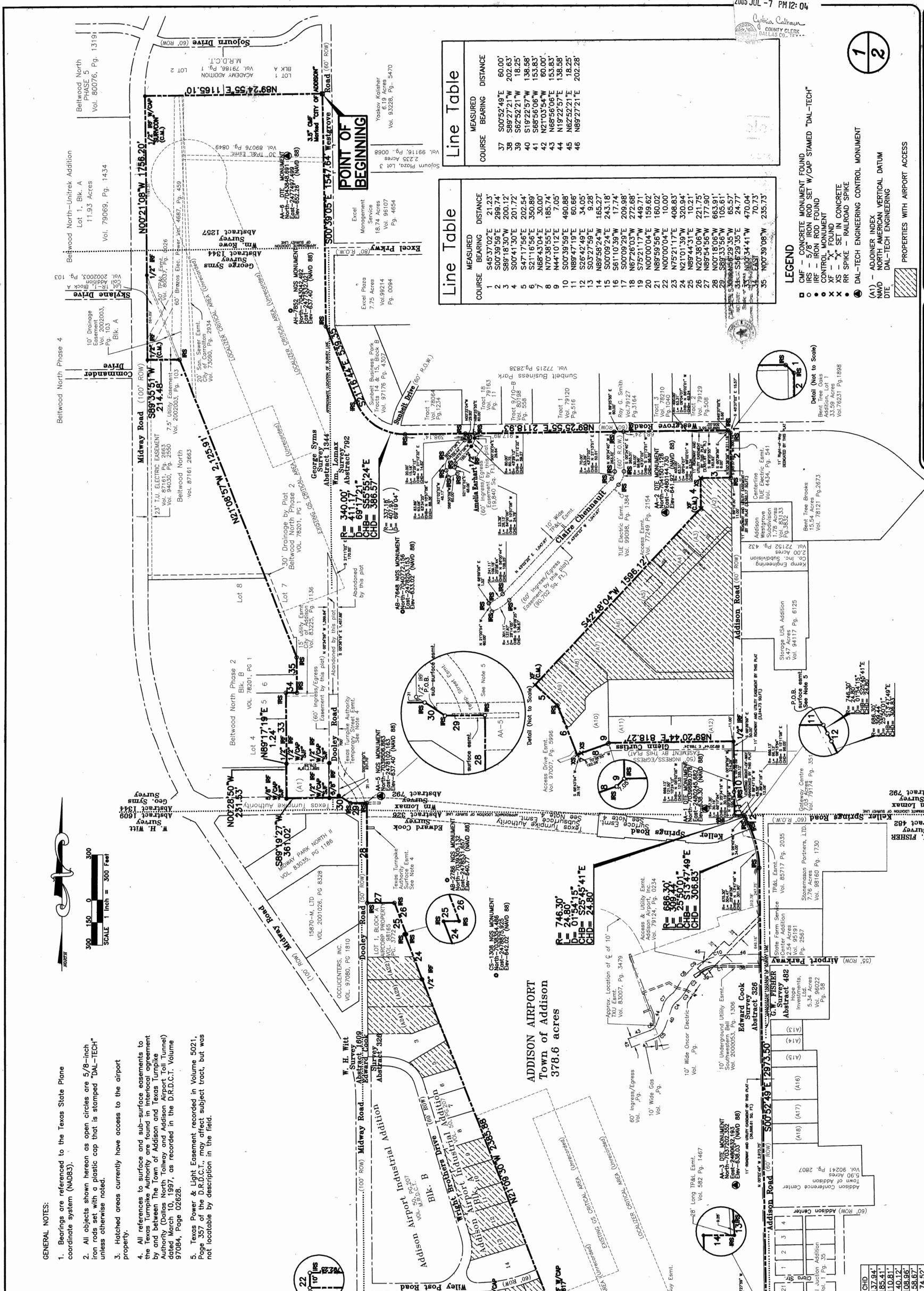
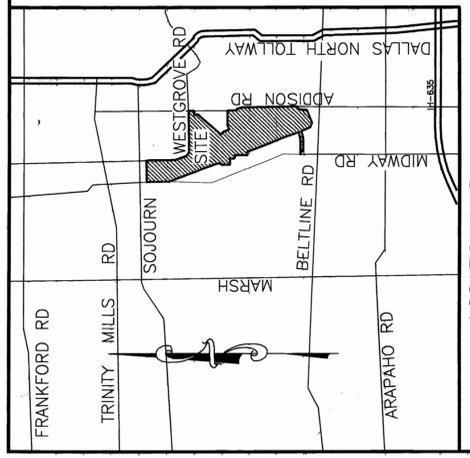
**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of  
\_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

## **Exhibit 1 – Legal Description of Addison Airport**

**GENERAL NOTES:**

- Bearings are referenced to the Texas State Plane coordinate system (NAD83).
- All objects shown hereon as open circles are 5/8-inch iron rods set with a plastic cap that is stamped "DAL-TECH" unless otherwise noted.
- Hatched areas currently have access to the airport property.
- All references to surface and sub-surface easements to the Texas Turnpike Authority are found in interlocal agreement by and between the Town of Addison and Texas Turnpike Authority (Dallas North Tollway and Addison Airport Toll Tunnel) dated March 10, 1997, as recorded in the D.R.D.C.T. Volume 97084, Page 02628.
- Texas Power & Light Easement recorded in Volume 5021, Page 357 of the D.R.D.C.T. may affect subject tract, but was not locatable by description in the field.



**Line Table**

COURSE	BEARING	DISTANCE
1	S45°37'02"E	21.23'
2	S00°39'59"E	298.74'
3	S89°18'30"W	200.12'
4	S00°41'30"E	201.72'
5	S47°17'56"E	202.54'
6	S21°16'56"E	350.89'
7	N68°43'04"E	30.00'
8	N70°38'55"E	185.74'
9	N44°10'12"E	7.05'
10	S00°39'59"E	490.88'
11	N89°47'19"E	60.66'
12	S26°42'49"E	34.05'
13	S03°27'59"E	9.28'
14	N89°58'24"E	165.27'
15	S00°09'24"E	243.18'
16	S61°10'39"W	209.98'
17	S00°09'29"E	272.68'
18	N67°26'03"W	272.68'
19	S75°21'17"W	449.71'
20	N00°00'04"E	159.62'
21	N00°00'04"E	160.02'
22	N89°59'56"W	10.00'
23	N75°21'17"E	408.83'
24	N21°01'39"W	320.94'
25	N89°44'31"E	10.21'
26	N20°38'06"W	221.75'
27	N89°54'56"W	177.90'
28	N00°18'06"W	663.91'
29	S89°33'56"W	105.61'
30	S39°29'35"E	55.57'
31	S00°34'41"W	470.04'
32	N00°39'08"W	235.73'

**Line Table**

COURSE	BEARING	DISTANCE
37	S00°52'49"E	60.00'
38	S89°27'21"W	202.63'
39	S62°52'21"W	18.25'
40	S19°22'57"W	138.98'
41	S68°56'06"W	153.63'
42	N27°03'54"W	60.00'
43	N68°56'06"E	153.63'
44	N19°22'57"E	138.98'
45	N82°52'21"E	18.25'
46	N89°27'21"E	202.28'

**LEGEND**

- CMF - CONCRETE MONUMENT FOUND
- IRF - 5/8" IRON ROD FOUND
- CONTROL MONUMENT
- XC - "X" SET IN CONCRETE
- RR SPIKE - RAILROAD SPIKE
- DAL-TECH ENGINEERING CONTROL MONUMENT
- (A1) - ADJOINER INDEX
- NAVD - NORTH AMERICAN VERTICAL DATUM
- DTE - DAL-TECH ENGINEERING

**DAL-TECH ENGINEERING, INC.**  
 CONSULTING CIVIL ENGINEERS / SURVEYORS  
 CONSTRUCTION PARKWAY  
 17311 DALLAS PARKWAY  
 DALLAS, TEXAS 75248  
 (972) 250-2727 (972) 250-4774

Town of Addison Approver: **JOE CHON**  
 City Secretary: **Carmon Moran**  
 Scott Wheeler, Mayor (Town of Addison)

**FINAL PLAT**  
**ADDISON AIRPORT**  
**TOWN OF ADDISON, TEXAS**

DRAWN: \_\_\_\_\_  
 JOB NO.: \_\_\_\_\_  
 CONTRACT NO.: \_\_\_\_\_  
 SCALE: 1"=300'  
 DATE: DEC. 2004

**CURVE TABLE**

NO.	RAD.	L	DELTA	CHB	CHD
C1	300.00'	139.18'	26°55'00"	S76°05'51"W	132.84'
C2	200.00'	188.92'	20°08'00"	S30°26'52"W	136.81'
C3	20.00'	10.69'	32°18'33"	S35°02'14"W	4.012'
C4	130.00'	112.43'	48°33'09"	S44°09'32"W	108.96'
C5	70.00'	60.54'	49°33'09"	N44°09'32"E	58.67'
C6	130.00'	75.68'	33°18'33"	N36°02'14"E	74.52'
C7	188.00'	84.72'	25°49'09"	N39°46'56"E	84.00'
C8	360.00'	226.19'	36°00'00"	N44°52'21"E	222.49'
C9	360.00'	167.03'	26°35'00"	N76°09'51"E	165.53'



## **Exhibit 2 – Description of Demised Premises**



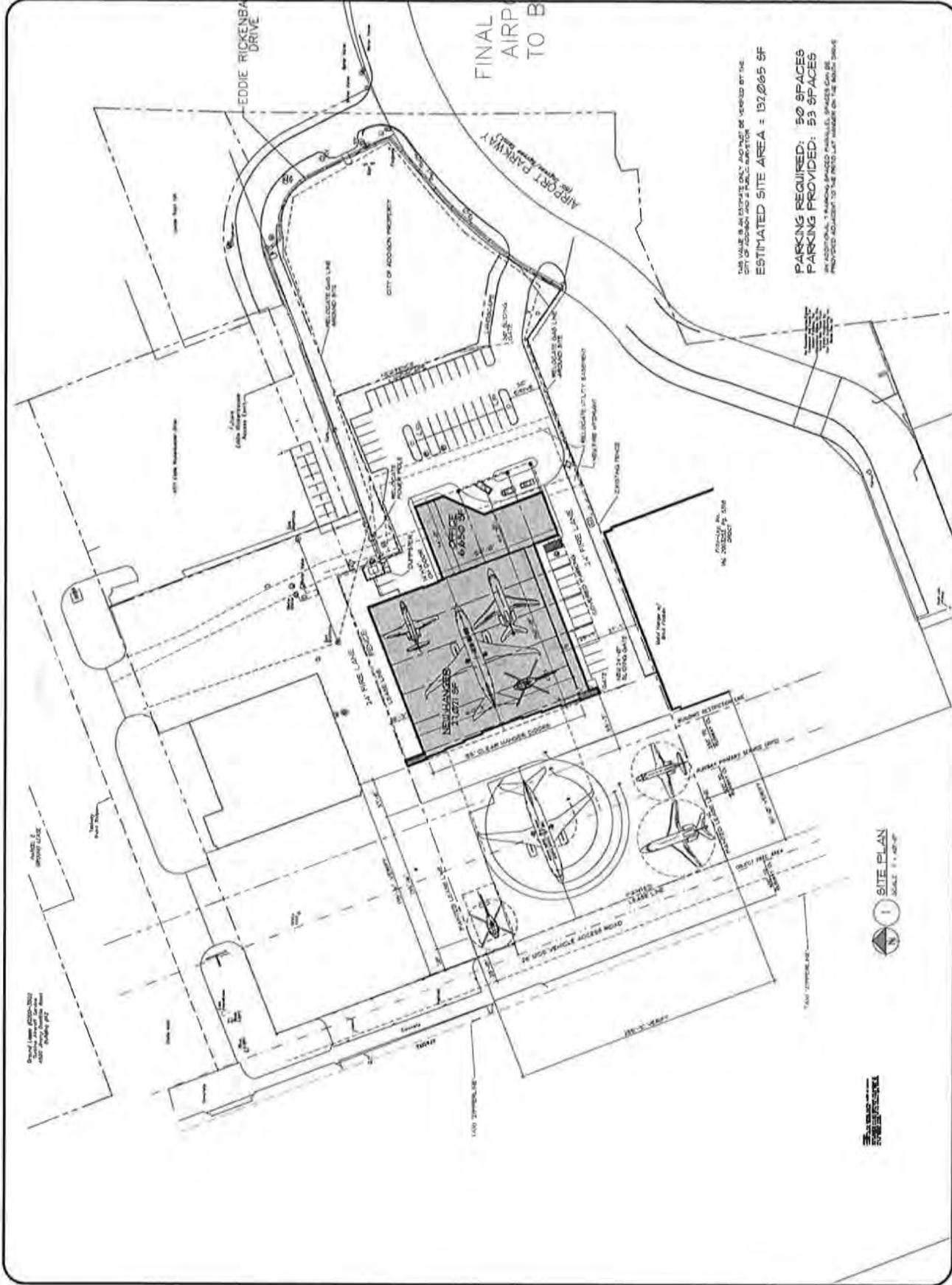
PROJECT: A NEW MANAGER AND TERMINAL  
 ARCHITECT: STUCKEY ARCHITECTS  
 THESE DRAWINGS ARE NOT FOR REGULATORY APPROVAL, PERMITTING, OR CONSTRUCTION.

**SKY B&B, LLC**  
 A NEW MANAGER AND TERMINAL FOR:  
 ADDISON AIRPORT  
 ADDISON, TEXAS

REVISIONS

NO.	DATE	DESCRIPTION
1	10/15/10	ISSUE FOR PERMITTING
2	10/20/10	REVISED PER CITY COMMENTS
3	11/05/10	REVISED PER CITY COMMENTS

**Cl.1c**  
 SHEET NO.  
 TOTAL SHEETS: 10  
 PROJECT NO.: 10-10000



**Exhibit 3 – Survey, including Metes and Bounds Description of Demised Premises**



**PROPERTY #0750**  
**ALP# A-3a**  
**4641 Airport Parkway**

**BEING** a tract of land situated in the Edward Cook Survey, Abstract No. 326, Dallas County, Texas, and being a part of the Final Plat of Addison Airport, an addition to the Town of Addison, Texas, according to the plat thereof recorded in Volume 2005131, Page 82 of the Deed Records of Dallas County, Texas (DRDCT), and being more particularly described as follows:

**COMMENCING** at a set one-inch brass disc stamped 'Sparr Surveys' at the intersection of the west line of Addison Road, (variable width right-of-way), with the north line of Airport Parkway (a unrecorded 60 foot ingress/egress easement) and having Texas State Plane Coordinates of Northing: 7,038,499.0066, Easting: 2,480,658.2488;

**THENCE** westerly, along the north line of said Airport Parkway the following:

South 89 degrees 26 minutes 44 seconds West, 202.26 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the point of curvature of a circular curve to the left having a radius of 360.00 feet;

Southwesterly, along said curve to the left, through a central angle of 26 degrees 35 minutes 00 seconds, an arc distance of 167.03 feet and having a chord which bears South 76 degrees 09 minutes 14 seconds West, 165.53 feet to a set one-inch brass disc stamped 'Sparr Surveys' at the point of tangency;

South 62 degrees 51 minutes 44 seconds West, 18.25 feet to a set one-inch brass disc stamped 'Sparr Surveys' at the point of curvature of a circular curve to the left having a radius of 360.00 feet;

Southwesterly, along said curve to the left, through a central angle of 27 degrees 58 minutes 31 seconds, an arc distance of 175.77 feet and having a chord which bears South 48 degrees 52 minutes 30 seconds West, 174.03 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the **POINT of BEGINNING**;

**THENCE** southwesterly, continuing along the north line of said Airport Parkway and along said curve to the left, through a central angle of 08 degrees 01 minutes 29 seconds, an arc distance of 50.42 feet and having a chord which bears South 30 degrees 52 minutes 28 seconds West, 50.38 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' at the point of reverse curvature of a circular curve to the right having a radius of 188.00 feet;

**THENCE** southwesterly, continuing along the north line of said Airport Parkway and along said curve to the right, through a central angle of 05 degrees 09 minutes 52 seconds, an arc distance of 16.95 feet and having a chord which bears South 29 degrees 26 minutes 40 seconds West, 16.94 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys'

**THENCE** North 55 degrees 40 minutes 25 seconds West, departing the north line of said Airport Parkway, 62.97 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** South 69 degrees 00 minutes 00 seconds West, 535.32 feet to a set one-inch brass disc stamped 'Sparr Surveys';

**THENCE** North 21 degrees 16 minutes 20 seconds West, 254.56 feet to a "PK" nail set in concrete;

**THENCE** North 69 degrees 40 minutes 26 seconds East, 387.67 feet to a "PK" nail set in concrete;

**THENCE** South 21 degrees 58 minutes 08 seconds East, at 13.78 feet passing a set one-inch brass disc stamped 'Sparr Surveys' in the north line of said Eddie Rickenbacker Drive, continuing along the west line of said Eddie Rickenbacker Drive, in all a distance of 63.78 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys' in the south line of said Eddie Rickenbacker Drive;

**THENCE** North 68 degrees 01 minutes 52 seconds East, along the south line of said Eddie Rickenbacker Drive, 160.08 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** South 21 degrees 00 minutes 00 seconds East, departing the south line of said Eddie Rickenbacker Drive, 143.96 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** South 81 degrees 04 minutes 52 seconds East, 66.79 feet to a 5/8-inch iron rod set with plastic cap stamped 'Sparr Surveys';

**THENCE** South 61 degrees 27 minutes 49 seconds East, 28.33 feet to feet to the **POINT of BEGINNING** and **CONTAINING** 3.03 acres of land.

  
Brad Sparr  
Registered Professional  
Land Surveyor No. 3701



Sparr Surveys  
2553 C.R. 722  
McKinney, Texas 75069  
(214) 544-2297

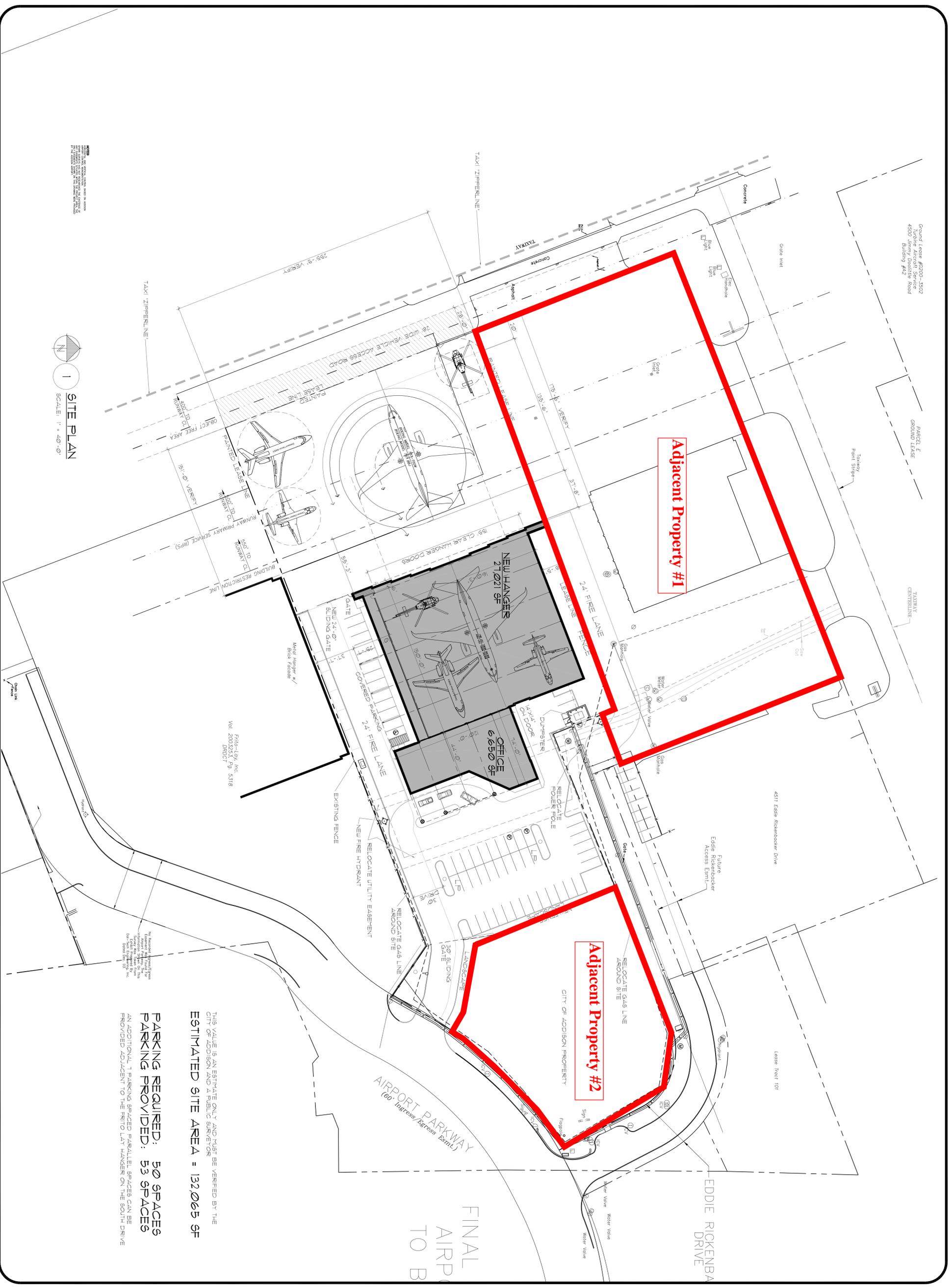
## **Exhibit 4– Description of Building Improvements To Be Constructed**

Tenant may cause to have erected and/or constructed to or on the Demised Premises the Building Improvements generally described in this Exhibit 3 as follows:

Permanent Hanger Improvements: Construction of a 33,000 sf hanger facility which includes a 6,550 sf Office – Terminal building. This facility shall be a 150' x 150' x 45' eave height hanger with an approximate 65' x 100' terminal building. Included is 10,000 sf of apron paving for aircraft and 36,000 sf of paving for automobile parking and circulation. This facility shall have an approved fire sprinkler system and meet the City of Addison Building Codes. The hanger structure shall have a PEMB metal skin. The Terminal Building shall have an approved masonry front elevation.

This Exhibit 3 hereby includes by reference the complete set of Construction Documents approved by the Town of Addison for the Building Improvements including but not limited to all architectural, civil, mechanical, and electrical and landscape drawings and specifications, together with all change orders and as-built modifications, warranties and guaranties procured by Tenant.

**Exhibit 5– Description of Adjacent Property #1 & #2**



Ground Lease #2000-3302  
4500 Jimmy Doolittle Road  
Building #A2

PARCEL E  
GROUND LEASE

TAXIWAY  
CENTERLINE

4511 Eddie Rickenbauer Drive

Lease Tract 101

EDDIE RICKENBAUER  
DRIVE

FINAL  
AIRPORT  
TO B

NOTES:  
1. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.  
2. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.  
3. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.  
4. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.  
5. ALL DIMENSIONS ARE TO CENTER UNLESS OTHERWISE NOTED.

**SITE PLAN**  
SCALE: 1" = 40'-0"

THIS VALUE IS AN ESTIMATE ONLY AND MUST BE VERIFIED BY THE  
CITY OF ADDISON AND A PUBLIC SURVEYOR  
ESTIMATED SITE AREA = 132,065 SF

**PARKING REQUIRED: 50 SPACES**  
**PARKING PROVIDED: 53 SPACES**  
AN ADDITIONAL 7 PARKING SPACES PARALLEL SPACES CAN BE  
PROVIDED ADJACENT TO THE FRITO LAY HANGER ON THE SOUTH DRIVE

A NEW HANGAR AND TERMINAL FOR:  
**SKY B&B, LLC**  
ADDISON AIRPORT  
ADDISON, TEXAS



**STUCKEY ARCHITECTS**  
ARCHITECTURE PLANNING INTERIORS  
208 N. MAIN STREET, SUITE 140  
WEATHERFORD, TEXAS 76086  
TELEPHONE: (817) 341-0704  
FAX: (817) 341-0705

ROBERT A. STUCKEY  
ARCHITECT: TEXAS #2033

THESE DRAWINGS ARE  
PRELIMINARY AND ARE  
NOT FOR REGULATORY APPROVAL,  
PERMITTING OR CONSTRUCTION

SITE PLAN C

REVISIONS

DATE:	.....	PROJ. NO.:	2-10024
DRAWN BY:	RAS	PROJ. MGR.:	RAS
CHECKED BY:	.....	DATE:	FEBRUARY 27, 2014

SHEET NO. \_\_\_\_\_

**C1.1c**  
SHEET  
01

# **EXHIBIT “C”**

## **Interim Hangar Ground Lease**

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

- |  |
|--|
| <p style="text-align: center;"><b>Summary of Exhibits</b></p> <ul style="list-style-type: none"><li>• Exhibit 1: ADS Legal Description</li><li>• Exhibit 2A: Site Plan of Demised Premises</li><li>• Exhibit 2B: Legal Description of Demised Premises</li><li>• Exhibit 3: Description of Constructed Improvements to Demised Premises</li><li>• Exhibit 4: Permanent Hangar Ground Lease</li></ul> |
|--|

**INTERIM HANGAR GROUND LEASE AGREEMENT**

This Interim Hangar Ground Lease Agreement (“Lease” or “Agreement”) is made and entered into as of April \_\_\_\_, 2014 (the “Effective Date”), by and among the **Town of Addison, Texas**, a Texas home-rule municipality (hereinafter sometimes referred to as “Landlord” or the “City”), and **Sky B&B, LLC**, a Texas limited liability company (hereinafter referred to as “Tenant”) (Landlord and Tenant are sometimes referred to herein together as the “Parties” and individually as a “Party”).

**WITNESSETH:**

**WHEREAS**, the City is the record title owner of the Addison Airport, a description of which is set forth in Exhibit 1 attached hereto and incorporated herein (the “Airport”); and

**WHEREAS**, the Airport is operated and managed for and on behalf of the City by URS Energy & Construction, Inc., an Ohio corporation and SAMI Management, Inc., a Texas corporation (collectively the “Airport Manager”), pursuant to their respective management agreements each effective October 1, 2010 by and between the City and Airport Manager, and such Airport management may be changed by the City from time to time; and

**WHEREAS**, Tenant is currently subleasing space for aircraft from a current Airport tenant, is seeking to expand its presence at the Airport, and desires to enter into a ground lease of certain Airport property on which Tenant proposes to construct a 30,000 to 35,000 square foot hangar and office facility with dedicated aircraft apron, off-street parking and direct land-side/airside ingress and egress to the property pursuant to plans approved by the City at a development cost anticipated to be in excess of \$3,000,000.00 (hereinafter referred to as the “Permanent Hangar”), all as further described in the submittals filed or to be filed with the City in order to obtain a building permit(s) from time to time); and

**WHEREAS**, the City desires for Tenant to stay and remain located within the territorial limits of the City and at the Airport; and

**WHEREAS**, the City desires to lease to Tenant a certain parcel of Airport land in the vicinity of Airport Parkway and Taxiway Alpha (the “Permanent Hangar Site”), on and within which Tenant desires to construct, maintain and operate the Permanent Hangar pursuant to and in

accordance with a Ground Lease, the form of which is attached hereto as Exhibit “B” (the “Permanent Hangar Ground Lease”); and

**WHEREAS**, Tenant has advised the City that a condition to induce it to remain at Addison Airport, leasing the Permanent Hangar Site and constructing thereon the Permanent Hangar, would be an agreement with the City to provide Tenant a site at the Airport on which Tenant may construct a temporary or interim shade-hangar to protect Tenant’s aircraft(s) from the elements while the Permanent Hangar is being constructed; and

**WHEREAS**, there is located within the Airport a property generally known as the Addison Jetport and having a street address of 4507 Claire Chennault, Addison, Texas (the “Jeport”), and in order to allow for the construction of the temporary or interim shade-hangar, the City desires by this Agreement to lease to Tenant, and Tenant desires to lease from the City, a portion of the aircraft apron at the Jetport, which portion is more fully described in Exhibit 2 and Exhibit 2A attached hereto and incorporated herein by reference (the “Demised Premises”); and

**WHEREAS**, this Agreement constitutes a means for the City to promote economic development, and such a program is beneficial to the operation and economic development of the City and of the Airport and is for the public purpose of development and diversification of the economy; and

**WHEREAS**, the City has determined that entering into this Interim Hangar Ground Lease Agreement will further the objectives of the City, will benefit the City and the City’s inhabitants, and will promote local economic development and stimulate business and commercial activity in the City, and is beneficial to the operation and economic development of the City and of the Airport and is for the public purpose of development and diversification of the economy;

**NOW THEREFORE**, for and in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the Town of Addison, Texas and Sky B&B, LLC do hereby agree as follows:

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

**Section 1. Demise of the Premises:** In consideration of and subject to the terms, covenants and conditions set forth in this Agreement, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Demised Premises. This Lease is given and entered into subject to (i) all federal, state, and local laws, statutes, constitutional provisions, charters, ordinances, codes, rules, regulations, directives, policies, permits, standards, and orders (including, without limitation, court orders) of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, and the Texas Department of Transportation) whether in existence or hereafter enacted, adopted or imposed, and including, without limitation, any and all grant agreements or grant assurances, the Rules and Regulations, and the Minimum Standards, now existing or hereafter agreed to, adopted or imposed, (ii) all restrictive covenants affecting the Demised Premises, (iii) all restrictions, easements, and other encumbrances on or matters affecting the Demised Premises, whether recorded or not, and (iv) and all of the terms,

conditions, and provisions of this Lease. In furtherance of the foregoing, Landlord represents to Tenant that, to the best of Landlord's actual knowledge, there are no mortgages, deeds of trust or monetary liens affecting the Demised Premises which are not filed of record.

**Section 2. Term:**

Subject to the termination and all other provisions of this Lease, the term hereof (the "Term") shall commence as of the Effective Date of this Agreement (the "Commencement Date"), and shall end on (a) the earlier of (i) ninety (90) days after the City issues Tenant a Certificate of Occupancy for the Permanent Hangar, allowing Tenant to use and occupy the Permanent Hangar for its permitted and intended use, or (ii) thirty (30) months after the Construction Commencement Date of construction of the Permanent Hangar, as defined in the Permanent Hangar Ground Lease, or (b) as otherwise mutually agreed to by the Parties.

**Section 3. Rental; Security Deposit:**

**A.** Subject to adjustment as hereinbelow provided, Tenant agrees to and shall pay to Landlord, without notice, demand, offset or deduction, rental each month over the Term for the Demised Premises as set forth below:

1. **Base Rent:** Tenant agrees to and shall pay Landlord annual rental for the Demised Premises in the amount of Zero Dollars (\$0.00)

**B. Security Deposit:** No Security Deposit required.

**Section 4. Adjustment of Rental:** Not Applicable

**Section 5. Use of Demised Premises:** During the Term the Demised Premises shall be used and occupied by Tenant as set forth hereinbelow:

**A. Permitted Uses:** The Demised Premises may be used and occupied by Tenant only for the following:

1. Constructing, owning, using and operating an interim aircraft storage facility, approximately 130' wide, 120' long and 51'3" at its highest point, with all sides open (no walls, doors or enclosure of any type) and to be used in connection with the storage of Tenant's aircraft until the Permanent Hangar is complete and ready for occupancy;

2. Incidental support, services and materials in connection with the Tenant's aircraft stored or based at the Demised Premises, including maintenance and repair.

**B. Prohibited or Restricted Use of Demised Premises:** The following uses are expressly prohibited:

1. Third-party aircraft maintenance and repair, including but not limited to airframe, power plant and avionics;

2. Third-party brokerage of aircraft or aircraft parts;

3. Primary flight school or training;
4. Ground transportation for rent or hire (including taxi and limousine service);
5. Retail services including food sales; barber and valet services, alcoholic beverage sales, sales of pilot supplies; newsstands and gifts;
6. Any illegal purpose or any other activity (federal, state, county and municipal laws, rules, regulations, standards and policies) that, in Landlord's reasonable opinion, would create a nuisance, unreasonably disturb other tenants of the Airport, or may cause an increase in Landlord's insurance costs whether or not Landlord actually incurs such increased costs.

The Tenant shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of business for which the Demised Premises are leased, except during periods in which the Demised Premises may not be occupied as a result of fire or other casualty, or reasonable periods for repairs and alterations of the Building Improvements to the Demised Premises, all such repairs and alterations to be diligently pursued to completion.

**C.** Tenant acknowledges that Landlord is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms or any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Tenant agrees not to take any action or refrain from taking any action in relation to the Demised Premises that would cause Landlord to be in violation of such regulations or standards.

**D.** The Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (i) no person shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age or handicap; (ii) that in the construction of any improvements on, over or under the Demised Premises and the furnishing of services thereon, no person shall be excluded from participation in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities on the basis of race, creed, color, national origin, sex, age, or handicap; (iii) that the Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations may be amended.

**E.** The Tenant agrees to furnish all services on a fair, equal, and non-unjustly discriminatory basis to all users thereof and to charge fair, reasonable, and not unjustly discriminatory prices for such services, provided that the Tenant may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

## **Section 6. Construction of Improvements:**

A. In connection with the use and occupancy of the Demised Premises by Tenant, Tenant shall cause to be constructed on the Demised Premises buildings and other improvements (together, the “Building Improvements”), at Tenant’s sole cost, expense and risk (except as may be otherwise agreed to between Landlord and Tenant), in accordance with the Design Plans (as defined below) which shall be approved in writing by Landlord. The term “Building Improvements” shall mean those improvements described in Exhibit 3 attached hereto and incorporated herein. Except as provided for in this Agreement, Tenant may not construct, locate, install, place or erect any other improvements upon the Demised Premises without the prior written consent of Landlord.

B. The Building Improvements shall be constructed on the Demised Premises in accordance with plans and specifications prepared by an architect and/or engineer selected by Tenant (the “Design Plan”), which shall be submitted to Landlord and approved in writing by Landlord by the issuance of a Building Permit or other means as determined by the Landlord. Any architect or engineer shall be duly licensed to practice architecture or engineering, as the case may be, in the State of Texas. Such construction shall be performed in a first class, workmanlike manner and in compliance with all applicable building codes, standards and ordinances, as set out in more detail, below. Tenant agrees to promptly pay and discharge all costs, expenses, claims for damages (including incidental, special and consequential damages) or injury (including, without limitation, claims for personal injury or death, or property damage or destruction, or economic loss), liens and any and all other liabilities and obligations which arise in connection with such construction, and Tenant **SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS LANDLORD AND MANAGER, AND THEIR RESPECTIVE OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS (IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES) (THE “INDEMNIFIED PARTIES”)** FROM AND AGAINST ANY AND ALL SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS (TOGETHER, FOR PURPOSES OF THIS SUBSECTION, THE “DAMAGES”), **INCLUDING SUCH COSTS, EXPENSES, CLAIMS, DAMAGES, PENALTIES, FINES, LIENS LIABILITIES, AND OBLIGATIONS WHICH ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY OR RESULT FROM, IN WHOLE OR IN PART, THE NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ANY OF THE INDEMNIFIED PARTIES, OR CONDUCT BY THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, OR THE VIOLATION OF ANY TERM OF THIS LEASE WITHOUT LIMITATION. NOTWITHSTANDING THE FOREGOING, TENANT’S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PARTIES’ PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES. LIKewise, TENANT’S LIABILITY FOR THE INDEMNIFIED PARTIES’ DEFENSE COSTS AND ATTORNEYS’ FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS’ FEES EQUAL TO THE INDEMNIFIED PARTIES’ PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO THE STRICT LIABILITY OF ANY KIND, THAT CAUSED THE DAMAGES.**

**C.** Landlord's approval of the Design Plan or any other plans and/or specifications does not impose on Landlord any responsibility whatsoever, including, without limitation, any responsibility for the conformance of the plans and specifications with any governmental regulations, building codes, and the like, for which Tenant and its contractors shall have full and complete responsibility.

**D.** After commencement of construction, Tenant shall complete construction of the Building Improvements with reasonable diligence, without material deviation from the Design Plan, and any deviation from the Design Plan shall be subject to the review and approval of Landlord. If for any reason construction of the Building Improvements is not Substantially Complete ("Substantial Completion" being defined in subsection H. of this Section) within one year after the Effective Date, Landlord may (i) make written demand for Tenant to remove the building structure from the Demised Premises and return the Demised Premises to a condition similar to its condition immediately prior to the Effective Date of this Lease, including the demolition of each of the structural piers constructed by Tenant to a depth of 24" below the pavement's existing grade level and then backfilled to the existing grade level with concrete (the "Pier Removal"), and (ii) early terminate this Lease.

**E.** Tenant agrees that any construction or modification of the Building Improvements or any other improvements which may be authorized by Landlord, which authorization, if any, shall be in writing, on or within the Demised Premises shall comply with all standards, codes, and rules adopted by Landlord or Manager, including, but not limited to, any rules relating to construction and maintenance standards and specifications, shall further comply with the Town of Addison, Texas building and related codes and zoning requirements, and will meet or exceed all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time). Tenant recognizes that such construction/maintenance standards and specifications, Town of Addison building and related codes and zoning requirements, and all applicable State and Federal standards (including, without limitation, Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time) may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the approved Design Plan.

**F.** Tenant will properly and timely submit to the Federal Aviation Administration (FAA), the Texas Department of Transportation (TxDOT), and any other governmental authority, entity or agency having jurisdiction regarding Addison Airport, a Notice of Proposed Construction or Alteration, when and as required, and such other forms and information as may be required by the FAA, TxDOT, or other governmental entity or agency having jurisdiction over Addison Airport.

**G.** Tenant further agrees that the Landlord shall be authorized at all times during any project of construction to enter upon the Demised Premises, and all parts thereof, in order to observe the performance of such construction, and Tenant agrees to provide the Landlord a construction schedule setting out the time of commencement, final completion and completion of significant

elements of the construction, which schedule shall be delivered to Landlord prior to the start of any construction project on the Demised Premises.

**H.** “Substantial Completion of the Building Improvements” or “Substantial Completion” shall be deemed to have occurred upon the issuance by the Town of Addison, Texas of a certificate of temporary or final occupancy for the Building Improvements. “Final Completion” of the construction of the Building Improvements shall be deemed to occur upon the issuance by Tenant’s architect who designed the Building Improvements of such documentation as may be necessary to establish the final completion (closeout) of the construction of the Building Improvements and the delivery by Tenant to Landlord of comprehensive As-Built drawings and documentation reviewed by Tenant’s architect reflecting all approved changes and modifications to the originally approved Design Plan.

**I.** Failure of Tenant to observe and comply with the requirements of this Section shall be an Event of Default.

**J.** Within thirty (30) days after Final Completion, Landlord shall reimburse to Tenant the commercially reasonable design and engineering costs incurred and paid by Tenant with respect to the Building Improvements.

**Section 7. Acceptance of Demised Premises: TENANT ACKNOWLEDGES THAT TENANT HAS FULLY INSPECTED THE DEMISED PREMISES AND ACCEPTS THE DEMISED PREMISES AND THAT THE DEMISED PREMISES ARE LEASED TO TENANT "AS IS, WHERE IS, AND WITH ALL FAULTS AND PATENT AND LATENT DEFECTS", INCLUSIVE SPECIFICALLY OF CONDITIONS RELATING TO PAVEMENT STRENGTH, AND LANDLORD HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS, ANY REPRESENTATION, PROMISE, COVENANT, AGREEMENT, GUARANTY OR WARRANTY OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE QUANTITY, QUALITY, CONDITION, SUITABILITY, HABITABILITY, OR FITNESS OF THE PROPERTY, INCLUDING WITHOUT LIMITATION THE DEMISED PREMISES AND THE IMPROVEMENTS THEREON, FOR ANY PURPOSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION REGARDING SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, OR ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ALSO ACKNOWLEDGES AND AGREES THAT TENANT'S INSPECTION AND INVESTIGATION OF THE DEMISED PREMISES HAVE BEEN ADEQUATE TO ENABLE TENANT TO MAKE TENANT'S OWN DETERMINATION WITH RESPECT TO THE SUITABILITY OR FITNESS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO SOIL CONDITIONS, AVAILABILITY OF UTILITIES [SUBJECT TO SECTION 16], DRAINAGE, ZONING LAWS, ENVIRONMENTAL LAWS, AND ANY OTHER FEDERAL, STATE OR LOCAL STATUTES, CODES, REGULATIONS OR ORDINANCES. TENANT ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER**

**STATEMENTS SET FORTH IN THIS PARAGRAPH ARE AN INTEGRAL PORTION OF THIS LEASE AND THAT LANDLORD WOULD NOT AGREE TO LEASE THE DEMISED PREMISES TO TENANT AS SET FORTH HEREIN WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS PARAGRAPH. TENANT FURTHER ACKNOWLEDGES THAT TENANT IS NOT IN A DISPARATE BARGAINING POSITION WITH RESPECT TO LANDLORD. TENANT ACKNOWLEDGES AND AGREES FURTHER THAT THIS LEASE IS SUBJECT TO ANY AND ALL CURRENTLY EXISTING TITLE EXCEPTIONS OR OTHER MATTERS OF RECORD OR ANY MATTER OR ITEM VISIBLE OR APPARENT FROM AN INSPECTION AFFECTING THE DEMISED PREMISES. TENANT WAIVES ANY EXPRESS OR IMPLIED WARRANTIES OF SUITABILITY, HABITABILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND FURTHER WAIVES ALL CLAIMS BASED ON ANY DEFECT IN THE DEMISED PREMISES WHETHER OR NOT SUCH DEFECT COULD HAVE BEEN DISCOVERED BY TENANT'S REASONABLE INSPECTION. TENANT, AT ITS COST, SHALL BE ENTITLED TO PERFORM A PHASE I ENVIRONMENTAL STUDY, PROVIDING A COPY THEREOF TO LANDLORD, ALL AS MAY BE SPECIFIED IN MORE DETAIL IN SECTION 22.D. BELOW. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF SUITABILITY, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE GIVEN IN CONNECTION WITH THIS LEASE.**

Tenant acknowledges that Landlord has provided Tenant with geotechnical reports of the existing pavement and subsurface conditions of and at the Demised Premises and other portions of the Jetport (as defined in the Recitals, above). In addition, Tenant acknowledges that Landlord has notified and informed Tenant that the strength of the pavement at the Demised Premises and the other portions of the Jetport does not comply with FAA guidelines for the size of aircraft that Tenant intends to use at and within the Demised Premises. Tenant **ASSUMES THE RISK** of the use of the said pavement and subsurface conditions, and hereby **RELEASES, WAIVES, ACQUITS, AND FOREVER DISCHARGES Landlord and Manager and all other Indemnified Persons (as defined in Section 21.B., below) from, and COVENANTS NOT TO SUE Landlord or Manager or any of the said Indemnified Persons for, any and all claims, liability, demands, harm, losses, and damages, expenses, or costs whatsoever for or related to any damage to or destruction of any such aircraft, that Tenant or any Tenant Persons (as defined in Section 21.B., below) may sustain, incur or suffer in connection, arising out of, or related to the pavement and the subsurface conditions at or within the Demised Premises or any other portion of the Jetport.** Tenant shall promptly pay for any damage to the pavement at the Demised Premises and other portions of the Jetport that are caused by or result from the use thereof by Tenant.

**Section 8. Securing Governmental Approvals and Compliance with Law; Noise Abatement:**

**A.** Tenant at Tenant's sole cost and expense shall obtain any and all governmental licenses, permits and approvals necessary for the construction of improvements and for the use and occupancy of the Demised Premises. This Lease is subject to and Tenant shall comply at all times

with all laws, ordinances, rules, regulations, directives, permits, or standards of any governmental authority, entity, or agency (including, without limitation, the Town of Addison, Texas, the State of Texas, the Federal Aviation Administration, the Texas Department of Transportation, the United States Environmental Protection Agency, and the Texas Commission on Environmental Quality) applicable or related to, whether directly or indirectly the use and occupancy of the Demised Premises and whether in existence or hereafter enacted, adopted or imposed. Tenant shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon, or connected with, the Demised Premises, all at Tenant's sole cost and expense, and shall comply with and be subject to (and this Lease is made and entered into subject to) any and all grant agreements or grant assurances now existing or as hereafter agreed to, adopted or imposed. Landlord shall diligently and in good faith review and consider approval of the Design Plan, and once the Design Plan has been finally approved, to prosecute and expedite issuance of associated permits.

Tenant agrees that any new construction or modification of existing improvements on the Demised Premises will comply with all standards and rules published by the Landlord or by the Airport Manager (as of the Effective Date, the Airport Manager is as set forth in the Recitals, above, but the Airport Manager may be changed or modified by the City, and for purposes of this Lease the Airport Manager shall also mean any person or entity authorized by Landlord to manage and/or operate the Airport), including, but not limited to, the Airport's published "Construction/Maintenance Standards and Specifications," will comply with the Town of Addison building and related codes and zoning requirements or any other laws, ordinances, permits, rules, regulations, or policies of the Town of Addison, Texas, and will meet or exceed all applicable State and Federal standards, permits, laws, rules, or regulations. Tenant recognizes that the referenced Construction/Maintenance Standards and Specifications, Town of Addison building and related codes and zoning requirements and other laws, ordinances, permits, rules, regulations or policies, and all applicable State and Federal standards, laws, rules, or regulations may be modified or amended from time to time and that compliance will be measured by such standards in effect at the time of a particular construction or modification of improvements after the initial construction of the Building Improvements pursuant to the Design Plan.

**B.** Tenant shall comply with all noise abatement standards at the Airport at all times and shall notify any employee, guest or invitee of Tenant including any aircraft operator using any portion of the Demised Premises of such standards and shall ensure compliance with such standards by such third party.

**Section 9. Assignment, Subletting and Mortgaging of Leasehold Estate; Stored Aircraft Information:**

**A.** Without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole and absolute discretion and opinion), Tenant shall have no power to and may not assign, sell, pledge, encumber, license, transfer, or otherwise convey in any manner whatsoever, including by merger, consolidation, operation of law, or otherwise, (together, "assign" or "assignment," and the person or entity to whom an assignment is made being an "assignee"), this Lease or any rights, duties, or obligations of Tenant hereunder, nor sublet in whole or in part any portion of the Demised Premises, and any such assignment or any

subletting shall be null and void and may be deemed by Landlord (in Landlord's sole discretion) an event of default under Section 23 of this Lease. Any assignment or subletting shall be expressly subject to all the terms and provisions of this Lease, including the provisions of Section 5 pertaining to the use of the Demised Premises. In the event of any Landlord-approved assignment or subletting, Tenant shall not assign Tenant's rights, duties, or obligations hereunder nor sublet the Demised Premises without first obtaining a written agreement from each such assignee or sublessee whereby each such assignee or sublessee agrees to be bound by the terms and provisions of this Lease. No such assignment or subletting shall constitute a novation. In the event of the occurrence of an event of default while the Demised Premises are assigned or sublet, Landlord, in addition to any other rights and remedies provided herein or by law, may at Landlord's option, collect directly from such assignee or subtenant all rents becoming due under such assignment or subletting and apply such rent against any sums due to Landlord hereunder. No direct collection by Landlord from any such assignee or subtenant shall release Tenant from the payment or performance of Tenant's obligations hereunder. Landlord's consent to any assignment or subletting will not act as a waiver of any rights or remedies granted to or retained by Landlord under this Lease and shall not act as election of remedies nor shall it prohibit Landlord from exercising its rights and remedies with respect to any other actual or proposed assignment or subletting, and Landlord's consent to any assignment shall not relieve Tenant or any Guarantor of any liability to Landlord under this Lease or otherwise.

For purposes hereof, an assignment will be deemed to occur if the person or persons who own or have voting control of more than 50% of Tenant on the Effective Date cease to own or have voting control of more than 50% or more of Tenant at any time during the Term. Tenant shall provide to Landlord from time to time, as requested by Landlord and in a form acceptable to Landlord, a written certification as to the ownership of voting securities or voting control of Tenant. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise.

**B.** Upon request by Landlord, Tenant shall provide to Landlord a complete and accurate roster of the make, model, aircraft type and "N" number of any aircraft regularly stored or located on or in the Demised Premises. Tenant's failure to provide said information as prescribed constitutes a default of this Lease.

#### **Section 10. Property Taxes and Assessments:**

Tenant shall pay, before they become delinquent, any and all property taxes or assessments, and any other governmental charges, fees or expenses (collectively, the "Taxes"), levied or assessed on any improvements on the Demised Premises, the personal property and fixtures on the Demised Premises, and, if applicable, upon the leasehold estate of Tenant created hereby. Upon the request of Landlord, Tenant shall from time to time furnish to Landlord "paid receipts" or other written evidence that all such taxes have been paid by Tenant. In the event Tenant shall fail to pay any such taxes, assessments, or charges prior to delinquency, Landlord shall have the right to pay (but not the obligation) or may cause all taxes, assessments, or charges to be paid and the reasonable costs thereof expended by Landlord plus interest thereon as provided in Section 38 of this Lease shall be paid by Tenant on demand. Subject to the payment

of any outstanding Taxes, Tenant may protest, appeal or institute other formal proceedings to effect a reduction or abatement of real estate taxes and assessments with respect to real estate taxes and assessments levied against the improvements on the Demised Premises and/or the Tenant's leasehold interest in the Lease for any tax fiscal year that ends after the Commencement Date of this Lease. Such protest, appeal or other proceedings may be conducted only in the name of Tenant. To this end and at Tenant's expense, Tenant shall give Landlord written notice of any such protest or appeal and resolution thereof.

**Section 11. Maintenance and Repair of Demised Premises:**

**A.** Tenant shall, throughout the term hereof, maintain in good repair and in a first class condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, rules, codes, and regulations of or adopted by the Town of Addison, Texas) all the Demised Premises and all buildings, improvements, fixtures, equipment and personal property (excluding aircraft stored in the Building Improvements) on the Demised Premises and keep them free from waste or nuisance and, at the expiration or termination of this Lease, deliver up the Demised Premises clean and free of trash and in good repair and condition (in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, codes, rules and regulations of or adopted by the Town of Addison, Texas), with all fixtures and equipment situated in the Demised Premises in good working order, reasonable wear and tear excepted. Tenant shall reimburse Landlord for and indemnify Landlord against all damages which Landlord incurs from Tenant's delay in vacating the Demised.

**B.** Tenant's failure to keep the Demised Premises and all buildings, improvements, fixtures, equipment and personal property situated thereon in good repair and condition required by this Section is a default under this Lease. In the event Tenant shall fail to so maintain the Demised Premises and the buildings, improvements, fixtures, equipment and personal property situated thereon, in addition to its other rights and remedies, Landlord shall have the right (but not the obligation) to cause all repairs or other maintenance to be made and the reasonable costs therefore expended by Landlord plus interest thereon as provided in Section 39 shall be paid by Tenant on demand.

**Section 12. Alterations, Additions and Improvements:** After completion of the Building Improvements described in Section 6, Tenant shall not create any openings in the roof, add exterior walls or doors, or make any alterations, additions or improvements to the Demised Premises or any improvements thereon or modifications thereto without the prior written consent of Landlord or Manager. Consent for non-structural alterations, additions or improvements shall not be unreasonably withheld by Landlord or Manager. Tenant shall have the right to erect or install shelves, bins, machinery, air conditioning or heating equipment and trade fixtures, provided that Tenant complies with all applicable governmental laws, ordinances and regulations (including, without limitation and as may be required by law, obtaining a building permit).

All alterations, modifications, additions and improvements in and to the Demised Premises shall be performed in a first class, workmanlike manner, shall comply with all the standards and

requirements set out above, and in Section 6 and Section 8, and Tenant shall promptly pay and discharge all costs, expenses, claims for damages (including incidental, consequential and special damages), liens and any and all other liabilities and obligations which arise in connection therewith (and shall defend, indemnify, and hold harmless Landlord and Manager, and their respective officials, officers, employees, and agents, from and against any and all such costs, expenses, claims, liens, liabilities, and obligations as set forth in Section 6).

### **Section 13. Insurance and Bonds:**

A. At all times in connection with this Lease and during the Term hereof, Tenant shall purchase and maintain at Tenant's sole cost and expense and in a company or companies lawfully authorized to do business in Texas such insurance coverages relating to the Demised Premises as follows:

(i) Insurance against loss or damage to improvements by fire, lightning, and all other risks from time to time included under standard extended coverage policies, and sprinkler, vandalism and malicious mischief, all in amounts sufficient to prevent Landlord or Tenant from becoming co-insurers of any loss under the applicable policies but in any event in amounts not less than one hundred percent (100%) of the full insurable value of the Demised Premises and any and all improvements thereon. The term "full insurable value" as used herein means actual replacement value at the time of such loss. Upon request, such replacement value shall be determined by a qualified appraiser, a copy of whose findings shall be submitted to Landlord, and, thereafter, proper adjustment in the limits of insurance coverage shall be effected.

(ii) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$1,000,000 general aggregate for bodily injury, death or property damage or destruction occurring on, in or about the Demised Premises, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate). Coverage for products/completed operations must be maintained for at least two (2) years after construction work has been completed. Coverage must include contractual liability.

(iii) Statutory limits of workers compensation insurance and employer's liability with limits of liability of not less than \$1,000,000.00 each-occurrence each accident/\$1,000,000.00 by disease each-occurrence/\$1,000,000.00 by disease aggregate.

(iv) If applicable, boiler and pressure vessel insurance on all steam boilers and air compressors, parts thereof and appurtenances attached or connected thereto which by reason of their use or existence are capable of bursting, erupting, collapsing, imploding or exploding, in the minimum amount of \$500,000.00 for damage to or destruction of property resulting from such perils.

(v) In connection with the design and construction of any improvements on the Demised Premises, architects, engineers, and constructions managers, including design/build contractors used by Tenant, shall carry professional liability insurance at

minimum limits of \$250,000.00; this coverage must be maintained for at least two (2) years after the improvements are completed, and if coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Lease (or earlier) must be maintained.

(vi) Hangarkeepers Legal Liability insurance, at limits of \$1,000,000.00 per-occurrence is required if Tenant is engaged in maintenance, repair, or servicing of aircraft belonging to a third-party, or if Tenant is otherwise involved in any operation in which Tenant has care, custody, or control of an aircraft that belongs to a third-party.

(vii) Aircraft liability insurance against third party bodily injury or death and property damage or destruction at minimum limits required by regulatory agencies having jurisdiction at the Airport and which are acceptable to Landlord, but in any event not less than \$1,000,000.00 each occurrence (applies to the ownership, operation or use of aircraft by Tenant or any subtenant). Policy shall include non-owned aircraft liability with a minimum of \$1,000,000 and medical expense coverage with a limit of \$5,000 for any one person.

(viii) Business Automobile Liability insurance for all Tenant owned and non-owned vehicles being operated on the Airport with a minimum combined single limit of \$5,000,000 for bodily injury and property damage.

(ix) If Tenant is fueling aircraft at the Airport pursuant to a fueling permit issued by the City, Tenant shall maintain a minimum of \$1,000,000 in Pollution Liability Insurance coverage.

(x) Such other insurance in such amounts and against such other insurable hazards, which at the time are commonly obtained within the aeronautical industry for similar types of building improvements and other improvements that may be located on the Demised Premises and Tenant's permitted use of the Demised Premises.

**B.** Tenant shall cause all such policies of insurance to comply with the following and be specifically endorsed as follows:

(i) The Town of Addison, Texas, and the Airport Manager and their respective past and present officials, officers, employees and agents shall be named as additional insureds except with respect to the professional liability policies and workers compensation insurance;

(ii) All insurance policies which name the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) as additional insureds must be endorsed to read as primary coverage and non-contributory regardless of the application of other insurance;

(iii) A waiver of subrogation in favor of the Town of Addison, Texas and the Airport Manager (and their respective past and present officials, officers, employees and agents) shall be contained in each policy required herein;

(iv) All insurance policies shall be endorsed to the effect that the Town of Addison, Texas and the Airport Manager will receive at least sixty (60) days written notice prior to cancellation or non-renewal of the insurance (except that if such insurance is canceled for non-payment of premium, such notice shall be ten (10) days.);

(v) All insurance policies shall be endorsed to require the insurer to immediately notify the City and the Airport Manager of any material change in the insurance coverages;

(vi) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison or the Airport Manager;

(vii) Tenant may maintain reasonable and customary deductibles, subject to approval by Landlord; and

(viii) Insurance must be purchased from insurers that are financially acceptable to Landlord and licensed to do business in the State of Texas.

**C.** All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of insurance, satisfactory to Landlord, evidencing all coverage above, shall be prepared and executed by the insurance company or its authorized agent, promptly delivered to Landlord and updated as may be appropriate, and shall:

(i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein; and

(ii) Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison and the Airport Manager.

**D.** In connection with any construction on the Demised Premises:

(i) During any period of construction, a Builder's Risk Completed Value policy with an all risks endorsement in an amount equal to the greater of the full-completed value or the amount of the construction contract including any amendments or change orders thereto. The policy shall provide "All Risk" Builder's Risk Insurance (extended to include the perils of wind, collapse, vandalism/malicious mischief, and theft, including theft of materials whether or not attached to any structure). The deductible shall not exceed \$5,000.

(ii) Tenant shall obtain and keep in full force and effect at its sole cost and expense a Performance Bond and a Payment Bond guaranteeing, respectively, the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvements), in the penal sum of one-hundred percent (100%) of the construction costs. Tenant shall pay or cause to have paid the premiums for such bonds. Bonds shall be issued by a surety company satisfactory to the Landlord, licensed by the State of Texas to act as a Surety, and listed on the current U.S. Treasury Listing of Approved Sureties. All forms shall be made on a form complying with the requirements of the laws of the State of Texas and satisfactory to Landlord. Such bonds shall be in conformance with the provisions of Chapter 2253, Tex. Gov. Code, and any successor statute thereto. Tenant and Landlord shall be named as a joint obligees of all such bonds. Alternatively, and at Tenant's election, Tenant shall cause to be issued in favor of Landlord an irrevocable, stand-by letter of credit to secure the faithful performance of all construction work and the payment of all obligations arising during the construction (including, without limitation, the payment of all persons performing labor or providing materials under or in connection with the Building Improvement), in the amount of one hundred percent (100%) of the construction costs, such stand-by letter of credit to be drawn upon by site draft conditioned only upon the certification of the Landlord that an event of default has occurred under this Lease with respect to the construction of the Building Improvements. Upon written approval by Landlord on not less than ten (10) days written notice to Landlord from Tenant, Tenant shall have the right to reduce the amount of the stand-by letter of credit on a calendar quarterly basis by an amount equal to the construction costs incurred and paid by Tenant during the immediately preceding calendar quarter as demonstrated by the Construction Value Evidence submitted to Landlord.

**E.** Landlord reserves the right to review the insurance requirements contained herein and to reasonably adjust coverages and limits when deemed necessary and prudent by Landlord.

#### **Section 14. Casualty Damage or Destruction:**

**A.** In case of any damage to or destruction of the buildings, structures, equipment, or any other improvements on or at the Demised Premises (including the Building Improvements), or any part thereof, Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such damage and/or destruction.

**B.** In case of any damage to or destruction of any building, structure, equipment, or other improvements (including the Building Improvements) on or at the Demised Premises, or any part thereof, Tenant, whether or not the insurance proceeds, if any, payable on account of such damage and/or destruction shall be sufficient for such purpose, at Tenant's sole cost, risk and expense will promptly and diligently commence and complete the restoration, repair and replacement of said building, structure, equipment, or other improvements as nearly as possible to their value, condition and character immediately prior to such damage and/or destruction and with at least as good workmanship and quality as such building, structure, equipment, or other improvements on or at the Demised Premises being repaired or replaced, with such alterations in

and additions thereto as may be approved in writing by Landlord (hereinafter sometimes referred to as the “Restoration”). Notwithstanding the foregoing, in the event the Building Improvements or any other improvements on the Demised Premises shall be destroyed or substantially damaged during the last five (5) years of the Lease Term, then Tenant shall have no obligations for Restoration and shall notify Landlord in writing within thirty (30) days of such substantial damage or destruction whether Tenant elects to undertake Restoration or terminate this Lease. Tenant’s failure to timely make such election as aforesaid shall be deemed an election by Tenant to terminate this Lease. Tenant’s termination of this Lease pursuant to this Section 14 shall otherwise be in accordance with the terms and provisions of this Lease. For purposes of the foregoing, “substantial” shall mean such damage to the Building Improvements as shall render the Building Improvements unfit for their intended purpose. For purposes of this Section 14.B. and Section 14.E., the term “promptly” shall mean within ninety (90) days after Landlord and Tenant have mutually agreed upon the plans and specifications for the Restoration, provided Tenant shall in good faith and with reasonable diligence cooperate with Landlord in first proposing and then agreeing upon plans and specifications for the Restoration. All Restoration plans (whether design, architectural, or otherwise) shall be approved in writing by Landlord prior to the commencement of construction. All such design and construction shall comply with other Sections of this Lease concerning the design and construction of buildings and other improvements on or at the Demised Premises, including without limitation Sections 6, 8, and 13 hereof.

**C.** All insurance proceeds, if any, payable on account of such damage to or destruction of the buildings, structures and equipment on the Demised Premises shall be held by Landlord. Landlord shall be protected and fully indemnified in accordance with the provisions of this Lease in acting upon any certificate believed by Landlord to be genuine and to have been executed by the proper party and shall receive such certificate as conclusive evidence of any fact or as to any matter therein set forth. Such certificate shall be full warranty, authority and protection to Landlord in acting thereon, and Landlord shall be under no duty to take any action other than as set forth in this Section 14.

**D.** Insurance proceeds received by Landlord on account of any damage to or destruction of the buildings, structures and equipment on the Demised Premises, or any part thereof (less the costs, fees and expenses incurred by Landlord and Tenant in the collection thereof, including, without limitation, adjuster’s and attorney’s fees and expenses (“Net Insurance Proceeds”)) shall be applied as follows:

- (i) Net insurance proceeds as above defined shall be paid to Tenant or as Tenant may direct from time to time as Restoration progresses to pay (or reimburse Tenant for) the cost of Restoration, upon written request of Tenant to Landlord accompanied by (a) certificate of a supervising architect or engineer approved by Landlord, describing in reasonable detail the work and material in question and the cost thereof, stating that the same were necessary or appropriate to the Restoration and constitute a complete part thereof, and that no part of the cost thereof has theretofore been reimbursed, and specifying the additional amount, if any, necessary to complete the Restoration, and (b) an opinion of counsel satisfactory to Landlord that

there exist no mechanics', materialmen's or similar liens for labor or materials except such, if any, as are discharged by the payment of the amount requested.

- (ii) Upon receipt by Landlord of certificate and opinion required by the foregoing clauses (i)(a) and (b) that Restoration has been completed and the cost thereof paid in full, and that there are no mechanics', materialmen's or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid to Tenant or as Tenant may direct.

**E.** In the event that Tenant does not promptly commence Restoration, or after commencement Tenant does not diligently proceed to the completion of same, Landlord shall have the right to commence or complete Restoration. Landlord's right to commence or complete Restoration shall begin after Landlord has given Tenant at least thirty (30) days written notice requesting (i) the commencement of Restoration, or (ii) that Tenant diligently proceed to the completion of Restoration, and Tenant during such thirty (30) day period fails to commence or fails to proceed to diligently complete Restoration. In such event, Landlord shall be entitled to obtain the insurance proceeds, and Tenant shall promptly pay any deficiency if such proceeds are not sufficient for Restoration.

**F.** In the event of termination of this Lease by Landlord as a result of Tenant's failure to commence or complete (as the case may be) the Restoration, this Lease shall terminate and come to an end upon Landlord's termination as aforesaid as though the date of such termination by Landlord were the date of expiration of the term of this Lease, and all insurance proceeds shall be paid to Landlord.

#### **Section 15. Condemnation:**

**A.** If during the term hereof, any part of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, or are sold to a condemning authority under threat of condemnation, and after such taking by or sale to said condemning authority the remainder of the Demised Premises is not susceptible to efficient and economic occupation and operation by Tenant, this Lease shall automatically terminate as of the date that said condemning authority takes possession of the Demised Premises, and Landlord shall refund to Tenant any prepaid but unaccrued rental less any sum then owing by Tenant to Landlord.

**B.** If after such taking by or sale to said condemning authority the remainder of the Demised Premises is susceptible to efficient and economic occupation and operation by Tenant, this Lease shall not terminate but the rental due hereunder shall be adjusted so that Tenant shall be required to pay for the remainder of the term hereof the sum obtained by multiplying each monthly rental installment due hereunder, as adjusted from time to time pursuant to Section 4, by a fraction, the numerator of which shall be the number of square feet remaining in the Demised Premises after the taking by or sale to said condemning authority and denominator of which shall be the square footage originally contained in the Demised Premises. The rental adjustment called for herein shall not commence until said condemning authority actually takes possession of the condemned portion of the Demised Premises.

C. If this Lease is not terminated pursuant to Section 15.A., above, Tenant shall promptly restore any building and any other improvements on the Demised Premises, and the condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid first to cover the costs and expenses for restoring the remaining portion of the Demised Premises to a condition susceptible to efficient and economic occupation and operation by Tenant, and any remaining proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant, as their interest may appear. If this Lease is terminated pursuant to Section 15.A., condemnation proceeds to which Landlord and Tenant are entitled shall be awarded and paid to Landlord and Tenant as their interests may appear.

**Section 16. Utilities:** Tenant shall be responsible at Tenant's sole cost and expense for obtaining all utility connections at or for the Demised Premises and Tenant shall pay all charges for water, electricity, gas, sewer, telephone or any other utility connections, tap-in fees, impact fees, and services furnished to the Demised Premises during the term hereof. Tenant agrees to contact all utility service providers prior to any excavation or digging on the Demised Premises. Landlord shall in no event be liable or responsible for any cessation or interruption in any such utility services. Notwithstanding the foregoing, the City agrees to provide a domestic water tap and to cause electrical service to be provided to the Demised Premises by no later than sixty (60) days from the Effective Date (subject to force majeure as described in Section 41.A.).

**Section 17. Common Facilities:** Tenant and Tenant's employees, agents, servants, customers and other invitees shall have the non-exclusive right to use all common facilities, improvements, equipment and services which may now exist or which may hereafter be provided by Landlord for the accommodation and convenience of Landlord's customers and tenants, including landing and takeoff facilities, means of ingress and egress to the Demised Premises, other Airport installations, and all other reasonable services which may be provided with or without charge from time to time by Landlord in operating the Airport ("Common Facilities"). All such Common Facilities shall at all times be under the exclusive control, operation and management of Landlord and may be rearranged, modified, changed, altered, removed, or terminated from time to time at Landlord's sole discretion.

**Section 18. Rules and Regulations:** Landlord has adopted *Addison Airport Minimum Standards and Requirements for Commercial Aeronautical Service Providers* (also commonly referred to as the "Minimum Standards" or "Airport Minimum Standards") and *Addison Airport Rules and Regulations* (also commonly referred to as the "Rules and Regulations" or "Airport Rules and Regulations"), which shall govern Tenant in the use of the Demised Premises and all Common Facilities, a copy of which has been furnished to Tenant. The Minimum Standards and Rules and Regulations are incorporated by reference as if written verbatim herein, and Tenant agrees to comply fully at all times with these governing documents. Landlord, in its sole discretion, shall have the right to amend, modify and alter these Minimum Standards and Rules and Regulations from time to time in a reasonable manner or may introduce other regulations as deemed necessary for the purpose of assuring the safety, welfare, convenience and protection of property of Landlord, Tenant and all other tenants and customers of the Airport.

**Section 19. Signs and Equipment:** After first securing Landlord's approval, Tenant shall have the right from time to time to install and operate signs depicting Tenant's name and operate radio, communications, meteorological, aerial navigation and other equipment and facilities in or on the Demised Premises that may be reasonably necessary for the operation of Tenant's business, provided such signs and equipment are installed and maintained in compliance with all applicable governmental laws, rules, and regulations, including the City sign ordinance, and do not interfere with the operation of any navigation facilities or Airport communications (including, without limitation, navigation facilities or Airport communications used or operated by the Federal Aviation Administration).

**Section 20. Landlord's Right of Entry:** Landlord and Landlord's authorized representatives shall have the right, during normal business hours, and upon one (1) day notice (not counting Saturdays, Sundays or holidays), except in the case of emergencies to enter the Demised Premises (i) to inspect the general condition and state of repair thereof, (ii) to make repairs permitted under this Lease, (iii) to show the Demised Premises to any prospective tenant or purchaser or (iv) for any other reasonable and lawful purpose.

During the final one hundred eighty (180) days of the term hereof, Landlord and Landlord's authorized representatives shall have the right to erect and maintain on or about the Demised Premises customary signs advertising the Demised Premises for lease.

**Section 21. Indemnity and Exculpation:**

**A. Exculpation.** Landlord and the elected officials, the officers, employees, representatives, agents, and volunteers of Landlord, individually or collectively, in both their official and private capacities, (each a "Landlord Person" and collectively the "Landlord Persons"), and Airport Manager and Airport Manager's owners, officers, employees, representatives, and agents, in both their official and private capacities, (each a "Manager Person" and collectively the "Manager Persons"), shall not be liable to Tenant or to any of Tenant's owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, subcontractors, or any other person or entity for whom Tenant is legally responsible, and their respective owners, directors, officers, shareholders, partners, managers, employees, agents, consultants, servants, customers, invitees, patrons, subtenants, licensees, concessionaires, contractors, and subcontractors, (each a "Tenant Person" and collectively "Tenant Persons"), or to any other person whomsoever, for any death or injury to persons or damage to or destruction of property or any other harm on or about the Demised Premises or any adjacent area owned by Landlord caused by or resulting from any act or omission of Tenant or any Tenant Persons, or arising out of the use or occupation of the Demised Premises by Tenant or any Tenant Persons and/or the conduct of Tenant's business thereon, or arising out of any breach or default by Tenant in the performance of Tenant's obligations hereunder.

**B. TENANT'S INDEMNITY OBLIGATION.** Tenant shall DEFEND (with counsel reasonably acceptable to Landlord), INDEMNIFY, AND HOLD HARMLESS Landlord and all other Landlord Persons and Airport Manager and all Manager Persons

(Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons, being collectively the “Indemnified Persons”) from and against any and all claims, actions, proceedings, causes of action, demands, losses, harm, damages, penalties, fines, liability, expenses, lawsuits, judgments, costs, and fees (including reasonable attorney fees and court costs) of any kind and nature whatsoever made upon, incurred by, suffered by, or asserted against any of the Indemnified Persons, whether directly or indirectly (collectively for purposes of this Section, “Damages”), that result from, relate to, are based upon, or arise out of, in whole or in part, (I) any condition of the Demised Premises caused in whole or in part by Tenant or by any Tenant Persons, and the condition of the pavement and subsurface conditions at and within the Demised Premises as described in Section 7, above; (II) any act or omission of Tenant or any Tenant Persons under, in connection with, or in the performance of, this Lease; (III) any representations or warranties by Tenant under this Lease; (IV) any personal injuries (including but not limited to death) to any Tenant Persons and to any third persons or parties arising out of or in connection with Tenant’s use and occupancy of the Demised Premises under this Lease; and/or (V) the Demised Premises becoming out of repair due to the fault of Tenant or any Tenant Persons for any reason, including by failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling. **THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (BUT EXCLUDING THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PERSONS (OR ANY OF THEM), OR CONDUCT BY THE INDEMNIFIED PERSONS (OR ANY OF THEM) THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.** However, Tenant’s liability under this indemnity obligation shall be reduced by that portion of the total amount of the Damages (excluding defense fees and costs) equal to the Indemnified Person’s or Indemnified Persons’ proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss. Likewise, Tenant’s liability for Indemnified Person’s or Indemnified Persons’ defense costs and attorneys’ fees shall be reduced by that portion of the defense costs and attorneys’ fees equal to the Indemnified Person’s or Indemnified Persons’ proportionate share of the negligence, or conduct that would give rise to strict liability of any kind, that caused the loss.

Tenant shall promptly advise Landlord and Airport Manager in writing of any claim or demand against any Indemnified Persons, Tenant, or any Tenant Persons related to or arising out of Tenant’s activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant’s sole cost and expense. The Indemnified Persons shall have the right, at the Indemnified Person’s or Indemnified Persons’ option and own expense, to participate in such defense without relieving Tenant of any of its obligations hereunder.

**C. Release. Tenant hereby RELEASES Landlord and all other Landlord Persons, and Airport Manager and all other Manager Persons (i) for any death or injury to any person or persons or damage to or destruction of property of any kind resulting from the Demised Premises becoming out of repair or by defect in or failure of equipment, pipes, or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking,**

escaping or flowing into the Demised Premises, regardless of the source, or by dampness or by fire, explosion, falling plaster or ceiling or for any other reason whatsoever, and (ii) any loss or damage that may result from or be occasioned by or through the acts or omissions of other tenants of Landlord or caused by operations in construction of any private, public, or quasi-public work, and INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS WHICH ARISE FROM, OR ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED BY, IN WHOLE OR IN PART, THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY OF THE INDEMNIFIED PERSONS, OR CONDUCT BY ANY OF THE INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

**D. THE PROVISIONS OF THIS SECTION 21 SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.**

**Section 22. Environmental Compliance:**

**A. No Storage or Disposal:** Tenant shall not install, store, use, treat, transport, discharge or dispose (or permit or acquiesce in the installation, storage, use, treatment, transportation, discharge or disposal by Tenant, its directors, officers, shareholders, members, partners, agents, employees, invitees, contractors, subcontractors, independent contractors, or subtenants) on the Demised Premises or any portion of the Common Facilities, any: (a) asbestos in any form; (b) urea formaldehyde foam insulation; (c) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million; or (d) any other chemical, material, air pollutant, toxic pollutant, waste, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by the Resource Conservation Recovery Act (42 U.S.C. §6901, et seq., as amended or superseded), the Comprehensive and Environmental Response Compensation and Liability Act (42 U.S.C. §9601, et seq. as amended or superseded), the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act, and/or the Clean Water Act, or any other federal, state, county, regional, local or other governmental authority laws, rules, orders, standards, policies, or regulations, or which, even if not so regulated may or could pose a hazard to the health and safety of the occupants of the Demised Premises and/or any portions of the Common Facilities, and which is either: (i) in amounts in excess of that permitted or deemed safe under any applicable law, rule, order, standard, policy, or regulation or (ii) in any manner prohibited or deemed unsafe under applicable law, rule, order, standard, policy, or regulation. (The substances referred to in (a), (b), (c) or (d) are collectively referred to hereinafter as “Hazardous Materials”).

**B. Cleanup Laws:** Tenant shall, at Tenant’s own expense, comply with any presently existing or hereafter enacted laws relating to Hazardous Materials (collectively, “Cleanup Laws”); provided, however that Tenant shall not be responsible for correcting any violation of the Cleanup Laws under this Section that existed prior to the Effective Date. In furtherance and not in limitation of the foregoing, Tenant shall, at Tenant’s own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the “Authority”) under the Cleanup Laws. Should any Authority require that a cleanup plan be prepared and that a cleanup be undertaken because of the existence of Hazardous

Materials which were installed, stored, used, treated, transported, disposed of or discharged on the Demised Premises and/or any portion of the Common Facilities, by Tenant, its directors, shareholders, members, partners, officers, agents, employees, invitees, independent contractors, contractors, subcontractors, licensees, subtenants, any other person entering the Demised Premises under express or implied invitation of Tenant, or any person directly or indirectly employed by or acting under Tenant, during the Term of this Lease, Tenant shall, at Tenant's own expense, prepare and submit the required plans and financial assurances and carry out the approved plans in accordance with such Cleanup Laws and to Landlord's satisfaction. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits or other documents required by Landlord to determine the applicability of the Cleanup Laws to the Demised Premises and/or any portion of the Common Facilities, as the case may be, and shall sign the affidavits promptly when requested to do so by Landlord.

**TENANT'S FURTHER INDEMNITY OBLIGATION. TENANT SHALL INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FROM AND AGAINST, AND REIMBURSE LANDLORD AND ALL OTHER LANDLORD PERSONS, AND AIRPORT MANAGER AND ALL OTHER MANAGER PERSONS, FOR, ANY AND ALL OBLIGATIONS, DAMAGES, INJUNCTIONS, FINES, PENALTIES, DEMANDS, CLAIMS, COSTS, FEES, CHARGES, EXPENSES, ACTIONS, CAUSES OF ACTION, JUDGMENTS, LIABILITIES, SUITS, PROCEEDINGS AND LOSSES OF WHATEVER KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS), AND ALL CLEANUP OR REMOVAL COSTS (COLLECTIVELY FOR PURPOSES OF THIS SUBSECTION, "DAMAGES") AND ALL ACTIONS OF ANY KIND ARISING OUT OF OR IN ANY WAY CONNECTED WITH, (I) THE GENERATION, INSTALLATION, STORAGE, USE, TREATMENT, TRANSPORTING, DISPOSAL OR DISCHARGE OF HAZARDOUS MATERIALS IN OR ON THE DEMISED PREMISES AND/OR ANY PORTION OF THE AIRPORT, INCLUDING THE COMMON FACILITIES, OR ANY PROPERTY ADJACENT TO THE AIRPORT, BY TENANT OR ANY TENANT PERSONS, AND (II) ALL FINES, SUITS, PROCEDURES, CLAIMS AND ACTIONS OF ANY KIND ARISING OUT OF TENANT'S FAILURE TO PROVIDE ALL INFORMATION, MAKE ALL SUBMISSIONS AND TAKE ALL STEPS REQUIRED BY THE AUTHORITY UNDER THE CLEANUP LAWS OR ANY OTHER ENVIRONMENTAL LAW, RULE, STANDARD, REGULATION, OR POLICY. SUCH DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SHALL AND DOES INCLUDE DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE [BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT] OF THE LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON, OR BY ANY ACT OR OMISSION OF LANDLORD, ANY OTHER LANDLORD PERSON, AIRPORT MANAGER, OR ANY OTHER MANAGER PERSON THAT MAY GIVE RISE TO STRICT LIABILITY OF ANY KIND. HOWEVER, TENANT'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE DAMAGES (EXCLUDING DEFENSE FEES AND**

**COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, TENANT'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEYS' FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEYS' FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.** In addition to and not in limitation of Landlord's other rights and remedies, Tenant's failure to abide by the terms of this Section shall be restrainable by injunction.

**C.** Environmental Notices: Tenant shall promptly supply Landlord with copies of any notices, correspondence and submissions made by Tenant to or received by Tenant from any governmental authorities of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the FAA, TxDOT, or any other local, state or federal authority that requires submission of any information concerning environmental matters or Hazardous Materials.

**D.** Prior to the Commencement Date of this Lease, the Tenant, at Tenant's sole cost and expense, shall be entitled to conduct a Phase I Environmental Site Assessment ("ESA") with respect to the Demised Premises. If the Phase I ESA indicates the likely presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled to conduct a Phase II ESA at Tenant's sole cost and expense. If the Phase II ESA indicates the presence of Hazardous Materials on the Demised Premises, Tenant shall be entitled, as its sole remedy, to disaffirm this Lease, in which case this Lease shall become null and void and no further obligation shall be borne by either party hereto. A copy of a Phase I ESA, and Phase II ESA, if any, shall be delivered promptly to Landlord upon completion.

**E.** Survival: Tenant's defense and indemnity and hold harmless obligation and Tenant's liability pursuant to the terms of this Section 6, 21 and 22 shall survive the expiration or earlier termination of this Lease.

**Section 23. Default by Tenant:** Each of the following events, inclusive of those defaults events referenced otherwise herein, shall be deemed to be an Event of Default (herein so called) by Tenant under this Lease:

**A.** Failure of Tenant to pay any sum payable to Landlord hereunder, or to pay or cause to be paid taxes (to the extent Tenant is obligated to pay or cause same to be paid), utilities, or insurance premiums, or any other payment which Tenant is to make under this Lease, on the date that same is due and such failure shall continue for a period of ten (10) days after the date on which such payment is to be made.

**B.** Failure of Tenant to comply with any term, condition or covenant of this Lease (other than the payment of rent or other sum of money, or the payment of taxes, utilities or insurance premiums, or other payments Tenant is to make under this Lease, as set forth in Subsection A. of this Section 23) and such failure shall not be cured within thirty (30) days after

written notice thereof to Tenant; provided, however, in the event such failure is not susceptible of cure within such thirty (30) day period, then such thirty (30) day period shall be extended for an additional period of time (not to exceed an additional sixty [60] days) so long as Tenant has provided Landlord written notice of the curative measures Tenant proposes to undertake and commenced to cure such failure within the initial thirty (30) day period and thereafter diligently pursues such cure.

C. INTENTIONALLY DELETED.

D. Insolvency, the making of a transfer in fraud of creditors, or the making of an assignment for the benefit of creditors by Tenant or any guarantor of Tenant's obligations.

E. Filing of a petition under any section or chapter of the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof by Tenant or any guarantor of Tenant's obligations, or adjudication as a bankrupt or insolvent in proceedings filed against Tenant or such guarantor and same is not dismissed within sixty (60) days of filing.

F. Appointment of a receiver or trustee for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations and same is not dismissed within sixty (60) days of filing.

G. Abandonment or cessation of use of the Demised Premises for the purpose leased by Tenant for a period of thirty (30) consecutive days of any substantial portion of the Demised Premises.

H. Tenant is in default of any other Ground Lease or agreement with the Town of Addison after notice and opportunity to cure, if applicable, or, provided Tenant is the holder of a valid aviation fuel dispensing permit or license issued by the Town of Addison, is in default of said fuel dispensing permit or license after notice and opportunity to cure, if applicable.

**Section 24. Remedies of Landlord:** Upon the occurrence of any of Event of Default by Tenant under this Lease, Landlord, without prejudice to any other legal, equitable, or contractual right or remedy, shall have the option to pursue any one or more of the following remedies using lawful force if necessary or appropriate, without notice or demand whatsoever:

A. Terminate this Lease or any of Tenant's rights under this Lease, with or without reentering or repossessing the Demised Premises, and terminate any other Ground Lease or agreement at the Airport between Landlord and Tenant and any fuel license or permit granted to Tenant. Landlord may also terminate this Lease at any time after a termination of occupancy or possession as described in subsection B. of this Section.

B. Terminate Tenant's right to occupy or possess all or any part of the Demised Premises without terminating this Lease and with or without reentering or repossessing the Demised Premises.

C. Recover unpaid Rent and any Damages (as defined below);

**D.** Re-enter and re-possess all or any part of the Demised Premises by changing or picking the locks, access codes, or other access control devices, and taking any other self-help or judicial action, to exclude Tenant and other occupants from the Demised Premises. Re-entry or repossession of the Demised Premises by Landlord will not be construed as an election by Landlord to terminate this Lease.

**E.** Remove and store (at Tenant's sole cost) any property on the Demised Premises (other than aircraft).

**F.** Sue for eviction, specific enforcement, equitable relief, rent, damages, or any other available remedy.

**G.** Apply the Security Deposit in any manner permitted by this Lease, and increase the amount of the Security Deposit.

**H.** Cure Tenant's default, and if Landlord does so, Tenant must reimburse Landlord within 30 days after Landlord delivers an invoice for any actual, out-of-pocket expenses Landlord incurred effecting compliance with Tenant's obligations.

**I.** Withhold or suspend any payment that this Lease would otherwise require Landlord to make.

**J.** [INTENTIONALLY DELETED].

**K.** Exercise all other remedies available to Landlord at law or in equity (including, without limitation, injunctive and other extraordinary remedies).

For purposes of this Section, "Damages" includes, without limitation, all actual, incidental, special, and consequential damages, court costs, interest, and attorneys' fees incurred by Landlord and arising from Tenant's breach of this Lease (including, without limitation, the cost of (A) recovering possession of the Demised Premises, (B) removing and storing Tenant's and any other occupant's property, (C) re-letting the Demised Premises (including, without limitation, the costs of brokerage commissions and cleaning, decorating, repairing, or altering the Demised Premises for a substitute tenant or tenants), (D) collecting any money owed by Tenant or a substitute tenant, (E) repairing any damage caused by any Tenant Persons, (F) performing any obligation of Tenant under the Lease, and (G) any other loss or cost incurred by Landlord as a result of, or arising from, Tenant's breach of the Lease or Landlord's exercise of its rights and remedies for such breach.

Unless Landlord delivers signed, written notice thereof to Tenant explicitly accepting surrender of the Demised Premises, providing for termination of this Lease, or evicting Tenant, no act or omission by Landlord or Airport Manager or their respective officials, officers, employees, or agents will constitute Landlord's acceptance of surrender of the Demised Premises, termination of Lease, or an actual or constructive eviction of Tenant (including,

without limitation, Tenant's delivery of keys to any of Landlord's or Manager's officials, officers, employees, or agents or Landlord's repossession, reentry, or reletting of the Demised Premises).

Pursuit of any of the foregoing rights or remedies by Landlord shall not preclude Landlord's pursuit of any of the other rights or remedies herein provided or any other rights or remedies provided by law, in equity, or otherwise, nor shall pursuit of any right or remedy herein provided constitute a forfeiture or waiver of any Rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, conditions and covenants herein contained.

**Section 25. Default by Landlord:** No default by Landlord hereunder shall constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises or render Landlord liable for damages (including consequential damages) or entitle Tenant to be relieved from any of Tenant's obligations hereunder (including the obligation to pay rent) or grant Tenant any right of deduction, abatement, set-off or recovery or entitle Tenant to take any action whatsoever with regard to the Demised Premises or Landlord until thirty (30) days after Tenant has given Landlord written notice specifically setting forth such default by Landlord, and Landlord has failed to cure such default within said thirty (30) day period, or in the event such default cannot be cured within said thirty (30) day period then within an additional reasonable period of time so long as Landlord has commenced curative action within said thirty (30) day period and thereafter is diligently attempting to cure such default. In the event that Landlord fails to cure such default within said thirty (30) day period, or within said additional reasonable period of time, Tenant shall have the right as its sole and exclusive remedy to:

**A.** Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and deduct the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum from the next succeeding rental installment(s) due by Tenant to Landlord hereunder;

**B.** Proceed to cure such default (provided such cure occurs entirely within the Demised Premises) and bring suit against Landlord for the cost of curing same plus interest thereon at the rate of ten percent (10%) per annum; or

**C.** Seek, through judicial action, a declaratory judgment action, and limited equitable remedies of injunction and specific performance, as well as actual damages directly resulting from such default (but subject to the provisions of subsection B. of Section 26, below).

If any mortgagee of Landlord has given Tenant its address for notices and specifically requests such notice, Tenant agrees to give the notice required hereinabove to such mortgagee at the time Tenant gives same to Landlord, and to accept curative action, if any, undertaken by such mortgagee as if such curative action had been taken by Landlord.

**Section 26. Mitigation of Damages:**

**A.** In lieu of any obligation imposed by law on Landlord to mitigate damages arising from Tenant's abandonment of the Demised Premises in breach of this Lease, Landlord, beginning not more than 180 days after Tenant physically vacates the Demised Premises and

continuing until the Demised Premises have been relet (but subject to the provisions of this subsection A. set forth below), will market the Demised Premises for lease, and Tenant will remain liable for all Rent and for Damages incurred by Landlord (as the term "Damages" is defined in Section 24, above).

Landlord and Tenant agree to the following criteria in connection with Landlord's obligation (if any) to mitigate damages as described above:

(1) Landlord will have no obligation to solicit or entertain negotiations with any other prospective tenants of the Demised Premises until and unless Landlord obtains full and complete possession of the Demised Premises, including without limitation, the final and unappealable legal right to relet the Demised Premises free of any claim of Tenant.

(2) Landlord will not be obligated to offer the Demised Premises to a prospective tenant when other premises suitable for that prospective tenant's use are (or soon will be) available in any other premises located at Addison Airport.

(3) Landlord will not have any obligation to lease the Demised Premises for any rental less than the current rate then prevailing for similar space at Addison Airport (or if no similar space is available, the current fair market rental then prevailing for similar space in comparable buildings in the same market area as the Demised Premises) nor shall Landlord be obligated to enter into a new lease under any terms or conditions that are unacceptable to Landlord.

(4) Landlord will not be obligated to enter into any lease with any prospective tenant whose reputation is not acceptable to Landlord, in Landlord's commercially reasonable judgment and opinion.

(5) Landlord will not be obligated to enter into a lease with any prospective tenant: (i) which does not have, in Landlord's commercially reasonable judgment and opinion, sufficient financial resources and operating experience to operate the Demised Premises in a first class manner and meet its financial obligations; or (ii) whose proposed use of the Demised Premises is not a permitted use under the terms of this Lease.

(6) Landlord will not be required to expend any amount of money to alter, remodel or otherwise make the Demised Premises suitable for use by any prospective tenant.

If Landlord makes the Demised Premises available for reletting under the criteria set forth hereinabove, Landlord will be deemed to have fully satisfied Landlord's obligation (if any) to mitigate damages under this Lease and under any law or judicial ruling in effect on the date of this Lease or at the time of Tenant's default, and **Tenant hereby waives and releases**, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord (or

alleged failure by Landlord to adequately mitigate its damages), unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this Section.

No rent collected from a substitute tenant for any month in excess of the rent due under the Lease for that month will be credited or offset against unpaid rent for any other month or any other Damages. Tenant stipulates that the mitigation requirements expressed in this Section are objectively reasonable. **TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT WAIVES ANY OTHER OBLIGATION BY LANDLORD TO MITIGATE ITS DAMAGES AFTER TENANT FAILS TO PAY RENT OR VACATES OR ABANDONS THE PREMISES.**

**B.** Tenant's right to seek actual damages as a result of a default by Landlord under this Lease shall be conditioned on Tenant taking all actions reasonably required, under the circumstances, to minimize any loss or damage to Tenant's property or business, or to any of Tenant's officers, employees, agents, invitees, or other third parties that may be caused by any such default of Landlord.

**Section 27. Waiver of Subrogation:** Each party hereto waives any and every claim which arises or may arise in such party's favor against the other party hereto during the term of this Lease for any and all loss of, or damage to, any of such party's property located within or upon, or constituting a part of, the Demised Premises, which loss or damage is covered by valid and collectible casualty, fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Such mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of the parties hereto. Inasmuch as such mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation or otherwise to an insurance company (or any other person), each party hereby agrees immediately to give to each insurance company which has issued to such party policies of fire and extended coverage insurance, written notice of the terms of such mutual waivers, and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverages by reason of such waivers.

**Section 28. Title to Improvements:**

**A.** Any and all Building Improvements constructed by Tenant on the Demised Premises shall be owned by Tenant during the Term of this Agreement.

**B.** Prior to the expiration or early termination of this Agreement, Tenant shall either (i) remove, or cause to be removed, at its sole cost and expense, the Building Improvements and any other improvements constructed, placed, or located on the Demised Premises by Tenant above the existing grade level, as well as perform the Pier Removal, and restore the Demised Premises to the condition in which the same existed on the Effective Date hereof, or (ii) abandon the structure in good condition and repair, normal wear and tear accepted, and convey to Landlord, in form and content acceptable to Landlord (and free and clear of any and all claims and any and all liens or other encumbrances), all of Tenant's right, title and interest in and to the Building Improvements. If

Tenant elects to abandon the Building Improvements and other improvements and convey the same to Landlord, Tenant shall give written notice to Landlord of such election not less than 30 days prior to the expiration or termination of this Lease and during such period shall convey the same to Landlord as set forth in this subsection above.

If Tenant elects to abandon (or is deemed to have abandoned) the Building Improvements and other improvements, the same, and all parts thereof, shall merge with the title of the Demised Premises, free and clear of any claim of Tenant and all persons or entities claiming under or through Tenant (including, without limitation, any holder of a leasehold mortgage), and shall become the property of Landlord. At the time of Lease expiration or termination, however: (i) Tenant shall have the right to remove all personal property (including aircraft stored in the Building Improvements) and trade fixtures owned by Tenant from the Demised Premises, but Tenant shall be required to repair any damage to the Demised Premises caused by such removal in a good and workmanlike manner and at Tenant's sole cost and expense, and (ii) Landlord may, despite Tenant's abandonment of the Building Improvements and any other improvements, elect to require Tenant to remove the same from the Demised Premises and to perform the Pier Removal, and restore the Demised Premises to the condition in which the same existed on the date hereof, in which event Tenant shall promptly perform such removal and restoration in a good and workmanlike manner and at Tenant's sole cost and expense. Upon such termination, Tenant shall deliver the Demised Premises to Landlord in good condition (such condition being at least in accordance with any construction and/or maintenance standards and specifications established by Landlord or Airport Manager from time to time and all applicable ordinances, rules, codes, and regulations of or adopted by the Town of Addison, Texas), reasonable wear and tear excepted, and shall, at Landlord's request, execute a recordable instrument evidencing the expiration or termination of this Agreement and conveyance of the Building Improvements and other improvements, if any.

#### **Section 29. Mechanics' and Materialmen's Liens:**

**A.** Tenant agrees to DEFEND, INDEMNIFY and HOLD HARMLESS to the fullest extent provided for in this Lease, Landlord and all Landlord Persons, and Airport Manager and all Manager Persons, from and against all liability arising out of the filing of any mechanics' or materialmen's liens against the Demised Premises by reason of any act or omission of Tenant or anyone claiming under Tenant (including, without limitation, any Tenant Persons), and Landlord, at Landlord's option, may satisfy such liens and collect the amount expended from Tenant together with interest thereon as provided in Section 38, including as rent; provided, however, that Landlord shall not so satisfy such liens until thirty (30) days after written notification to Tenant of Landlord's intention to do so and Tenant's failure during such thirty (30) day period to bond such liens or escrow funds with appropriate parties to protect Landlord's interest in the Demised Premises, unless a shorter period of time is dictated by applicable law.

**B.** To secure payment of any sum of money coming due hereunder, Tenant grants to Landlord a continuing security interest in all of Tenant's goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper, and its other personal property, expressly excluding any and all aircraft owned by Tenant and stored in the Building Improvements ("Collateral") situated in or on the Demised Premises.

**C.** Tenant will not remove, or allow others to remove, the Collateral from the Demised Premises without Landlord's prior written consent. But Tenant may remove Collateral in the ordinary course of business before a default. If a default occurs, Landlord will be entitled to exercise any or all rights and remedies under the Uniform Commercial Code or otherwise provided in this Lease or by law. Landlord may sell any or all of the Collateral at public or private sale upon 10 days notice to Tenant, and Tenant stipulates that this notice is adequate and reasonable. This contractual lien supplements any statutory or contractual lien in favor of Landlord.

**D.** At Landlord's request, Tenant will sign and deliver to Landlord a financing statement in form sufficient to perfect Landlord's security interest in the Collateral, and Tenant irrevocably appoints Landlord as Tenant's attorney-in-fact to sign and deliver a financing statement to Landlord if Tenant fails or refuses to do so. This power-of-attorney is coupled with an interest.

**E.** Tenant warrants and represents that (a) the Collateral has not been purchased or used for personal, family, or household purposes; and (b) the lien in the Collateral constitutes a first and superior lien. Tenant will not allow any other lien in the Collateral without Landlord's prior written consent.

Pursuit of any one or more of the foregoing remedies shall not preclude the simultaneous or subsequent pursuit of any other remedy provided herein or any other remedy provided by law or in equity, nor shall the pursuit of any one or more remedies constitute a forfeiture or waiver of any rent or other amount payable by lessee hereunder or of any damages (including incidental, special, and consequential damages) accruing to or suffered by Landlord by reason of any event of default.

**Section 30.** INTENTIONALLY DELETED.

**Section 31. Quiet Enjoyment and Subordination:** Landlord represents that Tenant, upon performance of the terms, conditions, covenants and agreements herein contained, shall (subject to all of the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Demised Premises during the full term of this Lease; provided, however, that Tenant accepts this Lease subject and subordinate to any recorded mortgage, deed of trust or other lien presently existing upon, or to any other matter affecting, the Demised Premises. Landlord further is hereby irrevocably vested with full power and authority by Tenant to subordinate Tenant's interest hereunder to any mortgage, deed of trust or other lien now existing or hereafter placed on the Demised Premises or to declare this Lease prior and superior to any mortgage, deed of trust or other lien now existing or hereafter placed on the Demised Premises; provided, however, any such subordination shall be upon the express conditions that (i) this Lease shall be recognized by the mortgagee and that all of the rights of Tenant shall remain in full force and effect during the full term of this Lease on condition that Tenant attorn to the mortgagee, its successors and assigns, and perform all of the covenants and conditions required by the terms of this Lease, and (ii) in the event of foreclosure or any enforcement of any such mortgage, the rights of Tenant hereunder shall expressly survive and this Lease shall in all respects continue in full force and effect so long as

Tenant shall fully perform all Tenant's obligations hereunder and attorn to the purchaser. Tenant also agrees upon demand to execute further instruments declaring this Lease prior and superior to any mortgage, deed of trust or other lien and specifically providing that this Lease shall survive the foreclosure of such mortgage, deed of trust or other lien.

**Section 32. Holding Over:** Should Tenant, or any of Tenant's successors in interest fail to surrender the Demised Premises, or any part thereof, on the expiration of the term of this Lease, such holding over shall constitute a tenancy from month to month only terminable at any time by either Landlord or Tenant after thirty (30) days prior written notice to the other, at a monthly rental amount reasonably determined by Landlord in view of the holdover nature of Tenant's continued occupancy.

**Section 33. Waiver of Default:** No waiver by the parties hereto of any default or breach of any term, condition or covenant of this Lease shall be deemed to be a waiver of any subsequent default or breach of the same or any other term, condition or covenant contained herein. Landlord will not be deemed to have waived any right or Tenant's breach of any obligation under this Lease, unless Landlord delivers a signed writing, addressed to Tenant explicitly relinquishing that right or breach. No custom or practice arising during the administration this Lease will waive, or diminish, Landlord's right to insist upon strict performance of Tenant's obligations. No restrictive endorsement or other statement on or accompanying any check or payment will be deemed an accord and satisfaction or novation, and Landlord will be entitled to accept any such check or payment, without prejudice, to Landlord's rights to recover the full amount due and to exercise its other remedies.

**Section 34. Release of Landlord Upon Transfer:** All of Landlord's personal liability for the performance of the terms and provisions of this Lease (except for any liability accruing prior to such transfer) shall terminate upon a transfer of the Demised Premises by Landlord, provided that the obligations of Landlord under this Lease are covenants running with the land and shall be binding upon the transferee of Landlord's interest in this Lease and the Demised Premises.

**Section 35. Attorneys' Fees:** If, on account of any breach or default by either Party to this Lease, it shall become necessary for either party to employ an attorney to enforce or defend any of its rights or remedies hereunder, with the result that a judicial proceeding shall be filed, then the prevailing party in such judicial proceeding shall be entitled, in addition to any other rights it may have, in law or equity, to collect reasonable attorneys' fees and costs of Court incurred.

**Section 36. Financial Information:** Tenant agrees that Tenant will from time to time upon the written request of Landlord during the term of this Lease furnish to Landlord such credit and banking references as Landlord may reasonably request.

**Section 37. Estoppel Certificates:** Tenant agrees that from time to time, upon not less than ten (10) days prior written request by Landlord, Tenant will deliver to Landlord a statement in writing certifying that:

A. This Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications).

B. The dates to which any charges due hereunder have been paid.

C. Landlord is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

D. If requested by Landlord, Tenant will not pay any sums due hereunder for more than one (1) month in advance and that this Lease will not be amended without notice to Landlord's mortgagee and that the same will not be terminated without the same notice required by the Lease to be furnished to Landlord also being furnished to Landlord's mortgagee and Landlord's mortgagee fails to cure such default within the curative period allowed Landlord under this Lease.

Landlord agrees that from time to time, upon not less than ten (10) days' prior written request by Tenant, Landlord will deliver to Tenant a statement in writing certifying that:

(i) This Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications).

(ii) The dates to which any charges due hereunder have been paid.

(iii) Tenant is not in default under any term or provision of this Lease or if in default the nature thereof in detail in accordance with an exhibit attached thereto.

**Section 38. Interest on Tenant's Obligations and Manner of Payment:** All monetary obligations of Tenant to Landlord under this Lease remaining unpaid ten (10) days after the due date of the same (if no due date has been established under other provisions hereof, the "due date" shall be the date upon which Landlord demands payment from Tenant in writing) shall bear interest at the rate of ten percent (10%) per annum (or the maximum interest rate permitted by law, whichever is lower) from and after said tenth (10th) day until paid. If more than twice during the term of the Lease Tenant's personal or corporate check is not paid by the bank on which it is drawn for whatever reason, Landlord may require by giving written notice to Tenant that the payment of all future monetary obligations of Tenant under this Lease are to be made on or before the due date by cash, cashier's check, certified check or money order, and the delivery of Tenant's personal or corporate check will no longer constitute payment of such monetary obligations. Any acceptance by Landlord of a personal or corporate check after such notice shall not be deemed or construed as a waiver or estoppel of Landlord to require other payments as required by said notice. Notwithstanding the foregoing, Tenant's failure to pay any monetary amount due payable is a monetary default of this Lease.

**Section 39. Special Events:** Landlord may sponsor certain special events, including, but not limited to, air shows, to be conducted on portions of the Airport, which may limit or obstruct access to the Premises and/or to the Airport ("Special Events"), and Tenant agrees and consents to

the same. As a material inducement to Landlord to enter into this Lease, and notwithstanding anything to the contrary contained herein, Tenant, on behalf of Tenant and on behalf of all directors, officers, shareholders, partners, principals, employees, agents, contractors, subtenants, licensees or concessionaires of Tenant and on behalf of any other party claiming any right to use the Demised Premises by, through or under Tenant, hereby: (i) agrees that Landlord has the right to sponsor any or all Special Events and to allow use of portions of the Airport therefor even if the same limit or obstruct access to the Demised Premises and/or to the Airport; (ii) **releases, waives and discharges** Landlord and Manager, and Landlord Persons and Manager Persons, from all liability for any loss, damage, cost, expense or claim arising or resulting from or pertaining to the limitation or obstruction of access to the Demised Premises and/or to the Airport from the conduct of Special Events and/or activities relating or pertaining thereto, including, without limitation, death, injury to person or property or loss of business or revenue (the “Released Claims”); (iii) **covenants not to sue** the Landlord or Manager, or any of the Landlord Persons and Manager Persons, for any Released Claims; (iv) agrees that the terms contained in this Section are intended and shall be construed to be as broad and inclusive as possible under the laws of the State of Texas; and (v) agrees that if any portion of this Section is held to be invalid or unenforceable, the remainder of this Section shall not be affected thereby but shall continue in full force and effect.

**Section 40. Independent Contractor:** It is understood and agreed that in leasing, using, occupying, and operating the Demised Premises, Tenant is acting as an independent contractor and is not acting as agent, partner, joint venturer or employee of Landlord or Airport Manager.

**Section 41. Force Majeure:**

**A.** In the event performance by Landlord of any term, condition or covenant in this Lease is delayed or prevented by an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Landlord, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Landlord is so delayed or hindered.

**B.** In the event performance by Tenant of any term, condition or covenant in this Lease is delayed or prevented by an Act of God, strike, lockout, shortage of material or labor, restriction by any governmental authority, civil riot, flood, or any other cause not within the control of Tenant, the period for performance of such term, condition or covenant shall be extended for a period equal to the period Tenant is so delayed or hindered.

**Section 42. Exhibits:** All exhibits, attachments, annexed instruments and addenda referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

**Section 43. Use of Language:** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

**Section 44. Captions:** The captions or headings, sections, or paragraphs in this Lease are inserted for convenience only, and shall not be considered in construing the provisions hereof if any question of intent should arise.

**Section 45. Successors; No Third Party Beneficiaries; No Waiver of Immunity:** The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in interest and legal representatives except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of Landlord under this Lease, including, but not limited to, any notices required or permitted to be delivered by Landlord to Tenant hereunder, may, at Landlord's option, be exercised or performed by Landlord's agent or attorney.

Except as otherwise set forth in this Lease (e.g., provisions relating to the Airport Manager and Manager Persons), this Lease and all of its provisions are solely for the benefit of the parties hereto and do not and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

Notwithstanding any other provision of this Lease, nothing in this Lease shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents, or Airport Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

**Section 46. Severability:** If any provision in this Lease should be held to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby, and the invalid, illegal, or unenforceable term will be reformed to give effect (to the fullest extent possible) to the parties' intentions in a manner that is legal, valid, and enforceable.

**Section 47. Notices:** Any notice or document required to be delivered or given hereunder in writing shall be delivered or given (i) in person, (ii) by United States mail, postage prepaid, registered or certified mail, return receipt requested, or (iii) by Federal Express Corporation or other nationally recognized carrier to be delivered on the next business day. Such notice or document shall be deemed to be delivered or given, whether actually received or not, (a) when received if delivered or given in person, (b) if sent by United States mail, three (3) business days after being deposited in the United States mail as set forth above, and (c) on the next business day after the day the notice or document is provided to Federal Express Corporation or other nationally recognized carrier to be delivered as set forth above. Addresses for the delivery or giving of any such notice or document are as follows:

TO LANDLORD:

Town of Addison, Texas  
c/o City Manager  
5300 Belt Line Road  
Dallas, Texas 75254

TO TENANT:

Sky B&B, LLC  
Mr. Timothy A. Mack, Manager  
3738 Oak Lawn Avenue  
Dallas, Texas 75219

Email: \_\_\_\_\_

Email: tmack@mackmatheson.com

*and*

Town of Addison, Texas  
c/o Addison Airport Manager  
16051 Addison Road, Suite 220  
Addison, Texas 75001  
Attn: Real Estate Manager  
Email: \_\_\_\_\_

With Copy to:  
Holmes Firm PC  
14911 Quorum Drive  
Suite 340  
Dallas, Texas 75254  
Attn: Ronald L. Holmes  
Email: ron@theholmesfirm.com

**Section 48. Fees or Commissions:** Each party hereto hereby covenants and agrees with the other that such party shall be solely responsible for the payment of any brokers', agents' or finders' fees or commissions agreed to by such party arising from the execution of this Lease or the performance of the terms and provisions contained herein, and such party agrees to indemnify and hold the other party harmless from the payment of any such fees or commissions.

**Section 49. Counterparts:** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**Section 50. Consent; "Includes" and "Including"; Recitals; Certain Definitions:** Where Landlord consent or approval is required in this Lease, such consent or approval may be given by the City Council of the Town of Addison, Texas or by the City Manager of the Town of Addison. For purposes of this Lease, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. The above and foregoing recitals to the Lease are true and correct and are incorporated into and made a part of this Lease for all purposes.

For purposes of this Lease, "business day" means any day other than a Saturday, Sunday, or holiday; "holiday" means New Year's Day, Memorial Day, U.S. Independence Day, Labor Day, Thanksgiving Day and the day (Friday) following Thanksgiving Day, Christmas Eve, and Christmas Day.

**Section 51. Governing Law and Venue; Survivability of Rights and Remedies:** This Lease and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas, without regard to choice of laws rules of any jurisdiction. Any and all suits, actions or legal proceedings relating to this Agreement shall be maintained in the state or federal courts of Dallas County, Texas, which courts shall have exclusive jurisdiction for such purpose. Each of the parties submits to the exclusive jurisdiction of such courts for purposes of any such suit, action, or legal proceeding hereunder, and waives any objection or claim that any such suit, action, or legal proceeding has been brought in an inconvenient forum or that the venue of that suit, action, or legal proceeding is improper. Any rights and remedies either party may have with respect to the other arising out of the performance of

or failure to perform this Lease during the term hereof shall survive the cancellation, expiration or termination of this Lease.

**Section 52. Entire Agreement and Amendments; Authorized Persons:** This Lease, consisting of fifty-two (52) Sections and Exhibits 1,2A, 2B, 3 and 4 attached hereto, embodies the entire agreement between Landlord and Tenant and supersedes all prior agreements and understandings, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. Except as otherwise specifically provided herein, no agreement hereafter made shall be effective to change, modify, discharge or effect an abandonment of this Lease, in whole or in part, unless such agreement is in writing and signed by or in behalf of the party against whom enforcement of the change, modification, discharge or abandonment is sought.

The undersigned representatives of the parties hereto are the properly authorized persons and have the necessary authority to execute this Lease on behalf of the respective parties hereto.

**EXECUTED** as of the day, month and year first above written.

**LANDLORD:**

**TENANT:**

TOWN OF ADDISON, TEXAS

SKY B&B, LLC,

By: \_\_\_\_\_  
Lea Dunn, City Manager

By: \_\_\_\_\_  
Printed Name: Timothy A. Mack  
Its: Manager

**ACKNOWLEDGEMENTS**

**STATE OF TEXAS  
COUNTY OF DALLAS**

This instrument was acknowledged before me on \_\_\_\_\_, 200\_ by Lea Dunn, City Manager of the Town of Addison, Texas, a home-rule municipality, on behalf of the said municipality.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS  
COUNTY OF DALLAS**

This instrument was acknowledged before me on \_\_\_\_\_, 2014, by Timothy A. Mack, Manager of **Sky B&B, LLC**, a Texas limited liability company, on behalf of the said limited liability company.

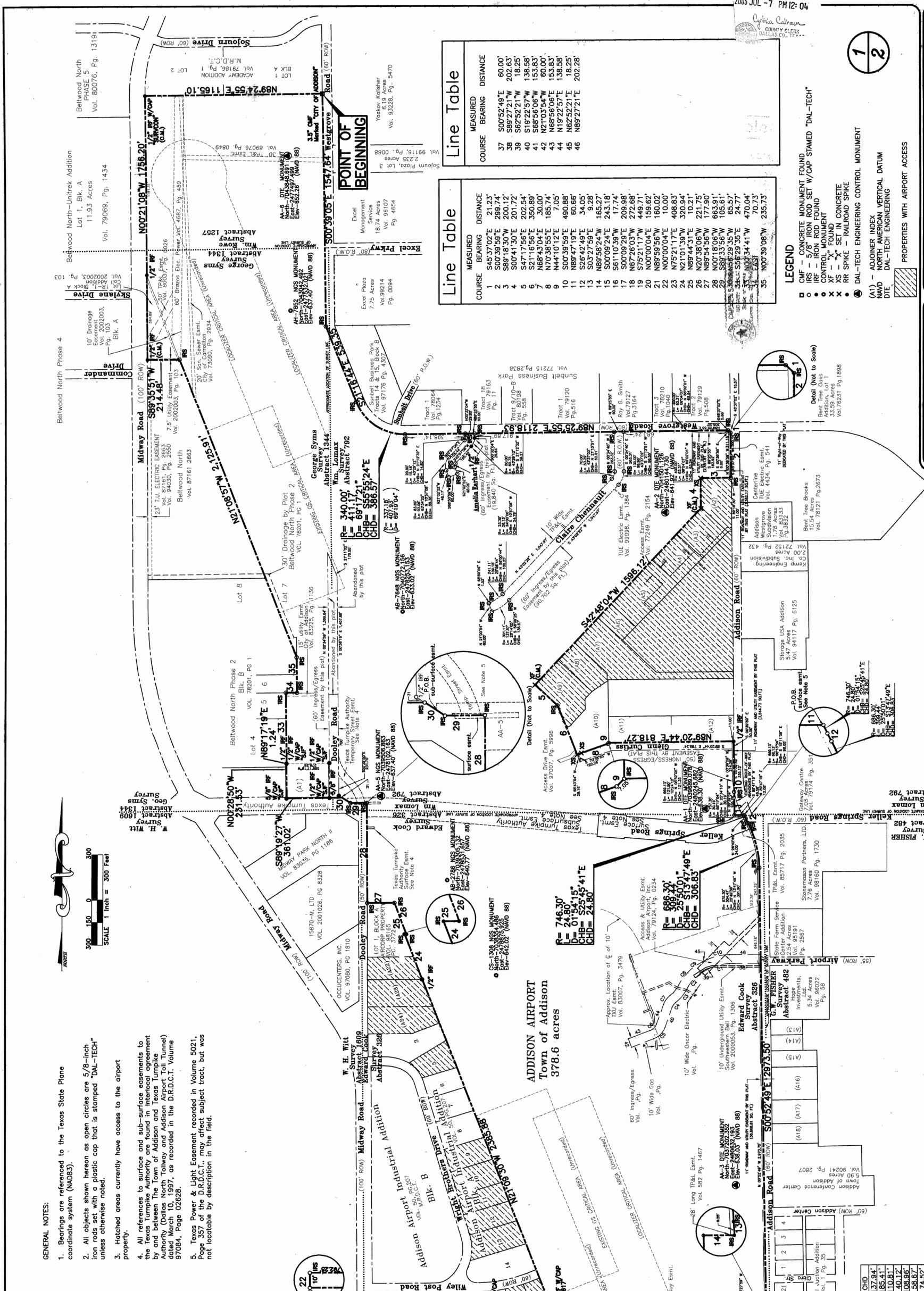
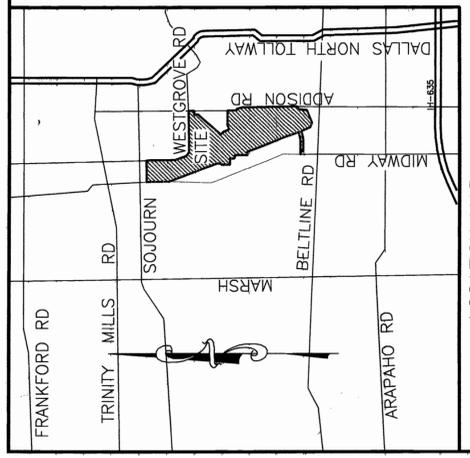
**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this the \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public, State of Texas

## **Exhibit 1 – Legal Description of Addison Airport**

**GENERAL NOTES:**

- Bearings are referenced to the Texas State Plane coordinate system (NAD83).
- All objects shown hereon as open circles are 5/8-inch iron rods set with a plastic cap that is stamped "DAL-TECH" unless otherwise noted.
- Hatched areas currently have access to the airport property.
- All references to surface and sub-surface easements to the Texas Turnpike Authority are found in interlocal agreement by and between the Town of Addison and Texas Turnpike Authority (Dallas North Tollway and Addison Airport Toll Tunnel) dated March 10, 1997, as recorded in the D.R.D.C.T. Volume 97084, Page 02628.
- Texas Power & Light Easement recorded in Volume 5021, Page 357 of the D.R.D.C.T. may affect subject tract, but was not locatable by description in the field.



**Line Table**

COURSE	BEARING	DISTANCE
1	S45°37'02"E	21.23'
2	S00°39'59"E	298.74'
3	S89°18'30"W	200.12'
4	S00°41'30"E	201.72'
5	S47°17'56"E	202.54'
6	S21°16'56"E	350.89'
7	N68°43'04"E	30.00'
8	N70°38'55"E	185.74'
9	N44°10'12"E	7.05'
10	S00°39'59"E	490.88'
11	N89°47'19"E	60.66'
12	S26°42'49"E	34.05'
13	S03°27'59"E	9.28'
14	N89°58'24"E	165.27'
15	S00°09'24"E	243.18'
16	S61°10'39"W	209.98'
17	S00°09'29"E	272.68'
18	N67°26'03"W	272.68'
19	S75°21'17"W	449.71'
20	N00°00'04"E	159.62'
21	N00°00'04"E	160.02'
22	N89°59'56"W	10.00'
23	N75°21'17"E	408.83'
24	N21°01'39"W	320.94'
25	N89°44'31"E	10.21'
26	N20°38'06"W	221.75'
27	N89°54'56"W	177.90'
28	N00°18'06"W	663.91'
29	S89°33'56"W	105.61'
30	S59°29'35"W	55.57'
31	S31°54'41"W	470.04'
32	N00°39'08"W	235.73'

**Line Table**

COURSE	BEARING	DISTANCE
37	S00°52'49"E	60.00'
38	S89°27'21"W	202.63'
39	S62°52'21"W	18.25'
40	S19°22'57"W	138.98'
41	S68°56'06"W	153.63'
42	N27°03'54"W	60.00'
43	N68°56'06"E	153.63'
44	N19°22'57"E	138.98'
45	N82°52'21"E	18.25'
46	N89°27'21"E	202.28'

**LEGEND**

- CMF - CONCRETE MONUMENT FOUND
- IRF - 5/8" IRON ROD FOUND
- CONTROL MONUMENT
- XC - "X" SET IN CONCRETE
- RR SPIKE - RAILROAD SPIKE
- DAL-TECH ENGINEERING CONTROL MONUMENT
- (A1) - ADJOINER INDEX
- NAVD - NORTH AMERICAN VERTICAL DATUM
- DTE - DAL-TECH ENGINEERING

PROPERTIES WITH AIRPORT ACCESS

**DAL-TECH ENGINEERING, INC.**  
 CONSULTING CIVIL ENGINEERS / SURVEYORS  
 CONSTRUCTION PARKWAY  
 17311 DALLAS PARKWAY  
 DALLAS, TEXAS 75248  
 (972) 250-2727 (972) 250-4774

Town of Addison Approver: **CARMEN MORAN**  
 City Secretary: **CARMEN MORAN**  
 Scott Wheeler Mayor (Town of Addison)  
**JOE CHON**

**ADDISON AIRPORT**  
 Town of Addison  
 378.6 acres

**CURVE TABLE**

NO.	RAD.	L	DELTA	CHD
C1	300.00'	139.18'	26°55'00"	S76°05'51"W 132.84'
C2	200.00'	188.90'	20°08'00"	S30°26'56"W 165.81'
C3	20.00'	10.69'	33°18'33"	S35°02'14"W 4.02'
C4	130.00'	112.43'	48°33'09"	S44°09'32"W 108.96'
C5	70.00'	60.54'	49°33'09"	N44°09'32"E 58.67'
C6	130.00'	75.68'	33°18'33"	N36°02'14"E 74.52'
C7	188.00'	84.72'	25°49'09"	N39°46'56"E 84.00'
C8	360.00'	226.19'	36°00'00"	N44°52'21"E 222.49'
C9	360.00'	167.03'	26°35'00"	N76°09'51"E 165.53'

1 2



## **Exhibit 2.1 – Boundary Survey of Demised Premises**

## **Exhibit 2.2 – Legal Description of Demised Premises**



## **Exhibit 2.3 – Approved Site Plan**



ROBERT A. STUCKEY  
 ARCHITECT: TEXAS #0093

THESE DRAWINGS ARE  
 PRELIMINARY AND ARE  
 NOT FOR REGULATORY APPROVAL,  
 PERMITTING, OR CONSTRUCTION.

A TEMPORARY HANGER FOR:  
**SKY B&B, LLC**  
 ADDISON AIRPORT  
 ADDISON, TEXAS

XXXXXX

SITE PLAN

REVISIONS

MARCH 25, 2014  
 DRAWN BY: RAS PROJ. MGR.: RAS  
 DATE: ..... PROJ. NO.:  
 SHEET NO.:

**C1.1**

SHEET  
 OF



### **Exhibit 3– Description of Building Improvements To Be Constructed**

Tenant may cause to have erected and/or constructed to or on the Demised Premises the Building Improvements generally described in this Exhibit 3 as follows:

Interim Hanger Improvements: This facility includes a 130' x 120' x 45' eave pre-engineered metal building (PEMB) roof and column system for the protection of the aircraft on existing paving. An additional 25'x25' paving area shall be added for tug maneuvering.

This Exhibit 3 hereby includes by reference the complete set of Construction Documents approved by the Town of Addison for the Building Improvements including but not limited to all architectural, civil, mechanical, and electrical and landscape drawings and specifications, together with all change orders and as-built modifications, warranties and guaranties procured by Tenant.

**Exhibit 4– Permanent Hangar Ground Lease**

**AVAILABLE UPON REQUEST**

# **EXHIBIT “D”**

## **Non-public Fuel Farm License**



# Addison Airport

## Fuel Farm License Agreement

SKY B&B, LLC



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# ADDISON AIRPORT FUEL FARM LICENSE AGREEMENT

## SECTION 1

### DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this License Agreement (“**License**” and “**Agreement**” are interchangeably used herein to mean one and the same):

- (a) “**Licensor**”: **TOWN OF ADDISON**, a Texas home-rule municipality.
- (b) Licensor's Address: 5300 Belt Line Road, Dallas, Texas 75254.
- (c) “**Manager**”: URS Energy & Construction, an Ohio corporation and SAMI Management, Inc., a Texas corporation or their appointed successors from time to time by the Licensor
- (d) Manager’s Address: 16051 Addison Road, Suite #220, Addison, Texas 75001, Phone Number: \_\_\_\_\_, Email: \_\_\_\_\_
- (e) “**Licensee**”: **SKY B&B, LLC**, a Texas limited liability corporation
- (f) Licensee's Address: 3738 Oak Lawn Avenue, Dallas, Texas 75219

Primary Contact: Dave Diamond Phone Number: 214.668.1005  
 Email: diamondds1@sbcglobal.net

With copy to: Ronald L. Holmes, Esq., Holmes Firm PC, 14911 Quorum Drive, Suite 340, Dallas, Texas 75254, Phone Number: 469.916.7700 Ext. 105, Email: ron@theholmesfirm.com

- (g) Licensee's Trade Name: **SKY B&B, LLC**
- (h) Licensee's Guarantor (if applicable, attach Guaranty as an exhibit): Not Applicable

- 
- (i) “**Fuel Farm**”: Licensor's property located in the Town of Addison, Dallas County, Texas, which property is described on Exhibit “A” and shown on Exhibit “B” attached to this License. With regard to Exhibits “A” and “B”, the parties agree that they are attached solely for the purpose of depicting the location of the Fuel Farm and the Fuel Tanks within the Fuel Farm and that no representation, warranty, or covenant is to be implied by any information shown on such exhibits.
  - (j) “**Fuel Tanks**”: The two (2) above-ground storage tanks, together with all equipment attached thereto necessary for Licensee’s use of the Fuel Tank in accordance with this License, situated in the Fuel Farm and identified on Exhibit “C” attached hereto, with a stipulated combined capacity of **50,000** gallons (“**Total Licensee Gallon Capacity**”) of fuel, also being known as

Tank #	Designated Fuel Type	Licensee Gallon Capacity	% Of Total Fuel Farm Combined Capacity
#	09	25,000	7.937%
#	10	25,000	7.937%
<b>Total</b>		<b>50,000</b>	<b>15.873% **</b>

\*\* The “**Licensee's Proportionate Share**”, calculated accordance with Section 4.10, on the Commencement Date is established to be Fifteen and 873/1000s Percent (15.873%).

- (k) “**Commencement Date**”: The earlier of (i) the date upon which Licensee commences use of the Fuel Tanks; or (ii) the date of Substantial Completion of the Building Improvements, each as defined in that certain Ground Lease, dated April \_\_, 2014, by and between Licensor, as Landlord, and Licensee, as Tenant, pertaining to the construction of a permanent hangar located near Airport Parkway and Eddie Rickenbacker Drive.
- (l) “**Term**”: The period of time commencing on the Commencement Date, unless earlier terminated as provided for herein, and continuing until the last day of the calendar month sixty (60) months from the Commencement Date or the last month of any properly exercised Term Extension (as described in Exhibit “D” attached hereto), whichever is later (i.e., if Commencement Date is March 10, 2006, the Term shall then expire no later than March 31, 2011 if no Term Extension is exercised). Licensee shall have the right to cancel (early terminate) this Agreement at any time upon thirty (30) days prior written notice to Licensor (subject, however, to all provisions of this License applicable to the expiration or earlier termination of Licensee's right to use the Fuel Farm pursuant to this License, including but not limited to Section 22 hereof).
- (m) “**Base Fee**”: Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by **\$0.2786<sup>1</sup>** per gallon, payable in equal monthly installments as provided for in Section 4.
- (n) “**Additional Fee**”: Annual Consideration for this License equal to the Total Licensee Gallon Capacity, multiplied by **\$.3290<sup>2</sup>** per gallon, payable in equal monthly installments as provided for in Section 4.
- (o) “**Fuel Flowage Fee**”: Consideration for this License to receive and dispense aircraft fuel, equal to the Fuel Flowage Rate (as defined in Section 7.1 of this License) for each gallon of aviation fuel received by Licensee during the Term, payable in monthly installments as provided for in Section 7.
- (p) “**Security Deposit**”: NONE.
- (q) “**Permitted Use of Fuel Tanks**”: Exclusively for the storage of fuel in support of aeronautical operations of type and grade approved in writing by Licensor in the capacity of a:

*(Check only one)*

**Public Fixed Based Operator** for retail delivery into aircraft at the Airport, for delivery into aircraft at the Airport owned, leased or otherwise operated by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee's aeronautical operations at the Airport and for no other purpose, except for any such delivery to aircraft of holders of valid off-airport access permits or as otherwise approved in writing by Licensor.

**Non-public Operator** with delivery to aircraft owned or leased, and controlled exclusively, by Licensee and for the purpose of fueling ground equipment at the Airport used in the support of Licensee's aeronautical operations and for no other purpose. For the purpose herein, aircraft owned or leased, and controlled exclusively, by Licensee includes only those aircraft listed on Exhibit “G” attached hereto, which list may be amended from time to time by Licensee with Licensor's prior written consent (which consent may be given by the City

<sup>1</sup> As of 10/1/2012

<sup>2</sup> As of 10/1/2012

Manager of the Town of Addison). **LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO, AND/OR ALLOWING THE FUELING OF, ANY AIRCRAFT NOT OWNED OR LEASED, AND CONTROLLED EXCLUSIVELY, BY LICENSEE. WITHOUT LIMITING THE FOREGOING, LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY PERSON OR ENTITY THAT MAY BE A TENANT OR SUBTENANT OF LICENSEE OF PREMISES AT THE AIRPORT**

- (r) **“Airport”**: The Addison Airport situated in the Town of Addison, Dallas County, Texas.
- (s) **“Licensee’s Minimum Standard to Operate Fuel Tanks”**: 75,000 gallons of aviation fuel (excluding diesel and mobile fuel), as described in Section 7.7.
- (t) **“Includes”** and **“including”**, for purposes of this Agreement, are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

1.2 The following chart is provided as an estimate of Licensee’s monthly and annual payment to Licensor as Consideration (as defined in Section 4.1). This chart, however, does not supersede the specific provisions contained elsewhere in this License.

<b>PAYMENTS IN ADVANCE:</b>	<b>Annual</b>	<b>Monthly</b>
Base Fee (Section 1.1(m) and 4.3)	<b><u>\$13,930.00</u></b>	<b><u>\$1,160.83</u></b>
Additional Fee (Section 1.1(n) and 4.4)	<b><u>\$16,450.00</u></b>	<b><u>\$1,370.84</u></b>
Subtotal of Payments in Advance	<b><u>\$30,380.00</u></b>	<b><u>\$2,531.67</u></b>
<b>PAYMENT IN ARREARS:</b>		
Fuel Flowage Fee \$0.20 x total gallons received during the preceding month (Section 7).	<b><u>\$TBD</u></b>	<b><u>\$TBD</u></b>
<b>TOTAL MONTHLY CONSIDERATION</b> (Payment In Advance plus Payment In Arrears)	<b><u>\$TBD</u></b>	<b><u>\$TBD</u></b>

## SECTION 2

### GRANTING CLAUSE

2.1 Licensor licenses the Fuel Tanks to Licensee, subject to and only upon the terms and conditions set forth in this License and further subject to all laws, codes, ordinances, rules, standards, policies, permits, and regulations now in effect or hereafter adopted, modified, or amended by Licensor or any governmental or quasi-governmental authority having jurisdiction over the Airport or any part thereof, and all requirements, conditions, and standards of any Airport grant or funding or any grant agreements or grant assurances of the Airport now in effect or as hereafter agreed to, adopted, issued, modified, amended, or established. This License is not a lease and grants no interest or estate in the Fuel Farm, including, without limitation, any leasehold interest.

## SECTION 3

### DELIVERY OF PREMISES

3.1 BY ACCEPTANCE OF THIS LICENSE, LICENSEE HEREBY AGREES THE FUEL FARM IS BEING DELIVERED TO LICENSEE IN GOOD WORKING CONDITION AND UNDERSTANDS THAT THE FUEL TANKS ARE BEING LICENSED TO LICENSEE, ON AN “AS IS”, “WHERE IS” AND “WITH ALL FAULTS” BASIS, WITH LICENSEE ACCEPTING ALL DEFECTS, IF ANY AND LICENSOR MAKES NO REPRESENTATIONS (OTHER THAN AS TO LICENSOR'S OWNERSHIP OF THE FUEL FARM), WARRANTIES OR COVENANTS OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, FITNESS OR SUITABILITY OF THE FUEL FARM FOR A PARTICULAR PURPOSE, INCLUDING, BUT NOT LIMITED TO (AND LICENSOR HEREBY EXPRESSLY DISCLAIMS THE SAME), ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE ACKNOWLEDGES AND AGREES THAT LICENSEE HAS HAD THE OPPORTUNITY TO INSPECT THE FUEL FARM, AND THAT ANY SUCH INSPECTION HAS BEEN ADEQUATE TO ENABLE LICENSEE TO MAKE LICENSEE'S OWN DETERMINATION REGARDING THE SUITABILITY OR FITNESS OF THE FUEL TANKS AND FUEL FARM. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSEE HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT LICENSOR SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGE) RESULTING OR ARISING FROM OR RELATING TO THE USE, CONDITION, LOCATION, MAINTENANCE, REPAIR OR OPERATION OF THE FUEL FARM, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY HEREIN AGREED AND CONSENTED TO BY LICENSOR.

3.2 Licensors shall have the right upon ninety (90) day's prior written notice, to relocate Licensee to another Fuel Tank or Fuel Tanks (the "**Replacement Fuel Tank(s)**") in the Fuel Farm as Licensors deems, at its sole discretion, to be reasonably necessary. In the event of such relocation, the cost of relocating Licensee and the cost of altering the Replacement Fuel Tanks to make them comparable to the current Fuel Tanks shall be borne by Licensors (except for those alterations or improvements made to the Fuel Tanks by Licensee with or without Licensors's prior consent). If Licensors exercises such right of relocation, this License shall continue in full force and effect without any change to the terms or other conditions, except that the Replacement Fuel Tanks shall be deemed substituted in Section 1.1(j) and an appropriate adjustment shall be made to the amount of the Consideration and any Security Deposit.

## SECTION 4

### PAYMENT OF BASE FEE AND ADDITIONAL FEE

4.1 The Base Fee and all other sums or charges payable by Licensee, including but not limited to Additional Fee and Fuel Flowage Fees and other fees required by this License, are sometimes herein referred to collectively as "**Consideration**". All payments of Consideration are to be paid by corporate, personal or cashier's check or money order. Payments of Consideration are not to be made in cash. The Licensors shall have the same remedies in the case of a default in the payment of Additional Fee and Fuel Flowage Fees and any other Consideration as are available to Licensors in the case of a default in the payment of the Base Fee.

4.2 The Consideration shall be payable to Licensors at Licensors's address set forth in Section 1.1(b) or, such other address designated by Licensors with prior written notice given to Licensee. Consideration shall not be considered paid until actually received by Licensors or Licensors's designee.

4.3 Beginning with the Commencement Date and continuing throughout the Term of this License, Licensee shall pay an annual Base Fee in the amount specified in Section 1.1(m), which Base Fee shall be paid by Licensee (separately or together with other Consideration due and payable) in equal monthly installments as required herein, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on or before the Commencement Date, and subsequent installments shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Base Fee installment of such partial month as provided for under this Section 4.3 shall be prorated and such installment or installments so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Base Fee).

4.4 In addition to the Base Fee and any other Consideration required under this License, Licensee shall pay an Additional Fee which is to be assessed by Licensors annually for each fiscal year of Licensors, but said amount shall never be less than that specified in Section 1.1(n).

4.5 The Additional Fee payable by the Licensee under this License shall be equivalent to Licensee's Proportionate Share of Licensors's cost of operating and maintaining the Common Area and the Replacement Recovery Allowance provided for under Section 4.6. Such costs, hereinafter referred to as the "**Common Area Charge**", may include but not be limited to: all utilities which serve the Fuel Farm including water, sewer, electricity, gas and data/tele-communications; all systems and system components necessary and appurtenant to the operation of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, safety systems, separators, auxiliary power supply); structural systems including roof and canopy repair and maintenance; the costs of any third-party service agreement which may include the repair, maintenance and inspection of the Fuel Farm and any of its systems and system components; painting, cleaning, sweeping, landscaping, inspecting, repairing and replacing the Fuel Farm or any portion thereof; Licensors's reasonable overhead costs for administration and management; and the cost of any Real Estate Charges or Insurance Expenses for which Licensors is not reimbursed pursuant to Section 5, but specifically excluding all expenses paid or reimbursed by Licensee to Licensors pursuant to Section 6.

4.6 Licensors and Licensee agree that Licensors may include in the Additional Fee a reasonable reserve sufficient to pay the costs of the future replacement of the Fuel Tanks and Roofing System (the

“**Replacement Recovery Allowance**”), which costs are to be amortized over a twenty-five (25) year and ten (10) year useful lifespan, respectively. Licensor, in its sole discretion, may adjust the monthly amount collected from Licensee for the Replacement Recovery Allowance from time to time to coincide with the industry’s generally accepted replacement values for fuel tanks and roofing systems comparable to the Fuel Tanks and Roofing System.

4.7 If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee for such partial month shall be pro-rated and paid in advance similarly as provided for the Base Fee under Section 4.3.

4.8 Prior to the commencement of Licensor's fiscal year beginning October 1, 2014 and prior to the commencement of each fiscal year of Licensor thereafter, Licensor shall provide Licensee an estimate of the Additional Fee for such fiscal year. The Additional Fee shall be due and payable by Licensee (separately or together with other Consideration due and payable) in equal monthly installments during such fiscal year, without any interruption, offset or deduction of any nature. The first such monthly installment shall be due and payable on the Commencement Date, and subsequent installments, as adjusted for each fiscal year during the Term, shall be due and payable on or before the first day of each succeeding calendar month during the Term. If the Term of this License commences on a day other than the first day of a calendar month, or terminates on a day other than the last day of a calendar month, the Additional Fee installment of such partial month as provided for under this Section 4.8 shall be prorated and such installment so prorated shall be paid in advance (i.e., the quotient that results from dividing the number of calendar days of such partial month included in the Term by the total number of days in that month, then multiplying such quotient by one-twelfth of the Additional Fee).

4.9 Within one hundred twenty (120) days following the conclusion of the Licensor’s fiscal year ending September 30, 2014, and within one hundred twenty (120) days following the conclusion of each fiscal year of Licensor thereafter, or as soon thereafter as reasonably possible, Licensor shall furnish to Licensee an itemized statement reconciling the actual Common Area Charge and other costs for that fiscal year (or part thereof during the Term of this License) against the Additional Fee for such fiscal year or partial fiscal year. Within thirty (30) days of the delivery of such statement to Licensee, Licensee shall pay to Licensor the Licensee's Proportionate Share of the positive difference, if any, resulting from subtracting the Additional Fee paid by Licensee for such fiscal year from the Licensee's Proportionate Share of the actual Common Area Charge and other costs for such fiscal year. If such Additional Fee paid by Licensee exceeds Licensee's Proportionate Share of such Common Area Charge and other costs for such fiscal year or partial fiscal year, Licensor shall have the right, at its option, to credit such excess against the next accruing payment(s) of the Additional Fee due under this License or return such excess to Licensee.

4.10 The Licensee's Proportionate Share is that percentage, at the time when the applicable cost was incurred, determined by dividing the Total Licensee Gallon Capacity by the combined capacity of the fuel tanks in the Fuel Farm, as reasonably determined by Licensor. Licensee’s Proportionate Share on the Commencement Date is stipulated by the parties in Section 1.1(j).

4.11 The amount of the actual Common Area Charge and other costs determined by Licensor under Section 4.9 shall be final, conclusive and binding upon the parties hereto on the date which is one hundred-eighty (180) calendar days following the date Licensor provides such itemized statement of reconciliation to Licensee. Licensee shall have the right to dispute the amount of the actual Common Area Charge by written notice to Licensor within sixty (60) days after Licensee’s receipt of the actual Common Area Charge.

4.12 In the event any Consideration due is not actually received by Licensor by the fifth (5<sup>th</sup>) day after such amount is due, or if any Consideration payment is made by check, which check is returned for insufficient funds, then in addition to the past due amount, immediately on Licensor’s demand, Licensee shall pay to Licensor one of the following (the choice to be at the sole option of Licensor unless one of the choices is improper under applicable law, in which event the other alternative, if proper under applicable law, will automatically be deemed to have been selected): (a) a late charge in an amount equal to five percent (5%) of such late Consideration, in order to compensate Licensor for its administrative and other overhead expenses; or (b) interest on such late Consideration then due at the maximum rate of interest which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month), such interest to accrue continuously on any unpaid balance of such Consideration due to Licensor by Licensee during the period commencing with the due date of such late Consideration and

terminating with the date on which Licensee makes full payment of all such late Consideration. Any such late charge or interest payment shall be payable immediately on demand as additional Consideration. It is hereby agreed that in no event shall any charges permitted under this License, to the extent the same are considered to be interest under applicable law, ever exceed the maximum lawful rate of interest allowed under applicable law.

4.13 If Licensor fails to receive from Licensee any installment of Base Fee or Additional Fee within ten (10) days after the same is due for any two (2) consecutive calendar months, or if the payment of any Consideration is made by check, which check is returned for insufficient funds twice within any consecutive twelve (12) month period, Licensor may, by giving written notice to Licensee, and in addition to any late charge or interest accruing pursuant to Section 4.12 above, as well as any other rights and remedies accruing pursuant to Section 20 or Section 22 below, or any other provision of this License, at law or in equity, require subsequent Base Fee and Additional Fee installments to be paid quarterly in advance by cashier's check or money order and the delivery of Licensee's corporate or personal check will no longer constitute a payment of such Consideration. Any acceptance of a corporate or personal check for such Consideration shall not be construed as a subsequent waiver of said right to require payment by cashier's check or money order.

4.14 The obligation of Licensee to pay Consideration shall survive the expiration or earlier termination of this License.

## SECTION 5

### LICENSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES AND REAL PROPERTY TAXES

5.1 Licensee shall be liable for all taxes, if any, levied against personal property owned by Licensee and placed within or used by Licensee within the Fuel Farm. If any personal property taxes are validly levied against Licensor or Licensor's property and Licensor pays the same, such taxes shall be included in the Common Area Charge.

5.2 If any Real Estate Charges (as defined below) are validly levied against Licensor or Licensor's property and Licensor pays the same, such Real Estate Charges shall be included in the Common Area Charge. All Insurance Expenses (as defined below) related to the Fuel Farm or Licensor's ownership of the Fuel Farm shall be included in the Common Area Charge. "**Real Estate Charges**" shall include, if any, ad valorem taxes, general and special assessments, any tax or excise on fees including Consideration, any tax or charge for governmental services (such as street maintenance or fire protection) and any tax or charge which replaces any of such above-described Real Estate Charges; provided, however, that Real Estate Charges shall not be deemed to include any franchise, estate, inheritance or general income tax. "**Insurance Expenses**" shall include all premiums and other expenses incurred by Licensor for liability insurance, and fire and extended coverage property insurance (plus whatever endorsements or special coverages which Licensor, in Licensor's sole discretion, may consider appropriate) and the amount of any deductible paid by Licensor in connection with any claim thereunder.

## SECTION 6

### COMMON AREA OF THE FUEL FARM

6.1 The term "**Common Area**" is defined for all purposes of this License as that part of the Fuel Farm which is maintained by Licensor, the expense of which may be incurred by Licensor and included as Common Area Expenses as provided for in Section 4.5, intended for the common use of all licensees of the Fuel Farm and other authorized persons. The Common Area includes all systems that comprise the Fuel Farm and are appurtenant thereto including but not limited to all utilities (water, sewer, electricity, gas and data/tele-communications); all systems and system components necessary to the operation and function of the Fuel Farm (i.e., motors, pumps, pipes, hoses, valves, regulators, vents, life and safety systems, separators, auxiliary power, lights, switches, meters, tanks), building infrastructures, parking areas, driveways, landscaping, curbs, loading area, lighting facilities, roofs and the like. Licensor reserves the right

to change from time to time the rights and interests to, and the dimensions and location of, the Common Area, as well as the rights and interests to and the dimensions, identities, locations and types of any improvements in the Fuel Farm.

6.2 Licensee shall have the nonexclusive right to use the Common Area as constituted from time to time for the purpose or purposes described in Section 1.1(q), such use to be in common with Licensor, other licensees in the Fuel Farm and other authorized persons subject to such reasonable rules and regulations governing use as Licensor may from time to time prescribe.

## SECTION 7

### FUEL RECEIPT, REPORTING AND FUEL FLOWAGE FEES

7.1 As additional Consideration under this License, Licensee shall pay to Licensor the Fuel Flowage Fee at the Flowage Fee Rate. The "Flowage Fee Rate" (herein so called) is twenty cents (\$0.20) for each gallon of aviation fuel received by Licensee at the Airport during the Term, excluding any fuel not intended for aeronautical use (i.e., diesel and mobile fuel used in connection with ground support operations) during the Term; provided, however, the Town of Addison, Texas reserves the right to increase or decrease the Flowage Fee Rate as, in its sole discretion, may be necessary or reasonably appropriate. This License is conditioned upon the payment of the Fuel Flowage Fee at the Flowage Fee Rate, and such payment is required as set forth in and in accordance with Chapter 14, Article III, Division 2 of the Code of Ordinances of the Town of Addison, Texas (as the same may be amended or superseded). Licensor and Licensee herein agree and acknowledge that any payment made by Licensee of said Fuel Flowage Fee required hereunder is in satisfaction of the Fuel Flowage Fee at the Flowage Fee Rate established by the City Council of the Town of Addison, Texas. Licensor shall give Licensee at least thirty (30) days prior written notice before any change in the Flowage Fee Rate becomes effective.

7.2 The Fuel Flowage Fee shall be paid, with respect to each calendar month during the Term beginning with the month in which the Commencement Date occurs, on or before the fifth (5<sup>th</sup>) day of the calendar month following such month, without offset or deduction of any nature, at a sum equal to the product of the applicable Flowage Fee Rate multiplied by the total amount of fuel received at the Airport by Licensee during the preceding full or partial calendar month.

7.3 Licensee shall submit to Licensor with each monthly payment of the Fuel Flowage Fee, but in no event later than the fifth (5<sup>th</sup>) day of each month during the Term, a monthly fuel report (the "**Monthly Report**"), certified as being true and correct by a duly authorized representative of Licensee, showing for the preceding calendar month the amount of fuel received, sold or dispensed.

7.4 On or before the sixtieth (60<sup>th</sup>) day after the expiration of each calendar year, and the thirtieth (30<sup>th</sup>) day after the expiration or termination of this License, Licensee shall deliver to Licensor an annual fuel report (the "**Annual Report**"), certified as being true and correct by an authorized representative of Licensee, showing the amount of aviation fuel received, sold or dispensed during the calendar year preceding the date on which the Annual Report is due. In the event any provision of this License or the enforcement thereof by the Licensor, requires accounting of the Fuel Flowage Fee and the payment thereof for a period less than twelve (12) months, such shorter period shall be treated as one (1) year for the purpose of an Annual Report, and such Annual Report shall be delivered to Licensor within thirty (30) days after termination of such shorter period.

7.5 In addition to the information described in Section 7.4, each Monthly Report and each Annual Report shall include any and all additional information required by Licensor, and shall be in the form established by Licensor (which form may be modified, revised, or amended by Licensor in its sole discretion at any time). Each of the Monthly Reports and the Annual Reports are hereinafter referred to as a "**Fuel Report**." In the event Licensor is not satisfied with any Fuel Report provided by Licensee, Licensor shall have the right to cause its auditors or designated representative to inspect Licensee's books and records, wherever located, evidencing and accounting for all aviation fuel received, sold or dispensed in or from the Airport for the reporting period or periods in question. Licensee hereby agrees to make available all books and records, including but not limited to its bills of lading, general ledgers, bank accounts and fuel sales receipts available for inspection during Licensee's normal business hours within five (5) days upon receipt

of written demand by Licensor. If it is determined by the auditors that the amount of fuel received, sold or dispensed during such period(s) is understated by more than five percent (5%), the reasonable expense of such audit shall be borne by Licensee. Licensee shall promptly pay to Licensor any deficiency, or Licensor shall promptly refund to Licensee any overpayment, as the case may be, which is established by such audit.

7.6 If Licensee fails to prepare and deliver promptly any Fuel Report or other document required under this License, Licensor may, in addition to exercising any of the remedies provided to Licensor under this License or any law, rule, or regulation, engage a Certified Public Accountant to make an audit of all books and records of Licensee, including (without limitation) Licensee's bank accounts, which in any way pertain to or show the aviation fuel received, sold or dispensed and prepare the Fuel Report or other document that Licensee failed to prepare and deliver to Licensor. The Fuel Report or other document prepared by such Certified Public Accountant shall be conclusively binding on Licensee, and Licensee shall pay upon demand all expenses of the audit and other services in regard to preparing such Fuel Report or other document.

7.7 Licensee shall continuously during the Term of this License use commercially reasonable efforts to maximize the quantity of fuel it receives at the Fuel Tanks at the Fuel Farm. Under no circumstance, however, shall Licensee fail to receive at least the following quantities of fuel at the Fuel Farm ("**Licensee's Minimum Standard to Operate Fuel Tanks**"), except as expressly provided under this Section 7.7:

- (a) If the Permitted Use of the Fuel Tanks is for a Public Fixed Based Operator as described in Section 1.1(q), Licensee's Minimum Standard to Operate Fuel Tanks is 320,000 gallons of fuel received at the Fuel Farm over each three (3) consecutive calendar month period during the Term (the "**Quarterly Minimum Gallons**"); provided, however, that
  - (i) during the first six (6) calendar months immediately following the Commencement Date, Licensee shall exercise its best efforts to receive no less than 320,000 gallons of fuel, and
  - (ii) during the first year of this License ("**Licensee's Start-up Period**"), Licensee shall exercise its best efforts to receive no less than 896,000 gallons of fuel (the "**Start-up Period Minimum Gallons**").

Licensee's

- (i) failure to receive the Start-up Period Minimum Gallons during the Licensee's Start-up Period (the difference between the Start-up Period Minimum Gallons and the amount of fuel actually received during Licensee's Start-up Period being the "**Start-up Deficiency**"), or
- (ii) failure after the Start-up Period to receive at least the Quarterly Minimum Gallons (the difference between the Quarterly Minimum Gallons and the amount of fuel actually received by Licensee during any three (3) month period (following the Start-up Period) that Licensee failed to receive at least the Quarterly Minimum Gallons being the "**Quarterly Deficiency**"),

shall not constitute an event of default under this License if, during the three (3) consecutive calendar months immediately after Licensee receives written notice from Licensor of such failure (the "**FBO Notice Period**", beginning on the first day of the first calendar month following Licensee's receipt of the written notice), Licensee receives in the Fuel Tanks at the Fuel Farm an amount of fuel equal to or greater than the Start-up Deficiency or the Quarterly Deficiency, as the case may be, in addition to the Quarterly Minimum Gallons for the FBO Notice Period.

- (b) If the Permitted Use of the Fuel Tanks is for a Non-public Operator as described in Section 1.1(q), Licensee's Minimum Standard to Operate Fuel Tanks is **75,000** gallons received at the Fuel Farm over each six (6) consecutive calendar month period during the Term (the "**Semi-annual Minimum Gallons**"); provided, however, Licensee's failure to receive at least the Semi-annual Minimum Gallons (the difference between the Semi-annual Minimum Gallons and the amount of fuel actually received by Licensee during any six (6) month period that Licensee failed to receive at least the Semi-annual Minimum Gallons being the "**Semi-annual Deficiency**") shall not constitute an event of default under this License if, during the six (6)

consecutive calendar months immediately after Licensee receives written notice from Licensor of such failure (the “**Non-public Notice Period**”, beginning on the first day of the first calendar month following Licensee's receipt of the written notice), Licensee receives in the Fuel Tanks at the Fuel Farm an amount of fuel equal to or greater than the Semi-annual Deficiency, in addition to the Semi-annual Minimum Gallons for the Non-public Notice Period.

- (c) Licensee’s cure rights under Section 20.1 shall not apply to the occurrence of any failure to satisfy the Licensee’s Minimum Standard to Operate Fuel Tanks under this Section 7.7. Except as provided for in this Section 7.7, any such failure to perform under this Section 7.7 shall constitute an immediate event of default entitling Licensor to exercise its remedies under this License, at law, in equity, or otherwise.
- (d) Licensor shall decrease the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons, or temporarily suspend or waive, and then reinstitute, the Licensee’s Minimum Standard to Operate Fuel Tanks, as Licensor may deem to be necessary or appropriate, in its sole but reasonable discretion, based upon but not limited to, a *force majeure* event that has prevented Licensee from receiving the minimum quantity of fuel required under this Section 7.7.
- (e) Licensor reserves the right, in its sole discretion, to uniformly increase for all Licensees the Quarterly Minimum Gallons or the Semi-Annual Minimum Gallons effective as of the 1<sup>st</sup> day of January of 2012 and on the 1<sup>st</sup> day of January every third (3rd) year thereafter during the Term, provided that Licensor has given Licensee three (3) years prior written notice of the increase.

## SECTION 8

### USES AND CARE OF THE FUEL FARM

8.1 Licensee shall commence all of its fueling operations at the Fuel Farm on or immediately after the Commencement Date and shall perform such operations in a commercially reasonable manner so as to produce the maximum amount of sales from the Fuel Tanks.

8.2 Licensee shall not use the Fuel Farm or the Fuel Tanks for any purpose other than the purpose authorized by Section 1.1(q). Licensee, without Licensor's prior written consent, shall not store anything in the Fuel Tanks, other than the designated fuel type and grade of fuel authorized in Section 1.1(j), or use the Fuel Farm for any purpose which creates a risk of release of toxic or otherwise Hazardous Substances or increases the insurance premium cost for the Fuel Farm or the Airport or invalidates any insurance policy carried on the Fuel Farm or the Airport, other than the ordinary risk associated with the prudent use of any substantially similar aircraft fuel farm. All fuel kept, stored or maintained in the Fuel Tanks by Licensee, and all other property of Licensee that is maintained or used at the Fuel Farm shall be delivered, kept, stored, maintained, transported, dispensed and otherwise used at Licensee's sole risk. Without limiting the generality of the foregoing, Licensee covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of Licensee's owners, officers, employees, agents, contractors or other representatives, or any other person for whom Licensee may be responsible or liable (Licensee, together with such other persons and entities being sometimes hereinafter collectively referred to as “**Licensee Parties**”), to cause, directly or indirectly, any release or discharge of any Hazardous Substances (as defined in Section 8.4) at the Fuel Farm or any other portion of the Airport or premises adjacent thereto. Without limiting the generality of the foregoing, Licensee further covenants and agrees that Licensee shall not, nor shall Licensee allow or permit any of the Licensee Parties to, bring into, maintain upon, generate, use, store, dispense or dispose of any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto, unless such Hazardous Substances are maintained upon, generated, used, stored, dispensed or disposed of only (a) in such quantities as are reasonably necessary for Licensee's operations, (b) in accordance with the standards and instructions of the producer and distributor of such Hazardous Substances and, if fuel, the manufacturer of the Fuel Tanks and in compliance with all applicable laws, and (c) in such a manner as would prevent a release or discharge thereof in violation of applicable laws. Upon request of Licensor at any time, Licensee shall provide Licensor with a written list, certified to by Licensee in writing,

identifying any Hazardous Substances then maintained upon, generated, used, stored, dispensed or disposed of at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto by Licensee and the approximate quantity of same, together with a representation that neither Licensee nor any other Licensee Parties have released or discharged any Hazardous Substances in or about the Fuel Farm or any other portion of the Airport or adjacent premises in violation of these provisions, all certified as being true and correct by a duly authorized representative of Licensee. Upon any violation of the foregoing covenants, Licensee shall be obligated, at Licensee's sole cost, to immediately cease such violation and, if any Hazardous Substance has been released or discharged, remediate, clean-up and remove from the Fuel Farm or other portions of the Airport or premises adjacent thereto all such Hazardous Substances; provided, however, that any such remediation, clean-up and removal shall be undertaken only after written notice of the release or discharge has been given by Licensee to Licensor and Licensor has approved the method of remediation, clean-up and removal. Notwithstanding the proceeding or any other provision of this Agreement, the introduction, receipt, delivery, creation, use, storage, dispensing or disposal of any Hazardous Substances at the Fuel Farm or elsewhere at the Airport or premises adjacent thereto, and any remediation, clean-up or removal of released or discharged Hazardous Substances, by or on behalf of Licensee or any other Licensee Parties shall be conducted to the satisfaction of Licensor.

**8.3 INDEMNITY.** LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND OTHER REPRESENTATIVES, AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS, AND THE MANAGER AND MANAGER'S OWNERS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS, (TOGETHER, "INDEMNIFIED PERSONS"), FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, LOSSES, JUDGMENTS, DAMAGES (INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, AND OTHER DAMAGES), ACTIONS, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) (TOGETHER, "INDEMNIFIED DAMAGES") INCURRED BY LICENSOR, MANAGER, OR OTHER SUCH INDEMNIFIED PERSONS, OR ANY OF THEM, AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH ANY BREACH OF ANY PROVISION OF SECTION 8.2 OR ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THE RECEIPT, DELIVERY, STORAGE, MAINTENANCE, TRANSPORTATION, DISPENSING, OR OTHER USE OF ANY HAZARDOUS SUBSTANCES, INCLUDING ANY INDEMNIFIED DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS, OR CONDUCT BY THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR, MANAGER, OR ANY OTHER INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR, MANAGER, OR SUCH OTHER INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. HOWEVER, LICENSEE'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE INDEMNIFIED DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, LICENSEE'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEY'S FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEY'S FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.

8.4 As used in this Section 8, "**Hazardous Substances**" shall include, without limitation, any and all hazardous or toxic substances, materials, contaminants, pollutants, or wastes pertaining to health or the environment as are identified, defined or listed elsewhere in any applicable local, state and federal

ordinances, rules, regulations, laws and statutes, as the same may hereafter be passed, issued, enacted and/or amended, such as asbestos, petroleum products, hazardous materials, hazardous wastes and hazardous and/or toxic substances as defined or used in the Comprehensive Environmental Response, Compensation And Liability Act Of 1980, as amended (42 U.S.C. §9601 Et Seq.) and The Resource Conservation And Recovery Act, as amended (42 U.S.C. §6901 Et Seq.).

8.5 Licensee shall not, nor shall Licensee permit or allow any other Licensee Parties to, (a) cause any damage or waste at or about the Fuel Farm; (b) overload the Fuel Tanks; (c) cause any objectionable or unpleasant odors to emanate from the Fuel Tanks, except odors ordinarily emanating from a substantially similar aircraft fuel farm; (d) take any other action which would constitute a nuisance or would disturb or endanger Licensor, its employees, agents and other representatives, other licensees of the Fuel Farm, other occupants or users of the Airport or any neighbors of the Airport; or (e) permit any unlawful practice to be carried on or committed on the Fuel Farm.

8.6 Licensee shall procure, at its sole expense, any permits and licenses required for the use of the Fuel Farm including, without limitation, any permit or license required by the fire department of Licensor. At Licensor's request, Licensee shall deliver to Licensor copies of all such permits and licenses.

8.7 Only authorized and properly trained personnel of Licensee shall use the Fuel Farm pursuant to Licensee's rights under this License. In addition, if Licensee's business makes it advisable for Licensee to take any extra precautions at the Fuel Farm, Licensee shall take all such extra precautions.

## SECTION 9

### MAINTENANCE AND REPAIR OF FUEL TANKS AND OTHER EQUIPMENT

9.1 During the Term, Licensee, at Licensee's sole expense, shall maintain, repair and replace, as reasonably and prudently required, all equipment at the Fuel Farm diagonally cross-hatched on Exhibit "F" attached hereto (collectively, the "**Licensee Equipment**"). Without limiting the generality of the forgoing, the Licensee Equipment shall include all fuel loading and unloading equipment, such as hoses, couplings, swivels and such devices used in connection with the Fuel Tanks, and all filters, separators or other filtering medium or such devices related to the Fuel Tanks. With regard to Exhibit "F", the parties agree that no representation, warranty, or covenant is to be implied by Exhibit "F". If any such maintenance, repairs or replacements required to be made by Licensee are not made within ten (10) days after written notice delivered to Licensee by Licensor (except in the event of an emergency, in which case such repairs, replacements, changes or upgrades shall be required to be made by Licensee, as quickly as reasonably possible under the circumstances), then Licensor may perform such maintenance, repairs and replacements, and Licensee shall pay to Licensor, on demand, the costs of such maintenance, repairs and replacements, plus 10% for Licensor's overhead, plus interest on such sums). If Licensor elects to perform such maintenance, repairs or replacements, Licensor shall have no liability to Licensee for any loss or damage that may result to Licensee's business by reason of the same.

9.2 Except for the obligations of Licensee to be responsible for the continued maintenance, repairs and replacements of the Licensee Equipment described in Section 9.1 and Licensee's obligations under Section 9.3, and subject to the other obligations of Licensee under this License, Licensor shall at all times keep the Fuel Farm in good condition and repair generally in keeping with the standards of Licensor for the Airport and prevailing industry standards. Licensor, however, shall not be required to make any repairs occasioned by the act, omission, damage or negligence of Licensee, its employees, agents or other representatives, or any other person entering or using the Fuel Farm allegedly through the rights granted to Licensee under this License; and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Section 15 and Section 16 of this License. In the event that the Fuel Tanks or other parts of the Fuel Farm should become in need of repair required to be made by Licensor hereunder, Licensee shall give immediate written notice thereof to Licensor and Licensor shall have a commercially reasonable time after receipt of such written notice in which to make such repairs. The costs of Licensor incurred pursuant to this Section 9.2 shall be included in the Common Area Charge.

9.3 During the Term, Licensee shall keep the Fuel Tanks, and cooperate with Licensor and other licensees of the Fuel Farm in keeping the Fuel Farm sidewalks, service-ways and loading areas, neat, clean and free from debris.

## SECTION 10

### ALTERATIONS

10.1 Licensee shall not make any installations, alterations or replacements of improvements, fixtures or equipment at the Fuel Farm without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Without limiting the generality of the immediately preceding sentence, any installation, alteration or replacement consented to by Licensor must be effected strictly in accordance with Licensor's instructions and shall not unreasonably interfere with or disrupt the activities of Licensor or any other licensees of fuel tanks at the Fuel Farm. Licensee shall, promptly following the completion of any installations, alterations or replacements consented to by Licensor, deliver to Licensor "as built" plans and specifications with respect to any such installations, alterations and replacements. Any permitted installation, alteration or replacement which may be made or installed by Licensee in connection with the Fuel Farm shall remain upon and become the property of Licensor on completion of such installation, alteration or replacement; provided, however, that Licensor may request their removal upon the expiration or earlier termination of this License, in which event Licensee shall remove the same and restore the Fuel Farm to its condition immediately preceding such installation, alteration or replacement, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16, at Licensee's sole cost and expense. In the event that Licensee fails to remove such installation, alteration and replacement from the Fuel Farm within ten (10) days after the date of expiration or earlier termination of this License, Licensor may, at its option, keep or dispose of the same as Licensor shall determine at its sole discretion, without any liability or obligation to Licensee whatsoever. Licensee shall be obligated to reimburse Licensor for any costs incurred by Licensor in removing and disposing of such installation, alteration and replacement, and restoring the Fuel Farm to its original condition immediately preceding such construction, ordinary wear and tear excepted and subject to Sections 9.2, 15 and 16.

10.2 **INDEMNITY.** All construction work done by Licensee on the Fuel Farm shall be performed in a good and workmanlike manner, lien-free and in compliance with all applicable laws, and in such manner as to cause a minimum of interference with other construction in progress at the Fuel Farm or the use of the Fuel Farm by Licensor or any other licensees of fuel tanks at the Fuel Farm. **LICENSEE AGREES TO DEFEND AND INDEMNIFY LICENSOR, MANAGER, AND ALL INDEMNIFIED PERSONS AND HOLD LICENSOR, MANAGER, AND THE OTHER INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY INDEMNIFIED DAMAGES RESULTING FROM SUCH WORK, INCLUDING ANY INDEMNIFIED DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS, OR CONDUCT BY THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR, MANAGER, OR ANY INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. HOWEVER, LICENSEE'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE INDEMNIFIED DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, LICENSEE'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEY'S FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEY'S FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED**

**PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.**

10.3 In the event Licensee uses a general contractor to perform any installations, alterations or replacements on the Fuel Farm, Licensee shall, prior to the commencement of such work, require said general contractor to execute and deliver to Licensor a waiver and release of lien (in form and content reasonably satisfactory to Licensor) of any and all claims against Licensor and liens against the Fuel Farm to which such contractor might at any time be entitled, and to execute and record a Bond to Pay Claims (the "Bond") in accordance with Chapter 53, Subchapter I of the Texas Property Code, as such may be amended, superseded or replaced from time to time, and shall deliver a copy of the recorded Bond to Licensor. The delivery of the waiver and release of lien and the Bond within the time period set forth above shall be a condition precedent to Licensee's ability to enter on and begin its installation, alteration or replacement work on the Fuel Tanks and, if applicable, to any reimbursement from Licensor for Licensee's work.

10.4 In the event that Licensor elects to modify all or any portion of the Fuel Farm, Licensee will cooperate with Licensor during such modification, including Licensee's tolerating temporary inconveniences.

**SECTION 11**

**ACCESS TO FUEL FARM, FUEL TANKS AND EQUIPMENT**

11.1 Licensor shall have the right to enter upon the Fuel Farm at any time for any purpose consistent with this License.

11.2 Neither Licensee nor any Licensee Parties shall enter onto the roof of the Fuel Farm.

11.3 Neither Licensee nor any Licensee Parties shall use or manipulate in any manner any fuel tanks at the Fuel Farm (other than the Fuel Tanks), or any equipment used solely therewith.

11.4 Licensor shall have no liability to Licensee for any loss of access by Licensee to the Fuel Farm or the Fuel Tanks by reason of any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor.

**SECTION 12**

**UTILITIES**

12.1 Failure by Licensor to furnish, or the interruption or termination of utility services in whole or in part, resulting from any security requirement, legal requirement, casualty, accident, condemnation, alteration, maintenance, repair, strike, act of God, force majeure, or cause beyond the reasonable control of Licensor, shall not render Licensor liable in any respect nor be construed as a breach of this License, nor work as an abatement of the Consideration, nor relieve Licensee from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in providing such services for any cause cease to function properly, Licensor shall use reasonable diligence to repair such equipment or machinery but, except as otherwise expressly provided herein, Licensee shall have no claim for offset, abatement of the Consideration, damages or termination of this License on account of an interruption in service thereby or resulting therefrom.

**SECTION 13**

**INSURANCE COVERAGE**

13.1 Licensor shall procure and maintain throughout the Term of this License a policy or policies of insurance, causing the Fuel Farm to be insured under standard fire and extended coverage insurance and liability insurance or that which is typically available to a municipality for such purposes in the State of Texas (plus whatever endorsements or special coverages Licensor, at its sole and reasonable discretion, may consider appropriate), to the extent necessary to comply with Licensor's obligations pursuant to the provisions set forth in this License.

13.2 Licensee shall procure and maintain throughout the Term a policy or policies of insurance, at its sole cost and expense to meet or exceed the requirements specified in the then prevailing "Addison Airport Minimum Standards and Requirements For Commercial Aeronautical Service Providers" (the "**Minimum Licensee Insurance Standards**") which may be amended or modified by Licensor from time to time.

13.3 In the event no Minimum Licensee Insurance Standards are known to be in effect, Licensee shall procure and maintain throughout the Term, at the minimum, at its sole cost and expense: (a) a policy or policies of insurance causing the Licensee Equipment and Licensee's personal property at the Fuel Farm to be insured under standard Special Form or similar property insurance; (b) business automobile liability insurance for all owned and non-owned automobiles with a combined single limit of \$5,000,000 for bodily injury and property damage; (c) commercial general liability insurance insuring Licensee on an occurrence basis against all claims, demands or actions arising out of or in connection with Licensee's use or occupancy of the Fuel Farm, or by the condition of the Fuel Farm; and (d) Pollution Liability Insurance of not less than \$1,000,000 single limit coverage. Licensee's commercial general liability policy or policies must provide coverage with a combined single limit of not less than \$5,000,000 per occurrence (with no offset for occurrences on property other than the Fuel Tanks), and Licensee's insurance policy or policies must list Licensor as a loss payee (as to the Special Form or similar property insurance) as to Licensor's interest in any of Licensee's property and as an "Additional Insured" as to all other insurance including, without limitation, the commercial general liability insurance, which shall also name as Additional Insured's any management personnel or company retained by Licensor to operate or manage the Fuel Farm and/or the Airport.

13.4 All such insurance must be written by insurance companies and on forms and with deductibles satisfactory to Licensor, and Licensee's insurance shall be primary (with any policies of Licensor being excess, secondary and non-contributory). If it becomes customary or otherwise a prudent business practice within Licensee's industry to provide insurance policies with limits higher than the foregoing limits or with coverages other than the foregoing coverages, then Licensee will provide Licensor with such additional insurance as may be requested by Licensor. Licensee also agrees to provide and maintain adequate workers' compensation insurance insuring against and satisfying Licensee's obligations and liabilities under the workers' compensation laws of the State of Texas in no less than statutorily required amounts, covering Licensee's agents and employees in the Fuel Tanks, and containing a waiver of subrogation in favor of Licensor.

13.5 **INDEMNITY. LICENSEE** HEREBY INDEMNIFIES, AGREES TO HOLD HARMLESS AND DEFEND LICENSOR, MANAGER, AND THE OTHER INDEMNIFIED PERSONS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES SUFFERED BY LICENSEE OR ANY OF LICENSEE'S OFFICIALS, OFFICERS, EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES, AND/OR BY MANAGER OR ANY OF MANAGER'S OWNERS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS, AT OR ABOUT THE FUEL FARM WHICH WOULD HAVE BEEN OR IS COVERED BY AN APPROPRIATE WORKERS' COMPENSATION INSURANCE POLICY (AS MAY BE REQUIRED BY LAW TO BE CARRIED BY LICENSEE) AND/OR EMPLOYER'S LIABILITY INSURANCE POLICY, **INCLUDING ANY INDEMNIFIED DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS, OR CONDUCT BY THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR, MANAGER, OR ANY INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE, GROSS**

**NEGLIGENCE OR WILLFUL MISCONDUCT. HOWEVER, LICENSEE'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE INDEMNIFIED DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, LICENSEE'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEY'S FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEY'S FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.**

13.6 Licensee shall obtain a written obligation on the part of each insurance company to notify Licensor at least thirty (30) days prior to cancellation, non-renewal or modification of all such insurance described above. Such policies or duly executed certificates or other evidence of such insurance (in any event in form and content reasonably satisfactory to Licensor) shall be delivered to Licensor prior to the Commencement Date. Renewals of insurance shall be delivered to Licensor at least thirty (30) days prior to the expiration of the respective policy term(s). If Licensee should fail to comply with the foregoing requirement relating to insurance, Licensor may obtain such insurance on Licensee's behalf, and Licensee shall pay to Licensor on demand as additional Consideration the premium cost plus interest on such additional Consideration at the maximum contractual rate which could legally be charged in the event of a loan of such late Consideration to Licensee (but in no event to exceed 1 ½% per month).

## **SECTION 14**

### **WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION**

14.1 Licensor and its agents, employees or authorized representatives shall not (a) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any injury to person (including, without limitation, death) or damage to or destruction of property caused by the Fuel Tanks or other portion of the Fuel Farm becoming out of repair or by defect or failure of any structural element of the Fuel Tanks or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by fuel, gas, water, steam, electricity or oil leaking, escaping or flowing into the Fuel Tanks or the Fuel Farm, except where due to Licensor's willful acts or gross negligence in failing to maintain or make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Licensor of the need for such repairs and Licensor failed to remedy said condition; and (b) be liable to Licensee, nor to Licensee's officers, owners, employees, representatives, contractors, agents or visitors, nor to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other licensees of fuel tanks at the Fuel Farm or of any other persons whomsoever, except for the willful misconduct or gross negligence of authorized employees, agents or authorized representatives of Licensor.

14.2 **INDEMNITY.** Licensor and Manager (and all other Indemnified Persons) shall not be liable to Licensee, any Licensee Parties or any other person for (a) any injury to person (including, without limitation, death) or damage to or destruction of property on or about the Fuel Farm or any other portion of the Airport or premises adjacent thereto caused by the act or omission of Licensee, any Licensee Parties or any other person using the Fuel Farm or any equipment used in connection therewith under the express or implied invitation of Licensee; or (b) events, acts or occurrences arising out of any breach or default by Licensee in the performance of its obligations under this License. LICENSEE AGREES TO AND SHALL DEFEND AND INDEMNIFY LICENSOR, MANAGER, AND THE OTHER INDEMNIFIED PERSONS AND HOLD LICENSOR, MANAGER AND THE OTHER INDEMNIFIED PERSONS HARMLESS FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF SUCH INJURY, INDEMNIFIED DAMAGES OR DESTRUCTION, OR INDEMNIFIED DAMAGES CAUSED BY (I) LICENSEE'S PERFORMANCE OF THIS AGREEMENT, (II) THE USE OF THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO BY LICENSEE OR BY ANY LICENSEE PARTIES; (III) THE CONDUCT OF LICENSEE'S BUSINESS OR

ANYTHING ELSE DONE OR PERMITTED BY LICENSEE (OR ANY OF LICENSEE PARTIES) TO BE DONE IN OR ABOUT THE FUEL FARM, FUEL TANKS, OR ANY OTHER PORTION OF THE AIRPORT OR PROPERTY ADJACENT THERETO; (IV) ANY MISREPRESENTATION OR BREACH OF WARRANTY BY LICENSEE UNDER THIS AGREEMENT; OR (V) WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, **INCLUDING ANY INDEMNIFIED DAMAGES ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS, OR CONDUCT BY THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR, MANAGER, OR ANY INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. HOWEVER, LICENSEE'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE INDEMNIFIED DAMAGES (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, LICENSEE'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEY'S FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEY'S FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.**

14.3 Licensor and Licensee each hereby waives all right of recovery against the other, and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property arising from any cause that is insurable under standard Special Form or similar property insurance or which is required herein to be insured thereby (and each party agrees to obtain an endorsement to that effect in their respective Special Form or similar property insurance policies), **EVEN IF SUCH LIABILITY OR LOSS IS CAUSED BY THE NEGLIGENCE OF THE OTHER PARTY**; provided, however, that this mutual waiver and release is applicable only with respect to any loss or damage occurring during the time when such Special Form or similar property insurance policies which are readily available in the marketplace contain a clause or permitted endorsement to the effect that any such waiver and release does not adversely affect or impair the policy or the right of the insured party to proceeds under such policy and further provided that this waiver and release shall be applicable only to the extent that insurance proceeds are actually paid and collected to cover for such loss or damage and shall not be applicable to the portion of any such loss or damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. The release specified in this Section 14.3 is cumulative with any releases or exculpations, which may be contained in any other provisions of this License.

## SECTION 15

### DAMAGES BY CASUALTY

15.1 Licensee shall give immediate written notice to the Licensor of any damage caused to the Fuel Farm or any Fuel Tank by fire or other casualty.

15.2 In the event that the Fuel Farm or any Fuel Tank is damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance, and Licensor does not elect to terminate this License as hereinafter provided, Licensor shall proceed with reasonable diligence and at its sole cost and expense (to the extent that insurance proceeds are available therefore, and provided that Licensee shall reimburse Licensor for any such costs and expenses for which Licensee may be liable under this License) to rebuild and repair the Fuel Farm or any Fuel Tank. In the event (a) the Fuel Farm or any Fuel Tank is

destroyed or substantially damaged by a casualty not covered by Licensor's insurance or (b) the Fuel Farm or any Fuel Tank is destroyed or rendered unusable (as determined by Licensor), then Licensor may elect either to terminate this License as to all Fuel Tanks or just the damaged, destroyed or unusable Fuel Tank(s) or to proceed to rebuild and repair the Fuel Farm or any damaged, destroyed or unusable Fuel Tank. Licensor shall give written notice to Licensee of any such election within sixty (60) days' after the occurrence of such casualty and, if Licensor elects to rebuild and repair, shall proceed to do so with commercially reasonable diligence.

15.3 Licensor's obligation to rebuild and repair under this Section 15 shall, in any event, be limited to restoring the Fuel Farm or any Fuel Tank to substantially the condition in which the same existed prior to such fire or other casualty, exclusive of any Licensee Equipment, alterations, additions, improvements, fixtures and other equipment installed by Licensee. Licensee agrees that promptly after completion of such work by Licensor, Licensee will proceed with reasonable diligence and at Licensee's sole cost and expense to restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

15.4 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 15, it will continue the operation of its business within the Fuel Farm to the extent practical.

## **SECTION 16**

### **EMINENT DOMAIN**

16.1 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, at Licensor's election, this License shall terminate and Licensor shall credit Licensee for unearned Consideration, if any, effective on the date physical possession is taken by the condemning authority.

16.2 If less than all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, and Licensor elects not to terminate this License, Licensor shall make all necessary repairs or alterations to the remaining Fuel Farm and, promptly after completion of such work by Licensor, Licensee shall restore, repair and replace all Licensee Equipment and all alterations, additions, improvements, fixtures, signs and equipment installed by Licensee.

16.3 If all of the Fuel Farm should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this License shall terminate effective on the date physical possession is taken by the condemning authority.

16.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Fuel Farm shall be the property of Licensor, and Licensee hereby assigns its interest in any award related to such taking to Licensor.

16.5 Licensee agrees that during any period of reconstruction or repair of the Fuel Farm or any Fuel Tank pursuant to this Section 16, it will continue the operation of its business within the Fuel Farm to the extent practical.

## **SECTION 17**

### **ASSIGNMENT AND SUBLETTING**

17.1 Licensee shall not and has no authority to assign or in any manner transfer this License or any interest herein, sublicense its interest under this License or any part thereof, or grant any license, concession or other right of use of any portion of the Fuel Farm without Licensor's prior written consent, which may be withheld in Licensor's sole discretion. Any attempted assignment or transfer, or any attempt to grant any

sublicense, concession or other right of use, in violation of the preceding sentence shall be null and void, *ab initio*. In determining whether or not to grant its consent, Licensor shall be entitled to take into consideration all factors including, without limitation, Licensor's desired Licensee mix, the reputation and net worth of the proposed transferee, purported intent and use of the facilities by the proposed transferee (even beyond what is specified in Section 1.1(q)) and the then-current market conditions (including market consideration). In addition, Licensor shall also be entitled to charge an assignment fee for processing and considering, but not necessarily consenting to, Licensee's request. Consent by Licensor to one or more assignments, transfers, or sublicenses shall not constitute a novation or waiver of Licensor's rights as to any subsequent assignments, transfers, and sublicenses. If Licensor consents, any unexercised extension options of Licensee described on Exhibit "D" attached hereto shall be deemed null and void, *ab initio*, and of no force or effect.

17.2 If Licensee is a corporation, partnership or other entity (other than a publicly traded entity), and if at any time during the Term of this License the person or persons who own a majority of either the outstanding voting rights or controlling interests of Licensee at the time of the execution of this License cease for any reason to own a majority of such voting rights or controlling interests (except as a result of transfers by devise or descent) of Licensee, the loss of a majority of such voting rights or controlling interests shall be deemed an assignment of this License by Licensee and, therefore, subject in all respects to the provisions of Section 17.1 above. For purposes hereof, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities or partnership interests, by contract, or otherwise. Licensee shall give to Licensor, upon Licensor's request, a list of such person or persons.

17.3 Any assignee or other transferee of an interest in and to this License shall be deemed, by acceptance of such assignment or other transfer or by use of the Fuel Farm, to have assumed all of the obligations set forth in or arising under this License. Such assumption shall be effective as of the earlier of the date of such assignment or other transfer, or the date on which the assignee or other transferee commences use of the Fuel Farm.

17.4 Notwithstanding any assignment, other transfer or subletting, Licensee shall at all times remain fully responsible and liable for the payment of the Consideration herein specified and for compliance with all of its other obligations under this License (even if future assignments, transfers and sublicenses occur subsequent to the assignment, transfer or sublicensing by Licensee, and regardless of whether or not Licensee's approval has been obtained for such future assignments, transfers and sublicensing). In the event that for any reason any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, prohibited by this Section 17 is consummated without the prior written consent of Licensor, or if an assignment, sublicense or other transfer by Licensee is permitted by Licensor, and the consideration paid and/or payable by an assignee, transferee, sublicensee or other user by reason of this License exceeds the Consideration paid payable under this License, then Licensee shall be bound and obligated to pay Licensor all such excess consideration within ten (10) days following receipt thereof by Licensee from such assignee, transferee, sublicensee or other user. Finally, in the event of any assignment or transfer, or sublicense, concession or other right of use of any portion of the Fuel Farm, whether permitted by Licensor or otherwise consummated without Licensor's consent, it is understood and agreed that all consideration paid to Licensee by the assignee, transferee, sublicensee or other user shall be received by Licensee in trust for Licensor to be forwarded immediately to Licensor without offset or reduction of any kind, and upon election by Licensor such consideration shall be paid directly to Licensor as specified in Section 4.2 of this License (to be applied as a credit and offset to Licensee's Consideration obligation).

17.5 Licensee shall not and has no authority to mortgage, pledge or otherwise encumber its interest in this License, without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion. Any such mortgage, pledge or other encumbrance in violation of the preceding sentence shall be null and void, *ab initio*.

17.6 In the event of the transfer and assignment by Licensor of its interest in this License to a person or persons expressly assuming Licensor's obligations under this License, Licensor shall thereupon be released from any further obligations hereunder, and Licensee agrees to look solely to such successor in interest of the Licensor for performance of such obligations. Any security given by Licensee to secure performance of

Licensee's obligations hereunder may be assigned and transferred by Licensor to such successor in interest and Licensor shall thereby be discharged of any further obligation relating thereto.

## SECTION 18

### ESTOPPELS

18.1 Licensee agrees that it will, from time to time upon request by Licensor, execute and deliver to Licensor a written statement addressed to Licensor (or to a party designated by Licensor), which statement shall identify Licensee and this License, shall certify that this License is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Licensor is not in default as to any obligations of Licensor under this License (or if Licensor is in default, specifying any default), shall confirm Licensee's agreements contained in this License, and shall contain such other information or confirmations as Licensor may reasonably request. Licensor is hereby irrevocably appointed and authorized as the agent and attorney in fact of Licensee to execute and deliver any such written statement on Licensee's behalf if Licensee fails to do so within fourteen (14) business days after the delivery of a written request from Licensor to Licensee.

## SECTION 19

### NON-COMPETE

19.1 Licensee covenants and agrees that during the Term of this License, neither Licensee nor any person, firm or corporation, directly or indirectly controlling, controlled by or under common control with Licensee (and also, in the event Licensee is a corporation, if any officer or director thereof or shareholder owning more than ten percent (10%) of the outstanding stock thereof, or parent, subsidiary or related or affiliated corporation) either directly or indirectly shall operate or commence operation of any facility selling or that otherwise offers for sale any aircraft fuel of the type to be used by Licensee in the Fuel Tanks or similar or related items, or in any manner competes with the business of the Fuel Farm, within a straight-line radius of seven (7) miles of the Fuel Farm, which Licensee acknowledges is a reasonable area for the purpose of this provision. It is acknowledged that Licensor will incur damages by reason of the diversion of business from the Fuel Tanks and Fuel Farm to such other facility within such radius, as a proximate result of the establishment of such other facility.

## SECTION 20

### DEFAULT AND REMEDIES

20.1 Default by Licensee. The following events shall be deemed to be events of default by Licensee under this License:

- (a) Licensee shall fail to pay when due any Base Fee or other sum of Consideration including, but not limited to, Licensee's Additional Fee or adjusted Additional Fee and Fuel Flowage Fees as required to be paid by Licensee to Licensor under this License and such failure shall continue for ten (10) days (hereinafter sometimes referred to as a "**Monetary Default**").
- (b) Licensee shall fail to comply with any term, provision or covenant of this License (other than a Monetary Default) and shall not cure such failure within thirty (30) days after delivery to Licensee notice of the occurrence of such default. Provided, however, in the event such default is not capable of being cured within thirty (30) days, then Licensee shall have an additional period of time (not to exceed an additional sixty [60] days) to cure such default so long as Licensee has provided Licensor written notice of the curative measures

Licensee proposes to undertake and commences to cure the default within the initial thirty (30) day period and thereafter diligently pursue such cure.

- (c) Licensee shall become insolvent or shall make an assignment for the benefit of creditors, or Licensee shall admit in writing its inability to pay its debts as they become due.
- (d) Licensee shall file a petition under any section or chapter of the Bankruptcy Code, as may be amended, pertaining to bankruptcy or under any similar insolvency or debtor-relief law or statute of the United States or any state thereof, or Licensee shall be adjudged bankrupt or insolvent in proceedings filed against Licensee thereunder; or an involuntary case is commenced under 11 U.S.C. § 303 as may be amended or an insolvency, receivership or any similar proceedings are commenced under Federal or State law and such proceeding is not fully and finally dismissed within sixty (60) days after the filing thereof, or a petition or answer proposing the adjudication of Licensee as bankrupt or its reorganization under any present or future federal or state bankruptcy or similar insolvency or debtor-relief law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof.
- (e) A receiver or trustee shall be appointed for all or substantially all of the assets of Licensee, or for the Fuel Tanks or any of Licensee's property located therein, in any proceeding brought by Licensee; or any such receiver or trustee shall be appointed in any proceeding brought against Licensee and shall not be discharged within sixty (60) days after such appointment or Licensee shall consent to or acquiesce in such appointment.
- (f) The license hereunder shall be revoked upon execution or other process of law in any action against Licensee.
- (g) The liquidation, termination, or default of a lease, license or other written agreement with the Town of Addison, dissolution, forfeiture of right to do business or death of Licensee.

20.2 Remedies of Licensor. Upon the occurrence of any event of default by Licensee under this License, Licensor may:

- (a) immediately terminate this License and at the expense and liability of the Licensee, alter or change any or all locks or other security or power devices controlling access to the Fuel Farm or Fuel Tanks without posting or giving notice of any kind to Licensee.
- (b) do whatever Licensee is obligated to do under the terms of this License; and Licensee agrees to reimburse Licensor on demand for any expense which Licensor may incur in thus effecting compliance with Licensee's obligations under this License together with interest at the lesser of (i) the maximum rate permitted under applicable law or (ii) eighteen percent (18%) per annum.

20.3 Event of Bankruptcy. In addition to, and in no way limiting the other remedies set forth in this Section 20, Licensor and Licensee agree that if Licensee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization or other similar type proceeding under the federal bankruptcy laws, as now enacted or hereinafter amended, then:

- (a) "adequate protection" and "adequate assurance" of Licensor's interest under this License pursuant to the provisions of Sections 361, 362, 363, 364 and 365 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq. (such Bankruptcy Code as amended from time to time being herein referred to as the "**Bankruptcy Code**"), prior to assumption and/or assignment of this License by Licensee shall include, but not be limited to, all or any part of the following:
  - (1) curing all monetary and non-monetary defaults, including, without limitation, payment of attorneys' fees incurred by Licensor related to enforcing the terms and conditions of this License and the continued payment by Licensee of the Base Fee and all other Considerations due and owing hereunder and the performance of all other covenants and obligations hereunder by Licensee;

(2) the furnishing of an additional and/or new security deposit by Licensee in the amount of three (3) times the then-current monthly Base Fee and other Considerations payable hereunder; and

(3) in addition, the Licensee shall provide financial statements evidencing the financial condition and operating performance of any proposed assignee and guarantors, if any, which is sufficient to show that the proposed assignee is capable of performing in Licensor's sole discretion, all of the Licensee's obligations under the terms and conditions of this License, including, without limitation, the "adequate assurance" and "adequate protection" requirements set forth herein.

(b) in the event Licensor consents, in its sole discretion, to the assignment of this License, any person or entity, to which this License is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations of Licensee arising under this License on and after the effective date of such assignment, including, without limitation, adequate protection and adequate assurance requirements under Section 20.3(a). Any such assignee shall, upon demand by Licensor, execute and deliver to Licensor an instrument confirming such assumption of liability, along with applicable guaranties of any principals of the assignee.

(c) notwithstanding the prohibition against assignment contained in Section 17.1 herein, if this License is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered to Licensor including Base Fees and other Considerations hereunder, shall be and remain the exclusive property of Licensor and shall not constitute property of Licensee or of the bankruptcy estate of Licensee. Any and all monies or other considerations constituting Licensor's property under the preceding sentence not paid or delivered to Licensor shall be held in trust by Licensee or Licensee's bankruptcy estate for the benefit of Licensor and shall be promptly paid to or turned over to Licensor.

(d) to the extent permitted by law, Licensor and Licensee agree that this License is a contract under which applicable law excuses Licensor from accepting performance from, or rendering performance to, any person or entity other than Licensee within the meaning of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq.

20.4 No Waiver. The following do not constitute a waiver of any rights Licensor may have under the License: (a) failure of Licensor to declare any default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not constitute a waiver of such default, nor shall it constitute an estoppel against Licensor, but Licensor shall have the right to declare the default at any time and take such action as is lawful or authorized under this License; (b) failure by Licensor to enforce its rights with respect to any one default shall not constitute a waiver of its rights with respect to any subsequent default; (c) receipt by Licensor of Licensee's keys to the Fuel Tanks or the Fuel Farm shall not constitute a termination of this License; and (d) no payment by Licensee or receipt by Licensor of (i) a lesser amount than the Consideration due under this License shall be deemed to be other than on account of the earliest Consideration due hereunder; and (ii) any endorsement or statement on any check or any letter accompanying any check or payment as Consideration shall not be deemed an accord and satisfaction and Licensor may accept such check or payment without prejudice to Licensor's right to recover the balance of such Consideration or pursue any other remedy in this License provided.

20.5 Remedies Cumulative. No right or remedy herein conferred upon or reserved to Licensor is intended to be exclusive of any other right or remedy it may have, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law, common law, in equity, or otherwise. In addition to other remedies provided in this License, Licensor shall be entitled, to the extent permitted by applicable law, but without the requirement of a bond or evidence of irreparable harm, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this License, or to a decree compelling performance of any of the other covenants, agreements, conditions or provisions of this License, or to any other remedy allowed to Licensor by law, common law, in equity, or otherwise.

20.6 Evidence of Termination. To the extent any provision of applicable law requires some action by Licensor to evidence or effect the termination of this License or to evidence the termination of Licensee's right of occupancy, Licensee and Licensor hereby agree that written notice by Licensor to Licensee or to any of Licensee's agents, servants or employees, which states, in substance, that Licensor has elected to and has terminated this License, shall be sufficient to evidence and effect the termination herein provided for.

20.7 Licensor Default. Licensee shall not exercise any remedy for any breach or default by Licensor under this License without first giving written notice of such breach or default to Licensor and a commercially reasonable opportunity to cure such breach or default of not less than thirty (30) days from the date Licensor receives such notice.

## **SECTION 21**

### **HOLDING OVER**

21.1 In the event Licensee continues use of the Fuel Farm after the termination or expiration of this License and without the execution of a new license, it will be deemed to be using the Fuel Farm as a licensee under a license terminable at will at a daily fee equal to the Consideration herein provided plus fifty percent (50%) of such amount, pro-rated on a daily basis, otherwise subject to all the conditions, provisions and obligations of this License insofar as the same are applicable to a license terminable at will.

## **SECTION 22**

### **EXPIRATION OR TERMINATION OF LICENSE**

22.1 Immediately prior to the expiration or earlier termination of Licensee's right to use the Fuel Farm pursuant to this License, Licensee shall:

- a) deliver the Fuel Tanks back to Licensor in good repair, excepting reasonable wear and tear and losses required to be restored by Licensor provided for in Section 9.1, Section 15 and Section 16;
- b) completely remove all sludge, solids, and residual substances from inside of the Fuel Tanks, piping and filtration devices in accordance with state and federal guidelines;
- c) dispose of tank bottom sludge according to state and federal laws and regulations;
- d) remove and replace all filters, separators or other filtering medium or such devices typically required under Section 9.1;
- e) secure the Fuel Tanks by bolting and locking all manways, valves and cap or plug fill lines, gauge openings or pump lines; and
- f) take all other actions reasonably necessary to empty, secure and stabilize the Fuel Tanks as instructed by Licensor.

22.2 On the surrender of the Fuel Tanks at the expiration or earlier termination of this License, Licensee shall give Licensor at least seventy-two (72) hours advance notice that the Fuel Tanks are ready for Licensor's inspection and acceptance. Upon this notification, Licensor shall then inspect the Fuel Tanks and call for the inspection by the Town of Addison Fire Department and any other regulatory entity having jurisdiction over such matters. Licensee agrees to remedy, at first reasonable opportunity, any exception or exceptions reported as a result of said inspections. Once all exceptions have been resolved and accepted by Licensor, Licensor shall deliver written notice to Licensee that Licensor has accepted the surrender of the Fuel Tanks pursuant to this Section 22, and Licensee's right to access and use of the Fuel Tanks and Fuel Farm is terminated.

## SECTION 23

### NOTICES

23.1 Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when actually received by the designated addressee or, if earlier and regardless of whether actually received or not, three (3) days after being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the parties hereto at the respective addresses set out in Section 1.1 above, or at such other address as they might specify by written notice.

23.2 If and when included within the term "Licensor" as used in this License there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Licensor; if and when included within the term "Licensee" as used in this instrument there are more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Licensee. All parties included within the terms "Licensor" and "Licensee", respectively, shall be bound by notices and payments given in accordance with the provisions of this Section. 23.2 to the same effect as if each had received such notice or payment. In addition, Licensee agrees that Licensor's attorney, property manager or other agent may give notices to Licensee on Licensor's behalf.

## SECTION 24

### COMMISSIONS

**24.1 EACH PARTY HERETO REPRESENTS TO THE OTHER THAT IT HAS NOT AUTHORIZED ANY BROKER OR FINDER TO ACT ON ITS BEHALF IN CONNECTION WITH THE NEGOTIATION AND EXECUTION OF THIS LICENSE, AND LICENSOR AND LICENSEE EACH AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER FROM AND AGAINST ANY AND ALL INDEMNIFIED DAMAGES ARISING OUT OF OR RESULTING FROM ANY AGREEMENT, ARRANGEMENT OR UNDERSTANDING MADE OR ALLEGED TO HAVE BEEN MADE BY SUCH INDEMNIFYING PARTY WITH ANY SUCH OTHER BROKER OR FINDER IN CONNECTION WITH THIS LICENSE, INCLUDING ANY SUCH CLAIM, LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF THE NEGLIGENCE OF THE INDEMNIFIED PARTY, PROVIDED THAT INDEMNIFYING PARTY SHALL HAVE NO DUTY TO INDEMNIFY THE INDEMNIFIED PARTY FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNIFIED PARTY.**

## SECTION 25

### CHANGES DUE TO LEGAL REQUIREMENTS

25.1 If for any reason the Fuel Farm was not constructed in compliance with any legal requirements in existence at the time of construction, Licensor shall have no liability to Licensee or any Licensee Parties as a result thereof, except that Licensor shall have a reasonable period of time after notification from Licensee of such noncompliance to cause the Fuel Farm to comply with such legal requirements. If there are any changes to such legal requirements after the date of completion of Licensor's construction of the Fuel Farm that require changes thereto, Licensor shall have a reasonable period of time after notification from Licensee to make such changes. All costs incurred by Licensor in causing the Fuel Farm to comply with applicable laws may be included in the Common Area Charge.

## SECTION 26

### APPLICABLE LAWS

26.1 Licensors and Licensees acknowledge that there are in effect federal, state, county and municipal laws, rules, regulations, standards, and policies (together, "laws") and that the same may hereafter be modified or amended and additional laws may hereafter be enacted or go into effect, relating to or affecting the Fuel Farm or the Fuel Tanks. Licensee shall not cause, or permit or allow the Licensee Parties to cause, any violation of any applicable laws. Moreover, Licensee shall have no claim against Licensor by reason of any changes Licensor may make in the Fuel Farm or the Fuel Tanks required by any applicable laws or any charges imposed upon Licensee, Licensee's customers or other invitees as a result of applicable laws.

26.2 If any provision in this License is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this license shall not be affected thereby.

26.3 Licensee hereby acknowledges that Licensor is bound by the terms and conditions of any and all Federal Aviation Administration, Texas Department of Transportation, and other grant agreements, grant assurances and regulations regarding the Airport, and the terms of any grant, loan, regulation, or agreement under Section 22.055 of the Texas Transportation Code, as amended or superseded, whether now existing or made in the future. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such terms, conditions, agreements, assurances, regulations, grant or loan.

26.4 Licensor and Licensee hereby specifically acknowledge that U.S. Code of Federal Regulations Title 40 Part 112 – *Oil Pollution Prevention*, governs the conduct of the parties under the License. Licensor and Licensee hereby further specifically acknowledge that the National Fire Protection Association, Inc. (NFPA) 407, *Standard for Aircraft Fuel Servicing*, governs the conduct of the parties under the License. Without limiting the generality of Section 26.1, Licensee agrees not to take any action or omit to take any action in relation to the Fuel Farm that would cause Licensor to be in violation of such regulations or standards.

26.5 If, by reason of any applicable laws, the payment to, or collection by, Licensor of any Consideration or other charges payable by Licensee to Licensor pursuant to the provisions of this License is in excess of the amount (the "**Maximum Charge**") permitted by laws, then Licensee, during the period when such laws shall be in force and effect (the "**Freeze Period**"), shall not be required to pay, nor shall Licensor be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring such laws to be invalid or not applicable to the provisions of this License, Licensee, to the extent not then proscribed by applicable law, and commencing with the first day of the month immediately following, shall pay to Licensor as additional Consideration, prorated in equal monthly installments over the balance of the Term of this License, a sum equal to the cumulative difference between the Maximum Charge and such Consideration or other charge during the Freeze Period. If any provision of this Section 26.5, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to effect the validity and enforceability of any of the other provisions of this Section 26.5 or of this License, all of which shall remain in effect to the fullest extent permitted by law.

## SECTION 27

### MANDATORY NON-BINDING MEDIATION

27.1 The parties have entered into this License in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute (unless the Dispute involves an event of default of a payment obligation under this License) amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this License (the "**Dispute**"), they will first utilize the following procedures specified in this Section 27 (the "**Procedure**") before resorting to any court proceedings, unless the lack of immediate court proceedings would cause irreparable harm without an adequate remedy at law:

(a) The party seeking to initiate the Procedure (the “**Initiating Party**”) will give Notification to the other party. The Notification must describe in general terms the nature of the Dispute and the Initiating Party’s requested relief. Additionally, the Notification must identify one or more individuals with authority to settle the Dispute on the Initiating Party’s behalf. The party receiving the Notification (the “**Responding Party**”) will have five (5) business days within which to designate by reply Notification to the Initiating Party one or more individuals with authority to settle the Dispute on the Responding Party’s behalf. The individuals so designated will be known as the “**Authorized Individuals**”. The Initiating Party and the Responding Party will collectively be referred to as the “**Disputing Parties**” or individually as a “**Disputing Party**”.

(b) The Authorized Individuals may investigate the Dispute as they deem appropriate, but they agree to promptly, and in no event not later than fourteen (14) days from the date of the Initiating Party’s Notification, meet to discuss the resolution of the Dispute. The Authorized Individuals will meet at the times and places and with the frequency as they may agree. If the Dispute has not been resolved within fourteen (14) days from their initial meeting date, the Disputing Parties will cease direct negotiations and will submit the Dispute to mediation in accordance with the following procedure:

(i) The Authorized Individuals will have five (5) business days from the date they cease direct negotiations to submit to each other by Notification a written list of acceptable qualified attorney-mediators not affiliated with any party. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, the Disputing Parties agree jointly to request a state district or federal district judge of their choosing, from the State of Texas, to supply a list of potential qualified attorney-mediators. Within five (5) days from the date the list is received, the Authorized Individuals will rank the mediators in numerical order of preference and exchange the rankings. If one or more names are on both lists, the highest-ranking person will be designated as the mediator. If no mediator has been selected under this procedure, either of the Disputing Parties may unilaterally request a local state district judge for Dallas County, Texas, to supply the list. Within five (5) business days from the date the list is received, the Authorized Individuals will again rank the proposed mediators in numerical order of preference and will simultaneously exchange the list and will select as the mediator the individual receiving the highest combined ranking. If the mediator is not available to serve, they will proceed to contact the mediator who was next highest in ranking until they are able to select a mediator.

(ii) In consultation with the mediator selected, each Disputing Party will cause its Authorized Individual to cooperate with the other Authorized Individual in promptly designating a mutually convenient time and place for the mediation. Unless circumstances require otherwise, the time for mediation shall not be later than thirty (30) days after selecting the mediator.

(iii) If any Disputing Party has substantial need for information in another Disputing Party’s possession or control in order to prepare for the mediation, all Disputing Parties will attempt to agree to procedures to expeditiously request and exchange the information and the scope of such request with the mediator’s help if required.

(iv) At least seven (7) days before the first scheduled mediation session, each Disputing Party will deliver to the mediator, and by Notification deliver to the other Disputing Party, a general and concise written summary of its views on the Dispute and any other matters required by the mediator. The mediator may also request that a confidential issue paper be submitted by each Disputing Party to the mediator.

(v) In the mediation, each Disputing Party will be represented by its Authorized Individual and may also be represented by counsel. In addition, each Disputing Party may, with the mediator’s permission and subject to the confidentiality provisions of this Section

27, bring additional persons as needed to respond to questions, contribute information and participate in the negotiations.

(vi) The mediator will determine the format for the meetings. The format must be designed to insure that (A) both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each Disputing Party's views on the Dispute, and (B) the Authorized Individuals attempt to negotiate to resolve the Dispute, with or without the assistance of counsel or others permitted to attend, but with the mediator's assistance. To this end, the mediator is authorized to conduct both joint meetings and separate private caucuses with the Disputing Parties. The mediation session will be private and the Disputing Parties agree to not disclose or release any information to third-parties (except as allowed under Subsection (x) below). The Parties will require the mediator to keep confidential all information learned in private caucus with any Disputing Party unless specifically authorized by the Disputing Party to disclose the information to the other Disputing Party. The Disputing Parties commit to participate in the proceedings with the intention of resolving the Dispute if at all possible.

(vii) The Disputing Parties agree to participate in the mediation procedure to its conclusion. The mediation will be terminated by (a) executing a settlement agreement between the Disputing Parties, (b) declaring to the mediator that the mediation is terminated, or (c) a Disputing Party declaring in writing that the mediation process is terminated when one (1) full day's mediation session is concluded.

(viii) Even if the mediation is terminated without the resolution of the Dispute, the Disputing Parties agree not to terminate negotiations and not to commence any court proceedings before five (5) days following the termination of the mediation. In any event, any Disputing Party may terminate the mediation procedure if the other Disputing Party fails to comply with this Procedure or if any claim in the Dispute, in the absence of such termination, could be barred by any applicable statute of limitations.

(ix) The mediator's fees and expenses will be shared equally among the Disputing Parties. The mediator will be disqualified as a witness, consultant, expert, or counsel for any Disputing Party with respect to the Dispute and any related matters.

(x) Mediation is a compromise and offer to compromise subject to Rule 408 of the Texas and Federal Rules of Evidence. The entire mediation process is confidential, and no stenographic, visual or audio record will be made. Subject to Rule 408 of the Texas and Federal Rules of Evidence, all conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any Disputing Party, their Authorized Individuals or any of their agents, employees, representatives or other invitees and by the mediator are confidential and, in addition and where appropriate, will be deemed privileged, and shall not be disclosed to anyone who is not (A) a party's agent, employee, expert, witness, or representative and (B) bound by the same confidentiality standards as the parties hereto. Evidence otherwise discoverable or admissible, however, is not excluded from discovery or admission as a result of its use in the mediation.

## SECTION 28

### MISCELLANEOUS

28.1. **INDEMNITY.** LICENSEE SHALL ALSO DEFEND AND INDEMNIFY LICENSOR, MANAGER, AND THE OTHER INDEMNIFIED PERSONS AGAINST AND HOLD LICENSOR, MANAGER, AND THE OTHER INDEMNIFIED PERSONS HARMLESS FROM ALL COSTS, EXPENSES, DEMANDS AND LIABILITY LICENSOR, MANAGER, OR THE OTHER INDEMNIFIED PERSONS MAY INCUR IF LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS BECOME OR ARE MADE A PARTY TO ANY CLAIM OR ACTION (A) INSTITUTED BY LICENSEE AGAINST ANY THIRD PARTY, OR BY ANY THIRD PARTY

**AGAINST LICENSEE, OR AGAINST ANY PERSON HOLDING ANY INTEREST UNDER OR USING THE FUEL FARM BY LICENSE OR BY AGREEMENT WITH LICENSEE; (B) FOR FORECLOSURE OF ANY LIEN FOR LABOR OR MATERIAL FURNISHED TO OR FOR LICENSEE OR SUCH OTHER PERSON; (C) OTHERWISE ARISING OUT OF OR RESULTING FROM ANY ACT, OMISSION OR TRANSACTION OF LICENSEE, ANY OF LICENSEE PARTIES, OR SUCH OTHER PERSON; OR (D) NECESSARY TO PROTECT LICENSOR'S INTEREST UNDER THIS LICENSE IN A BANKRUPTCY PROCEEDING, OR OTHER PROCEEDING UNDER THE BANKRUPTCY CODE, 11 U.S.C. PARAGRAPH 101, ET SEQ., INCLUDING SUCH COSTS, EXPENSES, DEMANDS, AND LIABILITIES AS ARE ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS, OR CONDUCT BY THE LICENSOR, MANAGER, OR ANY OF THE OTHER INDEMNIFIED PERSONS THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, BUT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR, MANAGER, OR ANY OTHER INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSOR, MANAGER, OR SUCH OTHER INDEMNIFIED PERSON, UNLESS THE INSURANCE OF LICENSEE COVERS THE INDEMNIFIED DAMAGES CAUSED BY SUCH SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. HOWEVER, LICENSEE'S LIABILITY UNDER THIS INDEMNITY OBLIGATION SHALL BE REDUCED BY THAT PORTION OF THE TOTAL AMOUNT OF THE COSTS, EXPENSES, DEMANDS AND LIABILITY (EXCLUDING DEFENSE FEES AND COSTS) EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS. LIKEWISE, LICENSEE'S LIABILITY FOR INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' DEFENSE COSTS AND ATTORNEY'S FEES SHALL BE REDUCED BY A PORTION OF THE DEFENSE COSTS AND ATTORNEY'S FEES EQUAL TO THE INDEMNIFIED PERSON'S OR INDEMNIFIED PERSONS' PROPORTIONATE SHARE OF THE NEGLIGENCE, OR CONDUCT THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND, THAT CAUSED THE LOSS.**

28.2 Nothing in this License shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture or joint enterprise between the parties hereto, it being understood and agreed that neither the method of computation of Consideration, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Licensor and Licensee.

28.3 Licensee shall not, for any reason, withhold or reduce Licensee's required payments of Consideration and other charges provided in this License, it being agreed that the obligations of Licensor under this License are independent of Licensee's obligations except as may be otherwise expressly provided herein.

28.4 Licensee shall deposit the Security Deposit with Licensor upon Licensee's execution of this Lease. Licensor shall hold the Security Deposit without interest as security for the performance by Licensee of Licensee's covenants and obligations under this License. Licensor shall not be required to keep the Security Deposit separate from its other accounts and no trust relationship is created with respect to the Security Deposit. The Security Deposit is not an advance payment of rental or a measure of liquidated damages in case of an event of default by Licensee. Upon the occurrence of an event of default by Licensee, Licensor, from time to time, in addition to and without prejudice to any other remedy provided herein or provided by law, may use the Security Deposit to the extent necessary to make good any arrearages of Consideration and any other damage, injury, expense or liability caused to Licensor by any events of default by Licensee. If at any time during this License the Security Deposit then being held by Licensor is less than one monthly installment of the Base Fee plus the then prevailing Additional Fee, Licensee will be required to make an additional payment to Licensor so that the Security Deposit being held by Licensor is always equal to one monthly installment of the Base Fee plus the then prevailing Additional Fee. If an event of default by Licensee does not exist, and no condition exists, which, with the passage of time or the giving of notice, or both, would constitute an event of default, when this License expires or terminates, any remaining balance of such Security Deposit not used by Licensor in accordance with this License and applicable law shall be

returned by Licensor to Licensee at the last address of Licensee according to the records of Licensor within a commercially reasonable time following such expiration or termination. Licensee's actual or attempted assignment, transfer, or encumbrance of the Security Deposit will not bind Licensor.

28.5 One or more waivers of any covenant, term or condition of this License by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

28.6 If any provision of this License is held to be illegal, invalid, or unenforceable, under present or future governmental laws, rules, or regulations, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions shall remain in full force and effect. Licensee shall not record this License or any memorandum or short form hereof, nor shall Licensee permit or cause this License or any memorandum or short form hereof to be recorded. Any attempt at recordation of this License or of a memorandum or short form hereof by Licensee without having first obtained Licensor's written approval shall, at Licensor's option, constitute an automatic event of default by Licensee and, at Licensor's option, may void this License and Licensee's rights hereunder.

28.7 THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS) SHALL GOVERN THE INTERPRETATION, VALIDITY, PERFORMANCE AND ENFORCEMENT OF THIS LICENSE. THIS LICENSE IS PERFORMABLE IN DALLAS COUNTY, TEXAS. VENUE FOR ANY ACTION UNDER THIS LICENSE SHALL BE IN DALLAS STATE DISTRICT COURT, DALLAS COUNTY, TEXAS, THE COUNTY IN WHICH CONSIDERATION SHALL BE PAID PURSUANT TO SECTION 1 AND SECTION 4.2 OF THIS LICENSE. BY EXECUTING THIS LICENSE, EACH PARTY HERETO (i) EXPRESSLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE COURTS OF SUCH COUNTY AND THE STATE OF TEXAS; (II) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CLAIM OR DEFENSE THAT THE COURTS OF SUCH COUNTY AND STATE ARE NOT A PROPER OR CONVENIENT VENUE OR FORUM; AND (III) CONSENTS TO THE SERVICE OF PROCESS IN ANY MANNER AUTHORIZED BY TEXAS LAW.

28.8 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

28.9 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

28.10 The terms, provisions and covenants contained in this License shall apply to, inure to the benefit of and be binding upon the parties and their respective heirs, successors in interest, legal representatives and permitted assigns except as otherwise herein expressly provided. Neither party shall be bound by this License in any way until both parties have executed this License and each party has received a copy of this License duly executed by the other. Except as otherwise set forth in this License (e.g., provisions relating to the Manager, its owners, officers, employees, representatives, and agents), no provision of this License is intended to and does not inure to the benefit of any third party.

Notwithstanding any other provision of this License, nothing in this License shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Town of Addison, Texas, its officials, officers, employees, representatives, and agents, or the Manager, its owners, officers, employee, representatives, and agents, are or may be entitled, including, without limitation, any waiver of immunity to suit.

28.11 This License and the schedules, riders and exhibits attached, if any (all of which are hereby incorporated by reference herein and made a part hereof), together with the rules and regulations adopted and promulgated by Licensor pursuant to the provisions of this License, contain the entire agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties, and no rights are created in favor of either party other than as specified or expressly contemplated in this License, and this License supersedes and revokes all previous negotiations, arrangements, letters of intent, offers to lease or license, lease or license proposals, brochures, representations and information conveyed, whether oral or in

writing, between the parties or their respective representatives or any other person purporting to represent Licensor or Licensee. Licensee acknowledges that it has not been induced to enter into this License by any representations or warranties not set forth in this License, that Licensee has not relied upon any representations or warranties not contained in this License and that any rules of interpretation which would otherwise guide the interpretation of this License by virtue of the identity of the party drafting the terms and provisions of this License shall not apply (it being acknowledged and agreed that each party has been represented or had the opportunity to be represented by able counsel in connection with the negotiation and interpretation of this License and all terms and provisions hereof). No brochure, rendering, information, correspondence, representation, warranty or discussion shall be deemed to be a part of this License unless specifically set forth herein or specifically incorporated herein by reference. In addition, no agreement, discussion, course of dealing or course of performance between the parties shall be effective to change, modify or terminate this License or to release Licensee or any other obligated party with respect to liability for this License, either in whole or in part unless the same shall be in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

28.12 INTENTIONALLY DELETED.

28.13 This License consists of twenty-eight (28) Sections and Exhibits "A" through "F". In the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of this License, the provision set forth in the License shall be deemed to control.

28.14 If Licensee executes this License as a corporation or partnership, each of the persons executing this License on behalf of Licensee does hereby personally represent and warrant that Licensee is a duly authorized and existing corporation or partnership, that Licensee is qualified to do business in the state in which the Fuel Farm is located, that such corporation or partnership has full right and authority to enter into this License, and that each person signing this License on behalf of such corporation or partnership is authorized to do so. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. In the event any representation or warranty set forth in this Section 28.14 is materially false, all persons who execute this License on behalf of, or as the act and deed of Licensee, shall be individually liable as Licensee.

28.15 In addition to provisions of this Agreement expressly providing for the survival of provisions of this Agreement following the expiration or earlier termination of this Agreement, any other provision of this Agreement, including, without limitation, remedies for a breach or default under this Agreement or the payment of Compensation, that could be reasonably construed to be intended by the parties to survive such expiration or termination shall so survive. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

28.16 Licensor and Licensee hereby acknowledge and agree that they are knowledgeable and experienced in commercial transactions and further hereby acknowledge and agree that the provisions of this License for determining Consideration and other charges payable by Licensee are commercially reasonable and valid even though such methods may not state precise mathematical formulae for determining such charges. ACCORDINGLY, LICENSEE HEREBY VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS TO WHICH LICENSEE MAY BE ENTITLED UNDER SECTION 93.004 OF THE TEXAS PROPERTY CODE, AS ENACTED BY HOUSE BILL 2186, 77<sup>TH</sup> LEGISLATURE, AS SUCH SECTION NOW EXISTS OR AS SAME MAY BE HEREAFTER AMENDED OR SUCCEEDED, TO THE EXTENT SUCH SECTION IS APPLICABLE.

#### **NOTICE OF INDEMNIFICATION**

**THE PARTIES TO THIS LICENSE AGREEMENT HEREBY ACKNOWLEDGE AND AGREE THAT THIS LICENSE CONTAINS CERTAIN INDEMNIFICATION PROVISIONS FOR THE LICENSEE TO INDEMNIFY THE LICENSOR, MANAGER, AND OTHER INDEMNIFIED**

**PERSONS. IF A CLAIM IS MADE AGAINST LICENSOR, MANAGER, OR ANY OTHER INDEMNIFIED PERSON THAT IS INDEMNIFIED BY LICENSEE UNDER THIS AGREEMENT, LICENSEE SHALL DEFEND LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON AT LICENSEE'S SOLE COST AND EXPENSE WITH COUNSEL REASONABLY ACCEPTABLE TO LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON, OR, AT LICENSEE'S ELECTION, LICENSEE SHALL REIMBURSE LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON FOR ANY FEES OR COSTS LICENSOR, MANAGER, OR SUCH INDEMNIFIED PERSON INCURS IN DEFENDING ANY SUCH CLAIM. LICENSEE'S DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

**EXECUTED** effective as of \_\_\_\_\_, 2014. ("Effective Date")

**LICENSOR:**

**TOWN OF ADDISON, TEXAS**

By: \_\_\_\_\_  
Lea Dunn, City Manager

**ATTEST:**

By: \_\_\_\_\_,  
City Secretary

**LICENSEE:**

**SKY B&B, LLC**

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

Print Name: Timothy A. Mack

Title: Manager

Date of Signature: \_\_\_\_\_

Taxpayer Identification No. \_\_\_\_\_

**ATTEST:**

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

Print Name: \_\_\_\_\_

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF ADDISON AIRPORT FUEL FARM**

**DESCRIPTION:**

BEING 106,831 Square Feet or 2.4525 Acres, Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of a 0.6983 acres Addison Airport lease Tract; THENCE South 00° 52' 49" East and along said West line of Addison Road, a distance of 129.60 feet to a 5/8 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;

THENCE South 00° 52' 49" East and continuing along the said West line of Addison Road, a distance of 598.6 feet to a 5/8 inch iron rod set for corner;

THENCE South 89° 07' 11" West and departing said West line of Addison Road, a distance of 104.06 feet to a 5/8 inch iron rod set for corner;

THENCE North 14° 20' 57" West a distance of 390.27 feet to a PK Nail set for corner;

THENCE North 21° 29' 45" West a distance of 130.61 feet to a PK Nail set for corner;

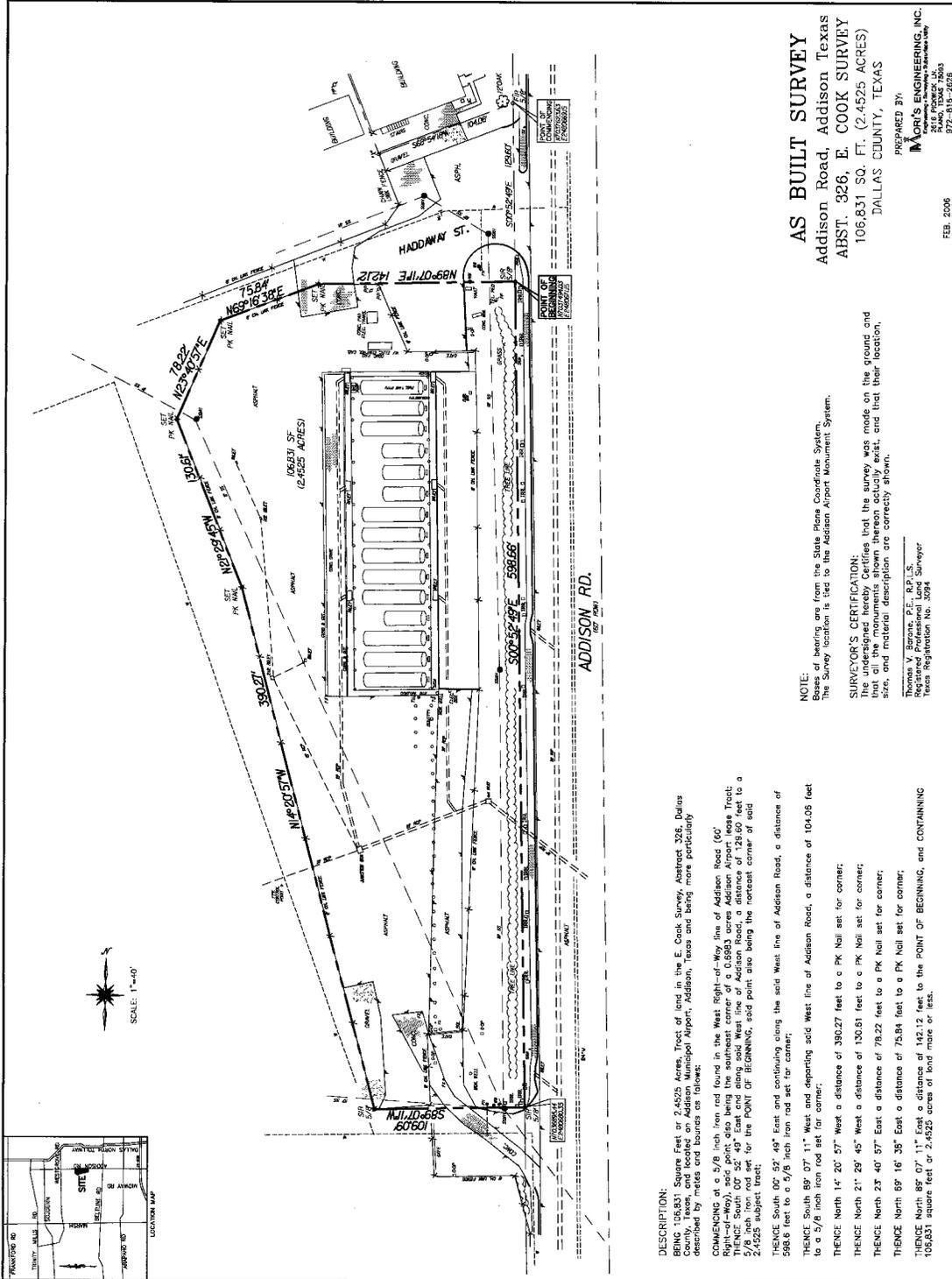
THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;

THENCE North 69° 16' 38" East a distance of 75.84 feet to a PK Nail set for corner;

THENCE North 89° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106,831 square feet or 2.4525 acres of land more or less.

EXHIBIT "B"

SURVEY OF ADDISON AIRPORT FUEL FARM



AS BUILT SURVEY

Addison Road, Addison Texas  
 ABST. 326, E. COOK SURVEY  
 106,831 SQ. FT. (2.4525 ACRES)  
 DALLAS COUNTY, TEXAS

PREPARED BY:  
**MORRIS ENGINEERING, INC.**  
 8111 PARKWAY, SUITE 100  
 FORT WORTH, TEXAS 76116  
 972-818-2628

FEB. 2006

NOTE:  
 All bearings are from the State Plane Coordinate System.  
 The Survey location is tied to the Addison Airport Monument System.

SURVEYOR'S CERTIFICATION:  
 The undersigned hereby certifies that the survey was made on the ground and that all the monuments shown thereon actually exist, and that their location, size, and material description are correctly shown.

Thomas V. Barrone, P.E., R.P.S.  
 Registered Professional Land Surveyor  
 Texas Registration No. 5894

DESCRIPTION:  
 BEING 106,831 Square Feet or 2.4525 Acres Tract of land in the E. Cook Survey, Abstract 326, Dallas County, Texas, and located on Addison Municipal Airport, Addison, Texas and being more particularly described by metes and bounds as follows:

- COMMENCING at a 5/8 inch iron rod found in the West Right-of-Way line of Addison Road (60' Right-of-Way), said point also being the southeast corner of a 0.6893 acre Addison Airport lease Tract;
- THENCE South 00° 52' 49" East and along said West line of Addison Road, a distance of 129.60 feet to a 1/2 inch iron rod set for the POINT OF BEGINNING, said point also being the northeast corner of said 2.4525 subject tract;
- THENCE South 00° 55' 48" East and continuing along the said West line of Addison Road, a distance of 598.6 feet to a 5/8 inch iron rod set for corner;
- THENCE South 89° 07' 11" West and departing said West line of Addison Road, a distance of 104.05 feet to a 5/8 inch iron rod set for corner;
- THENCE North 14° 20' 57" West a distance of 380.27 feet to a PK Nail set for corner;
- THENCE North 21° 29' 45" West a distance of 130.51 feet to a PK Nail set for corner;
- THENCE North 23° 40' 57" East a distance of 78.22 feet to a PK Nail set for corner;
- THENCE North 69° 16' 39" East a distance of 75.84 feet to a PK Nail set for corner;
- THENCE North 89° 07' 11" East a distance of 142.12 feet to the POINT OF BEGINNING, and CONTAINING 106,831 square feet or 2.4525 acres of land more or less.

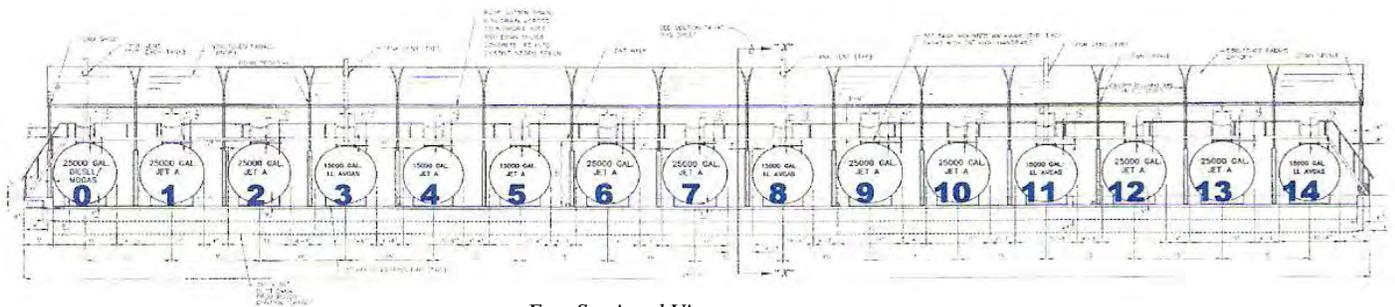
**EXHIBIT “C”**

**SITE PLAN AND TANK CAPACITY OF ADDISON AIRPORT FUEL FARM**

This Exhibit “C” is presented for the purpose of identifying the Fuel Tanks within the Fuel Farm, their capacity in gallons and percentage relative to the aggregate. This Exhibit “C” is subject to change at Licensor’s discretion except as otherwise expressly restricted in the Agreement.

Table 1: Tank Assignment as of the Effective Date of this License

License Holder	Tank ID#	Designated Fuel Type	Tank Gallon Capacity	Capacity as % of Total Gallons	TCEQ #
Mercury Air Center – Addison, Inc.	00 <sub>a</sub>	Motor Vehicle Gasoline	10,000	0.03175	
Mercury Air Center – Addison, Inc.	00 <sub>b</sub>	Diesel	15,000	0.04762	
Mercury Air Center – Addison, Inc.	01	Jet A	25,000	0.07937	
Mercury Air Center – Addison, Inc.	02	Jet A	25,000	0.07937	
Mercury Air Center – Addison, Inc.	03	100 LL	15,000	0.04762	
Non-Public	04	Jet A	15,000	0.04762	
Non-Public	05	Jet A	15,000	0.04762	
Future FBO	06	Jet A	25,000	0.07937	
Future FBO	07	Jet A	25,000	0.07937	
Future FBO	08	100 LL	15,000	0.04762	
Sky B&B, LLC	09	Jet A	25,000	0.07937	
Sky B&B, LLC	10	Jet A	25,000	0.07937	
Eagle, Land & Cattle, Inc.	11	100 LL	15,000	0.04762	
RR Investments, Inc.	12	Jet A	25,000	0.07937	
RR Investments, Inc.	13	Jet A	25,000	0.07937	
RR Investments, Inc.	14	100 LL	15,000	0.04762	
<b>Totals</b>			<b>315,000</b>	<b>1.0000</b>	



*East Sectional View*

## EXHIBIT "D"

### TERM EXTENSIONS

Licensee (but not any assignee, sublicensee or other transferee of Licensee, even if Licensor's consent thereto is obtained in accordance with the terms and conditions of Section 17 of this License) is granted the option(s) to extend the Term of this License for four (4) consecutive term(s) of sixty (60) months each (each, a "**Term Extension**"), provided (a) Licensee is not in default under the License or any other agreement with the Town of Addison at Addison Airport at the time of its exercise of the Term Extension, nor at the commencement date of the applicable Term Extension, and (b) Licensee gives written notice to Licensor of its exercise of the option to extend the Term between that period of time being sixty (60) months prior to the end of Term and six (6) months prior to the end of Term or Term Extension (the "**Option Period**"). Each Term Extension shall commence on the day immediately following the date of expiration of the immediately preceding original Term or Term Extension and shall be upon the same terms, conditions and Consideration as were in effect hereunder during such immediately preceding original Term or Term Extension, except (i) Licensee shall have no further right of renewal after the last Term Extension described above; and (ii) the monthly Base Fee during such each Term Extension will be as follows:

(a) The first Term Extension, from month Sixty-One (61) from the Commencement Date thru month One Hundred Twenty-One (121), shall be at the monthly adjusted Base Fee rate of \$.2928 per gallon/YR.; and

(b) The second Term Extension, from month One Hundred and Twenty-Two (122) from the Commencement Date thru month One Hundred and Eighty-Two (182), shall be at the monthly adjusted Base Fee rate of \$.3078 per gallon/YR.; and

(c) The third Term Extension, from month One Hundred Eighty-Three (183) from the Commencement Date thru month Two Hundred and Forty-Three (243), shall be at the monthly adjusted Base Fee rate of \$.3235 per gallon/YR.

(d) The fourth Term Extension, from month Two Hundred Forty-Four (244) from the Commencement Date thru month Three Hundred (304), shall be at the monthly adjusted Base Fee rate of \$.3400 per gallon/YR.

Licensee's rights under this Exhibit "D" shall terminate if the License or Licensee's right to use of the Fuel Tanks is terminated, or if Licensee fails to timely exercise Licensee's option to extend the Term of this License in accordance with the terms and conditions of this Exhibit "D" with TIME BEING OF THE ESSENCE WITH RESPECT TO LICENSEE'S EXERCISE THEREOF.

## EXHIBIT “E”

### STATEMENT OF LICENSOR’S INITIAL CONSTRUCTION RESPONSIBILITY

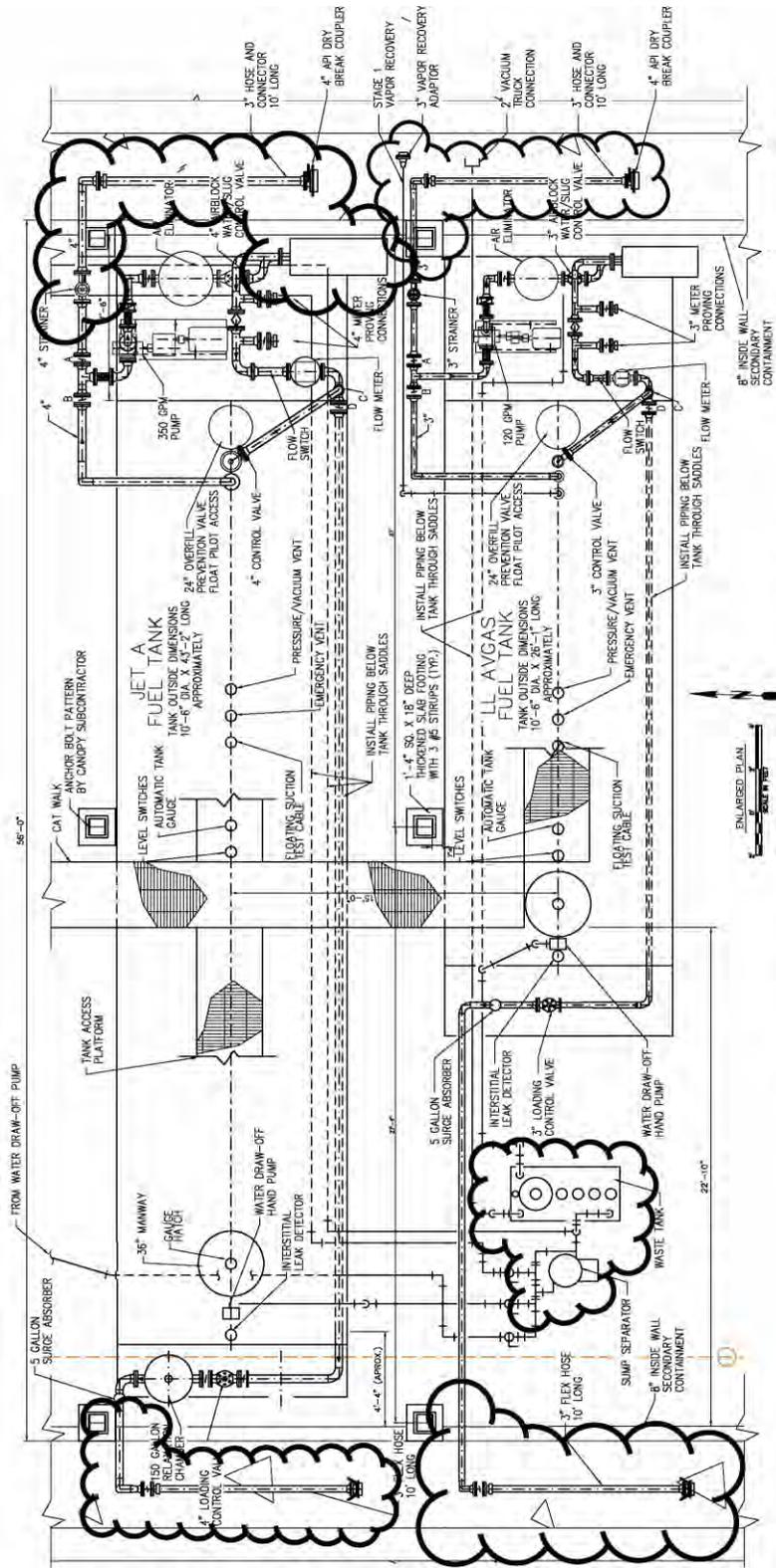
#### Description of Bulk Fuel and Dispensing System For Addison Airport

The proposed Bulk Fuel Storage and Dispensing System is to be centrally located with fifteen (15) individual bulk fuel storage tanks, with off-load and five (5) Fixed Base Operator (FBO) metered dispensing systems, in a consolidated, environmentally protected site, including tanks and operating equipment, with suitable architectural considerations to blend into the site. The horizontal mounted cylindrical tanks will have an approximate dimension of ten and one-half feet (10.5' W) diameter by forty-three feet (43' L) in length (25,000 gal), or alternatively, ten and one-half feet (10.5') diameter by twenty-six feet (26') in length (15,000 gal). Fuel storage tanks will be double wall, 2-hour fire rated, protected tanks. Primary products to be dispensed are Low Lead AVGAS and Jet A Fuel, with one two-compartment tank of 10,000 and 15,000 gallon, with dispensing equipment for LL MoGas and Diesel. The Jet A off-load systems will be capable of off-loading 8,000 gallons to an over-the-road fuel tanker truck within 20 minutes at approximately 350 gallons/minute and the dispensing systems into the Airport refueling vehicles will be rated at approximately 300 gallons/minute. Industry standard filtration systems with automatic shutdown and alarms will be installed on the off-load side of the storage tanks, to protect product in the fuel storage tanks. Overflow protection devices will be installed on all fuel storage tanks and connected to the pump control panel. Pump/dispensing control panel or panels, will be logically sequenced, gauged to fuel storage tanks for fuel level indication, and clearly marked for ease of operations. An oil/water separator will be installed and connected to the secondary containment dike area, using a valve connection and the off-load/dispensing pad to allow for immediate wash-down of any spilled product. The off-load/dispensing pad will be large enough to provide a designated parking spot for any aircraft-refueling vehicle that develops a leak. Fuel storage area will have explosion proof electrical fixtures and control panel. A fresh water line will be required for emergency eye wash unit and a 1” hose and reel unit installed for wash down. The hose must reach all areas of the facility, including the oil/water separator. An emergency telephone/intercom/transmitter device will be installed with direct link to the Main Fire Station alarm room located at 4798 Airport Parkway, Addison, Texas 75001-3364. Fuel storage tanks will be mounted in an 18” high concrete low wall secondary containment area, connected to the oil/water separator so that any major spill in the containment area can be washed down and pumped out through the oil/water separator. Design will include area lighting, site storm drainage and connection, any required utilities relocation, and site appearance considerations. Access from the outside (airport land side) will be controlled with electrically operated gates and/or a code or key access pad. Paved access will be required from the street and from the airfield areas. Street connection will include driveways, curb and gutter.

Source: Addison Airport Project Specification Book for Bulk Fuel Storage and Dispensing System, Section 01000A, Paragraph 9, Page 5

EXHIBIT "F"

LICENSEE'S GENERAL AREAS OF RESPONSIBILITY FOR MAINTENANCE AND REPAIR



LL AVGAS AND JET A FUEL TANK LAYOUT PLAN

This diagram is attached for the purpose of depicting Licensee's general area of responsibility for the maintenance and repair within the Fuel Farm and with respect to the Fuel Tanks and that no representation, warranty, or covenant is to be implied by its accuracy, deviation, from actual conditions or any other information shown including dimensions, locations, title, reference or classification. Should a arise between this Exhibit and the meaning of the License Agreement, the License Agreement shall prevail.

**EXHIBIT "G"**

**SCHEDULE OF REGISTERED AIRCRAFT  
ELIGIBLE TO BE FUELED PURSUANT TO THIS LICENSE**

	<b>Aircraft Type/Model Description</b>	<b>"N" Number</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		
<b>6</b>		
<b>7</b>		
<b>8</b>		
<b>9</b>		
<b>10</b>		
<b>11</b>		
<b>12</b>		
<b>13</b>		
<b>14</b>		
<b>15</b>		

**Registered By** \_\_\_\_\_ **Date** \_\_\_\_\_

**LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO, AND/OR ALLOWING THE FUELING OF, ANY AIRCRAFT NOT OWNED OR LEASED, AND CONTROLLED EXCLUSIVELY, BY LICENSEE. LICENSEE IS HEREBY EXPRESSLY PROHIBITED FROM DISPENSING AIRCRAFT FUEL TO ANY PERSON OR ENTITY THAT MAY BE A TENANT OR SUBTENANT OF LICENSEE OF PREMISES AT THE AIRPORT.**

**Combined Meeting**

**ES1**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Closed (Executive) session of the Addison City Council pursuant to Section 551.087, Texas Government Code, to discuss or deliberate regarding commercial or financial information that the City Council has received from a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or to deliberate the offer of a financial or other incentive to such business prospect or business prospects.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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**Combined Meeting**

**R13**

**Meeting Date:** 04/22/2014

**Council Goals:** N/A

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**AGENDA CAPTION:**

Discussion, consider, and take action regarding a business prospect or business prospects that the City Council seeks to have locate, stay, or expand in or near the territory of the Town of Addison and with which the City Council is conducting economic development negotiations, and/or regarding the offer of a financial or other incentive to such business prospect or business prospects.

**FINANCIAL IMPACT:**

N/A

**BACKGROUND:**

N/A

**RECOMMENDATION:**

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