



**NOTICE OF A REGULAR MEETING
AIRPORT ADVISORY BOARD
TUESDAY, MARCH 16, 2021 AT 5:30 P.M.
BRENHAM MUNICIPAL AIRPORT
3001 AVIATION WAY
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Citizen/Visitor Comments**
- 3. Reports and Announcements**

CONSENT AGENDA

- 4. Statutory Consent Agenda**

The Statutory Consent Agenda includes non-controversial and routine items that the Commission may act on with one single vote. A Commissioner may pull any item from the Consent Agenda in order that the Commission discuss and act upon it individually as part of the Regular Agenda.

- 4-a Minutes from the January 19, 2021 Airport Advisory Board Meeting**

REGULAR AGENDA

- 5. Discussion and Update on the following:**
 - a. PAPI Notam**
 - b. Airport Operations Report**
 - c. Terminal Keypad Access**
- 6. Discussion and Possible Action on a proposed Terminal Building Lease Agreement with Aviators Plus, LLC.**
- 7. Discussion and Possible Action on a Revised FBO Agreement with Aviators Plus, LLC.**
- 8. Discussion on any current issues regarding airport operations and future airport needs including, but not limited to, possible improvements or other development at the Brenham Municipal Airport (no action may be taken).**
- 9. Adjourn**

CERTIFICATION

I certify that a copy of the March 16, 2021 agenda of items to be considered by the Airport Advisory Board was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on March 11, 2021 at 10:00 am.

Kim Hodde

Kim Hodde
Planning Technician / Airport Coordinator

Disability Access Statement: This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the ____ day of _____, 2021 at _____ am/pm.

Signature

Title

AIRPORT ADVISORY BOARD MINUTES



The meeting minutes herein are a summarization of meeting procedures, not a verbatim transcription.

A regular meeting of the AIRPORT ADVISORY BOARD was held on January 19, 2021, beginning at 5:30 p.m. at the Brenham Municipal Airport.

Members Present: Jon Hodde (Chairman), Michele Bright, Josiah Jameson, Lynwood Kindt, Grant Meschewitz, and Mark Whitehead

Members Absent: Edwin Owens (excused)

Others Present: Donald Reese, Stephanie Doland, Kim Hodde, Scott Caggiano, and Eric LeBlanc

Media Present: Alyssa Faykus (Brenham Banner Press)

1. Call to Order:

Chairman Jon Hodde called the meeting to order at 5:30 p.m.

2. Citizen/Visitor Comments:

There were no citizen/visitor comments.

3. Reports and Announcements

Stephanie Doland stated that the Airport Advisory Board was being reduced from nine members to seven members. She further stated that Janet Hess and Eddie Van Dyke did not seek reappointment and that Bryan Butler was not re-appointed to serve. She introduced the two new board members, Josiah Jameson, and Grant Meschewitz and reminded the Board that Brent Nedbalek will continue to serve as a non-voting, ex-officio member.

CONSENT AGENDA

4. Review/Approval of Minutes from November 17, 2020 Meeting

A motion was made by Mark Whitehead and seconded by Lynwood Kindt to approve the minutes from the November 17, 2020 meeting, as presented. The motion carried unanimously.

REGULAR AGENDA

5. Election of a Chair and Vice-Chair for the Airport Advisory Board for 2021.

A motion was made by Michele Bright and seconded by Lynwood Kindt to re-elect Jon Hodde as Chair and Mark Whitehead as Vice-Chair of the Airport Advisory Board for 2021. The motion carried unanimously.

6. Discussion and update on the following:

- a. Airport Lighting Project** – Kim Hodde reported that the north and south end PAPI lights along with the primary lighted wind cone were replaced as of January 14, 2021.
- b. Airport Operations Report** – Stephanie Doland reported that:
- The runway project has been completed. A request was received for striping of the taxiway. A quote has been requested to see if RAMP funds could possibly be used for this project. Donald Reese stated that the City Street Department may be able to help with this project. Missing runway markers were recently replaced; however, if anyone notices additional ones that need to be replaced, please contact City staff.
 - The person hired as the Airport Maintenance Worker did not work out. This position has been re-posted and the City is hopeful to have someone on board in the near future to provide everyday maintenance to the airport.
 - The city-owned T-hangars are currently all leased.
 - City staff is still working on a terminal building lease with Aviators Plus. The lease is proposed to be considered by City Council on February 4, 2021.
 - The City is still working on an open-bid request for proposals (RFP) for the City's fuel farm with the following proposed bidding options:
 1. FBO – full service
 2. SASO – self-serve only; no fuel sales
 3. Co-Op Opportunity

The following schedule is proposed; however, details are still being finalized:

- 2-02-21 – RFP issuance
- 2-12-21 – questions on RFP's due to the City
- 2-19-21 – deadline for submittal of RFP's
- 3-04-21 – City Council award

Co-Op Bidding

Scott Caggiano asked if there could be a combination SASO / CO-OP proposal, i.e., SASO – jet fuel / Avgas – Co-Op. Donald Reese suggested that they put it in their proposal. City staff would need to consult with the City Attorney.

In response to questions by Grant Meschewitz, Ms. Doland clarified that:

- The number of members within a co-op will need to be defined by the bidder with the membership list being able to be amended possibly once a year; and
- Co-Op members shall have planes based at the Brenham Municipal Airport.

Mr. Meschewitz asked if the co-op criteria could be expanded to include Washington County residents since there are quite a number of them with private air strips that utilize the fuel at the airport. Mr. Reese responded that the City will further research this question.

c. **Routine Airport Maintenance Program (RAMP) Projects** – Kim Hodde stated that several projects have been completed recently utilizing TxDOT’s Routine Airport Maintenance Program Grant funds (50/50), including:

- Replacement of the primary lighted wind cone in January 2021.
- Four replacement windsocks were ordered in November 2020.
- The Notam headset broke and was replaced in December.
- Repair of one of the T-hangars that had a cable break. The door cables were replaced with plans to have maintenance check the cables on the other T-hangar doors.
- Repainting of the 2nd windsock tower, weather radios & box lights, and the beacon tower.
- The drainage project on the south end near Aviators Plus completed in December.

7. Discussion and Possible Action on a request for ground space lease agreement(s) for construction of two hangars on the south end at the Brenham Municipal Airport (Brenham Nedbalek / Aviators Plus).

Kim Hodde stated that back in 2019, the possibility of construction of two hangars on the south end of the runway was discussed by the Airport Advisory Board. It was not an action item; however, the direction was to proceed with submission to the Form 7460-1 to see if the FAA would grant approval since there have been various changes to the approach surface requirements. The form 7460-1 was submitted to the FAA and approval was granted on June 3, 2020 for construction of two 100’x100’ hangars. There is a clause in the ground space lease agreement that requires the start of construction within 150-days. Brent Nedbalek is ready to proceed with construction of these hangars and requests formal approval of the location so that he can move forward with surveys of the lease area(s), execution of ground space lease agreements, plan submittal and approval etc. Staff supports this request. If approved, the hangars will be added to the Airport Layout Plan when the Master Plan project begins later this year.

Mark Whitehead asked if the doors were vertical or sliding and which way they open. Depending on the type of door and the orientation, it appears to put it very close to the entrance road. Grant Meschewitz stated that it appears that corner 12 (as noted on the plan in the meeting packet) is very close to the Andras hangar and asked if Mr. Andras is on board with the proposed hangar being so close to his hangar. He further stated that corner 3 appears to be on the boundary fence line. Mr. Reese stated the attachment is a conceptual drawing that was used to submit the Form 7460-1, and that the surveys will show the actual lease areas and will allow staff to verify that that the lease areas do not encroach into these areas.

A motion was made by Michele Bright and seconded by Lynwood Kindt for Mr. Nedbalek to move forward with getting the lease areas surveyed and work with the City staff on the lease agreements. The motion carried unanimously.

8. Discussion and Possible Direction to Staff to allow service fees to be charged by a Fixed Base Operator (FBO) at the Brenham Municipal Airport for aircraft exceeding 12,000 pounds in lieu of a fuel purchase.

Stephanie Doland stated that staff has received a request from the FBO, Aviators Plus, to charge service fees rendered on aircraft over 12,000 pounds that do not purchase fuel. Service fees are not specifically addressed in the recently adopted Airport Minimum Standards; therefore, staff is requesting feedback

from the Airport Advisory Board. A discussion was held with various comments from Board members, including:

- It is a common practice among airports to charge some kind of service fees - ramp fees, service fees, or landing fees.
- Landing fees are generally assessed by the Airport owners to help offset pavement and maintenance costs.
- Handling fees are usually associated with multiple amenities for the pilots and the passengers.
- There have been complaints with the service or lack of service from the FBO (Aviators Plus). People have had to call someone to fuel them during normal working hours and/or had to park themselves.
- Service fees may be a deterrent to people landing at Brenham Municipal versus area airports.
- The facilities and services need to be updated before service fees should be instituted.
- These fees are not a huge revenue generator.
- The language, as presented, needs to be re-worked. It appears that ramp parking, extended stays, drop-offs, quick turns, towing, and luggage loading have all been lumped into the "service fees". Most airports have fees such as infrastructure facility fee, ramp fee / overnight fee, lavatory service fee, etc. Charges for luggage loading or towing are atypical, unless it is for a great distance. It would be better to break-out the fees out rather than lumping them all together.
- Fees should be limited to actual services.
- An airport our size does not warrant service fees.

Ms. Doland stated that the fee structure would be broken out and clarified then distributed to the Board for further comments. Any approved language would apply to current and future FBO's as part of their FBO agreement and not part of the minimum standards.

9. Discussion on any current issues regarding Airport operations and future Airport needs including, but not limited to, possible improvements or other development at the Brenham Municipal Airport (no action may be taken).

- The Southern Flyer Diner signs will be removed by City staff.
- A request was made for the foyer area to be available to pilots after hours via keypad access or some other means.
- A request was made for regular sweeping of the runway and taxiway. Jack used to drive the runway daily since there is lots of FOD then he could request the sweeper. Donald Reese stated that he would talk to the Street Department and see if this can be done at least monthly.

10. Adjourn

With no further business to discuss, a motion was made by Michele Bright and seconded by Mark Whitehead to adjourn the meeting at 6:24 p.m.

Airport Advisory Board

Jon Hodde
Chairman

March 16, 2021
Meeting Date

Attest

Kim Hodde
Staff Secretary

March 16, 2021
Meeting Date



To: Airport Advisory Board Members
From: Stephanie Doland / Kim Hodde
Re: Terminal Building Lease Agreement with Brent Nedbalek / Aviators Plus
Date: March 16, 2021

Background: A contract for a Fixed Base Operator (FBO) was entered into with Southern Flyer, Inc. (Jack and Janet Hess) on August 3, 2000 and made effective as of September 1, 2000. On June 24, 2020, a 60-day cancellation request was received by Southern Flyer. On August 18, 2020, the Brenham City Council approved a cancellation agreement stating that effective August 31, 2020, the FBO Agreement between the City of Brenham and Southern Flyer is cancelled and that Southern Flyer shall be fully released and discharged from any and all obligations, benefits and requirements provided for in the FBO Agreement. The agreement further stated that Southern Flyer would vacate the City-owned facilities on or before September 30, 2020. Per the FBO Agreement between Aviators Plus, LLC and the City of Brenham, Aviators Plus was given the first opportunity to occupy the Terminal Building in the event that Southern Flyer, Inc. vacated the building.

Proposed Lease for Consideration: Since the terminal building was vacated, City staff has been in negotiation with Brent Nedbalek regarding this terminal building lease. This lease agreement clarifies the rights, responsibilities, and expectations of the FBO including operation of a restaurant on the premises. A signed lease agreement has been submitted by Brent and the lease is tentatively scheduled for consideration by City Council on March 25, 2021. General terms of the proposed lease include:

- Initial term of the lease shall be ten years;
- Lessee shall be pay rent of \$2,500 annually for the first five years with an increase of \$300 automatically at the five-year mark. Additionally, lessee agrees to donate \$2,000 annually to the City of Brenham for landscaping/ entrance improvements, and airside maintenance such as pavement markings;
- Lessee shall be responsible for all utilities;
- Lessee shall maintain all interior portions of the building and the City shall be responsible for any exterior portions of the building;
- Lessee shall open and operate a restaurant no later than 270 days from the date of contractual execution. Restaurant may be subleased, with the City's written approval, and shall be open at least four days a week for eight hours each day;
- Terminal building and restaurant may be remodeled at the Lessee's expense; however, the building shall remain available to the public, maintain a pilot's lounge and sleeping room, public restrooms and FBO office;
- Additional lease terms include mandatory insurance requirements, compliance with applicable adopted local, state and FAA restrictions.

The Facilities Subcommittee of the Brenham City Council met on Monday, March 8th to discuss the executed lease agreement. Due to the ongoing interest by the Aviation and Brenham Community in the Brenham Restaurant facility much of the discussion centered around the urgency of opening the restaurant to the public in a timely manner. Included in the proposed lease are the following requirements:

- Restaurant shall open to the public no later than 270 days (9 months) from the date of contract execution;
- Restaurant shall be open at least 4 days per week for a minimum of 8 hours;
- Aviators Plus shall have the opportunity to sublease the restaurant space with prior written City approval.

Additional performance measures were requested by the Facilities Subcommittee. Additional performance measures that may be added to the Terminal Building Lease upon recommendation by the Board and at Council's final approval, include but shall not be limited to:

- Building permit application for renovations to the restaurant received within 3 months of contract execution.
- Building permit issued for renovations to the restaurant within 5 months of contract execution.
- Performance Evaluation at the 1-year anniversary date of the restaurant grand opening with Aviators Plus, LLC and sublessor (if applicable) to be held by the Facilities Subcommittee of Council and Chair of the Airport Advisory Board Chair.

City Staff and City Council request a recommendation from the Airport Advisory Board regarding this proposed terminal building lease agreement.

AIRPORT TERMINAL BUILDING
LEASE AGREEMENT
By and Between
City of Brenham and Aviators Plus, LLC

WHEREAS, the City of Brenham, Texas owns the real property and improvements thereon (commonly referred to as the restaurant and airport terminal building) (“Premises”) located at 3001 Aviation Way in Brenham, Washington County, Texas; and

WHEREAS, Aviators Plus, LLC desires to lease from the City of Brenham the Premises for the purpose of operating a public restaurant and as a Fixed Based Operator as defined in the Minimum Standards of the Brenham Municipal Airport ;

This Lease Agreement, hereinafter also referred to as “this lease,” is made and entered into by and between Aviators Plus, LLC, a Texas limited liability company (hereinafter referred to as “Lessee”) and the City of Brenham, a Texas home-rule municipal corporation, as Lessor (hereinafter also referred to as “City”).

WITNESSETH:

I.

City, in consideration of the covenants and agreements to be performed by Lessee and upon terms and conditions hereinafter stated, does hereby lease Lessee the Premises located at 3001 Aviation Way, Brenham, Texas, said Premises further depicted in Exhibit “A” attached hereto and incorporated herein for all purposes. The term of this lease shall be for a period of ten (10) years (“Term”), commencing upon the ___ day of _____, 20__ and ending on the ___ day of _____, 20__, provided, however, that City and Lessee shall have the right to terminate this lease as provide elsewhere herein.

II.

For and in consideration of this lease, upon execution hereof by all parties, Lessee shall pay, as rent, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) annually to City during the first five (5) years of the term. Annual Rent shall automatically increase at the five year anniversary of the lease execution at a rate

of Three Hundred Dollars (\$300) or Twenty Five Dollars (\$25.00) per month. Said Annual Rent shall be paid in equal monthly payments on or before the 5th day of each month. Additionally, Lessee agrees to donate One Thousand Dollars and No/100 to the City of Brenham annually for landscaping and entrance improvements. Similarly, Lessee agrees to donate and additional One Thousand Dollars and No/100 annually for airside maintenance such as pavement markings, lighting, herbicide, etc. The aforementioned annual donations shall be for the life of this agreement and shall be made in a single payment within three (3) months of the lease anniversary date.

Lessee hereby accepts the Premises in its "as is" condition. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE. Further, Lessee shall be responsible for any and all improvements to or retrofitting of the Premises as may be required by law for compliance with the Americans with Disabilities Act or similar state or federal law, and any regulations promulgated thereunder.

It is also agreed by Lessee that violation of any covenant herein contained shall constitute forfeiture of Lessee's right to occupy the Premises, and City shall be entitled to immediate possession thereof without the necessity of legal proceedings.

City and City's agents and representatives shall have the right to enter upon and inspect the Premises at any reasonable time and after reasonable notice during Lessee's normal business hours, for the purpose of ascertaining compliance with the terms of this lease and/or the condition of the Premises.

III.

Lessee shall be responsible for obtaining any necessary utility services and agrees to assume all charges in connection therewith.

Lessee shall be responsible for the installation, maintenance and expense of its own telephone service and security system.

Lessee shall not permit any mechanic's lien to be placed upon the Land, Building or Premises, caused by or resulting from work performed, materials furnished or obligations incurred by or at the request of Lessee, and in the case of such filing of such lien, Lessee agrees to promptly pay the same or otherwise cause the immediate release of the same.

Lessee shall be responsible for all payment of taxes levied or assessed against the Premises and/or personal property located thereon, during the Term.

IV.

Lessee shall, at its own cost and expense and subject to City approval, make all improvements desired to use Premises as a restaurant and airport terminal building. Lessee shall maintain within the terminal building public access to the following uses within the terminal building, FBO office, restrooms, pilots lounge, sleeping room and restaurant. After hours the restrooms and pilots lounge shall remain accessible by keyless door lock with an aviation related code, all other uses, including the FBO office and restaurant, shall remained locked. The aforementioned uses, may be remodeled or reconfigured from the current configuration (Exhibit "A") at the Lessee's own cost and expense and subject to City approval. Lessee agrees to post a performance bond with the City in an amount equal to one hundred and ten percent (110%) of the estimated construction costs for all proposed improvements.

Lessee shall, at its own cost and expense, keep and maintain all interior parts of the Premises in good clean condition, promptly making all necessary repairs and replacements, including but not limited to, interior walls, finish work, floor covering, fixtures, pest extermination and regular removal of trash and debris. At Lessor's expense, maintenance shall be performed in a normal and routine manner as required to keep the interior plumbing, electrical, heating and air conditioning equipment serving the leased Premises in good operating condition during the term of this lease and any renewal term. Lessee shall notify Lessor in writing within twenty-four (24) hours of any identified maintenance concerns in need of repair or further evaluation. Lessee shall not be responsible for structural maintenance or repairs to exterior portions of the Building and Premises, including, but not limited to, plumbing service, electrical service, and heating and air conditioning equipment located to the exterior of the structure. Lessor will not be responsible for any repairs or maintenance of the Premises not associated with normal wear and tear of building nor will Lessor be responsible for maintenance of items added to the exterior of the building by the Lessee, such as, but not limited to signage and decorative attachments.

Lessee shall not make structural leasehold improvements to the Premises without the review and written approval of the City Manager, or his designee, which consent shall not be unreasonably withheld or delayed. All such leasehold improvements to be made by Lessee shall be in accordance with the City of Brenham adopted Building and Fire Codes, related Ordinances and in accordance with the plans approved by the Development Services Department of the City of Brenham.

Lessee shall maintain the Premises, including, but not limited to, the public parking areas, public ramp space, and areas adjacent to fueling areas and fuel service road in a cleaned and orderly manner, including but not limited to the maintenance of grass and vegetation. The aforementioned areas are further depicted in Exhibit "B" attached hereto and incorporated herein for all purposes.

Lessee shall be responsible for the cleanliness of the terminal building public restrooms and for restroom supplies for such restroom. Public restrooms located on the Premises in the terminal building may be available to airport patrons after hours via a keyless door lock with an aviation related code.

V.

Lessee agrees to open and operate a restaurant on the Premises no later than two hundred seventy (270) days from the commencement of the 10 year Term as shown in Section I above. The restaurant shall be open and serve patrons no fewer than four (4) days each week for a minimum of eight (8) hours per day. Lessee shall have the option to sell beer and wine in the restaurant area provided that the Lessee, at Lessee's expense, obtain all appropriate permit(s) from the Texas Alcoholic Beverage Commission and comply with all applicable local and state laws and regulations.

Lessee shall have the option to sublease the restaurant space within the terminal building or to subcontract restaurant operations in accordance with this agreement. Lessee covenants and agrees that Lessee shall not transfer or assign this lease or sublease any portion of the Premises without City's prior written consent. Any attempt to transfer or assign or sublease this lease or sublease any portion of the Premises without the City's written consent shall be null and void and may cause this agreement to be terminated.

The Lessee/FBO or any other entity shall not impose or asses any additional fees, higher fuel prices or the requirement to buy fuel on those flying in to dine at the restaurant. In no way shall the Lessee discriminate or make it more difficult for persons to patronize the restaurant or enjoy the restaurant experience. If the Lessee does not assist in aircraft parking, restaurant employees will be allowed to do so. Additionally, the Lessee or restaurant operator (whichever is applicable) shall allow patrons of the restaurant to use the terminal deck located on the Premises for dining purposes.

VI.

Upon termination of this lease by City or Lessee, City and Lessee agree that Lessee may at Lessee's sole expense, remove its trade fixtures, including equipment, provided that such removal shall not impair the structural integrity of the Premises; such determination shall be made by the City Manager, or his designee, and same shall be binding on the parties hereto: and Lessee shall repair any damages caused by such removal to the satisfaction of the City Manager, or his designee.

VII.

Lessee shall, at Lessee's expense, obtain all governmental licenses and permits necessary for the permitted uses of the Premises and shall comply with all

governmental laws, ordinances and regulations applicable to the use of the Premises; also promptly comply with all governmental orders and directives for the correction, prevention and abatement of violations, nuisances and hazardous conditions in or upon, or connected with the Premises.

Lessee will comply with all laws, rules and regulations now existing or hereafter established by the United States of America, the State of Texas, the City of Brenham, and their respective agencies, including the Federal Aviation Administration, and the Texas Department of Transportation, Aviation Division (TxDOT Aviation). Lessee acknowledges receipt of a copy of the current Airport Minimum Standards of the Airport. The Airport Minimum Standards are incorporated by reference as if written verbatim herein, and Lessee agrees to comply fully at all times with the Airport Minimum Standards. Lessor shall have the right to amend, modify and alter the Airport Minimum Standards from time to time in a reasonable manner for the purpose of assuring the safety, welfare and convenience of Lessor, Lessee and all other Lessees and customers of the Airport.

Lessor and Lessee recognize and agree this Lease shall be subject to: such regulations and approvals as required by the FAA and TxDOT Aviation and in particular those FAA regulations which provide that the property subject to this Lease shall be used for Airport purposes and in such a manner so as not to materially and adversely affect the development and improvement, operation or maintenance of the Airport; and to the requirements of national emergency. Lessee agrees to cooperate and assist Lessor in complying with such regulations and conditions of approval. All runways and Airport facilities shall be open to the general traveling public for the landing and operation of aircraft therefrom without hindrance or interference on the part of Lessee.

VIII.

AS A CONDITION HEREOF, LESSEE AGREES TO INDEMNIFY AND DEFEND CITY AGAINST ANY AND ALL CLAIMS FOR INJURIES, DAMAGES, COSTS AND EXPENSE, TO PERSONS OR PROPERTY THAT MAY ARISE OUT OF, OR BE OCCASIONED BY THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY LESSEE, OR FROM ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF ANY REPRESENTATIVE, AGENT, INVITEE AND /OR EMPLOYEE OF LESSEE. LESSEE HEREBY AGREES TO DEFEND ANY AND ALL SUITS, CLAIMS, OR CAUSES OF ACTION BROUGHT AGAINST CITY ON ACCOUNT OF SAME, AND DISCHARGE ANY JUDGMENT OR JUDGMENTS THAT MAY BE RENDERED AGAINST CITY IN CONNECTION THEREWITH.

IX.

The Lessee shall procure and maintain at its sole cost and expense for the duration of this lease insurance against claims for injuries to persons or damages to property that may arise from or in connection with the use and occupancy of the Premises by the Lessee, and the Lessee's agents, representatives, volunteers, employees or subcontractors. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self- insurance maintained by the City, its officials, employees or volunteers shall be considered in excess of the Lessee's insurance and shall not contribute to it. Further, the Lessee shall include the City as an additional insured under its insurance policy. All coverage for subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before occupancy of the Premises by the Lessee.

Standard Insurance Policies Required:

- (a) Commercial General Liability Policy
- (b) Automobile Liability Policy
- (c) Workers' Compensation Policy

General Requirements Applicable to All Policies:

- (a) General Liability and Automobile Liability insurance shall be written by a carrier with a A:VIII or better rating in accordance with the current Best Key Rating Guide.
- (b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
- (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
- (d) "Claims Made" policies will not be accepted.
- (e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
- (f) A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.
- (g) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after

thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of Brenham.

(h) Upon request, certified copies of all insurance policies shall be furnished to the City of Brenham.

Commercial General liability

(a) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.

(b) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

5. Automobile Liability

(a) Minimum Combined Single limit of \$500,000.00 per occurrence for bodily injury and property damage.

6. Worker's Compensation

(a) Employer's Liability limits of \$100,000.00 for each accident is required.

7. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

(a) The company is licensed and admitted to do business in the State of Texas.

(b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance.

(c) All endorsements and insurance coverage according to requirements and instructions contained herein.

(d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of Brenham.

(e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

X.

In the event the Premises are substantially or totally damaged or destroyed or rendered partially unfit for occupancy by natural disaster, or fire or water damage or other casualty, either party may elect to terminate this Lease.

XI.

City may, by written notice to Lessee, immediately terminate this lease, notwithstanding the provisions of Article XII herein, if Lessee fails to operate a restaurant in the Building in accordance with the provisions of Article V herein. Furthermore, lessee shall show substantial progress in the opening of a restaurant within ninety (90) days from the commencement of the 10 year Term as shown in Section 1. Substantial completion shall be defined as plan review submittal, building permit issuance or food permit issuance through the Development Services Department.

XII.

If either party defaults in the performance of any obligation or covenant herein, the non-defaulting party may enforce the performance of this lease in any manner provided by law. This lease may be terminated at the non-defaulting party's discretion if such default continues for a period of thirty (30) days after written notification of such default and of the intention of the non-defaulting party to declare this lease terminated, provided, however, if the default is not capable of being fully cured within thirty (30) days, the defaulting party shall be allowed the needed additional time to cure the default if (i) the defaulting party begins the cure within the thirty (30) days period, (ii) diligently pursues the cure thereafter until it is fully cured, and has been given advance written approval to proceed by the non-defaulting party. Such notice shall be sent by the non-defaulting party to the party in default. If Lessee, as the defaulting party, has not substantially cured the default within the time period referenced above, this lease shall terminate. Thereafter, City, if the non-defaulting party, or its agents, shall have the right, without further notice or demand, to enter the Premises and remove all persons and property there from without being deemed guilty of trespass and without waiving any other remedies for arrears of rent or breach of covenant. City or its agents may resume possession of the Premises and relet the same for the remainder of the Term, and/or exercise any other remedy available to the City by law or equity.

XIII.

CITY AND ITS AGENTS SHALL NOT BE LIABLE TO LESSEE OR TO LESSEE'S EMPLOYEES, PATRONS, VISITORS, INVITEES OR ANY OTHER PERSONS FOR ANY INJURY TO ANY SUCH PERSONS OR ANY DAMAGE TO PERSONAL PROPERTY OCCURRING ON THE PREMISES CAUSED BY THE NEGLIGENCE OR MISCONDUCT OF LESSEE AND/OR ITS EMPLOYEES, AGENTS OR VOLUNTEERS.

XIV

Subject to prior written approval of the City Manager or his designee, Lessee shall have the right to erect signs on the Premises, provided that Lessee bears the expense of all signs it places on the Premises and the sign(s) conform to the ordinances and regulations of the City of Brenham Code of Ordinances.

XV.

Force Majeure. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to acts, events or conditions beyond its control, including acts of God, weather conditions, shortages of energy or materials, embargoes, riots, rebellions, sabotage, acts of a public enemy, war, terrorism, insurrection, strikes, boycotts, picketing, slow-downs, work stoppages or other labor actions affecting the rights or obligations of the parties hereunder, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption directly or indirectly results from failure on the part of either party to use reasonable care to prevent, or make reasonable efforts to cure, such failure, delay or interruption. The party seeking to avail itself of any of the foregoing excuses must promptly, but no later than five (5) business days after the date of failure, delay or interruption in performance, notify the other party of the reasons for the failure or delay in connection with the performance hereunder and shall exert its best efforts to avoid further failure, delay or interruption.

XVI.

Any waiver by City or Lessee of any default or breach of any term, covenant, condition, agreement, provision or stipulation herein contained shall not constitute a waiver of any subsequent default or breach of the same or any other term, covenant, condition, agreement, provision or stipulation hereof.

XVII.

This lease agreement constitutes the full and final expression of the agreement between City and Lessee, through the entire Term and it may not be amended except by written instrument signed by both parties.

XVIII.

All notices required under this lease shall be written notices. Any notice or document required or permitted to be delivered herein shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the addresses set out below, or at such other addresses as they may specify by notice delivered in accordance herewith:

City of Brenham _____

XVIV.

This lease is expressly made subject to the ordinances of the City of Brenham, and all applicable state and federal laws. Should any legal action be instituted in connection with this lease, legal venue for all purposes shall lie exclusively in Washington County, Texas.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the _____ day of _____, 20__.

LESSEE: Aviators Plus

CITY OF BRENHAM

By: _____
President

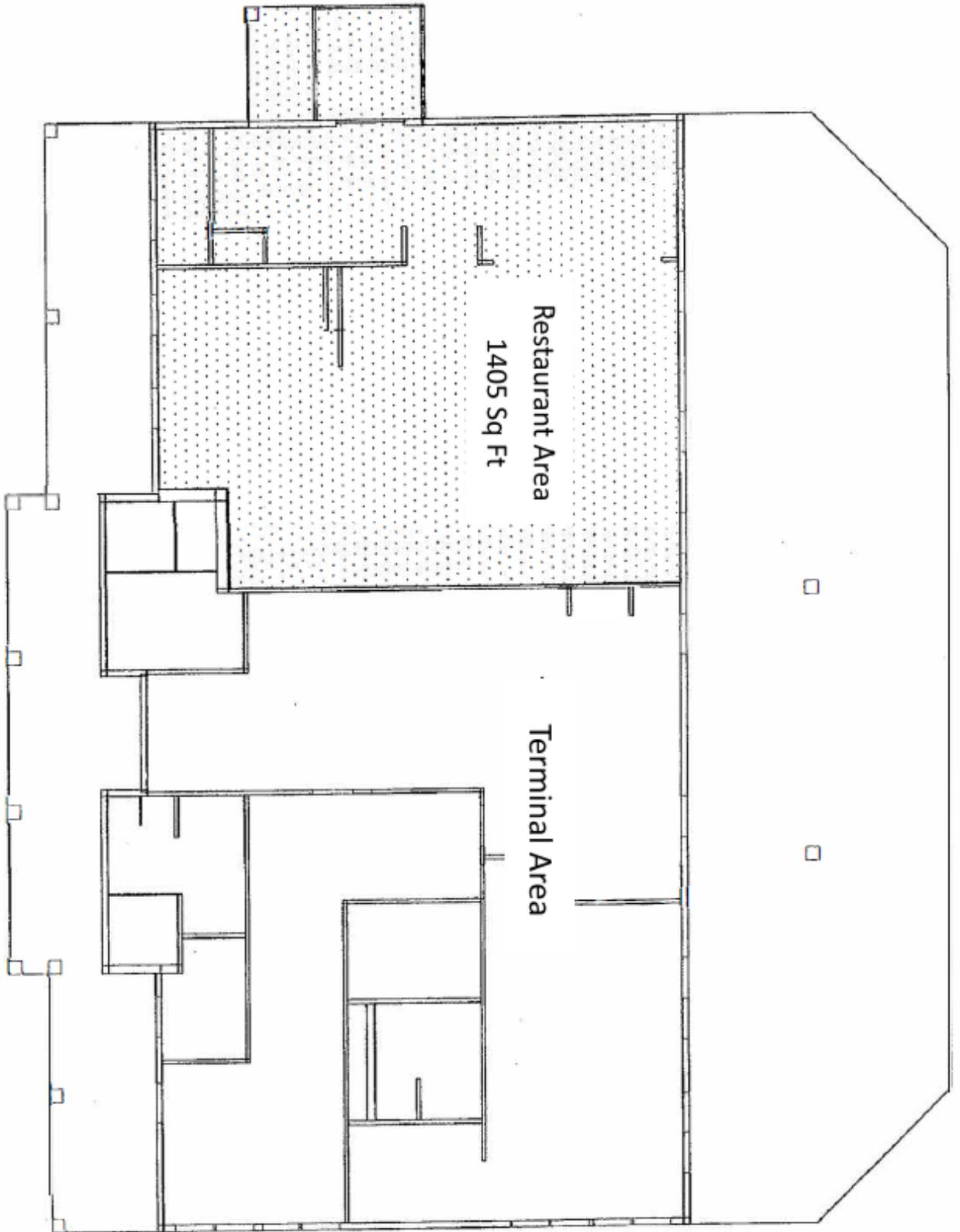
By: _____
Hon. Milton Tate, Mayor

ATTEST:

By: _____

By: _____
City Secretary

**Exhibit "A":
Existing Terminal Building Layout**



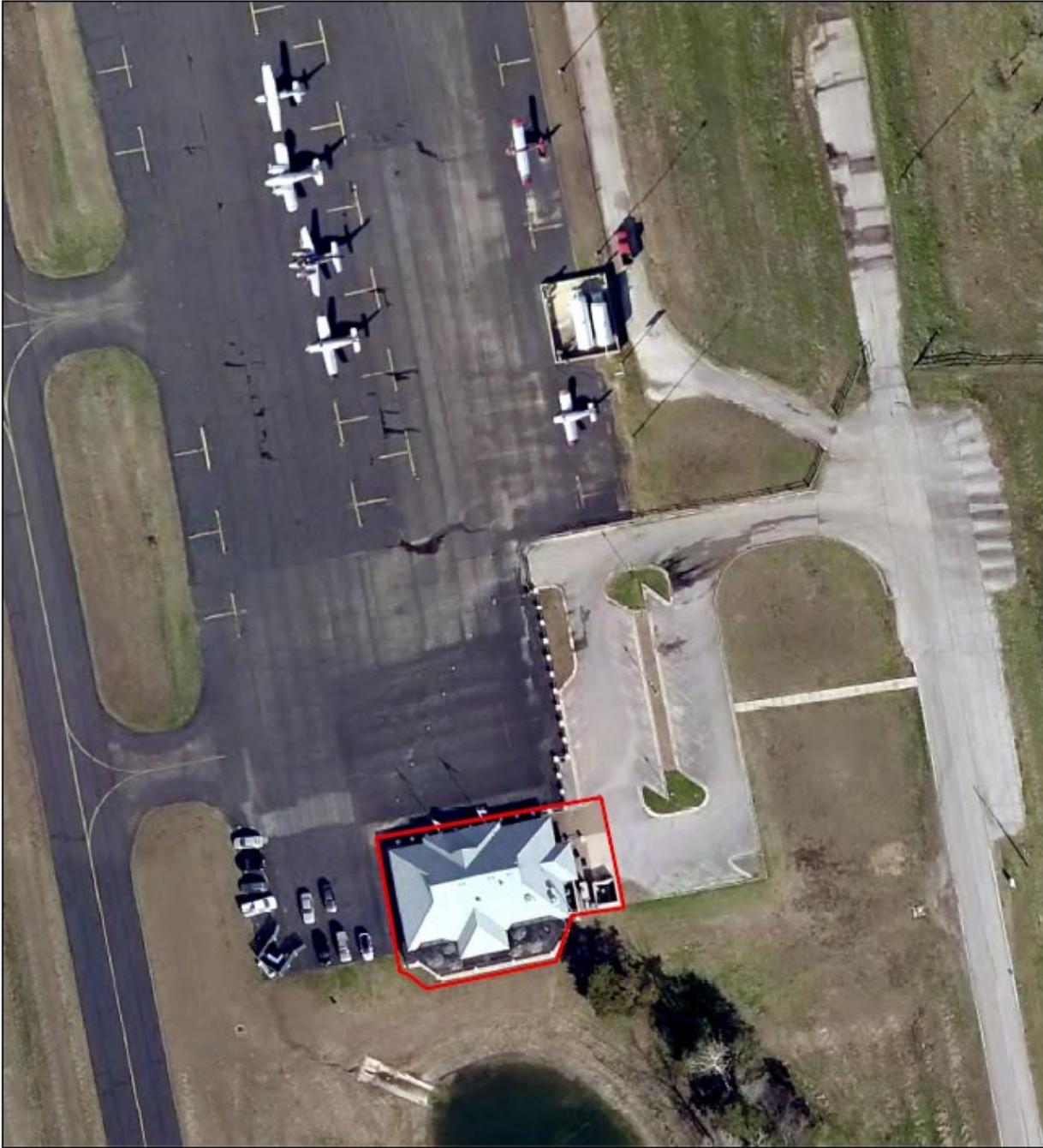


Exhibit "B"

Brenham Municipal Airport

 **Area to be maintained by Lessee**

1 inch = 72 feet





To: Airport Advisory Board Members
From: Stephanie Doland / Kim Hodde
Re: Revised Fixed Base Operator Agreement with Aviators Plus, LLC / Brent Nedbalek
Date: March 16, 2021

A Fixed Base Operator Agreement (FBO) was executed on October 1, 2019 with Aviators Plus, LLC / Brent Nedbalek. There were various items that Southern Flyer, in their capacity as the main FBO for the Airport, were responsible for. However, since Southern Flyer ceased to operate as the Airport's main FBO and Aviator's Plus, LLC is now acting in that capacity, there is a need for a revised FBO agreement to reflect the revised requirements, responsibilities, and expectations. City staff has been in negotiation with Brent to clarify various items and establish some revisions such as:

- The original FBO agreement was for 10-years ending in 2029 with a 5-year renewal term available. The revised initial term would terminate in 2031, rather than 2029. (Section 1)
- The original FBO agreement had verbiage about Aviators Plus entering into a separate contract for construction of a fuel farm. Since this has already been done, the language would be removed. (Sections 2 and 8(T))
- The wording would be updated to reference the Revised Airport Minimum Standards that were adopted since the original contract was executed.
- Aviators Plus would be allowed to charge service fees. (Section 4(C))
- There is added flexibility provided to Aviators Plus regarding operation hours around Holidays and heavy or slow air traffic seasons. (Section 8(B))

The proposed revisions to the new FBO agreement benefit each party in various ways, and are the result of recent discussions and negotiations between the City and Aviators Plus.

City Council is requesting a recommendation from the Airport Advisory Board regarding the proposed revisions as well as any comments or proposed revisions as determined by the Board. The agreement is scheduled to be considered by the City Council in conjunction with the Terminal Building Lease during the March 25, 2021 Council meeting.

which location the FBO may operate its business on the ramp during such time as this FBO Agreement remains in effect.

Any additions or improvements to the Property may not be made unless the City expressly approves the additions or improvements in writing. Any additions or improvements shall be made solely at the expense of FBO and, unless the City expressly agrees otherwise in writing, and such additions and improvements to existing structures or facilities shall be subject to all terms and conditions of this instrument. All improvements to the Property must be made in compliance with the Airport Master Plan and Airport Layout Plan applicable to the Brenham Municipal Airport. In making improvements to the Property, FBO shall be responsible for preparing, obtaining approval of (if needed), implementing and complying with any Stormwater Pollution Prevention Plan requirements made applicable by federal, state or local laws or regulations.

FBO shall timely pay the City all fees and charges as set forth in other provisions of this Agreement.

For the term of the Agreement, FBO will be responsible for payment of all costs and charges for any utilities servicing the Property. FBO shall assume and pay for all costs or charges associated with any utility facilities or services that are provided to or extended to the Property after the date of execution of this Agreement.

FBO agrees that except as may be otherwise provided in other agreements entered into between FBO and City, it will not engage in nor permit the engagement by any persons on the Property in any business other than that which is expressly authorized herein.

3. GENERAL PRIVILEGES, USES AND RIGHTS

City grants to FBO the following general privileges, uses and rights, in common with others, all of which shall be subject to the terms, conditions and covenants set forth and all of which shall be nonexclusive on the Airport. Notwithstanding anything herein contained that may be or appears to be contrary, it is expressly understood and agreed that the rights granted under this Agreement are non-exclusive and the City herein reserves the right to grant similar privileges to another operator or other operators on other parts of the Airport, and nothing contained herein is to be construed as granting to the FBO an exclusive right as defined in Section 308 (a) of the Federal Aviation Act of 1958, or any successor law, as may be amended, or any other applicable regulation.

(A) The use in common with the public generally of all public airport facilities and improvements that are now or may afterwards be connected with or appurtenant to the airport, except as herein provided, to be used by FBO for commercial or noncommercial aviation activities and fixed base operations, and all activities in connection with or, incidental to the business or operation, as herein defined, so long as any use of the public airport facilities by FBO does not interfere with other operations at the airport.

For the purpose of this Agreement, “public airport facilities” shall include all necessary landing area appurtenances, including, but not limited to, approach areas, runways, taxiways, public ramp and aprons, public automobile parking areas, public roadways, public sidewalks, navigational and navigational aids, lighting facilities, public terminal facilities or other public facilities appurtenant to the airport.

(B) The right of ingress to and egress from the premises over and across public roadways serving the airport for FBO, its agents, employees, servants, patrons, invitees, suppliers of service and furnishers of material.

(C) The rights above shall be subject to the City’s ordinances, rules and regulations as now or may afterwards have application at the Airport.

4. SPECIFIC PRIVILEGES, USES AND RIGHTS

(A) In addition to the general privileges, uses and rights above described and without limiting the generality of them, City grants to FBO the right to engage in commercial aviation activities and fixed base operations, as defined below, subject to the conditions and covenants set out herein. Further, FBO shall comply with the “Minimum Standards” as approved and adopted by the City Council on July 2, 2020. FBO covenants and agrees to observe and comply with all provisions in the City’s Minimum Standards, as may be amended from time to time, and with all rules and regulations of City which may hereinafter be promulgated from time to time governing safe conduct on and operations at the Airport and the safe use of its facilities.

“Commercial aviation activities and fixed base Operations” are defined as those activities which involve the sale of aviation services for profit to the general public and other entities. The aviation services shall include: fuel sales; aircraft maintenance and restoration; aircraft sales and brokerage, and aircraft rentals; airframe, engine and accessory maintenance and repair services; sales of aircraft parts, supplies and accessories; flight instruction; pilot supply sales; automobile rentals; and other services as approved by the City Manager in writing.

(B) FBO shall have the right to build or construct any new aircraft storage or repair facilities or any other type buildings or structures normally found on public use airports, at FBO's expense, subject to the express written approval of the City, provided that the location of such facilities is in agreement with the Airport Master Plan and Airport Layout Plan for the Brenham Municipal Airport, and is approved by the City through execution of a separate ground lease with FBO if said buildings or structures are not to be located on the Property.

(C) FBO is hereby granted the right to agree with users of the Airport to perform transient tie downs or blocking for operators flying into the Brenham Municipal Airport and collect fees for such service. Additionally, the FBO is hereby permitted to assess a service fee in exchange for services rendered for aircraft exceeding 12,000 pounds MGTOW (Maximum Gross Take Off Weight) without a minimum fuel purchase. Service fees, as outlined below, shall be limited to one fee per landing and shall include, ramp parking, extended stays, quick turns, towing and any additional services as approved in writing by the City of Brenham. FBO agrees that in return for such privilege Lessee shall sweep, clean and keep ramp areas presentable at all times without charge to the City. All fees may be collected by the FBO and the FBO shall provide a monthly report to the City of all fees assessed. Prior to the first tie-down or service fee charged, a separate standard operating procedure (SOP) document detailing the services offered for charge shall be provided to the City by the FBO. Except upon further contractual authorization from the City, FBO shall make no charge to any aircraft for using the ramp.

- Light Turbine Aircraft (<12,000 lbs. MGTOW) \$ 50.00 or waived with a minimum fuel purchase of 100 gallons.

- Mid-Size Cabin Turbine Aircraft (12,500 – 30,000 lbs. MGTOW)..... \$ 85.00 or waived with a minimum fuel purchase of 150 gallons.
- Large Cabin Turbine Aircraft (> 30,000 lbs. MGTOW) \$ 150.00 or waived with a minimum fuel purchase of 250 gallons.

5. CONDITIONS OF GRANTING RIGHTS CONTAINED HEREIN

The granting of the rights contained herein is conditioned upon the following covenants:

(A) That the right to use the public airport facilities as well as all of FBO’s rights shall be exercised subject to and in accordance with the laws of the United States of America, the State of Texas, and the City of Brenham; the rules and regulations promulgated by their authority with reference to aviation and air navigation; and all applicable rules and regulations and ordinances of City now in force or afterwards ordained or promulgated.

(B) That FBO will not, on the grounds of religion, race, color, national origin, disability, or gender discriminate or permit discrimination against any person or group of persons in any manner prohibited by state or federal law or regulation.

(C) City reserves the right to enter upon the Property at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Agreement.

(D) 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 FBO 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.

(E) During any period when the Airport shall be closed by any lawful authority restricting the use of the Airport in such a manner as to interfere with the use of the same by FBO for its business operations, the period of such closure shall be added to the term of this Agreement, at FBO’s option, so as to extend and postpone the expiration thereof. There shall be no obligation on the City to furnish an auxiliary field in case free use of the Airport is curtailed to the FBO.

(F) City reserves the right to further develop or improve the Airport as it sees fit, regardless of the desires or views of FBO, and without interference or hindrance.

(G) All unpaid monies due to the City hereunder shall bear interest of one and one-half percent per month if same is not paid and received by City when due. FBO shall pay and discharge all costs, expenses, including attorney’s fees, incurred or expended by City in collection of said delinquent amounts due.

(H) City reserves the right to review all rental rates, fuel charges, tie down fees and charges for other services to determine whether the fees are unjustly discriminatory, excessive, or unreasonable and/or if the rates, charges and fees are comparable to rates, charges and fees for like facilities or services at other airports. FBO agrees to submit a schedule of its rates, charges and fees to the City for review sixty (60) days prior to their implementation, except that fuel charges shall not be subject

to the 60-day review period. Fuel charges will be expeditiously reviewed and approved/disapproved by the City each time an increase is proposed. Additionally, FBO agrees to provide the City with a quarterly fuel comparison report which provides fuel prices for at least three (3) additional area public airports and evidence fuel prices charged by FBO at the Brenham Municipal Airport are reasonable and not unjustly discriminatory. City shall provide a response concerning approval/disapproval regarding all other non-fuel fee schedules within forty-five (45) days from date of City's receipt of the proposed fee schedule.

6. OPERATION AS A PUBLIC AIRPORT

City covenants and agrees that during the term of this Agreement it will operate and maintain the Airport and its public airport facilities, as defined above, as a public airport consistent with and pursuant to the assurances given by City to the United States Government through applicable federal and state laws and regulations.

7. CONDITIONS OF PREMISES

Upon execution of this Agreement, City shall assume no further responsibility or liability as to the condition of all the premises allowed to be used and occupied by FBO.

8. OBLIGATIONS OF FBO

(A) FBO shall furnish from its leased Property first class, full service operations serving the needs of the users of the Airport and shall, at all times, conduct its business and activities in a safe and professional manner consistent with all Federal Aviation Administration (FAA) standards and applicable laws and regulations. FBO shall conduct business on the Airport in such a manner as to maintain a friendly and cooperative, though competitive, relationship with airport operators engaged in similar business, airport patrons, and the City of Brenham. FBO will not engage in open public disputes, disagreements, or conflicts, in-person or online, which would tend to deteriorate the quality of service of either party involved, or which would be incompatible with the best interest of the public or the Airport, or would slander, defame or reflect negatively on the City of Brenham in any way. FBO shall select and appoint a manager for its operation at the Airport. Such manager shall be highly qualified and experienced, and be vested with full power and authority to act in the name of the FBO with respect to the method, manner, and conduct of the services to be performed hereunder. Such manager shall be available at the Airport during regular business hours. During the manager's absence, a duly authorized and qualified subordinate shall be in charge of the FBO and on Premises at the Airport. FBO shall provide, at its sole expense, a sufficient number of, and properly trained, employees who are pleasant, neat, clean, and courteous in order to effectively and efficiently provide the commercial aeronautical activities as herein authorized. Employees are to wear appropriate uniforms and badges to indicate the fact and nature of their employment. FBO shall control the conduct, demeanor, and appearance of its employees and representatives. Such employees shall be trained and possess technical qualifications and hold certificates of qualifications, as may be required for such employee to carry out assigned duties. All aircraft Fuel Handling personnel are to be trained in the safe and proper handling, dispensing, and storage of Aircraft Fuel. Acceptable training shall be an FAA approved safety training course in accordance with FAA Advisory Circular 150/5230-4B (and any related addenda and/or errata sheets issued by the FAA) and the National Air Transportation Association (NATA) "Safety First" Program or equivalent training program acceptable to the City. All training records and qualifications shall be provided to the City upon request in accordance with 14 CFR Part 139.321.

(B) FBO shall be continually open for business and provide services for twelve (12) hours a day, seven days a week, except as when necessitated by unforeseen business or emergency conditions. The FBO Operator shall be allowed to vary the hours of operation to adjust for winter, summer, and holidays while still providing within a reasonable period of time (not greater than one hour) staffing on a call-back basis to address after-hour requests for service from customers. FBO shall notify City in writing 72 hours in advance of varied operating hours. When open for business FBO shall provide aircraft line service including but not limited to the sale and into-plane delivery of recognized brands of aviation fuels and other petroleum products. FBO shall provide and maintain an adequate supply at all times of av-gas and Jet-A fuel for sale to airport users.

(C) FBO shall procure and keep in force during the term of the Agreement all necessary licenses and permits as are required by law for all the operations conducted by FBO on Property.

(D) FBO shall, at its sole cost and expense, maintain all the buildings, structures on the Property in compliance with this Agreement, and the improvements and appurtenances in a presentable condition consistent with good business practice in a safe, neat, and good physical condition. FBO shall promptly repair all damages to the premises and the improvements thereon. FBO shall be responsible for all structural maintenance and repair of buildings and structures on the leased Property. FBO shall further be responsible for general maintenance of the buildings, structures, and Property, which shall include without limitation duties such as cleaning floors, cleaning windows, painting interior/exterior of hangar and other improvements, replacement of electric light bulbs and similar maintenance activities.

(E) FBO shall host, fully participate in, and assist in coordinating a minimum of two (2) airport promotions annually such as fly-ins, airshows, pancake breakfasts, etc. as well as be a resource for community events.

(F) FBO shall provide at least one (1) clean courtesy car in excellent condition with air conditioning.

(G) FBO shall: 1) Procure any necessary license or permit to operate the UNICOM radio system; 2) Operate and maintain the UNICOM radio system at the Airport during the effective period of this Agreement; and 3) Be responsible for issuing any NOTAMs related to the Brenham Municipal Airport. The City will determine the UNICOM operating frequency and location of the UNICOM equipment in consultation with the FBO.

(H) FBO further agrees to keep active written record of private parties, airport patrons and customers interested in occupying the City owned T-Hangars. FBO shall provide written record to the City at the City's request.

(I) FBO agrees that any commercial aviation operations on the premises shall be conducted in a legal, proper, efficient and courteous manner. FBO agrees to promote aviation activity on the airport. FBO agrees to maintain, operate and provide a pilots' lounge and public restrooms on the Property.

(J) FBO further agrees: 1) that all service shall be furnished on a reasonable, and not unjustly discriminatory, basis to all users thereof; and 2) to charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the FBO shall be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(K) FBO shall provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Airport of all trash, garbage, and other refuse caused as a result of the operation of its business. FBO shall provide and use suitable covered receptacles for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe, manner on or about the premises shall not be permitted. FBO shall also provide and maintain in proper condition readily accessible fire extinguishers in a number and of a type required in accordance with applicable fire codes.

(L) FBO shall not maintain upon the outside of any improvements or elsewhere on the Property any billboards, however, FBO may maintain on the outside of buildings its name and advertising on signs, the size, location and design of which shall be subject to the prior written approval of the City Manager or his designee.

(M) Nothing here shall be deemed to relieve FBO and its patrons, invitees, and others from such field use charges, including fuel flowage fees, as are levied generally by City directly or indirectly at the Airport.

(N) FBO shall comply with any and all applicable Environmental Laws and Permits (whether obtained by FBO or the City) related to FBO's occupancy and use of the Airport. Without limiting the generality of the foregoing, FBO shall comply with the requirements as set forth below:

1. Duty to Notify. In the event of any release or discharge, or threatened release or discharge of Hazardous Materials at, on, under, or about the Airport, or any portion thereof, that is caused by FBO, its agents, invitees, servants or employees, and which is required by applicable Environmental Laws, Environmental Permits, or Airport rules and regulations to be reported by FBO, whether as a result of negligent conduct or otherwise, or in the event any written claim, demand, complaint or action is made or taken against FBO that pertains to FBO's release, failure to comply with any Environmental Laws or Environmental Permits at the Airport, FBO shall notify the City immediately upon such release and follow up within 24 hours of all known facts pertinent to such release or discharge, or threatened release or discharge, claim, demand, complaint, action, or notice, and shall provide the City with copies of any and all such claims, demands, complaints, notices, or actions so made. If FBO is required, by any Environmental Laws, Environmental Permits, or governmental agency, to file any written notice or report of a release or discharge, or threatened release or discharge at, on, under or about the Airport, or any part thereof, FBO shall simultaneously provide a copy of such notice or report to the City.

2. Remediation. FBO shall undertake all necessary steps required under applicable Environmental Laws and Environmental Permits, or as directed by a governmental agency, to remedy and remove any Hazardous Material or environmental condition or damage to the extent caused by, or resulting from, the activities, conduct or presence of FBO, its agents, invitees, servants or employees, whether resulting from negligent conduct or otherwise ("Remediation Work"). Such Remediation Work shall be performed at FBO's expense.

Except in the event of an emergency, such Remediation Work shall be performed after FBO submits to the City a written plan for completing such Remediation Work and receives the prior written approval from the City, which approval shall not be unreasonably withheld or delayed. Specific cleanup levels for any Remediation Work by FBO shall be designed to return the property to conditions suitable for redevelopment by the City and

meet and satisfy the requirements of all applicable Environmental Laws and Environmental Permits, as determined by the governmental agency responsible for enforcing Environmental Laws or Environmental Permits. Neither an ongoing Remediation Work, including any testing or monitoring, shall either unreasonably or materially impair or interfere with the use of the Airport as an airport. The City shall have the right to conduct a reasonable review and inspect all such Remediation Work at any time using consultants and representatives of its choice. FBO's obligations hereunder shall survive the expiration or early termination of this Agreement.

3. Definitions. For purposes of this Section, the following words and phrases shall have the following meaning:

i. "Environmental Laws" means all applicable federal, state, and local statutes, ordinances, regulations, rules, laws, permits, permit conditions, and orders relating to the generation, use, storage, transportation, or disposal of Hazardous Materials.

ii. "Environmental Permits" means any and all permits, licenses, approvals, authorizations, consents, or registrations required by Environmental Laws, whether federal, state or local, which pertain to the production, use, treatment, generation, transportation, processing, handling, disposal, or storage of Hazardous Materials.

iii. "Hazardous Materials" means friable asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), petroleum, or crude oil or any fraction thereof, natural gas, source material, special nuclear material, and byproduct materials regulated under Environmental Laws, pesticides regulated under Environmental Laws, and any hazardous waste, toxic, or dangerous substance or related material, including any material defined or treated as a hazardous substance, hazardous waste, toxic substance, or contaminant (or comparable term) under any of the Environmental Laws

(O) FBO shall have available the equipment necessary to safely and efficiently move aircraft frequenting the airport.

(P) FBO shall not use or allow property under its control or that of the Airport to be used for any illegal or unauthorized purpose and shall notify the City of any suspected illegal activity at the Airport. FBO, its officers, directors, employees, agents, and contractors shall comply with the following, the same may be amended from time to time: (i) all applicable federal, state, and local laws and ordinances, including directives of the FAA and TSA applicable to FBO's presence and operations at the Airport; and (ii) the Airport Rules and Regulations. Notwithstanding anything to the contrary, references in this Agreement to a law or regulation shall be deemed to be a reference to: (i) such law or regulation as it may be amended from time to time, and (ii) all ordinances, rules, executive orders, policies, and instructions pertaining, and lawfully promulgated pursuant, to such law or regulation as they now exist or may be amended from time to time.

(Q) FBO shall, at its own expense and at all times during their term of this Agreement, pay all lawful taxes and assessments levied against the Property as well as all taxes and assessments levied against the personal property used by FBO in its operation on the Property. None of the terms, covenants or conditions of this Agreement shall be construed as a release of waiver on the part of City, of the right to assess, levy or collect any license, personal, intangible, or other tax which shall be lawfully imposed on the business or property of FBO

(R) FBO shall use the Property only for uses and purposes hereinbefore described.

(S) FBO shall permit City free access to the Property at all reasonable times for the purposes of examining the same and seeing that all of the obligations of FBO hereunder are being met and

performed, and to permit City to enter any building or structure on the Premises at any time in the event of an emergency (the determination of an emergency being at the sole discretion of City).

(T) FBO shall be solely responsible for securing all federal, state, county or municipal approvals of an environmental or other nature required for any construction or alteration of leasehold improvements on the Property, or for any of FBO's operations thereon; provided that City will join in the execution of any such permits or other applications if so required by applicable law.

(U) While engaged in selling fuel at the Airport, FBO agrees to provide, maintain and operate a Jet-A Fuel and an av-gas truck or trailer system of adequate size and in good condition for safe and efficient operation. FBO must use the aircraft fueling systems in a careful and proper manner. FBO agrees that the aircraft fueling systems will be operated and used in accordance with any applicable vendor's or manufacturer's manuals or instructions, by competent and fully qualified personnel only. FBO shall not permit the aircraft fueling systems to be operated or used in violation of any applicable federal, state, or local statute, law, ordinance, rule, or regulation relating to the possession, use, or maintenance of the aircraft fueling systems.

FBO shall keep accurate and detailed records of all fuel sales. FBO shall keep all records necessary for government reporting and for calculating flowage fees due to the City. FBO is liable for and shall pay, on or before their due dates, all sales taxes, use taxes, personal property taxes, and any other taxes or governmental charges imposed on the aircraft fueling systems or in connection with the use or operation of the aircraft fueling systems.

FBO will pay City a fuel flowage fee of \$0.04 (4 cents) per gallon for av-gas, and \$0.08 (8 cents) per gallon for Jet-A fuel, for all gallons of fuel delivered to and accepted by FBO at the Airport. The City reserves the right to adjust the fuel flowage fee(s) at any time during the term of this Agreement by modifying the Airport Minimum Standards; however, the fuel flowage fee(s) may not be increased by more than 25% during the term of this Agreement, nor shall fuel flowage fees charged to FBO be higher than any fuel flowage fees charged to any other FBO at the Airport.

FBO agrees to provide the City with a monthly report of fuel purchased during the month by the tenth (10th) day of the following month. Fuel flowage fees are to be paid by the FBO not later than the tenth (10th) day of the month. Monthly fuel flowage fees are to be based on all gallons of fuel delivered to and accepted by FBO. Payment shall be mailed to the City of Brenham, P.O. Box 1059, Attn: Development Services Department, Brenham, Texas 77834-1059, or hand-delivered.

9. OBLIGATIONS OF CITY

(A) City hereby designates its City Manager or his designee as its official representative, with the full power to represent City in all dealings with FBO in connection with this Agreement.

(B) City covenants and agrees to permit FBO, its businesses, business invitees and other Airport users access to landing areas, runways, taxiways, terminal areas, automobile and aircraft parking areas, aprons, ramps, and the use of navigational aids, and the general use of all public airport facilities and improvements of a public nature which are now, or may hereafter be connected with or pertinent to the Airport.

- (C) City covenants and agrees to operate Brenham Municipal Airport as a public airport and to provide FBO and airport users with the normal and customary services pertinent thereto.
- (D) City covenants and agrees to a monthly meeting with the FBO to discuss any identified issues regarding airport safety or operations and any future airport needs including, but not limited to possible improvements or other development at the Brenham Municipal Airport.

10. INSURANCE AND INDEMNIFICATION

- (A) Insurance shall be procured from a company authorized to do business in the state of Texas and satisfactory to City, and FBO shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the term of this Agreement.

The proceeds of any such insurance paid on account of any of the perils as required to be insured as stated herein shall be used to defray the cost of repairing, restoring or reconstructing the improvements, as necessary, in the opinion of City.

Property insurance policies required by this paragraph shall contain waiver of subrogation endorsements and shall contain a provision that no change, cancellation or renewal of such insurance shall take effect until at least thirty (30) days after notice in writing has been delivered to City.

- (B) FBO is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions, and City shall in no way be responsible. **FBO COVENANTS AND AGREES TO INDEMNIFY AND DEFEND, AT ITS EXPENSE, CITY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR DAMAGES OR INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, OF ANY CHARACTER, ARISING OUT OF OR INCIDENT TO THE USE, OCCUPANCY, OR MAINTENANCE OF THE PREMISES BY FBO, ITS OFFICERS, AGENTS, EMPLOYEES, PATRONS, CONTRACTORS, SUBCONTRACTORS, LICENSES OR INVITEES. FBO ASSUMES ALL LIABILITY AND RESPONSIBILITY OF CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FOR ANY AND ALL CLAIMS OR SUITS FOR DAMAGES OR INJURIES, INCLUDING DEATH, TO ANY AND ALL PERSONS OR PROPERTY, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, IN CONNECTION WITH THE USE, OCCUPANCY OR MAINTENANCE OF THE PREMISES BY FBO, ITS OFFICERS, AGENTS, EMPLOYEES, PATRONS, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES, DESTRUCTION TO CITY'S PROPERTY ARISING OUT OF THE ACTS OR OMISSIONS OF FBO, ITS OFFICERS, AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, OR PATRONS. FBO SHALL INDEMNIFY CITY AGAINST ANY AND ALL MECHANIC'S AND MATERIAL MEN'S LIENS OR ANY OTHER TYPE OF CLAIMS OR LIENS IMPOSED UPON THE DEMISED PREMISES ARISING AS A RESULT OF FBO'S CONDUCT OR INACTIVITY.**

- (C) FBO shall secure public liability and hangar keeper's liability insurance, in which City shall be named an additional insured. Such policies of insurance shall protect City and FBO against any and all liability for death, injury, loss or damage against which FBO has elsewhere in this agreement undertaken to save and hold the City, and its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liability and annoyance of loss resulting from claims or court action of any nature and arising directly or indirectly out of the acts

of FBO, its agents, servants, guests, employees, business visitors or others under this agreement or by result of any act or omission or such persons. Such policies shall be placed with a company authorized to do business in the State of Texas and shall have not less than the following limits:

1. \$1,000,000 Comprehensive General Liability
2. Medical Expense Limit (Any one Person) \$5,000
3. Personal & Advertising Injury Aggregate Limit \$1,000,000
4. Products/Completed Operations Aggregate Limit \$1,000,000
5. Pollution Liability -- \$1,000,000 per loss
6. Hangar Keeper's Liability -- \$1,000,000 (any one aircraft)/\$2,000,000 (any one occurrence)

FBO shall provide the above referenced coverage and also procure and maintain Worker's Compensation insurance, including employer's liability, in the amounts required by the State of Texas.

The amounts of said insurance shall not be deemed a limitation of FBO's agreement to save and hold City harmless, and if FBO becomes liable for an amount in excess of the insurance FBO will save and hold the City harmless as the holder thereof. FBO shall furnish to the City certificates of insurance for the insurance coverage required herein.

FBO shall maintain the insurance with an insurance company authorized to do business in the State of Texas and approved by City. FBO shall furnish City with a certificate from the insurance carrier showing the insurance to be in full force during the entire term of this Agreement or shall deposit with the City copies of the policies.

The policies or certificates shall contain a provision that written notice of cancellation or of any material change in the policy by the insurer shall be delivered to City thirty (30) days in advance of the effective date of the cancellation or change.

11. ASSIGNMENT OR SALE

The FBO may assign, sell, or transfer this Agreement or any right hereunder to any person, corporation, association, or any other entity with the written consent of the City. Any assignment, sale, or transfer not consented to in writing by the City shall be null and void, and shall be grounds, at the option of the City, for the City to immediately terminate this Agreement.

12. DEFAULT AND TERMINATION

(A) This Agreement may be terminated at any time by the City if FBO fails to abide by the terms and conditions expressed herein and any exhibits hereto, including but not limited to the Airport Minimum Standards adopted July 2, 2020, as may be amended from time to time. This Agreement may also be terminated at any time by mutual agreement and consent of both parties in writing. Should the FBO be declared bankrupt, incompetent, or ceases operations, this Agreement shall immediately terminate and shall not be considered as part of the FBO's estate and shall not become an asset of any appointed or assigned guardian, trustee, or receiver. In the event FBO fails to make timely payments of all taxes or fees, fails to provide proof of required insurance, uses the Airport property or permits the Airport property to be used for any illegal or unauthorized purpose, files bankruptcy, abandons or leaves the property vacant or unoccupied for thirty (30) consecutive days, or violates any of the terms and conditions of this Agreement, the City has the right to

terminate this Agreement and retake possession of any Airport property used, occupied, or under the control of the FBO.

(B) If either party defaults in the performance of any obligation or covenant in this Agreement, the non-defaulting party may enforce the performance of this Agreement in any manner provided by law. This Agreement may be terminated at the non-defaulting party's discretion if such default continues for a period of sixty (60) days after written notification of such default and of the intention of the non-defaulting party to declare this Agreement terminated, provided, however, if the default is not reasonably capable of being fully cured within sixty (60) days, the defaulting party shall be allowed the needed additional time to cure the default if: (i) the defaulting party begins the cure within the sixty (60) day period; and (ii) diligently pursues the cure thereafter until it is fully cured. If the defaulting party has not substantially cured the default within the time period referenced above, this Agreement may be terminated by the non-defaulting party, and the non-defaulting party may pursue any other remedies available in law or equity.

(C) In the event of a breach by the FBO of any of the provisions of this Agreement in any manner that, in the sole opinion of the City, presents a danger to the City's equipment, property, or surrounding property, the City shall have the right to terminate this Agreement immediately.

(D) Upon the termination of this Agreement by expiration of a term not renewed, mutual agreement, or any other reason for termination, the FBO shall peaceably vacate the premises and any other property entrusted to the FBO shall be returned to the City in the same condition as it was when issued, normal wear excluded. Should FBO be in default of any monies owed to the City, the City may take possession of any personal property seized, subject to the disposition of a court of competent jurisdiction. The FBO shall be liable for any and all expenses incurred by the City in such action.

13. SUSPENSION OF AGREEMENT

(A) During the time of war or national emergency, City shall have the right to lease the landing area or any part of the airport to the United States government for military use. If any such lease is executed, any provisions of this Agreement which are inconsistent with the provisions of the lease to the government shall be suspended. Nothing contained in this Agreement shall prevent FBO from pursuing any rights which FBO may have for reimbursement from the United States government for the taking of any right conferred under this Agreement or for any loss or damage caused to FBO by the United States government.

14. MISCELLANEOUS

(A) This Agreement embraces the entire Fixed Base Operator Agreement between the parties hereto and no statement, remark, representation, agreement, or understanding, either oral or written, not contained herein shall be recognized or enforced, except that this Agreement may be modified by written addendum hereto attached and signed by all of the parties. The parties expressly agree and acknowledge that they have not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained or expressly incorporated by reference in this Agreement.

(B) For the purposes of this Agreement, the singular number shall include the plural and the masculine shall include the feminine and vice-versa, whenever the context so admits or requires.

(C) The captions and headings are inserted solely for the convenience of reference and are not part of or intended to govern, limit, or aid in the construction of any provision hereof.

(D) The parties to this Agreement hereby acknowledge and agree that they are the principals to the Agreement and have the power, right and authority to enter into this Agreement and are not acting as an agent for the benefit of any third party.

(E) This Agreement shall be governed by the laws of the State of Texas and construed thereunder, and exclusive venue of any action brought under this Agreement shall be in Washington County, Texas.

(F) If any section, paragraph, sentence, or phrase entered in this Agreement is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, such illegality, invalidity, or unenforceability shall not affect the remainder of this Agreement which can be given effect without the illegal, invalid, or unenforceable section, paragraph, sentence or phrase and to this end, the provisions of this Agreement are declared to be severable.

(G) All notices regarding this Agreement must be sent to each party at the following address:

City:

City of Brenham
Att: City Manager
P.O. Box 1059
Brenham, Texas 77834-1059

FBO:

Aviators Plus, LLC
2901 Aviation Way
Brenham, TX 77833

Any written notice under this Agreement shall become effective as of the date of mailing by registered or certified mail and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may hereafter be specified by notice in writing.

(H) The waiver by either party of a breach of this Agreement shall not constitute a continuing waiver of such breach or of a subsequent breach of the same or a different provision, unless so stipulated by the party not in breach of this Agreement. The payment or acceptance of fees, compensation or charges for any period after breach shall not be deemed a waiver of any right or acceptance of defective performance.

(I) Each party shall operate under this Agreement as an independent contractor, and not as an agent, representative or employee of the other. Subject to the terms of this Agreement, each party shall have the right to control the details of its performance hereunder.

(J) This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respects to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement

acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any parties which are not embodied herein and that no other agreements, statement, or promise not contained in this Agreement shall be valid or binding.

No modification concerning this instrument shall be of any force or effect, excepting a subsequent amendment in writing signed by the parties. No official, representative, agent or employee of the City, has any authority to modify this Agreement except pursuant to express written authority to do so granted by the City Council of the City of Brenham, Texas.

(K) If any action is brought to enforce, construe or determine the validity of any term or provision of this Agreement (whether at the trial court level or any appeal therefrom), the prevailing party shall be entitled to reasonable attorney’s fees and costs of the action.

(L) The parties acknowledge that each party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party must not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

(M) Each party agrees that both parties shall have the right to audit the financial and business records of the other party that relate to the subject matter of this Agreement (“Records”) at any time during the term of this Agreement, and for three (3) years thereafter, in order to determine compliance with this Agreement. Throughout the term of this Agreement and for three (3) years thereafter, each party shall make all Records available to the other party as it relates to the subject matter of this Agreement.

EXECUTED this the _____ day of _____, 2021.

CITY OF BRENHAM

FBO - FIXED BASE OPERATOR

Hon. Milton Y. Tate, Jr., Mayor
City of Brenham, Texas

FBO: _____, LLC
By: Brent Nedbalek
Title:

ATTEST:

ATTEST:

Jeana Bellinger, TRMC, CMC, City Secretary
City of Brenham, Texas

By:
Title: