

AIRPORT T-HANGAR LEASE AGREEMENT
HANGAR No. _____

THIS LEASE is entered into as of the _____ day of _____, _____ by the City of Temple, a home rule City, (“City”) and _____ (“LESSEE”) (collectively the “Parties”).

WHEREAS, the City is the owner of the Draughon-Miller Central Texas Regional Airport (the “Airport”), located in the limits of the City of Temple, by virtue of an agreement with the United States relative to development, operation, and maintenance of the Draughon-Miller Central Texas Regional Airport dated August 18, 1947, to which reference is hereby made, and by such reference made a part hereof.

NOW THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

1. Lease and Premises. The City agrees to lease to LESSEE T-Hangar No. _____ (the “Leased Premises”) located within the Airport in “Building No. _____” and depicted in the aerial photograph attached hereto as *Exhibit A* and incorporated herein for all purposes.

LESSEE agrees and understands that this Lease is subject to all of the provisions of Chapter 3, *Airports and Aircraft*, of the City of Temple Code of Ordinances and the Airport Rules and Regulations, insofar as they may be applicable hereto and that in the event of any conflict between the terms of this Lease and Chapter 3 of the Code of Ordinances, the terms in the Code of Ordinances shall prevail.

2. Term. This Lease will be for a term of 12 months, commencing on _____, _____ and ending on _____, _____, with four one-year optional renewals if so agreed between the Parties. If LESSEE shall hold over after the expiration of the lease term or any extension, such tenancy shall be from month-to-month on all terms, covenants, and conditions of this Lease, subject to any increases in rent approved and adopted by City Council. Rental rates will be adjusted as provided in Section 5. Any optional renewal terms agreed upon by the Parties will be evidenced by execution of a written amendment or addendum, or new lease agreement, reflecting any new rental rates and changes to any terms and conditions.

3. Purpose and Use. *LESSEE agrees that the Leased Premises will be used solely for aircraft hangar purposes and aeronautical operations.* LESSEE must store an operable, airworthy aircraft in the Leased Premises. Any aircraft stored in the Leased Premises must be owned or leased and operated by LESSEE. If at any time the Leased Premises are converted to a non-aeronautical use without the express written consent of the City, LESSEE will be considered in default of this Lease.

If LESSEE sells, disposes, or is otherwise divested of its aircraft located at the Leased Premises, LESSEE agrees to notify the City through the Airport Director, in writing, within five (5) business days of such divestment. LESSEE will have 90 days to replace the aircraft with another operable, airworthy aircraft and will provide written notification to the Airport Director concerning the replacement, including the aircraft tail number. If LESSEE fails to obtain another aircraft to store on the Leased Premises within the 90-day period, absent express written consent for an extension from the City, this Lease shall terminate immediately.

Disabled aircraft are not permitted to be stored on the Leased Premises for a period exceeding 90 days; if a disabled aircraft is not made operable within 90 days, or replaced by an operable, airworthy aircraft, LESSEE is considered in default of this Lease, and this Lease may be terminated at the discretion of the City.

LESSEE may use the Leased Premises for assembly of experimental or kit aircraft, provided however, LESSEE must show evidence of continuous and substantial progress towards airworthiness and verify such progress to the Airport Director every 90 days. If LESSEE fails to show evidence of substantial progress over two (2) consecutive 90-day periods, the aircraft will be deemed non-airworthy, and LESSEE will be in default of this Lease.

This Lease includes the right of access to and non-exclusive use of the Airport common areas, public buildings, ramps, taxiways, and runways by LESSEE during the term of this Lease.

4. **Terms and Conditions.** LESSEE agrees to abide by any official policies adopted by the City related to operations of the Airport, which are in effect at the commencement of this Lease or which may be adopted in the future. Failure to abide by the terms and conditions of this Lease, or the rules, regulations, and/or policies of the Airport may result in immediate termination of this Lease.

LESSEE AGREES NOT TO:

- Use Leased Premises for storage of items other than an aircraft and items related to aeronautical operations; Storage of non-aeronautical goods and equipment, including but not limited to, automobiles, boats, boat trailers, campers, and other household/office goods and records are prohibited;
- Use, occupy, or permit to be used or occupied the Leased Premises for any purpose that is illegal, dangerous, or that would constitute a nuisance;
- Perform aircraft maintenance or repairs on the Leased Premises, except those repairs which are authorized by FAA Regulations, Part 43, Appendix A, Paragraph (c) (*Preventative Maintenance*);
- Store any flammable, volatile, or explosive materials on the premises, except that residual fuel for the operation of the aircraft may be stored in aircraft fuel tanks;
- Store any hazardous materials or toxic substances on the Leased Premises;
- Fuel or defuel any aircraft parked inside the Leased Premises;
- Engage in spray painting or welding, or operate any sanders, grinders, or similar tools on the Leased Premises;
- Place or permit the placement of any sign, banner, flag, or placard, or similar advertising device on the Leased Premises so as to be visible outside of an enclosed building;
- Modify the Leased Premises in any manner (including painting) without the prior written consent of the City;
- Conduct commercial activities on the Leased Premises; commercial activities includes the sale of goods or services.

LESSEE AGREES TO:

- Timely pay Rent, fuel charges, and all other charges, fees and assessments due to the City;
- Provide a credit card to be billed for monthly rent and keep all credit card information up to date with the Airport Director;
- Store only aircraft and items related to aeronautical operations in the Leased Premises;
- Grant the City the right to enter the Leased Premises at any time for inspection, repairs, additions, or alterations as may be necessary for the safety, improvement, or preservation of the Leased Premises;
- Furnish a duplicate key or combination to the Airport Director for any lock used to secure the Leased Premises;
- Notify the Airport Director within ten (10) calendar days of any changes to LESSEE's information contained herein, including address, other contact information, or aircraft information;
- Notify the Airport Director within five (5) business days of the divestment of any aircraft stored pursuant to this Lease;
- Keep the Leased Premises in good and orderly condition;
- Upon vacating the Leased Premises, remove all personal items and leave the Leased Premises in a clean and swept condition, and arrange for final clearance inspection with the Airport Manager;
- Strictly comply and in all respects with the requirements of any applicable law, statute, ordinance, permit, decree, guideline, rule, regulation or order pertaining to health or the environment.

5. **Monthly Rent.** LESSEE will pay to the City, without notice or demand and without set-off or deduction, rent of \$____.____ per each full month of this Lease.

LESSEE'S obligation to pay rent under this Lease is an independent, unconditional covenant of LESSEE.

Rent is payable to the Airport Director without notice or billing on the first day of each calendar month.

Rental rates will be evaluated at the expiration of each 12-month term and will be subject to any rental rate increases approved and adopted by City Council.

6. **Maintenance and Repairs.** LESSEE agrees to maintain and operate the Leased Premises and improvements in their existing condition in accordance with all applicable laws, rules, ordinances, orders, and regulations of federal, state, county, municipal, and other governmental agencies, and bodies having or claiming jurisdiction over the Leased Premises, including but not limited to Federal Aviation Administration rules, regulations, and guidelines.

LESSEE, at its own costs and expense and at all times during the Term of this Lease, agrees to keep and maintain or cause to be kept and maintained, the Leased Premises in a good state of appearance and repair, reasonable wear and tear alone excepted. The hangar will remain neat and clean, free from rubbish and debris, including accumulation of birds' nests, insects, and the like.

LESSEE agrees not to make any additions, modifications, or alterations to the Leased Premises without the express written consent of the City. Any improvements constructed on the Leased Premises by LESSEE, as permitted by the City, will be owned by LESSEE until expiration of the term or sooner termination of this Lease. LESSEE may not, however, remove any improvements from the Leased Premises nor waste, destroy or modify any improvements without the City's written approval. All additions to the existing improvements will, at the expiration of the term or sooner termination of this Lease, and without compensation to LESSEE, become the City's property free and clear of all claims to or against them by LESSEE or anyone claiming by, through or under LESSEE. LESSEE agrees to defend and indemnify the City against all liability and loss arising from such claims or from the City's exercise of the rights conferred by this paragraph.

LESSEE accepts the Leased Premises "AS IS" on the date of the commencement of this Lease and is, except as expressly provided herein, accepting the Leased Premises without representation or warranty, express or implied in fact or by law and without recourse to the City as to the nature, condition, or usability thereof or the use or uses for which the Leased Premises or any portion thereof may be put.

City's sole duty as to the maintenance of the Leased Premises is, after written request from LESSEE, to repair any mounted lighting, repair or replace loose or missing sheet metal panels, broken windows, and repair aircraft hangar doors and cables, unless such damage or defect is caused, directly or indirectly, by the act or omission of the LESSEE. LESSEE agrees to reimburse the City for any repair the City makes to the Leased Premises for damages caused by LESSEE's acts, omissions, or negligence.

7. Insurance. The City agrees to insure the structure of the Leased Premises against all risks of direct physical loss in an amount equal to the full replacement cost of the same as of the date of the loss and liability. LESSEE will have no claim to any proceeds of City's insurance policy.

LESSEE agrees, to procure and maintain in full force and effect, at its own cost and expense, during the Term of this Agreement, insurance of such types and in such amounts as may be required by the City, including without limitation the following:

- a) **Aircraft liability insurance** including risks on the ground and in flight, for 100% of the replacement cost of the aircraft and other such personal property, and a \$1,000,000 per occurrence minimum limit for damage caused to persons or property in connection with the operation or storage of the aircraft;
- b) **Comprehensive general liability coverage** with a minimum combined single limit of \$1,000,000.00 per occurrence for bodily injury, including death, and property damage. The policy must include all risks coverages and must include coverage related to premises liability for Lessee's occupation and use of the Leased Premises.
- c) **Broad form contractual liability must not be excluded, and the policy must include a severability of interests provision.**
- d) **The City must be named as an additional insured on all policies required under this Lease.**
- e) The policies are to contain or be endorsed to stated that an **"Other Insurance" clause shall not apply** to the City where the City is an additional insured on the policy.
- f) **All policies required under this Lease shall contain a waiver of subrogation in favor of the City.**
- g) All polices are subject to examination and approval by the City for adequacy as to form and content, form of protection, and insurance company. Copies of policies or certificates of insurance

shall be provided to the City and approved prior to beginning use of the Leased Premises. Lessee shall provide written notice to the City of cancellation, non-renewal, or material change of any insurance required herein. Lessee shall provide the City with replacement certificate(s) of any insurance, policy endorsements, exclusions, or relevant extracts from the relevant insurance policy, either before the cancellation, non-renewal, or material change is effective, if known in advance, or within ten (10) business days of first learning of the cancellation, non-renewal, or material change if not known in advance.

- h) A cancellation of the insurance policy will be deemed default by the LESSEE and shall cause this Lease to terminate.

8. Taxes and Assessments. LESSEE will pay all taxes, assessments, and other government charges attributable to the Leased Premises and any personal property located on or within the Leased Premises by LESSEE throughout the term of this Lease.

9. Liability and Indemnity.

(a) **The City, its agents, servants, and employees, will not be liable for any loss, damage, or injury of any kind or character to any person or property arising from any use of the Leased Premises, or any part thereof, or caused by any defect in any building, structure, or other improvement thereon or in any equipment or other facility therein, or caused by or arising from any act or omission of LESSEE, or any of its agents, employees, licensees, or invitees. LESSEE agrees to hold the City, its agents, servants, and employees entirely free and harmless from all liability of any such loss, damage, or injury of other persons, and from all costs and expenses therefrom.**

(b) **LESSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE LEASED PREMISES. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (A) WILL SURVIVE THE END OF THE TERM AND (B) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF THE CITY BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY.**

10. Fire and Other Casualty Damage. In the event the improvements on the Leased Premises are damaged or destroyed, partially or totally, due to the acts, omissions, or negligence of LESSEE or LESSEE's guests, whether or not such damage or destruction is covered by any insurance required to be maintained under this Lease, LESSEE will repair, restore, and rebuild the Leased Premises to their condition existing immediately prior to such damage or destruction and this Lease will continue in full force and effect. Such repair, restoration, and rebuilding (all of which are herein called the "repair") must be commenced within a reasonable time after such damage or destruction and must be diligently prosecuted to completion. There will be no abatement of rent or of any other obligation of LESSEE hereunder by reason of such damage or destruction due to the acts, omissions, or negligence of LESSEE and LESSEE's guests.

If the Leased Premises are entirely or partially destroyed during the term of this Lease, the City or LESSEE may cancel and terminate this Lease by written notice to the other Party. This paragraph does not limit LESSEE's obligation to repair damage caused by the acts, omissions, or negligence of LESSEE or LESSEE's guests and such obligation will survive the termination of this Lease.

11. Furniture, Fixtures, and Cleanup. Prior to the termination of this Lease, LESSEE will remove all personal property from the Leased Premises and will repair any damage caused by such removal. LESSEE will thoroughly clean the Leased Premises and remove all trash, debris, dirt, and other materials and substances in, on, or about the Leased Premises arising out of or related to LESSEE's use of the Leased Premises. Should LESSEE fail to comply with this provision, LESSEE agrees to pay the City's expenses associated with such removal and cleanup.

12. Assignment and Sublease. Without the prior written consent of the City, which consent may be withheld in the City's sole discretion, LESSEE will not have the right to assign all or any part of LESSEE's rights under this lease or to sublet any part of the Leased Premises. Consent by the City to any such assignment or sublease shall not relieve LESSEE of its liability and obligations under this Lease.

13. Default by LESSEE. The occurrence of any one or more of the following events will constitute a default by LESSEE under this Lease:

- (a) LESSEE fails to perform, observe, or comply with any of the terms, provisions, agreements, covenants, or conditions of this Lease;
- (b) LESSEE fails to pay to the City any rent or any other monetary charge (including but not limited to fuel charges) due from LESSEE hereunder as and when due and payable;
- (c) The filing of any petition in bankruptcy or other insolvency proceeding by or against LESSEE;
- (d) LESSEE becomes insolvent or makes an assignment for the benefit of creditors, or makes a transfer in fraud of creditors, or a receiver or trustee is appointed for LESSEE or any of its properties;
- (e) LESSEE informs the City that it will be unable to meet its obligations under this Lease as they become due; and
- (f) LESSEE deserts, abandons, or vacates the Leased Premises or any substantial portion thereof.

14. The City's Remedies. Unless otherwise provided in this Lease, upon the occurrence of any default by LESSEE under this Lease, the City will give notice of the default to LESSEE and allow LESSEE 10 days to cure the default. If LESSEE fails to cure the default, the City may, at its option, pursue any of the following remedies without any notice or demand, other than the notice expressly provided in this Lease. LESSEE waives notice and demand for payment of rent or other obligations due hereunder and waives any and all other notice or demand requirements imposed by Texas law.

In the event of a default by LESSEE, the City may:

- (a) Terminate this Lease and repossess the Leased Premises, in any lawful manner and without breach of the peace; if the City elects to terminate this Lease, the City will have all the rights of reentry upon the Leased Premises without becoming liable for damages, or guilty of trespass;
- (b) Do whatever LESSEE is obligated to do under the terms of this Lease and, if necessary enter upon the Leased Premises to perform such act, and LESSEE agrees to reimburse the City on demand for any expenses which the City may incur in effecting compliance with LESSEE's obligations under this Lease and LESSEE agrees that the City shall not be liable for any damages resulting to LESSEE from such action;
- (c) Change all door locks and other security devices of the LESSEE at the Leased Premises, and LESSEE hereby expressly agrees that the City will not be required to affix any notice of any kind to the Leased Premises or provide the new key to the LESSEE at any hour, including the LESSEE's regular business hours, until such time as LESSEE has cured any and all defaults hereunder and reimbursed the City for all sums due to the City hereunder;
- (d) Exercise any of the following remedies: enforcement of statutory lien, suit on the contract, suit for anticipatory breach, and injunctive relief of all varieties;
- (e) Remove the aircraft and other personal property from the Leased Premises. In the event of such removal, LESSEE hereby releases the City from liability for any damage that occurs to the aircraft or other personal property; and
- (f) Exercise any or all other remedies available to the City in this Lease, at law, or in equity.

15. **No Duty to Relet or Mitigate.** Notwithstanding anything contained herein to the contrary, to the fullest extent permitted under applicable law, LESSEE hereby releases the City from any and all duty to relet the Leased Premises or otherwise mitigate damages.

16. **Reentry.** If, after written notice and time to cure, LESSEE fails to pay Rent in accordance with this Lease and allow the City to reenter and repossess the Leased Premises, the City will have full and free license under this Lease, to enter into and upon the Leased Premises, without breach of the peace and in any legal manner, with or without process of law for the purpose of repossessing the Leased Premises, expelling or removing LESSEE and any others who may be occupying the Leased Premises, removing all property therefrom, and changing all door locks of the Leased Premises. The City may take these actions without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, without accepting surrender of possession of the Leased Premises by LESSEE, and without incurring any liability for any damage resulting therefrom, including without limitation, any liability arising under Sections 93.002 and 93.003 of the Texas Property Code, as amended or superseded, and without relinquishing Landlord's right to rent or any other right given to Landlord hereunder or by operation of law or in equity. ***LESSEE agrees to waive any right to claim damage for such reentry and/or expulsion, including without limitation any rights granted to LESSEE by Sections 93.002 and 93.003 of the Texas Property Code, as amended or superseded.***

17. Termination.

- (a) Mutual Termination. The Parties may mutually agree in writing at any time to terminate this Lease.
- (b) Termination by Written Notice. Either Party may terminate this Lease by giving the other Party written notice at least fifteen (15) calendar days prior to the intended termination date.
- (c) Termination for Non-Payment. If LESSEE fails to pay all or part of the Rent as required by this Lease, and the failure continues for thirty (30) days past the due date, the City may immediately terminate this Lease by delivering the termination notice to LESSEE or posting the termination notice on the Leased Premises, the termination to be effective on the date of delivery or posting.
- (d) Removal of Personal Property. Upon termination of this Lease, the LESSEE must immediately remove all personal property from the Leased Premises and must surrender the Leased Premises in substantially the same condition as existed at the beginning of the Lease, normal wear and tear excepted. Should LESSEE fail to remove any personal property by the required date, the City may elect to retain possession of the property, sell the property in accordance with appropriate law, or have the property moved at the expense of the LESSEE.

18. Notice. All written notice provided under this Lease or required by law shall be deemed to have been given and received on the next day after such notice has been deposited by Registered or Certified Mail with sufficient postage affixed thereto and addressed to the other party to the Agreement, provided that this shall not prevent the giving of actual notice in any manner.

Notice to the City may be sent to the following address:

City of Temple
Draughon-Miller Municipal Airport
Attn: Airport Director
7720-F Airport Road
Temple, Texas 76501

With Mandatory Copy to:

City of Temple
City Attorney's Office
2 North Main Street, Suite 308
Temple, Texas 76501

Notice to LESSEE may be sent to the following address:

Lessee Name
Mailing Address
City, State ZIP
Lessee Email Address

19. Common Areas. LESSEE's rights in this Lease are limited and LESSEE agrees that the City may close the runway(s) or any other facilities at any time for routine maintenance, repair, or other government operations.

20. Venue; Recovery of Fees; Dispute Resolution; Choice of Law. Any suit or claim or cause of action regarding this Lease shall be brought in Bell County, Texas as the choice of venue and jurisdiction and site of performance by the Parties. The prevailing Party in such an action may recover reasonable costs, including costs of court, attorney's fees, expert witnesses' fees, and trial consultants' fees. The Parties are encouraged to enter into mediation should a dispute arise during the term of this Lease, the costs being shared equally by the Parties. The Parties further agree that the laws of the State of Texas shall govern any interpretation of the terms of this Lease.

21. Attorneys' Fees and Other Expenses. If any action at law or in equity is necessary to enforce this Agreement, each Party agrees to pay its own attorney fees and will not seek to recover its attorney fees from the other Party. LESSEE understands that, pursuant to Local Government Code § 271.153(a)(3), the total amount of money awarded in an adjudication brought against a governmental entity for breach of contract includes reasonable and necessary attorney fees that are equitable and just. ***LESSEE expressly waives its statutory rights to recover attorneys' fees as outlined in § 271.153(a)(3).***

22. No Warranties. THE CITY HAS MADE NO WARRANTIES TO LESSEE AS TO THE USE OR CONDITION OF THE LEASED PREMISES, EITHER EXPRESS OR IMPLIED, AND THE CITY AND LESSEE EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE LEASED PREMISES ARE SUITABLE FOR LESSEE'S INTENDED COMMERCIAL PURPOSE OR ANY OTHER WARRANTY (EXPRESS OR IMPLIED) REGARDING THE LEASED PREMISES. LESSEE EXPRESSLY WAIVES (TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW) ANY CLAIMS UNDER FEDERAL, STATE, OR OTHER LAW THAT LESSEE MIGHT OTHERWISE HAVE AGAINST THE CITY RELATING TO THE USE, CHARACTERISTICS, OR CONDITION OF THE LEASED PREMISES. THE CITY AND LESSEE EXPRESSLY AGREE THAT THERE ARE NO, AND SHALL NOT BE ANY, IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THAT ALL EXPRESS OR IMPLIED WARRANTIES IN CONNECTION HERewith ARE EXPRESSLY DISCLAIMED AND WAIVED.

23. No Waiver. A waiver of any breach of any provision of this Lease shall not constitute or operate as a waiver of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of the enforcement of such provision or any other provision.

24. Severability. The provisions of this Lease are severable and if, for any reason, any one or more of the provisions contained in the Lease shall be held to be invalid, illegal, or unenforceable in any respect,

the invalidity, illegality, or unenforceability shall not affect any other provision of this Lease and this Lease shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Lease.

25. **Third Parties.** This Lease is between the City and LESSEE and creates no right of or duties of any other person. No other person or entity is or shall be deemed a third-party beneficiary to this Lease.

26. **Entire Agreement.** This Lease constitutes the entire agreement between the City and LESSEE and supersedes any prior understanding or oral or written agreement between the City and LESSEE respecting the subject matter of this Lease.

27. **Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Lease. In the event an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of the provisions of this Lease.

28. **No Waiver of Sovereign Immunity.** The City does not waive any statutory or common law right to sovereign immunity by virtue of the execution of this Lease.

LESSEE acknowledges that the CITY is a governmental entity and agrees that this Agreement is a governmental function pursuant to Texas Civil Practice and Remedies Code § 101.0215.

29. **Execution of Lease.** The execution of this Agreement will proceed as follows: signature of LESSEE (and the Corporate Secretary and seal, if applicable) shall be affixed hereto, whereupon the Agreement must be submitted to the City Attorney’s Office for review and approval. After such approval, the Agreement will then be signed by the City Manager. An executed original of this Agreement will be kept on file in the City Secretary’s Office.

THE CITY OF TEMPLE, TEXAS

LESSEE

Brynn Myers, City Manager

Lessee Name

Type of Aircraft: _____

Manufacturer: _____

Model: _____

Aircraft Registration No: _____

ATTEST:

APPROVED AS TO FORM:

City Secretary

City Attorney’s Office