

H-715
8-17-11
Exp. 9-30-2030

AIRPORT LEASE AGREEMENT

STATE OF TEXAS §

COUNTY OF BELL §

KNOW ALL MEN BY THESE PRESENTS:

Date: August 17, 2011

WITNESS this Lease Agreement by and between the City of Temple, Texas, hereinafter referred to as "THE LESSOR," and Temple Fire & Rescue, a department of the City of Temple, hereinafter referred to as "LESSEE."

WHEREAS, the LESSOR is the owner of the Draughon Miller Central Texas Regional Airport, existing within the corporate 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 the 18th day of August, A.D. 1947, to which reference is hereby made, and by such reference made a part hereof.

I.

THE LESSOR is willing to, and by these presents does hereby, enter into a Lease Agreement with LESSEE, allowing and permitting LESSEE to lease a 2.86 acre (124,581 sq. ft.) tract of land and construct a 15,845 sq. ft. fire station and emergency operations center and 58,827 sq. ft. paved area at the Airport under the terms set out hereinafter.

II.

The term of this Lease Agreement shall be for twenty (20) years and shall begin on the 1st day of **October, 2010**, and shall be completed, ended and terminated on the 30th day of **September, 2030**. At the end of the lease term, upon mutual agreement of all the parties, the lease may be renewed for five 1-year terms at fair market value.

III.

For and in consideration of the rents, covenants and promises herein set forth and to be paid, kept, performed and observed by LESSEE, LESSOR does hereby lease and demise to LESSEE, and LESSEE does hereby rent and accept from LESSOR, referred to herein as the "leased premises" consisting of 124,581 sq. ft. and more particularly described in Attachment "A," attached hereto and made a part hereof.

Subject to the provisions herein set out, LESSEE agrees to pay to LESSOR the following amounts as rental for the use and occupancy of the leased premises under this lease: **\$12,458.00 per year**, in advance, beginning on the commencement date of this lease

and continuing regularly and annually thereafter during the term of this lease. Provided, however, if a rental adjustment is to be made with respect to a particular year but has not been made, then the rental payment due in advance with respect to such year shall be the annual rental due for the preceding year, but once the rental adjustment is made, and if it results in additional rental due for such year, then within thirty (30) days after LESSOR notifies LESSEE of such additional rental, LESSEE shall pay such additional rental to LESSOR.

LESSEE's rental rates will be adjusted at the end of each lease year computed according to the Consumer Price Index (CPI) for Dallas, Texas, or to rates prevailing in the Temple area for similar facilities.

The LESSEE shall have the option to prepay any of the annual installments of rent, but shall not be required to do so.

IV.

In consideration of the above and the benefits to be received by each party hereto, LESSEE agrees to and covenants with LESSOR as follows:

(1) LESSEE shall have the right at any time and from time to time during the term of this lease, to erect, maintain, alter, remodel, reconstruct, rebuild and replace buildings and other improvements on the leased premises, and correct and change the contour of the leased premises, subject to the following general conditions:

(a) The costs of any such construction, reconstruction, demolition or any change, alteration or improvements shall be borne and paid by LESSEE. Any additional construction or alternations must be pre-approved by the FAA prior to any work being done.

(b) The improvements constructed shall be generally consistent with the purposes hereinafter provided for in this lease.

(c) LESSOR shall be notified prior to commencement of any work as follows:

1. No structure or other improvement, the plans, specifications and proposed location of which have not first received the written approval of LESSOR, or which do not comply with such approved plans, specifications and locations, shall be constructed or maintained on the leased premises. No material addition to, or alteration of, any building or structure erected on the leased premises shall be commenced unless and until plans and specifications covering the exterior shall have been first submitted to and approved by LESSOR.

2. LESSEE shall, at its own expense, prepare plans and specifications for any building project, and shall submit the same to LESSOR at least thirty (30) days prior to the planned commencement of such project.

3. LESSOR agrees to promptly review and approve the plans or note in writing any required changes or corrections which must be made to the plans. Any required changes or corrections must be made and the plans resubmitted to LESSOR within thirty (30) days after the corrections or changes have been noted. Failure of LESSOR to object to such resubmitted plans and specifications within thirty (30) days shall constitute LESSOR's approval of the changes. Minor changes in work or materials, not affecting the general character of the building project, may be made in the plans and specifications at any time without the approval of LESSOR.

(d) The following items do not require submission to and approval by LESSOR of plans and specifications:

1. Such minor repairs and alterations as may be necessary to continue the structures and improvements already placed in a useful state of repair and operation; and

2. Such changes and alterations, either at the time of the original construction or thereafter as may be required by an authorized public official having authority or jurisdiction over such structures or improvements in order to comply with legal requirements.

(e) The approval by LESSOR of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plan for the leased premises and compliance with all applicable codes and ordinances, and such approval shall not be withheld unreasonably. Such plans and specifications are not approved for architectural or engineering design, and by approving such plans and specifications LESSOR assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans or specifications.

(2) LESSEE shall pay or cause to be paid all charges for water, heat, gas, electricity, sewer, and any and all other utilities used on the leased premises throughout the term of this lease, including any connection fees.

(3) LESSEE shall have, and is hereby granted a license to place and maintain utility lines across airport property to the various utility services necessary to provide adequate utility services to the leased premises, including water, electricity, telephone, sewer, and gas. LESSEE shall obtain the approval of LESSOR for the location of utility lines across airport property to the leased premises. All utility lines shall be

underground, and LESSEE shall repair all areas disturbed by the installation of said lines. It is, however, agreed that once the utility lines are installed, the LESSOR shall not thereafter require LESSEE to relocate such lines and the LESSOR shall relocate such lines or interrupt the use thereof only if at its expense the LESSOR relocates such lines and additionally provides for uninterrupted service of equal quality to that previously enjoyed by LESSEE.

(4) In addition to the provisions and limitations set forth below, LESSEE shall have the right to use the leased premises for lawful purposes of and not incompatible with other normal uses of airport property. In this regard, and without detracting from the generality of the foregoing, it is understood and agreed that the primary purpose for which the leased premises have been leased is for the development and construction of a fire station and emergency operations center.

(5) LESSEE agrees that its failure to begin substantial progress toward the construction of the improvements in Article IV hereof within 180 days from the date hereof shall constitute a waiver of its rights under this lease contract, and the leased premises shall revert to LESSOR, and the lease shall become null and void.

(6) If for any reason, LESSEE is unable to begin substantial progress toward the construction of the improvements described in Article IV hereof within 180 days from the date hereof, it shall be required to apply to the LESSOR in writing for an extension of time. LESSOR is under no obligation to grant the extension in the absence of the valid excuse, but the LESSOR agrees that such extension will not be unreasonably withheld.

(7) LESSEE may, at any time and from time to time, encumber the leasehold interest, by deed of trust, mortgage or other security instrument, without obtaining the consent of the LESSOR, but no such encumbrance shall constitute a lien on the fee title of LESSOR, and the indebtedness secured thereby shall at all times be and remain inferior and subordinate to all the conditions, covenants and obligations of this lease and to all of the rights of the LESSOR hereunder.

(8) Any lender on the security of the leasehold estate shall have the right at any time during the term of this lease:

(a) to do any act or thing required of LESSEE hereunder and all such acts or things done and performed shall be as effective to prevent a forfeiture of LESSEE's rights hereunder as if done by LESSEE; and

(b) to realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the security documents and to transfer, convey or assign, the title of LESSEE to the leasehold estate created hereby to any purchaser at any such foreclosure sale, and to acquire and succeed to the interest of LESSEE

hereunder by virtue of any such foreclosure sale. No such mortgagee or trustee of the rights or interests of LESSEE hereunder shall be or become liable to LESSOR as an assignee of this lease or otherwise until it expressly assumes by written instrument such liability.

(9) LESSEE, at its own costs and expense at all times during the term of this lease agrees to keep and maintain or cause to be kept and maintained, all buildings and improvements which may be erected upon the leased premises in a good state of appearance and repair, reasonable wear and tear alone excepted.

(10) In the event the building or any building or improvement thereafter constructed on the leased premises is damaged by fire or any other casualty, regardless of the extent of such damage or destruction, LESSEE shall within one year from the date of such damage or destruction commence the work of repair, reconstruction or replacement of damage or destroyed building or improvement and prosecute the same with reasonable diligence so that the building, to the extent originally constructed by LESSEE, shall be restored to substantially the condition it was in prior to the happening of the casualty, provided, however, that if the commencement, construction or completion of said repair, reconstruction or replacement work shall be prevented or delayed by reason or war, civil commotion, acts of God, strikes governmental restrictions or regulations, or interferences, fire or other casualty, or any other reason enumerated or not, the time for commencing or completing, or both, of the construction of said building, as the case may be, shall automatically be extended for the period of each such delay.

(11) During the period of construction of any building or other improvement on the leased premises and at all times thereafter during the lease term, LESSEE shall keep the improvements insured against loss or damage by fire, with extended coverage endorsement or its equivalent, in such responsible insurance companies as LESSEE shall select and LESSOR shall approve, and in amounts not less than 80% of the fair insurable value of the buildings and other improvements.

(12) LESSOR, ITS AGENTS, SERVANTS AND EMPLOYEES, SHALL 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 OF ANY OF ITS AGENTS, EMPLOYEES, LICENSEES, OR INVITEES. LESSEE AGREES TO HOLD LESSOR, 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.

(13) Nothing herein contained shall be construed to deny the LESSOR its right to condemn the leased property through its power of eminent domain. In the event of condemnation of all or any portion of the leased premises, the leasehold interest of LESSEE shall be deemed to include all rights under this lease including, but not limited to, the right to occupy the improvements placed on the leased premises.

(14) Any consent required of the LESSOR hereunder shall be given or denied within thirty (30) days after written request has been made by LESSEE.

(15) Should LESSEE default in the performance of any covenant, condition or agreement in this lease, and such default is not corrected within thirty (30) days after receipt of written notice from LESSOR to LESSEE, LESSOR may declare this lease, and all rights and interest created by it, to be terminated. Upon LESSOR electing to terminate, this lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. LESSOR, its agent or attorney, may resume possession of the premises and release LESSEE of all liability or relet the same for the remainder of the term at the best rent LESSOR, its agent or attorney may obtain for the account of LESSEE, who shall make good any deficiency.

(16) Any termination of this lease as herein provided shall not relieve LESSEE from the payment of any sum or sums that shall then be due and payable to LESSOR hereunder, or any claim or damages then or theretofore accruing against LESSEE hereunder, and any such termination shall not prevent LESSOR from enforcing the payment of any such sum or sums or claim damages by any remedy provided for by law or from recovering damages from LESSEE for any default thereunder.

(17) All rents or other sums, notices, demands or requests from one party to another may be electronically transferred, personally delivered or sent by certified or registered mail, postage prepaid, to the below business address, and shall be deemed to have been given at the time the electronic transfer is received, or at the time of personal delivery, or at the time of mailing.

All payments, notices, demands, or request from LESSOR to LESSEE shall be given to LESSEE at 2 North Main Street, Temple, TX 76501, or at such other address as LESSEE may give written notice of to LESSOR.

(18) That, insofar as general municipal regulation is concerned, LESSEE binds itself, its successors and assigns, to comply, at its own cost and expense, with all municipal regulations, ordinances and zoning regulations now in force, or that may be hereafter enacted with regard to the use of the airport premises.

(19) That it is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right except as to the premises leased herein.

(20) That LESSOR reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of LESSEE, and the granting of an exclusive right.

(21) That, during the time of war or national emergency, LESSOR shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use, and, if such lease is executed, the provisions of this instrument insofar as they are inconsistent with the provisions of the lease to the Government shall be suspended.

(22) That LESSOR 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 LESSEE from erecting, or permitting to be erected, any building or other structure on or adjacent to the airport which, in the opinion of the LESSOR, would limit the usefulness of the airport or constitute a hazard to aircraft.

(23) That this lease shall be subordinate to the provisions of any existing or future agreement between LESSOR and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the airport.

(24) That it is agreed and understood that any holding over by LESSEE of the airport premises after the expiration of this Agreement shall operate and be construed as a tenancy from day to day at a rental rate computed from the rental rate then prevailing under this lease.

(25) That the LESSEE may sell or transfer title to improvements made on the leased land, subject to written notice to LESSOR, and receipt of written consent of LESSOR, which consent will not be unreasonably withheld. The transfer of title will require the new LESSEE to sign a new lease, with the same terms and conditions as this lease. No time extension will be approved in the new lease for LESSOR acquisition of title to any and all improvements made on the leased land under the terms of this lease.

(26) LESSOR, within a reasonable time will give LESSEE notice of any changes in governmental rules and regulations affecting this lease.

(27) LESSEE agrees and understands that this lease is particularly subject to all of the provisions of Chapter 3 of the Code of Ordinances of the City of Temple insofar as they may be applicable hereto.

(28) LESSEE must apply for an individual TPDES Storm Water Permit and comply with the State and Federal requirements for businesses at the Airport.

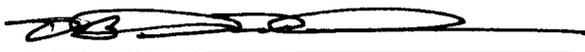
All covenants set forth in the Lease Agreement shall be paid, kept and performed at Temple, Bell County, Texas.

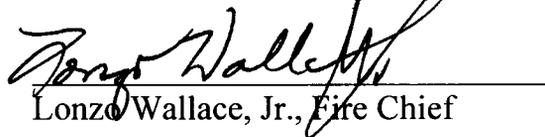
Upon default by LESSEE or LESSOR in the performance of any of the covenants herein contained, to be paid, kept and performed herein, either party may enforce the performance of the covenant hereof in an of the modes provided by law, and this Lease Agreement may be forfeited at either's discretion, if such default continues for a period of thirty (30) days after LESSOR has given LESSEE written notice or vice versa. Thereafter, if either so elects, this Lease Agreement shall cease and come to an end as if that were the day originally fixed for the expiration of the term hereof.

As security for the performance by LESSEE of all covenants to be paid, kept and performed by LESSEE, LESSOR shall have a lien upon any slab and any building that may be placed in or upon the airport premises during the term of this Lease Agreement.

THE CITY OF TEMPLE, TEXAS

TEMPLE FIRE & RESCUE

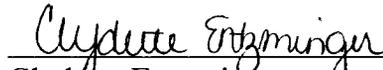




David A. Blackburn, City Manager

Lonzo Wallace, Jr., Fire Chief

ATTEST:


Clydette Entzminger
City Secretary



APPROVED AS TO FORM:

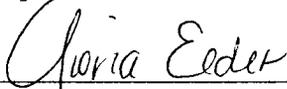

City Attorney's Office

STATE OF TEXAS §

COUNTY OF BELL §

This instrument was acknowledged before me on the 10th day of Sept, 2011, by David A. Blackburn, City Manager of the City of Temple, Texas.

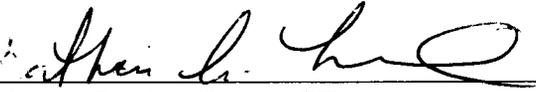



Gloria Eder
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF BELL §

This instrument was acknowledged before me on the 29 day of August, 2011, by Lonzo Wallace, Jr, on behalf of Temple Fire & Rescue.


Notary Public, State of Texas

