

**WHARTON REGIONAL AIRPORT
FIXED BASED OPERATORS HANGAR LEASE AGREEMENT**

The **City of Wharton**, a municipal corporation acting by and through the Mayor of the City of Wharton, hereinafter referred to as **Lessor**, and _____, hereinafter referred to as **Lessee**, whether one or more, enter into this lease agreement on the following terms and conditions:

Hangar Description

1. In consideration of the mutual agreements herein set forth, and other good and valuable consideration, Lessor leases to Lessee and Lessee leases from Lessor, the following:

Hangar, which consists of a total square footage of _____, situated at the Wharton Regional Airport, in the City of Wharton, Wharton County, Texas.

Term of Lease

2. The term of this lease shall be for a period of twelve **(12) months**, beginning as of the _____ day of _____ and ending on the _____ day of _____, unless sooner terminated herein provided and shall continue on a month to month basis after the initial term has expired.

Rent

3. Lessee shall pay to Lessor, at City Hall, 120 E. Caney Street, Wharton, Texas, 77488, or wherever Lessor designates in writing, without any prior demand therefore and without any deduction or setoff whatsoever, rental as follows:

The amount of \$ _____ per square foot (_____) for a monthly total of \$ _____ payable by the 10th day of each calendar month.

- 3.1 On October 1st of each year (the "adjustment date"), the base rent shall be adjusted to reflect increases in the Consumer Price Index for "All Urban Consumers, U.S. City Average, All Items," issued by the Bureau of Labor Statistics of the United States Department of Labor.
 - a. The adjustments in the base rent shall be determined by multiplying the base rent specified in the lease terms and definitions ("initial base rent") by a fraction, the numerator of which is the index number for July 31st before the adjustment (the "current index") and the denominator of which is the index number for July 31st preceding the first month of the first year of the term (the "base index"). If the product is greater than the initial base rent, Lessee shall pay this greater amount as base rent until the next rental adjustment. Base rent shall never be less than the initial base rent.

Use and Purposes

4. Lessee shall operate the leased premises for the sole purpose of the operation of aviation services including but not limited to _____. Lessee shall also be allowed to use any common airport areas for parking and any other facilities provided by the Wharton Regional Airport.

Conditions

5. This lease is subject to the terms and conditions of all agreements between the City of Wharton and the Federal Aviation Administration (FAA), and the Texas Department of Transportation (TxDOT) Aviation Division, as well as other laws, ordinances, rules and regulations applicable to the maintenance and operation of Wharton Regional Airport, and all such laws, rules, and regulations as may be enacted by the City of Wharton or the City of Wharton Airport Board or any other lawful authority having jurisdiction over the conduct of operations at the airport. The City of Wharton reserves to right to amend this lease upon thirty- (30) days written notice.

Ad Valorem Taxes

6. Lessee shall pay any and all taxes associated with the ownership of the personal property and trade fixtures placed by Lessee in the leased premises.

Surrender

7. Lessee shall throughout the lease term maintain the hangar and keep it free from waste or nuisance and shall deliver up the hangar in clean and sanitary condition at the termination of this lease in good repair and condition, reasonable wear and tear and damage by fire, tornado, or other casualty excepted.

Force Majeure

8. Neither Lessor nor Lessee shall be required to perform any term, condition or covenant in this lease so long as such performance is delayed or prevented by force Majeure, which shall mean acts of God, strikes, lockouts, material, or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee is unable, wholly or in part, to prevent or overcome.

Damage or Destruction to Leased Premises

9. Lessee shall repair, at Lessee's sole expense, under the direction and supervision of Lessor, any damage to or destruction of the leased premises resulting from the breach of any of Lessee's obligations hereunder or from the negligence of Lessee, Lessee's agents or employees, or any person or persons who may be on the leased premises with the consent or express or implied invitation of Lessee. In any of the above events, the amount of rental payable hereunder by Lessee to Lessor shall not be suspended or reduced.

Lessee's Examination of Premises

- 10. Lessee acknowledges that Lessee has thoroughly examined the leased premises and has made an adequate inspection thereof and accepts the leased premises in the condition in which the same now exist and in which they may hereafter exist during the term of this lease. Therefore, Lessee agrees that Lessor shall not be liable to Lessee, or any of Lessee's agents, employees, servants, or invitees, for any injury to persons or damage to property due to the condition of or the design or any defect in the hangar that may exist.

Lessor's Access to Premises

- 11. Lessee shall furnish the door lock and shall designate a local agent to maintain a key other than his or her own key. This key shall be made available to Lessor or Lessor's agents or employees during normal business hours when so requested. Lessor shall have access to hangars in this manner. "Local agent" shall be defined as one who shall provide the key on twenty-four hour's notice during normal business hours during normal working days. In case of an emergency, the Lessor or its agent may enter the premises to abate such emergency. The name and address of Lessee's local agent are as follows:

Name	David Allen, Airport Manager
Address	Wharton Regional Airport Robert VonDeRau Drive Wharton, Texas 77488
Phone	979-532-3210

Maintenance of Lessor's Property

- 12. Lessee shall at all times maintain the leased property in a reasonable and prudent manner.

Indemnity

- 13.1 Lessee agrees that Lessee will indemnify and hold Lessor harmless of, from, and against all suits, claims, and actions of any kind by reason of any breach, violation, or non-performance of any of the terms or conditions on the part of Lessee, specifically including, but not limited to, reasonable attorney's fees that Lessor may incur, as a result of any act of Lessee or Lessee's invitees which should cause any such suit, claim, or action of any kind by reason of violation of non-performance of the terms or conditions of this of this lease.
- 13.2 Additionally, Lessee agrees to indemnify and hold Lessor harmless of, from, and against all claims, actions, damages, liabilities and expenses asserted against Lessor, specifically including, but not limited to, reasonable attorney's fees that Lessor incurs, on account of injuries to persons or damage to property when and to the extent that any such damage or injury may be caused, either proximately or remotely, wholly or in part, by any act or omission, whether negligent or not, of Lessee or any of Lessee's agents, servants, employees, contractors, patrons, or invitees or any other person entering upon the leased premises under or with the express or implied invitation of Lessee, or if any such injury or damage may in any way arise from or out of the occupancy or use of Lessee or Lessee's agents, employed, and invitees of the leased premises.

- 13.3 The Lessee hereby agrees to maintain liability insurance in the amount of \$1,000,000.00 showing the City of Wharton as additional insured.

Default by Lessee

14. If Lessee shall allow the rent to be in arrears more than ten (10) days after written notice of such delinquency, or shall remain in default under any other condition of this lease for a period of ten (10) days after written notice from Lessor, or if any other person than Lessee secures possession of the premises, or any part thereof, by reason of receivership, bankruptcy proceedings, or other operation of law in any manner whatsoever, Lessor may, at Lessor's option, without notice to Lessee, terminate this lease; or, in the alternative, Lessor may reenter and take possession of the leased premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass, and relet the premises or any part thereof, for all or any part thereof, for all or any part of the remainder of the lease term, to a party satisfactory to Lessor, and at such monthly rental as Lessor may with reasonable diligence be able to secure.

Acceleration of Rent

15. If Lessee fails to pay the full amount of rent, as here-in-above provided when due or if Lessee fails to cure any other default in compliance with the terms hereof within ten (10) days after written notice of Lessee of such specific default by Lessee in the terms hereof, or if Lessee becomes insolvent or makes any assignment for the benefit of creditors or commits any act of bankruptcy or files any voluntary petition under the provisions of the Bankruptcy Act, then, in any of such events, the rent for the balance of the leased term (the initial term or the extended term, as the case may be) shall, at Lessor's option and without the necessity of additional notice, accelerate and immediately become due and payable; and Lessor shall thereupon have the option either to terminate this lease or, without terminating this lease, to terminate Lessee's right to possession of the leased premises. In either event, Lessor may, without additional notice and without court proceedings, reenter and repossess the leased premises and may remove all personal property therefrom, using such force as may be necessary, and Lessee waives any claim arising by reason of such reentry, repossession or removal or by reason of issuance of any distress warrant or writ of sequestration and agrees to hold Lessor harmless from any such claim.

Inspection by Lessor

16. Lessor and Lessor's agents shall have the right to enter into and upon the leased premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining or making repairs or alterations to the building.

Environmental Matters

- 17.1 Environmental Terms.
- a. *"Environmental Impact Claim"* means any claim, suit, judgment, penalty, fine, loss, administrative proceeding, request for information, citation, notice or request or inquiry by any governmental agency, or expense (including but not limited to any costs of investigation, study, cleanup, removal, response, remediation, transportation, disposal,

restoration, monitoring, consultant's fees, contractor's fees, and attorney's fees) which arises out of, is related to, alleges, or is based on the presence, transportation, handling, treatment, storage, or actual or threatened Release, dispersal, disposal, escape, or migration of any Hazardous Materials, Process Water, or Solid Waste, or any other chemical, material, irritant, regulated substance, or toxic substance (including but not limited to gasoline, diesel fuel, petroleum hydrocarbons, and any by-product or derivative thereof), whether solid, liquid, or gaseous in nature, in, on, or into the environment, including but not limited to surface and subsurface soils, air, waters, groundwater, as well as in, on, or into any object or matter.

- b. "*Environmental Laws*" shall mean all present and future laws relating to pollution or the environment, public health, welfare or safety, including, without limitation, all statutes, regulations, ordinances, permits, Conformity Plans, Conformity Determinations, Best Management Practices, Memoranda or Agreement, codes, orders, and any other governmental requirements, including but not limited to those related to discharge of Process Water or other pollutants into the waters of the United States, and/or waters of the State of Texas, and any other environmental duties or requirements arising out of common law.
- c. "*Hazardous Materials*" means (i) any Hazardous substance, "Pollutant or contaminant," "regulated substance," "petroleum substance," and "waste" as those terms are defined now or in the future in the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Clean Water Act, the Texas Water Code, and the Texas Health & Safety Code, amendments thereto, and regulations promulgated pursuant thereto, including but not limited to (i) asbestos or asbestos-containing materials; (ii) "PCB items" or "PCB-Contaminated Electrical Equipment," used oil filters, batteries or tires, and underground storage tanks and associated equipment; and (iii) "hazardous waste" as now or in the future defined by the Resource Conservation and Recovery Act ("RCRA"), Texas Solid Waste Disposal Act, or the Texas Health & Safety Code.
- d. "*Process Water*" means water which contains pollutants from any point source subject to permit requirements or subject to the Texas Pollutant Discharge Elimination System, the National Pollutant Discharge Elimination System, the Clean Water Act, or the Texas Water Code, amendments thereto, and regulations promulgated pursuant thereto.
- e. "*Release*" means any depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment or threat of release such that a release may enter the environment; and
- f. "*Solid Waste*" shall have the same meaning as in the Resource Conservation and Recovery Act, the Texas Health and Safety Code, and the Texas Solid Waste Disposal Act, and shall include sewage.

17.2 LESSEE Authorizations

- a. LESSEE has obtained and throughout the lease term shall obtain and maintain all licenses, permits, exemptions, registrations and other authorizations and provide any notices required under Environmental Laws for conducting its operations at the Leased Premises.

- b. LESSEE shall comply and shall cause all its employees, agents, contractors, sublessees or other third-parties under LESSEE's control to comply, and shall include in all subleases a provision requiring the sublessee to comply and all employees, contractors, sublessees or other third parties under sublessee's control to comply with all Environmental Laws.
- c. LESSEE shall comply and shall cause its employees, agents, contractors, sublessees or other third parties under LESSEE's control to comply with all LESSOR policies, rules, regulations, permits, and Deicing Plans.
- d. LESSEE shall not cause, contribute to, or permit any Release of any Hazardous Materials, Solid Waste, or Process Water by LESSEE or its employees, agents, contractors, sublessees or other third parties under LESSEE'S control into the environment, or from the Leased Premises, or cause, contribute to, or permit any violation of any Environmental Law.
- e. LESSEE shall not and shall require its employees, agents, contractors, sublessees, or other third parties under LESSEE's control not to handle, use, store, discharge, or otherwise manage any Hazardous Materials, Process Water, or Solid Waste on or at the Leased Premises except in a lawful and prudent manner and so as to prevent the Release of any Hazardous Materials, Process Water, or Solid Waste. Without limiting the foregoing, LESSEE shall not conduct or allow any employee, agent, contractor, sublessee or other third party under LESSEE's control to conduct any operations or activities involving the use or application of ethylene glycol, propylene glycol, and/or any other substance used to de-ice or anti-ice aircraft at any location at the Airport except with the prior written consent of the LESSOR, and on such terms as the LESSOR may prescribe, in the LESSOR's sole discretion.
- f. In the event that LESSEE receives any notice, letter, citation, order, warning, complaint, inquiry, claim or demand (i) concerning any alleged Release of Hazardous Materials, Solid Waste, or Process Water at, on, or from the Leased Premises, or into the environment, or (ii) alleging that LESSEE or any employee, agent, contractor, sublessor, or any other third party has violated or is about to violate any Environmental Law, or (iii) asserting that LESSEE is liable for the cost of remediation or investigation of a Release of Hazardous Materials, Solid Waste and/or Process Water on, at, or from the Leased Premises, LESSEE shall immediately, but not later than five (5) days after LESSEE's receipt, provide written notice to the LESSOR of the same, including a copy of any related documents.
- g. LESSEE shall dispose of and cause its employees, agents, contractors, sublessors, or any other third party under LESSEE's control to dispose of any Solid Waste or Hazardous Materials generated or located at the Leased Premises in compliance with Environmental Laws, and, if not sooner required by Environmental Laws or this Agreement, at the termination of this Agreement shall remove and dispose of all Solid Wastes and Hazardous Materials of at its sole expense in a lawful and timely manner.

17.3 Inspections

From time to time, and in LESSOR's sole discretion, LESSOR may conduct an inspection, assessment, and/or regulatory compliance audit of the Leased Premises and/or LESSEE's operations, including operations of LESSEE's employees, agents, contractors, sublessors, or any other third party under LESSEE's control. The LESSOR may perform testing as needed, including test borings of the ground and chemical analyses of air, soil, water, Process Water, and waste discharges. LESSEE will cooperate and will cause its employees, agents, contractors, sublessors, or any other third party under LESSEE's control to fully cooperate in such inspections, assessment, or audit. LESSEE remains solely responsible for its environmental compliance, notwithstanding any LESSOR inspection, audit, or assessment.

17.4 Contamination of Property

If the Leased Premises or adjacent property are contaminated or otherwise damaged or injured by any Solid Waste or Hazardous Materials released by LESSEE or employee, agent, or contractor, sublessor, or any other third party by LESSEE's control, LESSEE agrees to promptly undertake remediation of such contamination or damage to background levels, and to restore the Leased Premises or affected adjacent property to its condition prior to such contamination or damage in all material respects, or to such condition that not deed recordation will be required; provided that, if LESSEE does not promptly and fully remediate and restore the Leased Premises or affected adjacent property, LESSOR may, but is not required to, perform the remediation and restoration, and LESSEE shall reimburse LESSOR for all costs associated with such contamination, remediation, and restoration, including but not limited to consultants' fees, contractor's fees, penalties, attorneys' fees, and costs of investigation, within twenty (20) days after LESSOR delivers notice to LESSEE of such costs.

17.5 Term of Environmental Provisions

The provisions of this Article, including the representations, warranties, covenants and indemnities of LESSEE, shall expressly survive termination of this Agreement.

Assignment and Subletting

18. Lessee shall not have the right to assign this lease nor any interest therein nor to sublet the leased premises without Lessor's prior written consent.

Notices and Addresses

19.1 All notices provided to be given under this agreement shall be given by United States mail, postage prepaid, addressed to the proper party, at the following addresses:

<u>Lessor</u>	<u>Lessee</u>
City of Wharton	
120 East Caney Street	
Wharton, Texas 77488	
(979) 532-2491	(

- 19.2 Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of three days after mailing.
- 19.3 Either party may change addresses in accordance with the terms of this section of the agreement.

Parties Bound

20. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, or assigns.

Texas Law to Apply

21. This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Wharton County, Texas.

Legal Construction

22. If any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

Termination

23. Lessor may terminate this agreement for any reason by giving Lessee thirty (30) days written notice of Lessor's intention to terminate this agreement.

Prior Agreements Superseded

24. This agreement constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

Amendment

25. No amendment, modification, or alteration of the terms hereof shall be binding unless they are in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

Rights and Remedies Cumulative

26. The rights and remedies provided by this lease agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Waiver of Default

- 27. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

Attorney's Fees

- 28. If either Lessor or Lessee breaches any of the terms of this agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorneys' fees so incurred by the other party.

Time of Essence

- 29. Time is of the essence of this agreement.

Improvements and Alterations

- 30. Any physical additions or improvements to the premises made by Lessee will become the property of Lessor. Lessor may require that Lessee, at termination of this lease and at Lessee's expense, remove any physical additions and improvements, repair any alterations, and restore the premises to its original condition, normal wear and tear excepted.

Utility Services

- 31. Lessee shall pay for electricity, gas, water, and wastewater utility service furnished the leased premises, during the lease term. Lessor shall not be liable for any interruption or impairment whatsoever in utility services. Lessee shall pay for maintenance and installation of any telephones and for the use thereof during the lease term.

Date

EXECUTED in duplicate originals as of the _____ day of _____, 20__

CITY OF WHARTON AIRPORT BOARD

By: _____
Glenn Erdelt, Chairman

CITY OF WHARTON, TEXAS

By: _____
Andres Garza, Jr., City Manager

ATTEST:

By: _____
Paula Favors, City Secretary