

RESOLUTION NO. 2015-39

WHEREAS, the City has leased hangar space at the Lea County Lovington Airport for several years; and

WHEREAS, this facility is utilized by the City for evidence and large item storage; and

WHEREAS, there continues to be a need for this storage facility and renewal of this lease is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED, that the Lovington City Commission authorizes the City Manager to renew the lease between the City and Lea County for hangar space located at the Lea County Lovington Airport.

DONE THIS 11th DAY OF MAY, 2015 at

City of Lovington
New Mexico

Scotty Gandy, Mayor

ATTEST:

Carol Ann Hogue, City Clerk

HANGAR LEASE AGREEMENT NO. 384

WHEREAS, the County of Lea is the owner of airport properties adjacent to the cities of Hobbs, Jal and Lovington in Lea County, New Mexico, portions of which are leased to private entities for personal and business uses; and

WHEREAS, **CITY OF LOVINGTON, NEW MEXICO**, has requested a lease of surface estate at the **Lea County -Lovington Airport**, as more fully described below; and

WHEREAS, the County is willing to grant the requested lease on the terms and conditions set forth below;

NOW, THEREFORE, **CITY OF LOVINGTON, NEW MEXICO**, Lessee, and the Lea County Board of County Commissioners, Lessor, do hereby agree as follows:

1. **GRANT OF LEASE-TERM-RENEWAL**

1.1 The Lessor does hereby lease to Lessee the following described property:

PHYSICAL LOCATION	DIMENSIONS	TOTAL SQUARE FEET
Space #18	85 ft. x 35 ft.	2,975 sq ft

1.2 The term of this lease shall be three years, **beginning May 1, 2015 and ending April 30, 2018.**

1.3 This lease may be renewed at the expiration of this term if there has been no breach or default by Lessee in meeting its obligations hereunder. (Lessee is not entitled, however, to a renewal of lease on the same terms and conditions set forth herein; said terms and conditions are subject to renegotiation.)

1.4 Renewal may also be declined for any reason which in the sole opinion and exercise of discretion by Lessor necessitates the denial of renewal in order to achieve a more efficient or effective operation of the airport, or for any other reason which, in the opinion of Lessor, justifies said denial.

2. **LEASE PAYMENT**

2.1 Lessee does hereby agree to pay to Lessor the **annual sum of Two hundred thirty-eight dollars and no cents (\$297.50)** at the rate of (\$.10) per square foot.

2.2 Said amount is **to be paid on or before the first of each year during the term of this lease**, this constituting advance payment for the next twelve (12) months.

2.3 Lessee acknowledges that he bears a duty of timely performance and that time is of the essence in this agreement. In the event that Lessee fails to make timely payment of any amount due hereunder, Lessor shall be entitled to a late fee equal to fifteen percent (15%) per annum on such amount, exclusive of the late fee, due hereunder. The late fee shall be computed from date that is thirty (30) days after the due date of amount due until fully paid or until entry of judgment. Any judgment awarded to Lessor shall bear interest at the rate of fifteen percent (15%) per annum until paid in full, and shall be in addition to attorneys' fees and costs as

provided for hereunder, which shall likewise bear interest from the date that such attorneys' fees and costs are incurred until paid in full or entry of judgment thereon. Attorney fees and costs shall also include reasonable fees for in-house attorney.

- 2.4 A surcharge of \$150 per lease per year will be imposed to help defray the cost of utilities where water is available. A surcharge of \$75 per lease per year will be imposed to help defray the cost of utilities where water is not available.

3. USE, CARE AND MAINTENANCE

- 3.1 Leased premises may not be used in any way directly to generate income for Lessee, the intent being that no commercial business be conducted on or operated from the leased premises. This shall not prohibit a commercial enterprise, however, from using leased premises as a storage facility, primarily for aircraft and related equipment.
- 3.2 Lessee does hereby agree to be responsible for all maintenance and repair of all structure(s) and fixture(s) on leased premises, so that such are safe and pose no hazard to the public.
- 3.3 Lessee shall keep the leased premises clean, orderly, and in a safe condition.
- 3.4 Lessee is required to initiate hangar construction within one year and complete construction within 18 months of the date a new lease is signed.
- 3.5 As to structure(s) and fixture(s) on leased premises at the commencement of this lease, Lessee warrants that such are in good order and repair.
- 3.6 The Airport Supervisor may, from time to time, direct Lessee to perform certain maintenance, repair or clean-up work on leased premises within a stated period of time in order to achieve the required level of upkeep in a timely fashion. Lessee's noncompliance shall entitle Lessor to terminate this lease and/or remedy the problem at Lessee's expense.
- 3.7 Lessee shall notify Lessor of any underground fuel storage tanks on the leased premises. With respect to such tanks already installed, Lessee does hereby represent to Lessor that Lessee, as the owner and/or operator of said tank(s), is in full compliance with all New Mexico EID Underground Storage Tank Regulations and that it will take all necessary steps to maintain compliance during the term of this lease and any renewal thereof.
- 3.8 No above-ground fuel storage tank or underground fuel storage tank may be installed by Lessee on airport property or on the leased premises without first obtaining the written consent of Lessor. Lessor may condition consent so as to insure that all applicable Federal, state and local safety ordinances, laws, rules, and regulations are met and that appropriate financial responsibility is established.

4. TRANSFER OF LEASE:

- 4.1 Lessee does hereby agree that it shall not assign, sublet, or otherwise transfer or attempt to transfer this lease or any of its rights or obligations herein without first obtaining the written consent of Lessor.
- 4.2 Lessee is required to provide Lessor with a list of any sublessee(s).
- 4.3 Any unauthorized assignment, subletting, or other transfer of this lease shall be void and entitle Lessor to terminate this lease.
- 4.4 In the event that, by reason of a transfer of Lessee's interest in property on the premises, the lease is terminated after

payment of annual rent, Lessee expressly agrees, in consideration of Lessor's consent of transfer, that such rent shall not be refundable.

5. OBLIGATION TO INDEMNIFY, DEFEND AND HOLD HARMLESS:

- 5.1 Lessee shall indemnify, defend, and hold Lessor, its commissioners, agents, officers, and employees harmless from any and all losses, claims or expenses, without limitation, that may arise in connection with the Lessee's operations and activities at the airport at which the leased premises are located. The Lessor reserves the right to require insurance coverage of the Lessee premises at Lessee's expense, in order to adequately protect the Lessor's interest.
- 5.2 Lessee's obligation herein to indemnify, defend and hold the Lessor, its commissioners, officers, employees, and agents harmless shall extend to Lessee's ownership and/or operation of any underground storage tank, if any, installed on leased premises or elsewhere on airport property.
- 5.3 Lessee shall promptly notify Lessor of any claims or lawsuits brought against Lessee that involves the leased premises.
- 5.4 Sublessees are required to obtain insurance naming Lessor as additional insured, and to indemnify Lessor on the same terms as listed in 5.1 above.

6. COMPLIANCE WITH RULES, REGULATIONS AND LAWS:

- 6.1 Lessee shall obey all rules and regulations adopted by the Airport Supervisor, currently in effect or adopted in the future.
- 6.2 Lessee shall obey all applicable federal, state, and local ordinances, laws, rules, and regulations.
- 6.3 If the Airport Supervisor determines that Lessee is not in compliance with Section 6.1 or 6.2 above, he may direct Lessee to do those things necessary in order to achieve compliance. Lessee's failure to remedy the violation within the time specified shall entitle Lessor to terminate this lease and/or correct the violation at Lessee's expense.
- 6.4 Lessee agrees not to discriminate on the basis of race, color, national origin, or other prohibited characteristic against any person or groups of persons in any manner prohibited by federal anti-discrimination laws.

7. INSPECTION OF RECORDS AND PREMISES:

- 7.1 Lessor may inspect the leased premises and any structure(s) and fixture(s) thereon at any time.
- 7.2 If Lessee owns or operates any underground storage tanks on leased premises, then Lessee shall make all documentation required by the New Mexico EID Underground Storage Tank Rules and Regulations available for inspection at the Airport Supervisor's office within 48 hours of written request to do so.

8. SAFETY:

- 8.1 Lessee shall maintain adequate fire extinguishing equipment on the leased premises so as to protect the leased premises and surrounding properties from fire hazards.
- 8.2 The Airport Supervisor may require other safety equipment be provided or safety procedures be employed by Lessee in order to safeguard leased premises, surrounding properties, and activities conducted at the Airport.
- 8.3 Lessor hereby reserves the right to take any action it considers necessary to protect the aerial approaches to the airport in accordance with Federal regulations, including the right to direct Lessee to alter or take down

any structure placed on leased premises by Lessee that might interfere or endanger aerial approaches.

9. EMERGENCY:

9.1 In the event of war or national emergency, Lessor shall have the right to modify any part or all of this agreement in favor of the United States Government or its agents.

10. RETURN OF PREMISES:

10.1 Lessor hereby acknowledges that the structure(s) and fixture(s) presently located or to be constructed on leased premises, are owned by Lessee.

10.2 Unless sold or assigned in the appropriate manner by Lessee at the termination of this lease or any renewal thereof, said structure(s) and fixture(s) shall be removed by Lessee at Lessee's expense. If the removal will result in damage to the surface estate, Lessee shall be responsible for the immediate repair of said damage.

10.3 Lessee's failure to remove structure(s) and fixture(s) within sixty (60) days of notice by Lessor to do so shall result in the transfer of all Lessee's right, title, and interest to said structure(s) and fixture(s) to Lessor.

11. TERMINATION:

11.1 Lessor may terminate this lease for any material breach by Lessee of the terms and conditions set forth herein. Lessee may also terminate this lease for any material breach by Lessor

11.2 Notwithstanding Section 11.1 above, Lessor may also terminate this lease for any reason which necessitates the termination of lease in order to achieve a more safe, efficient, or effective operation of the airport.

11.3 Except in an emergency situation, which shall be determined in the sole opinion and discretion of Lessor, termination shall not go into effect until Lessee has been given thirty (30) days written notice.

12. MISCELLANEOUS PROVISIONS:

12.1 Except as otherwise provided herein, the rights and powers held by Lessor pursuant to this agreement may be exercised by the Airport Supervisor or a Lea County Board of County Commissioners designee.

12.2 No delay or abstention on the part of Lessor in exercising any right or power herein shall operate as a waiver thereof. Notwithstanding Section 12.1 above, only Lessor can modify this lease agreement or waive any right accruing to the Lessor herein. A modification can be accomplished only by another written agreement executed by both parties.

12.3 This agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

12.4 If Lessee breaches the lease, Lessor may pursue any and all remedies available to it at law or in equity, in addition to any specific right specified herein for a specific type of breach.

12.5 If any part of this lease agreement is found to be legally invalid or unenforceable, that finding shall not affect the validity and enforceability of the remainder of this lease agreement.

12.6 The validity, construction and effect of the lease shall be governed by New Mexico law applicable to leases made and to be performed in New Mexico, without regard or effect given to conflict of law principles or rules that would

require the laws of any other jurisdiction. Lessee consents to venue and jurisdiction in the District Court in and for the County of Lea, State of New Mexico, and to service of process under the laws of New Mexico.

12.7 All notices or other communications herein shall be deemed to have been duly given when made in writing and delivered in person, or deposited in the United States mail, postage prepaid and addressed as follows:

LESSOR

Airport Supervisor
P.O. Box 1106
Hobbs, NM 88240-1106

LESSEE

City of Lovington
214 S Love
Lovington, NM 88260

12.8 In the event of litigation to enforce any right or obligation under this agreement, the prevailing party shall be awarded reasonable attorney's fees and costs. Such reasonable attorney's fees and cost shall include reasonable cost of in-house attorney.

13. SPECIAL PROVISIONS:

13.1 Attached hereto as Exhibit A and incorporated herein by reference are those special terms and conditions applicable to this lease.

IN WITNESS WHEREOF, this agreement has been executed in duplicated originals this _____ day of _____ 2015.

LESSEE: City of Lovington

LESSOR:



By: _____

LEA COUNTY, NEW MEXICO

Mike Gallagher, County Manager

RECOMMENDED BY:

ATTEST: Pat Chappelle
Lea County Clerk

Corey Needham, Public Works Director

By: _____

Lea County Attorney