



Airport Leasing Policy

ARTICLE I. Introduction

Section 1.01 The City of Midland recognizes the importance of Midland International and Midland Airpark Airport Systems to the City, the community, Texas Aviation System Plan (TASP) and the National Plan of Integrated Airport Systems (NPIAS). Consequently, the City has adopted policies for the leasing and use of airport land that are designed to:

- (a) Encourage and ensure provision of stable, essential, and safe aviation services needed in the community;
- (b) Foster the stable growth of aviation;
- (c) Provide a fair market return to the Airport;
- (d) Comply with FAA and State/Obligations, policies and regulations.

ARTICLE II. Effective Date, Revisions and Renewals

Section 2.01 This policy is effective by Resolution 2005-138 of the City Council dated May 10, 2005. Prior to the first anniversary of the effective date, this policy will be reviewed by the Director of Airports and recommendations for revision (if any) will be made to the Airport Advisory Board. Thereafter, review and revision of this policy will occur every two years.

Section 2.02 The Director of Airports shall review those policies, requirements, standard forms, fees, charges, rules and regulations in effect within the Midland Airport System, and recommend those changes identified as desirable in that review to the Airport Advisory Board.

Section 2.03 The Airport Advisory Board shall review those changes recommended by the Director of Airports and recommend approval or disapproval.

ARTICLE III. Definitions

Section 3.01 **Airport** means Midland International Airport and/or Midland Airpark Airport.

Section 3.02 **City** means the City of Midland a Texas home-rule municipality.

Section 3.03 **Commercial Aeronautical Service** means a service for hire which involves, makes possible, or is required for the operation of aircraft, or which contributes to, or is required for the safe conduct and utility of such aircraft operations, and includes those services provided by either a Fixed Base Operator (FBO) or a Specialized Aviation Service Operator (SASO).

Section 3.04 **Non-Commercial Hangar and Aviation Fuel Dispensing Facilities:** A Non-Commercial applicant which desires to operate from a hangar or facility located on the airport and wishes to dispense aviation fuels and oil and provide other related services for its own aircraft, such as tie-down, maintenance and parking.

Section 3.05 **Director** means the Director of Airports for City of Midland Department of Airports, or authorized designee.

Section 3.06 **FAA** means the Federal Aviation Administration of the United States Department of Transportation (USDOT).

Section 3.07 **TSA** means the Transportation Security Administration of the United States Department of Homeland Security.

Section 3.08 **Fixed Base Operator or FBO** means a person maintaining facilities at the Airport for the purpose of: (1) engaging in the retail sale of aviation fuels to General Aviation, Military, Charter and Freight Aircraft; (2) providing into plane fueling for airlines and freight aircraft (3) performing other aircraft line services; and (4) providing aircraft airframe and engine repair and maintenance services.

Section 3.09 **Specialized Aviation Service Operator or SASO** is a Person maintaining facilities at the Airport for the purpose of providing one or more of the following services: (1) specialized aircraft repair services (radios, painting, upholstery, propellers, instruments, accessories, etc.); (2) aircraft airframe and powerplant maintenance and repair; (3) flight training; (4) aircraft sales; (5) aircraft rental; and/or (6) aircraft charter and air taxi service. Aircraft fueling may not be performed as a Specialized Aviation Service; only those Operators that provide each of the Minimum Services.

Section 3.10 **Improvements** includes, without limitation, means any buildings, hangars, paved areas such as parking lots, ramp, or apron, or other improvements constructed or installed by an Operator on its Premises.

Section 3.11 **Operator** means either a Fixed Base Operator, or a Specialized Aviation Service Operator, or both, as the context indicates.

Section 3.12 **Person** means a natural person, corporation, partnership, trust, association, political subdivision, agency of the State, or other legal entity, but does not include the City.

Section 3.13 **Premises** means a defined area on the Airport which the City has either leased to an Operator, or has granted an Operator the preferential right to use, by lease or other written agreement.

Section 3.14 **Museum** means a not for profit or charitable person, firm or corporation, as herein defined, whose purpose is to exhibit and display airworthy and non-airworthy aircraft and aviation artifacts for interpretation by the general public.

Section 3.15 **Aeronautical Activity** - Shall mean any activity which involves, makes possible, or is required for the operation of aircraft or which contributes to, or is required for, the safety of such operations and shall include, but not by way of limitation, all activities commonly conducted at airports, such as charter operations, pilot training, aircraft rental, sightseeing, aerial photography, crop dusting, aerial advertising, surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products (whether or not conducted in conjunction with other included activities), repair and maintenance of aircraft, sale of aircraft parts, sale and maintenance of aircraft accessories, radio, communication and navigation equipment, flying clubs, commercial skydiving, ultra light aircraft operations and any other activity which, because of its direct relationship to the operation of aircraft, can appropriately be regarded as an "aeronautical activity."

Section 3.16 **Midland Airport System (MAS)** - Shall mean Midland International Airport and/or Midland Airpark Airport, operated by the City of Midland, Texas.

Section 3.17 Airport Commercial Lease - Shall mean the written agreement with a commercial operator for a nonexclusive right to conduct a specified commercial activity within the Midland Airport System (MAS).

Section 3.18 Airport Tenant - Shall mean any person, firm, or corporation leasing property or facilities within the Midland Airport System under a valid lease agreement.

Section 3.19 Agreement - Shall mean the Lease and Operating Agreement.

Section 3.20 Building - Shall mean any existing or planned facility, hangar, or T-hangar of wood, concrete, concrete block, or substantial metal construction on a concrete foundation to be located on airport property and approved by the Director of Airports and the City.

Section 3.21 Commercial activity - Shall mean any activity by any person, the purpose of which is to secure earnings, income, compensation, or profit, whether such objective or objectives are accomplished or not.

Section 3.22 Commercial aircraft - Shall mean any aircraft used in the conduct of any commercial activity.

Section 3.23 Commercial operator - Shall mean a person who conducts any commercial activity which, uses, however briefly, Midland Airport System.

Section 3.24 Exclusive Right - A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right.

Section 3.25 Lessee – Shall mean any person, firm, general or limited partnership, corporation, trust or association, or any other legal entity, leasing facilities and/or services from the City under a valid lease agreement, as specifically defined in each individual lease agreement.

Section 3.26 Lessor - Shall mean the City of Midland or as otherwise specifically defined by each individual lease agreement.

Section 3.27 Master Plan - Shall mean current master plan report and the scaled dimensional layout of the entire airport, indicating current and proposed usage for each identifiable segment as approved by the City, the State, and the Federal Aviation Administration.

Section 3.28 Minimum Standards - The qualifications or criteria which may be established by an airport owner as *minimum* requirements that must be met as a condition for the right to conduct a *commercial aeronautical activity* on the airport.

Section 3.29 Transient Commercial Aircraft Operator - Shall mean a person or corporation that provides on demand flying services, is based at another airport, and only prepositions aircraft, or conducts operations with pre-positioned aircraft, within the Midland Airport System.

ARTICLE IV. Authority of the City

Section 4.01 The Director of Airports shall at all times have the authority to take those necessary decisions and/or actions required to ensure compliance with the provisions of the following:

Existing leases, licenses, permits, and other written agreements between the City and persons within the Midland Airport System.

This policy, and those other policies, rules or regulations established by the authority of the City Council, which apply within the Midland Airport System.

Those temporary restrictions established in accordance with a federal, state, or city- mandated activity or plan, or as may be required to safeguard people, aircraft, equipment or property within the Midland Airport System.

Those responsibilities levied on the City by the federal or state governments with regards to Airport Management.

Section 4.02 The City Council may establish by resolution those fees and charges, and those terms and conditions it deems appropriate and applicable to Airport use.

Section 4.03 Any person wishing the exclusive use of any parcel of land on the Airport, or of any city-owned or operated facility must enter into a written lease agreement with the City specifying the terms and conditions of such use.

Section 4.04 By establishing this policy, along with standard lease terms and conditions, the Midland City Council has chosen to delegate by resolution the authority to execute and terminate standardized leasing agreements to the City Manager. City Council authorizes the City Manager to execute future Airport leases with terms no more than five (5) years; and annual rent less than \$10,000.0 that meet all requirements set forth in the Airport Leasing Policy and Airport Minimum Standards.

Section 4.05 The Director of Airports may authorize an interim or emergency agreement to occupy or use city-owned improvements and infrastructure by appropriate public agencies. Examples of situations that may be suitable for such authorizations are military or law enforcement activities and the temporary occupation of airport areas by government agencies during natural disasters, or aircraft accident investigations.

Section 4.06 All users of the Airport shall submit to the Director of Airports any report or reports or information regarding their operations within the Midland Airport System when and as required by the City Council.

ARTICLE V. General

Section 5.01 An Airport Lease Policy is needed within the Midland Airport System to provide a consistent and fair methodology for establishing airport leases. The City of Midland desires that within the Midland Airport System the Lease Policy reflect the following:

- (a) **Provision of Essential Aviation Services** - Essential aviation services are needed within the Midland Airport System to provide for the aviation needs of the local community Texas Aviation System Plan (TASP) and the National Plan of Integrated Airport Systems (NPIAS). The lease policy will encourage and require the provision of consistent, fair, efficient, and safe essential aviation services.
- (b) **Aviation Growth** - The Airport Lease Policy will recognize that aviation use of airport land is primary and will foster the stable growth of aviation within the Midland Airport System. Non-aviation uses of airport land will be permitted only on portions of airport land not needed for aviation purposes, as set forth in the Airport Master Plan. Non-aviation uses of airport land will be in accordance with FAA policy and airport rates and charges. Areas reserved for long-term aviation needs may be used for non-aviation purposes on a temporary basis if such short-term use does not conflict with the existing operation of the Airport or long-term expansion plans and only if such use is approved in writing by the FAA.
- (c) **Lease Revenues** - All revenues from aviation and non-aviation leases will remain in the airport fund and will be expended only for development, management, maintenance, operating, and/or other expenses directly related to the Midland Airport System.
- (d) **Minimum Operating Standards/ Rules & Regulations** - Any person, partnership, firm or corporation desiring to establish or renew a lease to engage in any commercial or aeronautical activity within the Midland Airport System must do so in accordance with current airport minimum operating standards and rules and regulations as may be amended by the City.
- (e) **Uniform Application of Policies, Standards, and Regulations** – The City of Midland desires to make the opportunity to engage in commercial aeronautical activities available to any qualified person, firm or corporation that meets reasonable minimum standards. The City desires to require compliance with all standards and regulations on a uniform and objective basis, without unjust discrimination. The City will allow the safe and efficient use of the airport by all types, kinds, and classes of aeronautical activity; however, the City may restrict or prohibit any type, kind or class of activity that compromises the safety or efficiency of the airport.

Section 5.02 All new and renewed lease agreements will require adherence to City Policy. City policy will promote and require fairness and consistency, uniform application of this policy, and prohibit economic discrimination relative to aviation leases.

ARTICLE VI. Federal & State Policy

Section 6.01 Federal

- (a) In accepting Federal grants for the development of Midland Airport System, the City of Midland has agreed to assume numerous obligations pertaining to the operation, use and maintenance of the airport. Most of these obligations are embodied in Federal Grant Applications for federal assistance as sponsor assurances and legally bind the City to compliance with their provisions.
- (b) The City of Midland desires to maintain full compliance with all Federal obligations, policies, and regulations. Many of these obligations relate directly to the leasing of

airport land and are contained within FAA Order 5190.6A, Airport Compliance Handbook, and the FAA publication "Terms and Conditions of Accepting Airport Improvement Program Grants".

- (c) The prime obligation of the City of Midland is to operate the Midland Airports System for the use and benefit of the public. Associated with this obligation is the obligation to make available suitable areas or space on reasonable terms to those who are willing and otherwise qualified to offer aeronautical services to the public or support services to aircraft operators. Accordingly, unless the City provides these services, it shall negotiate in good faith for the lease of such premises as may be available for the conduct of aeronautical activities.

Section 6.02 State

- (a) The City of Midland accepts grants in aid from the State of Texas and is therefore bound by the policies and Aviation Program Assurances of the Department's Joint Participation Agreement. It is there for the policy of the City of Midland to comply with state aviation policy and Grant Assurances.
- (b) The City of Midland will make every effort to achieve financial self-sufficiency within the Midland Airport System. The City will maintain a fee and rental structure commensurate with that goal considering local market conditions, the volume of traffic, economy of collection, and competing airports.
- (c) Rates, charges, and fees derived from lease of facilities constructed with State funds will be at fair market value or higher.
- (d) All revenue generated by the airport will be expended for capital or operating costs of the Airport; the local airport system; or other local facilities which are owned or operated by the City and are directly and substantially related to the actual air transportation of passengers or property, or for environmental or noise mitigation purposes on or off the airport.
- (e) The Midland Airport System and all facilities which are necessary to serve the aeronautical users of the Airport, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable federal and state agencies for maintenance and operation. The City will not permit any activity or action which would interfere with the operation of Midland Airport System for airport purposes.
- (f) The City of Midland will not grant or allow easement or access that opens onto or crosses the airport runways, taxiways, flight line, passengers facilities, or any area used for emergency equipment, fuel supplies, passengers, mail and freight, radar, communications, utilities and landing systems, including but not limited to flight operations, ground services, emergency services, terminal facilities, maintenance, repair or storage.

Accordingly, it is hereby the policy of the City of Midland to:

- (i) operate its airports for the use and benefit of the public, and to make them available for all types, kinds, and classes of aeronautical activity.

- (ii) make the opportunity to engage in commercial aeronautical activities available to any person, firm, or corporation that meets reasonable minimum standards established by the City.
- (iii) limit or prohibit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public.
- (iv) impose terms and conditions on those offering services and commodities to the public which are related to aeronautical activity only on a fair and reasonable basis and without unjust discrimination.
- (v) impose only the same rates, fees, rental and other charges as are uniformly applicable to all other aviation tenants and FBO's making the same or similar uses of such airport utilizing the same or similar facilities.
- (vi) all leases with a term exceeding one year shall provide for periodic review of rates and charges for the purpose of any adjustments to reflect the then current values, based on an acceptable index.
- (vii) make facilities available to the public on fair and reasonable terms and without unjust discrimination.
- (viii) endeavor to make the airports as self sustaining as possible.
- (ix) implement revisions to adopted minimum standards only when the purpose of such revisions is to improve the quality of services to the public and/or promote fairness among tenants.

ARTICLE VII. Commercial Activities

Section 7.01 All commercial operators, other than transient commercial aircraft operators, shall enter into an airport commercial lease or commercial operating agreement, at those terms and conditions established by resolution of the City Council, before beginning the conduct of any commercial activity, basing an aircraft on the Airport, or occupying any property upon the Airport.

Section 7.02 All legal commercial aeronautical activities shall be authorized, in accordance with the various assurances made by the City to federal and state government agencies.

Section 7.03 Any person engaged in furnishing services to the public shall furnish those services on a fair, equal and not unjustly discriminatory basis to all users, and shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service, but may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

Section 7.04 Persons not in possession of an airport commercial lease or operating agreement, other than transient aircraft operators, or those otherwise permitted by this chapter, are prohibited from offering any commercial service to the public upon or within the boundaries of the Airport. The holder of an airport commercial lease or operating agreement will be authorized to conduct only those legal commercial activities approved in the lease. Extensions to existing airport commercial leases will not establish new activities in which the commercial lessee may engage.

Section 7.05 Exempted Commercial Activities

- (a) Certain commercial operators offer services to the public within the Midland Airport System in common with the rest of the community, and do not require the Airport as an airport for the conduct of their business. These activities are currently exempted from the requirement to obtain an Airport Commercial Lease or operating agreement, and are only requested to obtain those permits and licenses required by law.
- (b) These exempted activities currently include:
 - (i) Mail and package pick up and delivery at fixed airport addresses (this does not exempt mail and package pickup and/or delivery to or from an aircraft).
 - (ii) Public utilities and services contracted by the City.
 - (iii) Landscaping and janitorial services.
 - (iv) Tow Trucks
 - (v) Small businesses engaged in commercial activities, located in approved airport office suites, subleasing or renting from airport tenants authorized to sublet such space.
 - (vi) Licensed general contractors, plumbers, electricians, and similar construction trade persons.

ARTICLE VIII. Non-Commercial Activity

Section 8.01 Individuals or corporation desiring to “home base” an aircraft within the Midland Airport System for non-commercial purposes shall execute a lease agreement, appropriate to the type of storage facility utilized, with the City or appropriate Fixed Base Operator and pay all fees, rates, and charges as established by City Policy, and be bound to all airport rules, regulations, and policies.

Section 8.02 Non-profit clubs and organizations shall enter into a written agreement with the City prior to basing offices, facilities, personnel, or aircraft within the Midland Airport System. Such agreement shall include those terms and conditions under which the club or organization may operate. Only clubs or organizations possessing a 501(c) (3) tax exemption from the Internal Revenue Service, or which are registered as a Texas non-profit corporation, may be based within the Midland Airport System. Non-profit clubs (excluding Museums) shall not offer any goods or services whatsoever to any person other than another member of the same club. See Exhibit “C” for Non-Commercial Vendor Policy for non-commercial vendors operating inside Airport Terminal Building.

ARTICLE IX. Airport Lease Categories

Section 9.01 Leases, and rates and charges within the Midland Airport System will be established in accordance with aviation and non-aviation categories. (See Exhibit "A" for General Lease Requirements established by lease categories.)

- (a) **Aviation** - The aviation category will include full service Fixed Base Operators (FBO's), specialty FBO's, non-FBO's (e.g., corporate hangars), and any other commercial or non-commercial aeronautical aviation activity.
- (b) **Non-aviation** - The non-aviation category will include all non-aeronautical uses of the airport land such as restaurants, motels, and commercial/industrial parks, corporate and recreational facilities

ARTICLE X. Airport Rates, Charges and Fees

Section 10.01 The City Council may establish by resolution those fees and charges, and those terms and conditions it deems appropriate and applicable to airport commercial leases. Failure to pay City Council approved fees and charges in the time and manner established by the City Council, shall be considered a violation of City Policy. Daily use fees may be suspended by the Director of Airports for special events.

Section 10.02 In establishing base rental and other fees within the Midland Airport System, the City's primary objective is to ensure the provision of, at least, essential aviation services to the community and, at least, offset the cost of maintaining, operating, and developing the Airport. The secondary objective is to obtain fair market revenues from non-aviation uses of airport land, and to achieve financial self-sufficiency for the Airport through these revenues.

Section 10.03 MINIMUM LEASE REQUIREMENTS

- (a) The City of Midland has established minimum leasing requirements, many which are site specific and others that are set minimums.
 - (i) Minimum Rental shall be based on current market rates. If current rates are not established for a particular site of operation rates will be figured as follows;
 - 1) **Aviation** – Unless otherwise approved by the City Council the minimum annual base rental will be 7 percent of the appraised value of the leased land and improvements. Rates will be reviewed annually and adjusted in accordance with the Consumer Price Index (CPI-U).
 - 2) **Non-aviation** - Current marketable rates shall be charged, but these rates will not be lower than a minimum annual base rental of 10 percent of the appraised value of the leased land and improvements. Every effort will be made to obtain a maximum fair return. Annual adjustments will be made in accordance with the CPI-U. Appraised value will be based on fair market value and the property will be re-appraised every fifth year.

- 3) **Other Fees** - In addition to the minimum based rental, other fees for new or renewed aviation and non-aviation leases may be negotiated by the Director of Airports. These fees may include, but are not limited to, percent of gross revenues, and others appropriate to the type of business. These fees are subject to approval of the City, and shall be imposed with fairness and consistency, and without unjust discrimination.

ARTICLE XI. Additional Lease Requirements

Section 11.01 Any individual, partnership, firm or Corporation desiring to initiate or renew a commercial activity within the Midland Airport System must prove financially and technically able. Prior to City Council review of any application or renewal, the tenant, or proposed tenant, shall furnish a statement of financial condition, certified by an officer of the firm as to its correctness.

Section 11.02 During the term of the lease the City retains the right to request and receive an annual report containing a statement of financial condition and business transacted prepared by a Certified Public Accountant which shall be subject to an audit by the City Auditor or designated representative of the Director of Airports. If an audit discloses a difference of more than 5 percent, then the cost of the audit shall be borne by the tenant. If the difference is in excess of 5 percent, the Lessor shall have the option to terminate the lease within the next 30 days, unless the Lessor elects to wave the option. The tenant, at all times during the term of the lease, shall keep accurate books, accounts, records and receipts, in a manner acceptable to a Certified Public Accountant, showing the true status of all business conducted on the leased premises. The tenant shall present said books and records to the City Auditor or designated representative of the Director of Airports within 10 days subsequent to written notice by the City.

Section 11.03 Any individual, partnership, firm, or corporation desiring to construct an aircraft hangar on airport property may do so on a site approved by the City, not in conflict with existing uses, and in conformity with the Airport Master Plan. (See Exhibit "B") The hangar building so constructed, the ramp area, and any additional taxiways constructed shall be the property of the City free and clear of all encumbrances subject only to a lease to the person constructing the building for 20 years or a mutually determined period. The facility must have a life expectancy of at least 40 years. All construction plans must be approved by the Director of Airports, Building Inspector, and the City. All hangars shall be constructed of substantial metal construction on concrete foundations. The lease will contain requirements that the tenant maintain the building to stringent standards so that at the end of the lease period, the building will be in a high-class condition, reasonable wear and tear is expected. The tenant shall be limited to uses of these buildings for only those purposes specifically defined by the lease, and shall not be authorized to engage in any additional activities which may conflict with airport minimum operating standards. Lessee shall be responsible for all interior and exterior maintenance and repairs.

Section 11.04 Any individual, partnership, firm, or corporation desiring to construct any building must also comply with the requirements of Section 11.03. However, any such construction must be fully evaluated by Director of Airports, must be in the best interest of the Airport, and must be approved by the City.

The tenant shall be required to obtain and maintain insurance on the building and other assets in sufficient amounts to allow reconstruction at then current costs, and to hold the City harmless from any claim. All tenant insurance coverage will be approved annually by the Director of Airports. The

Director of Airports shall consult the City's insurance carrier with regard to recommended policy limits prior to entering into a lease or annual insurance renewal.

Section 11.05 Any individual, partnership, firm or corporation desiring to lease land and improvements within the Midland Airport System may be required to pay for an appraisal of the land and improvements to be made by an M.A.I. appraiser if the current appraisal is greater than 5 years old. The City reserves the right to approve the appraiser and to conduct independent appraisals dependant upon existing leases or other factors.

Section 11.06 No additional business activity, not specifically authorized by the lease, shall be conducted without the prior written approval of the City.

ARTICLE XII Leasing of Facilities

Section 12.01 Leasing of Facilities within the Midland Airport System

- (a) Any individual, firm, or corporation desiring to lease airport facilities shall be required to submit a written application (Exhibit "D") containing the items specified herein. The City shall review, evaluate, and act upon the application within a period of 90 days from receipt of the completed application following the procedures contained in this section.
- (b) Lease Proposal Requirements
 - (i) The City will not accept, or take action on, a request to lease building space or land area, or a request for assignment of an existing lease, or in any way permit the installation of a commercial activity until after the proposed Lessee, in writing, submits a proposal, which clearly sets forth the scope and type of operations being proposed, including the following:
 - 1) A description of the proposed commercial activity and detailed business plan.
 - 2) The names of all parties owning an interest in the business and those that will be directly responsible for the day-to-day management of the business.
 - 3) The amount of land the Lessee desires to lease.
 - 4) The facilities to be constructed or leased.
 - 5) The services to be offered, hours of proposed operation, number of persons to be employed, and the number of aircraft to be based at the airport.
 - 6) Certificate of Insurance or other satisfactory evidence indicating the capability to obtain coverage as required.
 - 7) Evidence of financial capability (including a current financial statement) to perform and provide the services and facilities proposed.
 - 8) Historical evidence of satisfactory performance of previous similar commercial activity at other locations, including dates and location. Record

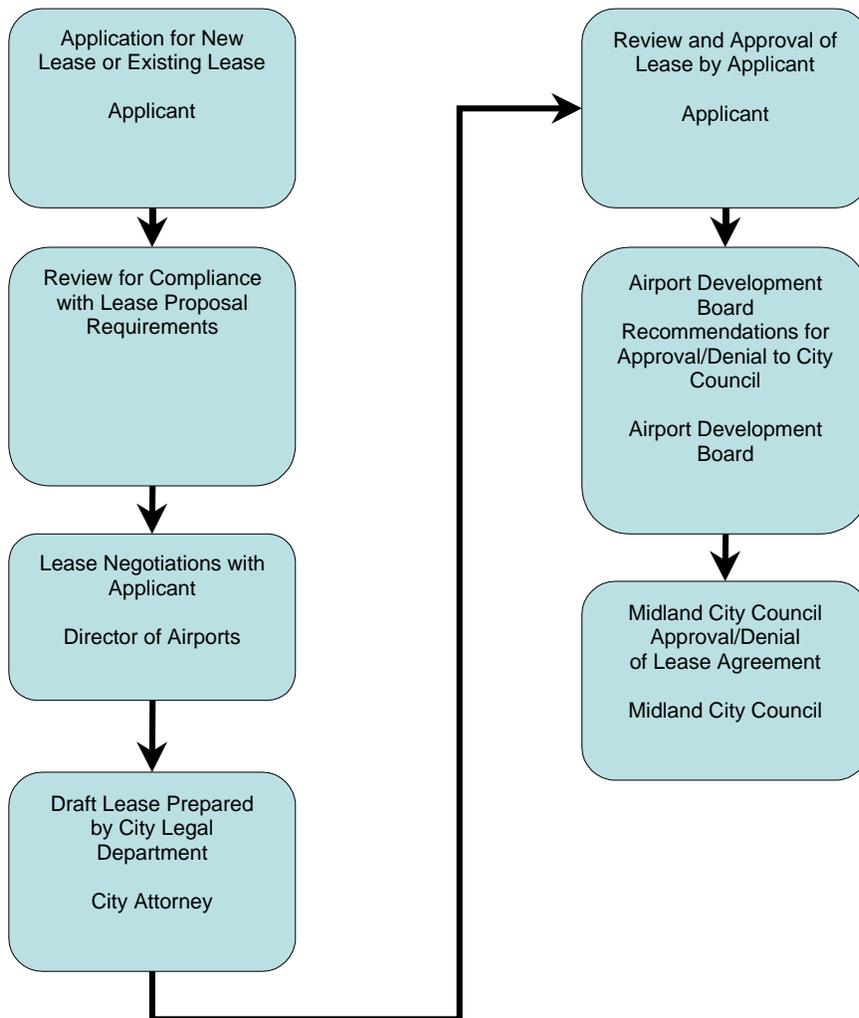
of any insolvency or bankruptcy proceeding in any past business relationships.

9) Aeronautical qualifications including years experience in proposed operation, past experience in other related activities, and four references.

10) Other information the City may require and specifically request.

Section 12.02 Lease Application/Proposal Process

- (a) Up to 90 days from receipt of application.
- (b) The City shall review, evaluate and act upon the application within a period of 90 days from the receipt of the completed application following the procedures specified in the City Lease Policy.



(c) City Application Review and Action

- (i) Following receipt of an application for lease of airport facilities, or assignment of an existing airport lease, the Airport shall evaluate the application(s) on the basis of the items specified in "Lease Proposal Requirements" and develop a ranking of the top three applicants if more than one applicant exists. A background investigation may be performed for the top three applicants relative to criminal history, immigration status, credit worthiness and past business performance. All fees for the background investigation shall be the responsibility of the applicant(s). The Airport Lease Committee shall forward the results of the background investigation and ranking of submitted applicants to the Airport Advisory Board, which shall make a recommendation for approval or denial to the City Council.
- (ii) All applications will be reviewed and acted upon by the City within 90 days from the receipt of the application. Applications may be denied for one or more of the following reasons:
 - 1) The applicant does not meet qualifications, standards and requirements established by Minimum Standards.
 - 2) The applicant's proposed operations or construction will create a safety or security hazard.
 - 3) The granting of the application will require unauthorized expenditure of local funds, labor or materials on the facilities described in, or related to, the application, or the operation will not provide the minimum rate of return specified in the City Lease Policy.
 - 4) There is no appropriate or adequate available space or building on the Airport to accommodate the entire activity of the applicant.
 - 5) The proposed operation, airport development or construction does not comply with the approved Airport Layout Plan.
 - 6) The development or use of the area requested will result in a congestion of aircraft or buildings, or will result in excessive interference with the operations of any existing tenant on the Airport, such as preventing free access and egress, or will result in depriving, without the proper economic study, an existing tenant of portions of its leased area in which it is operating.
 - 7) A party applying, or having an interest in the business, has supplied false information, or has misrepresented a material fact in the application or in supporting documents, or has failed to make full disclosure on the application.
 - 8) A party applying, or having an interest in the business, has a record of violating the Rules, or the Rules and Regulations of any other Airport, Civil Air Regulations, Federal Aviation Regulations, or any other rules and/or regulations applicable to this or any other Airport.

- 9) A party applying, or having an interest in the business, has defaulted in the performance of any lease or other agreement with the City or any lease or other agreement at any other airport.
- 10) A party applying, or having an interest in the business, is not sufficiently credit worthy and responsible in the judgment of the City to provide and maintain the business to which the application relates, and to promptly pay amounts due under the lease.
- 11) The applicant does not have the finances necessary to conduct the proposed operation for a minimum period of six months.
- 12) The applicant has committed a crime, or violated a local ordinance, rule, or regulation, which adversely reflects on its ability to conduct the operation applied for.
- 13) Any other reason that would result in an activity deemed not consistent with City Policy, or not be in the best interest of the City of Midland or National and/or Texas Aviation System.

ARTICLE XIII. Designated Areas

Section 13.01 The City of Midland has established through the Airport Master Plan certain areas approved for particular types of commercial and non-commercial activities within the airport system. A Land Use Drawing (Exhibit "B") depicts existing and recommended use of all land within the ultimate airport property and in the vicinity of the Midland International Airport. The purpose of the Land Use Drawing is to indicate the current and proposed uses and activities for each segment of the Midland International Airport property. All proposed activities must be located in designated areas with respect to the Land Use Drawing.

ARTICLE XIV. Requirements Applicable to all Leases

Section 14.01 The following standards apply to all leases with the City within the boundaries of the Midland International Airport and Midland Airpark Airport, unless otherwise explicitly provided. Additional standards specific to Commercial and Aeronautical Service Providers can be found in Sections VI and VII of the Airport Minimum Standards.

- (a) The Lease or Permit shall contain, or adopt by reference, all provisions required by the applicable law, including, without limitation, regulations promulgated by the FAA and TSA, and assurances or agreements entered into by the City as a condition of any Federal Grant to the City for the Airport. The Lease or Permit shall be subordinate to any existing or future Federal grant assurances.
- (b) The Lease or Permit shall provide that, at or before execution, the Operator shall deliver to the Director of Airports a security deposit in an amount not less than two months' fees and charges owed to the City under such agreement. The security deposit shall be in the form of cash or an irrevocable letter of credit drawn on a City-approved bank, and shall be held by City as security for the operator's performance of its obligations under the Lease or Permit, including, but not limited to, payment of fees and charges or other amounts due the City under the Lease or Permit. The

City shall not consider the security deposit an advance payment of such fees and charges, or a measure of damages in the event of default. If the City uses the security deposit, in whole or in part, the Operator shall promptly restore the security deposit to its original amount upon request of City. Provided that the Operator is not in default, the security deposit, or any unused balance thereof, shall be returned to Operator within thirty (30) days following termination of the Lease or Permit.

Section 14.02 Site Development Standards

- (a) Lessee may be located only in those areas of the Airport specified for such use in the Airport Layout Plan (ALP) and the Airport Master Plan. The City of Midland has established through the Airport Master Plan certain areas approved for particular types of commercial and non-commercial activities within the airport system. The Land Use Drawing (Exhibit "B") depicts existing and recommended use of all land within the ultimate airport property and in the vicinity of the Midland International Airport. The purpose of the Land Use Drawing is to indicate the current and proposed uses and activities for each segment of the Midland International Airport property. All proposed activities must be located in designated areas with respect to the Land Use Drawing.
- (b) The minimum space requirements as provided by the Minimum Standards shall be satisfied for all Commercial Aeronautical Service Providers. The City will consider reduction in minimum space requirements for combined operations in a common location (e.g., an SASO that wishes to operate a flight training school and aircraft rental facility need have only one office, one set of restrooms, one customer lounge, etc). An applicant who proposes combined operations in a common location shall provide a building layout or similar plan that demonstrates functional compliance with the applicable Minimum Standards.
- (c) All construction of improvements and infrastructure must conform to the ABIA Design and Development Guide and conform to and comply with the approved plans and specifications submitted by the Operator and approved by the City and the Director, the applicable statutes, ordinances, building codes, rules and regulations of City and the FAA and such other authorities as may have jurisdiction over the Airport, the Premises or Operator's operations herein. The height of any structure on the Premises must be within the limits of the FAA regulations governing objects affecting airspace, as set forth in 14 C.F.R., Part 77 and the City's Airport Height Hazard and Compatible Use Zoning Ordinances. Any structure that violates these requirements shall be subject to removal or remediation at the Operator's expense. The Director will have the right to review all plans and specifications for any improvements to be constructed on the premises to determine compliance with such regulations. The approval by the Director of Airports shall not constitute a representation or warranty as to such conformity or compliance, but responsibility therefore shall at all times remain with the Operator.
- (d) Lessee shall not construct, install, remove, or modify any improvements on the premises without the prior written approval of the Director, or his designated representative, of Operator's plans and specifications for the proposed project. All plans shall be complete and submitted in accordance with the ABIA Design and Development Guide, and the applicable provisions of the Lease or Permit.

- (e) Lessee shall provide or cause to be provided to the City prior to the commencement of any construction of any improvements, a valid performance bond and payment bond, each in the amount of the maximum estimated hard construction costs, for the successful construction of its improvements. Said bonds shall be maintained and kept in force and effect until work items called for in the Lessee's agreement with the City are complete. The bonds shall be conditioned to ensure performance and payment by the Lessee and its construction contractor of all improvements required and proposed by the Lessee, and to stand as security for the successful completion of the built improvements on the Premises and for payment of any valid claim by the City against the Lessee or its Contractor associated with the construction of the improvements. The bonds shall be in a form acceptable to the City and shall be issued by a surety that complies with the requirements of the Texas Insurance Code, as amended. If Lessee engages any contractors and/or subcontractors must carry appropriate builders risk and commercial general liability policies as is required at that time by the City Safety/Risk Coordinator for construction projects on City property.
- (f) Landscaping of facilities is required. Each FBO or SASO will be required to provide a plan for landscaping its area to be approved by the City and maintained by the FBO or SASO in a neat, clean and aesthetically pleasing manner, all in accordance with the ABIA Design and Development Guide.
- (g) The City shall have the right to relocate Lessee's Premises when necessary to accommodate the Airport development. The Director shall solely determine the need for such relocation. If relocation becomes necessary, the City shall provide the Lessee with a replacement area substantially equivalent in size and amenities. Should Lessee disagree with the replacement location, Lessee shall have the right, within ten (10) calendar days of receipt of the Director's written notice of impending relocation, to provide written notice to the Director that Lessee disagrees with the replacement location. Upon such notice by Lessee, the parties shall, for a period not to exceed thirty (30) days from the date of such notice, negotiate in good faith in an attempt to resolve the matter to the satisfaction of both parties; however, if for any reason the disagreement is not resolved within thirty (30) days, the Director shall have the right to unilaterally decide the matter, and Lessee agrees to and shall abide by the Director's decision, subject to such rights of termination as Lessee may have under its Lease or Permit. If the City requires the Lessee to relocate its facilities during the term of this Agreement, the City shall reimburse the Lessee for its documented actual and reasonable out-of-pocket relocation expenses, if any, but the City shall have no liability for increased overhead or operating costs, or lost profits or revenue of Lessee, if any, arising out of such relocation.
- (h) All right, title, and interest in any improvements constructed by or for Lessee on the Airport shall fully vest in the City upon the end of the term of the Lessee's Permit or Lease. The Lessee shall execute and deliver to the City such documents as may be required to evidence the City's ownership of such improvements.
- (i) Maintenance Responsibilities. Lessee shall, at its sole cost and expense, maintain, repair and keep in good condition all of its improvements on the premises, as hereinafter described unless specified otherwise during negotiations of the lease agreement.

- 1) Lessee shall maintain pavement, landscaping, greenbelts, lighting and all equipment on the Premises;
 - 2) Lessee shall maintain the interior and exterior of all improvements, to include electrical, mechanical, plumbing, fire protection system(s), roof, floors, load-bearing and exterior walls, utilities, and HVAC system(s);
 - 3) Lessee shall clean debris and trash from driveways, taxiways, aprons, greenbelts and sidewalks to maintain safe, clear, unobstructed access to the improvements at all times for authorized users and emergency vehicles.
 - 4) Lessee shall maintain all hangar and overhead doors and door operating systems, including weather stripping and glass replacement.
 - 5) Lessee shall maintain electric loads within the designed capacity of the system. Any change to such designed capacity will require the prior written consent of the Director.
 - 6) Lessee shall install and maintain hand-held fire extinguishers in the interior of all buildings, aircraft shops, aircraft parking and tie-down areas, and fuel storage areas, pursuant to fire and safety codes.
 - 7) Lessee shall have the necessary utility meters installed, as required by the utility company(s), at Lessee's expense. Lessee shall pay all utility charges, including, but not limited to, electricity, water, wastewater, natural gas, and telephone. Lessee shall maintain and repair all utility service lines and fixtures, including lighting fixtures, within the Premises to the extent utility company providing such utility service does not perform such maintenance or repair.
 - 8) Lessee shall provide, at its sole cost and expense, necessary arrangements for adequate sanitation, handling and disposal from the Airport of all trash, garbage and other refuse which results from Lessee's business operations, including receptacles for the deposit of such trash, garbage and other refuse.
 - 9) Lessee will not permit any action on the Premises that has an adverse effect, or interferes with the proper function of any drainage system, sanitary sewer system, or any facility provided for the operation or protection of Airport.
 - 10) Lessee shall provide for the disposal of all waste oil containers and or other hazardous refuse, at the sole expense of the Lessee, in accordance with all state, federal and local regulations.
 - 11) Lessee will conduct good house keeping practices in accordance with the Airport Certified Storm Water Pollution Prevention Plan (SWPPP)
- (j) Security. Lessee, its employees, agents, customers, and contractors, shall comply fully with the Airport Security Plan.
- 1) If the Premises are located in a restricted area accessible only to those persons displaying a security badge issued by Airport Police, each person working on the Premises must wear the badge at all times while at the Airport. The Employee or Lessee will pay for the cost of each badge.

- 2) To control access to the secured area, Lessee will provide written notice to the Director of Airports the names, addresses, telephone number(s) and contact persons for each contractor employed by Lessee that will require access to the AOA for the benefit of Lessee within five (5) days after the execution of the contract with such person.
 - 3) The Lessee shall control the Premises so as to prevent unauthorized access to the AOA. Lessee shall strictly comply with TSA 1542 (Aviation Security), and Lessee's security system must comply with the Airport's security specifications. The City reserves the right to install security devices in or on the premise, as it deems necessary at City's cost. The City will maintain security equipment located on the Lessee's premises which is associated with TSA 1542 or which the City may elect to install at some future date.
 - 4) If needed, the Lessee shall supply 120/208 three- phase power from an electrical panel, with circuit breaker protection. The Lessee shall allow the City to connect AOA security data cables to the Airport cable system (PDS) within the building's telecommunications closet. Energy to operate AOA security equipment on the Lessee's premises shall be furnished by the Lessee without cost to the City.
- (k) Indemnification. Lessee shall defend, indemnify and hold harmless the City and its employees, agents, representatives, successors and assigns (collectively, the "Indemnified Parties"), from and against all costs, expenses (including reasonable attorneys' fees, expenses of investigation and litigation, and court costs), liabilities, damages, claims, suits, judgments, actions and causes of actions whatsoever (collectively, "Claims") resulting from or concerning the conduct of Lessee's Commercial Aeronautical Service at the airport, to the extent arising directly or indirectly out of (a) any failure of the Lessee to comply with these Minimum Standards, (b) any breach of the Lease or Permit by Lessee, its agents, employees or contractors, (c) any false representation or warranty made by Lessee in making application to conduct business on the Airport or in the Lease or Permit, (d) any negligent act or omission or willful misconduct of Lessee, or their agents, employees or contractors, and (e) the negligent acts and omissions of the Indemnified Parties. Lessee shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all claims against any of the Indemnified Parties. Lessee may contest the validity of any claims, in the name of Lessee or the Indemnified Parties, as Lessee may in good faith deem appropriate, provided that Lessee thereof shall pay the expenses.
- (l) Insurance. The following requirements pertain to all Lessees. See the Airport Minimum Standards for specific insurance requirements applicable to the specific FBOs and SASOs and Privately Owned Non-Commercial Fuel Dispensing Facilities on the Airport.

Section 14.03 General Requirements

- (a) Lessee shall not commence operations or construction until Lessee has obtained the types and amounts of required insurance indicated below and until the City has reviewed such insurance or a Certificate of Insurance is received indicating required coverage. If the coverage period ends during the Term of Lessee's Lease or

Permit, Lessee must, prior to the end of the coverage period, forward a new Certificate of Insurance to City as verification of continuing coverage for the duration of the Term of the Lease or Permit. Lessee must submit certificates of insurance for all subcontractors to the City prior to them commencing work on the project.

- (b) Approval of insurance by the City and the required minimums shall not relieve or decrease the liability or responsibility of the Lessee hereunder and shall not be construed to be a limitation of liability on the part of the Lessee.
- (c) Lessee's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policy is issued and shall be written by companies with an A.M. best rating of B+VII or better. Hazardous materials insurance, is required, shall be written by companies with A.M. best ratings of A- or better. The City shall accept workers' compensation coverage written by the Test Workers' Compensation Insurance Fund.
- (d) All endorsements naming the City as additional insured, waivers of subrogation, and notices of cancellation endorsements as well as Certificates of Insurance shall indicate:

City of Midland
P. O. Box 60305
Midland, Texas 79711
Attn: Director of Airports
- (e) The "other" insurance clause shall not apply to the City where the City of Midland is an additional insured shown on any policy. It is intended that policies required in this Agreement covering the City and the Lessee will be considered primary coverage as applicable.
- (f) If insurance policies are not written for amounts specified below, the Lessee shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- (g) The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- (h) The City reserves the right to review insurance requirements set forth during the Term of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry, financial condition of the insurance company, as well as the Lessee or changes in the Lessees initial intended scope of services.
- (i) The Lessee shall not cause any insurance to be canceled nor permit any insurance to lapse during the Term of this Agreement or as required in the Agreement.

- (j) Lessee shall provide all deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificates of Insurance.
- (k) If City property is being transported or stored off-site by Lessee, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect City property.
- (l) Insurance provided by a Lessee pursuant to this Minimum Standards shall cover and protect the City, and its elected and non-elected officials, officers, agents, employees, contractors, successors, and assigns, as their interests may appear.
- (m) Specific Insurance Requirements. The Lessee shall obtain and maintain throughout the term of its Lease or Permit, the following insurance coverage, and furnish certificates of insurance and policy endorsements as evidence thereof.

Section 14.04 General Lease Clauses. These lease clauses shall be contained as a minimum in all leases between the City and the Lessee engaged in any aeronautical service on the Airport.

- (a) Non-Discrimination. The Lessee agreed to operate the premises leased for the use and benefit of the public:
 - 1) To furnish good, prompt, and efficient service, adequate to meet all demands for its service at the Airport.
 - 2) To furnish said service on a fair, equal, and non-discriminatory basis to all users thereof.
 - 3) To charge fair, reasonable and non-discriminatory prices for each unit of sale or service, provided that the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
 - 4) The Lessee, his agents and employees will not discriminate against any person or class of persons because of race, color, creed, or national origin in providing any services or in the use of its facilities provided for the public in any manner prohibited by Part 21 Assurances of the Regulations of the Office of the Secretary of Transportation. The Lessee further agrees to comply with such enforcement procedures as the United States might demand that the City take in order to comply with the Sponsors Assurances.
- (b) Aircraft Service by Owner or Lessee of Aircraft. No right or privilege granted herein shall operate to prevent any person or persons, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees, including but not limited to maintenance and repair, that it may choose to perform.
- (c) Non-Exclusive Rights. Nothing herein contained shall be construed to grant or otherwise authorize the granting of an exclusive right.
- (d) Airport Development. The City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the views of the Lessee, and

without interference or hindrance. If the physical development of the Airport requires the relocation of Lessee-owned facilities, the City agrees to provide a comparable location, and agrees to relocate all Lessee-owned buildings or provide similar facilities for the Lessee at no cost to the Lessee.

- (e) **City Rights.** The City reserves the right, but shall not be obligated to the Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport together with the right to direct and control all activities of the Lessee in this regard.
- (f) **War or National Emergency.** During the time of war or national emergency, the City shall have the right to lease the landing area or any part thereof to the United States Government for official use and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended or modified in whatever manner is appropriate to the situation.
- (g) **Airport Obstructions.** The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the Lessee from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.
- (h) **Subordination.** This lease shall be subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.
- (i) **Compliance with Laws, Etc.** The Lessee shall at all times comply with federal, state and municipal laws, ordinances, codes, and other regulatory measures now in existence, including rules and regulations contained in the Airport Operations Manual required by the Federal Aviation Administration, and including the current airport security plan, all as may be hereafter modified or amended, applicable to the specific type of operation contemplated by him. The Lessee shall procure and maintain during the term of the agreement all licenses, permits, and other similar authorizations required for the conduct of his business operations.
- (j) **Indemnity.** The Lessee shall hold the City of Midland, the City Council, the Airport Planning and Development Board, the Director of Airports, and the other officers, agents and employees of the City of Midland harmless from and against all suits, claims, demands, actions, and/or causes of action of any kind or nature in any way arising out of, or resulting from, his tenancy and activities, and shall pay all expenses in defending any claims against the City by reason of his tenancy and activities.
- (k) **Misrepresentation.** All terms and conditions with respect to this lease are expressly contained herein, and the Lessee agrees that no representative or agent of the City has made any representation or promise with respect to this lease not expressly contained herein.

Section 14.05 RELEASE. LESSEE HEREBY RELEASES, ACQUITS AND FOREVER DISCHARGES CITY, CITY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH LESSEE HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM HERUIT, CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR CITY'S NEGLIGENCE.

Section 14.06 INDEMNITY. LESSEE WILL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF LESSEE, its agents or employees, or any subcontractor, arising out of, or resulting from, Lessee's use of, or activities on, the Agreement Premises, and Lessee will be required to pay any judgment with costs which may be obtained against City or any of its officers, agents or employees, including reasonable attorney's fees.

LESSEE SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND CITY AND ALL OF CITY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATHS, PROPERTY DAMAGE, LOSSES, AND EXPENSE OF ANY CHARACTER WHATSOEVER INCLUDING REASONABLE ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF CITY, CITY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH LESSEE OR LESSEE'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE, IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS AGREEMENT AND LESSEE WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST CITY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

Section 14.07 ATTORNEY'S FEES. By executing this Agreement, LESSEE AGREES TO WAIVE AND DOES HEREBY WAIVE ANY CLAIM IT HAS OR MAY HAVE AGAINST THE CITY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE AGREEMENT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE AGREEMENT. THE LESSEE SPECIFICALLY AGREES THAT IF THE LESSEE BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET. SEQ., AS AMENDED), THE LESSEE AGREES TO WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH LESSEE MIGHT OTHERWISE BE ENTITLED.

Lessee agrees that this is the intentional relinquishment of a presently existing known right. Lessee acknowledges that it understands all terms and conditions of the Agreement.

By execution of this Agreement, Lessee hereby represents and warrants to the City that Lessee has read and understood the Agreement.

This section shall not be construed or interpreted as a waiver of sovereign immunity.

Section 14.08. SOVEREIGN IMMUNITY. By executing this Agreement the City is not waiving its right of sovereign immunity. The City is retaining its immunity from suit. The City is not granting consent to be sued by legislative resolution or action.

THERE IS NO WAIVER OF SOVEREIGN IMMUNITY.

Section 14.09. GOVERNING LAW AND VENUE. All performance and payment made pursuant to this Agreement shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Agreement or the performance of this Agreement shall be in Midland County, Texas. This Agreement shall be governed by the laws of the State of Texas. The obligations and undertakings of each of the parties to this Agreement shall be deemed to have occurred in Midland County, Texas.

Section 14.10. INDEPENDENT CONTRACTOR. It is expressly understood and agreed that Lessee shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City; that Lessee shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between City and Lessee, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between City and Lessee. No person performing any of the work and services described hereunder by Lessee shall be considered an officer, agent, servant or employee of the City. Further, it is specifically understood and agreed that nothing in this contract is intended or shall be construed as creating a "Community of Pecuniary Interest" or "An Equal Right of Control" which would give rise to vicarious liability. Lessee shall be an independent contractor under this Agreement and shall assume all of the rights, obligations and liabilities applicable to it as such independent contractor hereunder and any provisions in this Agreement which may appear to give City the right to direct Lessee as to details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that Lessee shall follow the desires of City in the results of the work only. The City does not have the power to direct the order in which the work is done. The City shall not have the right to control the means, methods or details of the Lessee's work. Lessee shall assume exclusive responsibility for the work.

Section 14.11. THIRD PARTY BENEFICIARY. The City's approval of this Agreement does not create a third party beneficiary. There is no third party beneficiary to this Agreement. No person or entity who is not a party to this Agreement shall have any third party beneficiary or other rights hereunder.

Section 14.12. TERMINATION AT WILL. The City may terminate this Agreement at will for no or any reason upon giving at least _____ days written notice to the Lessee. The parties to this Agreement understand and agree that it is in the City's sole discretion to cancel the Agreement during the term of the Agreement without penalty to the City. The lessee has no expectation and has received no guarantees that this Agreement will not be terminated before the end of the Agreement term. The parties have bargained for the flexibility of terminating this Agreement upon tender of the requisite notice at any time during the term of the Agreement. All work and services under the Agreement shall be suspended upon termination of Agreement becoming effective.

Section 14.13. INSURANCE REQUIREMENTS. All insurance required pursuant to this Agreement shall name the City of Midland as an additional insured except Worker's Compensation. All insurance required pursuant to this Agreement shall provide a waiver of subrogation in favor of the City of Midland, including Worker's Compensation.

Section 14.14. ASSIGNMENT AND SUBLEASING. At no time shall the Lessee sublease any portion of the Leased Premises or assign its interests or obligations in the Agreement without the written consent of the Director of Airports. Any such assignment or attempted assignment shall be void. Approval of any such assignment or attempted assignment shall be within the sole discretion of the Director of Airports.

Section 14.15. ACCEPTANCE OF LEASED PREMISES "AS IS". BY EXECUTING THIS AGREEMENT, THE LESSEE AGREES AND ACKNOWLEDGES THAT LESSEE IS TAKING OR LEASING THE LEASED PREMISES "**AS IS**" WITH ANY AND ALL LATENT AND PATENT DEFECTS AND THAT THERE IS NO WARRANTY, EXPRESS OR IMPLIED BEING MADE BY THE CITY, THAT THE LEASED PREMISES ARE FIT FOR A PARTICULAR PURPOSE. THE LESSEE ACKNOWLEDGES, BY EXECUTING THIS AGREEMENT THAT LESSEE IS NOT RELYING UPON ANY REPRESENTATION MADE BY THE CITY WITH RESPECT TO THE CONDITION OF THE LEASED PREMISES, BUT IS RELYING UPON LESSEE'S EXAMINATION OF THE LEASED PREMISES. LESSEE ALSO RECOGNIZES BY EXECUTING THIS AGREEMENT THAT THE LESSEE IS AGREEING TO ACCEPT THE LEASED PREMISES "**AS IS**" THAT LESSEE AGREES TO MAKE LESSEE'S OWN APPRAISAL OF THE LEASED PREMISES AND TO ACCEPT THE RISK THAT LESSEE MAY BE WRONG. THE CITY GIVES NO ASSURANCES, EXPRESS OR IMPLIED CONCERNING THE VALUE OR CONDITION OF THE LEASED PREMISES. IN NO EVENT SHALL A LESSEE HAVE THE RIGHT TO RECOVER CONSEQUENTIAL DAMAGES. THEREFORE, THE LESSEE WILL TAKE THE LEASED PREMISES UNDER THE EXPRESS UNDERSTANDING THE LEASED PREMISES ARE ACCEPTED "**AS IS**" AND WITH ALL FAULTS, EXCLUDING EXPRESS OR IMPLIED WARRANTIES.