



**Mobile Airport Authority**

**LEASING POLICY**

**FOR**

**MOBILE REGIONAL AIRPORT,**

**MOBILE DOWNTOWN AIRPORT AT BROOKLEY,**

**AND**

**MOBILE AEROPLEX AT BROOKLEY**

**Insert Date Adopted**

# **Mobile Airport Authority Leasing Policy**

## **STATEMENT**

The primary goal for establishing departmental procedures for Airport Property Leasing (“Leasing Procedures”) at the Mobile Regional Airport (“MOB”), Mobile Downtown Airport at Brookley. (“BFM”), collectively referred to as “Airport” in this document, and the Brookley Aeroplex (or Mobile Aeroplex at Brookley) (“BAX”) is to ensure that leasing activities are consistent with Local, State, and Federal requirements including, but not limited to, the policies and rules of the Mobile Airport Authority (“MAA” or “Authority”), Federal Aviation Administration (“FAA”), Department of Transportation and formal Procedures adopted by MAA. These Leasing Procedures should be followed, whenever possible; however, the President shall have the authority to change, update and/or waive any provisions that do not directly benefit the Airport, as long as such changes are not inconsistent with the requirements of the Airport’s regulatory agencies.

## **PURPOSE**

These Leasing Procedures incorporate aviation industry best practices, ensure compliance with governing entities, and establish a comprehensive leasing procedure that governs the Airport’s approach to property leasing. As an Airport receiving federal Airport Improvement Program (“AIP”) grant funding, MAA is required to adhere to certain federal obligations in the conveyance of federal property for aviation purposes. Once the Airport receives federal funds to develop or improve the Airport, it is considered a federally “Obligated Airport”, which means the Airport is required to adhere to certain Airport Sponsor Grant Assurances. The intent of these obligations is to ensure that the public interest in civil aviation is adequately served.

Further, airports are obligated to seek recovery of the capital and operating costs of providing a public use airfield and must maintain a fee and rental structure that makes the Airport as financially Self-sustaining as possible under its particular circumstances. The Leasing Procedures described herein shall be applied to individual Airport Tenants in a uniform manner to the greatest extent possible to ensure the equitable treatment of Airport users. The Leasing Procedures shall apply to all Aeronautical and Non-Aeronautical Agreements after the Effective Date of these Leasing Procedures above.

## **CONTROLLING DOCUMENTS**

Agreements entered into on behalf of the Airport must be consistent with, but not limited to, compliance with the FAA’s Code of Federal Regulations, Airport Grant Assurances, Airport Master Plan, Airport Layout Plan (“ALP”), Airport Rules and Regulations, Minimum Standards for Airport Operations (“Minimum Standards”), FAA Revenue Use Plan, Disadvantaged Business Enterprise (“DBE”) plan, Mobile Airport Authority's Leasing Policy and the Airport’s Schedule of Rates and Charges, as these exist or as may be amended in the future, and as fully incorporated herein by reference.

## **GOALS**

These procedures are established to:

1. Maximize Airport revenue to ensure the Airport's Self-sustainability
2. Ensure federal obligations are met in the conveyance of Airport property
3. Ensure Authority policies and procedures are met in the conveyance of Airport property
4. Protect MAA from uses that are detrimental to its operation, development, and future needs.
5. Follow standard procedures for responding to entities expressing interest in Airport business
6. Ensure equitable treatment of current and future Tenants and users of the Airport
7. Attract private investment and development of Airport facilities and land
8. Mitigate Airport's over-all exposure to risk
9. Minimize Airport financial obligations for maintaining facilities and properties

## **AGREEMENT TYPES**

There are two (2) primary types of lease agreements/contracts used in the conveyance of Airport property. The two (2) primary types of agreements used are Airport Use and Lease Agreements and Airport Use Agreements.

## **AIRPORT USE AND LEASE AGREEMENTS**

Airport Use and Lease Agreements are agreements between the Mobile Airport Authority and a Lessee for Airport property and/or facilities. The Lease and Use Agreement articulates the general terms and conditions, the space occupied, rates and charges, and Aeronautical and/or Non-aeronautical activities authorized.

### **Approval Process for Airport Use and Lease Agreements:**

1. If an interest has been expressed by more than one (1) party to lease a particular parcel of land and/or facilities or to offer a particular service, the Airport shall develop a competitive solicitation in accordance with the Authority's procurement process.
2. If interest has not been expressed by more than one (1) party to lease a particular parcel of land and/or facilities or to offer a particular type of aeronautical service, Airport Use and Lease Agreements may be directly negotiated between the President or his designee and the business entity seeking to lease property and/or facilities from the Airport Authority.
3. Airport Use and Lease Agreements that do not exceed \$25,000 in contract value shall be approved and executed by the President or designee upon approval as to form and content by the

Authority's Attorney or designee.

4. The Authority's approval shall be required prior to execution, if the projected annual revenue generated exceeds \$250,000 in contract value, especially for large-scale development projects.
5. The Authority's designated department shall review and approve the Agreement based on adequacy of insurance coverage and other provisions needed to protect the Authority from exposure to risk.
6. The President's Office shall be the Attestor and Final Signator of the Agreement.

### **AIRPORT USE AGREEMENTS**

Airport Use Agreements are non-revenue generating standard tri-party Agreements between the Airport, a Lessee and a Sub-lessee. Such agreements authorize a Tenant to sublease part or all of their premises to another, generally compatible, business entity. Lessees are neither permitted to sublease nor allow their service providers to occupy space without the formal written permission of the President through an Airport Use Agreement. The Airport Use Agreement articulates the general terms and conditions, the space occupied, and Aeronautical or Non-Aeronautical Activities authorized. All Subleases must be pre-approved by the President prior to execution of the Sublease and the Airport Use Agreement. With the exception of T-hangars and federal government agreements, all Sub-lessee's must sign an Airport Use Agreement authorizing specific Aeronautical and/or Non-Aeronautical Activities prior to conducting those activities at the Airport or MAA property. Signed Subleases must be attached and incorporated into the Airport Use Agreement as a formal exhibit. Use Agreements must hold the Lessee responsible for ensuring the Sublessee's compliance with the terms and conditions of the Airport Use Agreement. The Term of the Sublease may not exceed the Term of the Lease Agreement.

#### **Approval Process for Airport Use Agreements:**

1. Airport Use Agreements shall be approved and executed by the President or his/her designee upon approval as to form and content by the Authority's designated Attorney or his/her designee.
2. The Authority's designated Real Estate shall be responsible for obtaining approval of the Agreement from the designated Insurance Carrier for adequacy of insurance coverage and other provisions needed to protect the Authority from exposure to risk.
3. The President shall be the Attestor and final Signator of the Agreement.

### **AERONAUTICAL AND NON-AERONAUTICAL AGREEMENTS**

Aeronautical Agreements are contracts that contain terms and conditions for Aeronautical Activity providers that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe. Non-Aeronautical Agreements are contracts that do not involve or are not directly related to the operation of aircraft. The first step in considering any lease proposal is to review the "ALP" to determine if the prospective premises is designated for Aeronautical or Non-Aeronautical use. It is important

to ensure all agreements are consistent with the ALP designation and that there is no conflict with future Airport plans.

## **AERONAUTICAL AGREEMENTS**

Any individual, partnership, firm, or other entity desiring to initiate any Aeronautical Activity at the Airport must prove they are financially and technically capable and must submit an application, when applicable, in accordance with Section 3, Application and Qualifications, of the Minimum Standards. Aeronautical Airport Use and Lease Agreements must include reference to the applicable Section(s) of the Minimum Standards that identifies the minimum requirements for conducting specified Aeronautical Activities, such as square footage of facilities, parking, insurance and others.

## **AERONAUTICAL REVENUE**

Although aeronautical revenue is an important source of Airport revenue, the Airport's focus lies more toward ensuring that aviation needs are served by its Aeronautical Activity providers and in reducing the costs that it charges airlines to operate at the Airport. This strategy encourages the development and growth of air service, which is critical to the Airport's long-term survival. As a result, there is a greater focus on increasing Non-Aeronautical revenue, given those sources have the greatest potential for growth, in addition to playing an integral role in reducing airline rates and charges.

## **AERONAUTICAL USE**

The FAA, by way of its Airport Sponsor Grant Assurances ("Grant Assurances"), requires all airports developed with federal grant assistance funding, such as MAA, to operate for the use and benefit of the public and for the Airport to be made available to all types, kinds, and classes of Aeronautical Activity on fair and reasonable terms and without unjust discrimination. In addition, these Grant Assurances require an Airport to maintain a fee and rental structure for the facilities and services at the Airport which will make the airport as Self-sustaining as possible under the circumstances existing at the Airport and to avoid unjust economic discrimination within classes of users, taking into account such factors as the volume of traffic and economy of collection. The Airport may not grant a special privilege or a monopoly to anyone providing aeronautical services on the Airport or engaging in an Aeronautical Use. The intent of this restriction is to promote Aeronautical Activity and protect fair competition at federally Obligated Airports.

## **REVIEW PROCESS**

The FAA Airport's District Office ("ADO") may review aeronautical agreements, advise the Airport of its federal obligations and ensure that lease terms do not violate the Airport's federal obligations. However, the FAA does not review all leases, and there is no requirement for the Airport to obtain FAA approval before entering into an aeronautical lease. The type of document or written instrument used to grant airport privileges is the sole responsibility of the Airport; therefore, the Authority policies and procedures for contract administration will be followed. The

FAA does not approve aeronautical leases and will only indicate whether or not it has an objection to a particular lease agreement. It is the Airport's sole responsibility to ensure that it has not entered into an agreement that would relinquish its capability to control the Airport and prevent the Airport from realizing the full benefits for which it was developed. Further, the FAA does not consider the Self-sustaining assurance to require airports to charge Fair Market Value ("FMV") rates to Aeronautical Users.

### **RATES AND CHARGES**

For facilities that are directly and substantially related to air transportation, regardless of whether an air carrier or user is a Tenant, Sub-tenant, or Non-tenant, the Airport must impose nondiscriminatory and substantially comparable rates, fees, rentals, and charges on all air carriers and users that assume similar obligations, use similar facilities, and make similar use of the Airport. However, individual circumstances may still allow differences in rental rates among aeronautical Tenants, especially when a substantial capital investment is made that will benefit the Airport and its traveling public. Airport property identified for Aeronautical Uses may be leased without seeking competitive proposals when it is in the best interest of Airport, such as when supporting community aviation needs. This is typically only done when there is a surplus of airport land available for lease and not more than one party has expressed an interest in leasing a particular parcel of land or offering the same aeronautical services. In situations where known competition exists, the Authority's solicitation process will be followed in the procurement of aeronautical Tenants.

### **AERONAUTICAL AGREEMENT TYPES**

Aeronautical Agreements include full service Fixed Base Operators ("FBO's"), Specialized Aeronautical Service Operators ("SASOs"), Aircraft Hangar leases, and any other commercial or non-commercial activities that require the use of the airfield. These Aeronautical Activities are authorized via agreements between the Authority and the Operator through two (2) primary types of agreements: Airport Use and Lease Agreements and Airport Use Agreements.

### **NON-AERONAUTICAL AGREEMENTS**

Any individual, partnership, firm or corporation desiring to initiate any Non-Aeronautical Activity at the Airport must submit a proposal that identifies the scope of services and/or activities to be provided to the public. Non-Aeronautical Uses of Airport property will only be considered when there is not an immediate Aeronautical need for the property and/or facilities to be occupied and only if prior concurrence by the ADO is received.

### **NON-AERONAUTICAL REVENUE**

Maximizing Non-Aeronautical revenue benefits both the Airport and its Signatory Airlines by decreasing the Airport's reliance on airline rates and charges and by strengthening the Airport's ability to attract new air service and passengers. Non-Aeronautical uses of Airport property include Non-Aeronautical businesses such as solar farms, warehouses, distribution centers, light

industry, and other non-aviation related businesses. Although the Authority has a substantial amount of undeveloped property that may be considered for Non-Aeronautical use, care must be taken to ensure that such developments would not interfere with the long-term aeronautical needs of the Airport.

#### **NON-AERONAUTICAL USE**

The Airport must receive a benefit for the use of its Non-Aeronautical property and the value of that benefit must be equal to or more than the FMV for similar, off-Airport property. Most importantly, Non-Aeronautical Use must not interfere with the aviation use of the Airport and must not jeopardize future Airport development or create or contribute to a flight hazard. For all Non-Aeronautical Uses of Airport property, Airport resources should not be used to support Non-Aeronautical activities, unless there is a means for the Airport to recover such costs. Further, the Airport should not provide any support services such as lawn care, irrigation, leasehold improvements, maintenance, trash removal, etc. to support Non-Aeronautical Uses of the Airport, unless payment terms have been established.

#### **REVIEW PROCESS**

The ADO must review and concur with all Non-Aeronautical Agreements, advising the Airport of its federal obligations and ensuring that lease terms do not violate an Airport's federal obligations. It is the Airport's sole responsibility to ensure that it has not entered into an agreement that would relinquish its capability to control the Airport and prevent the Airport from realizing the full benefits for which it was developed. The Airport must demonstrate to the ADO that all Aeronautical Uses have been accommodated and that any future Aeronautical Users can be reasonably accommodated prior to entering into a Non-Aeronautical agreement. Further, property and facilities being leased must be designated as "Non-Aeronautical" on the Airport's ALP. Non-Aeronautical Agreements must be interim-use, temporary and short-term agreements that require the leasehold to revert back to the Airport in the event that it is needed for aeronautical development, as the Airport is obligated to ensure that its facilities, first and foremost, adequately serve the public's interest in Aviation.

#### **RATES AND CHARGES**

For Tenant's operating businesses that are not directly and substantially related to air transportation, the Airport must charge at or above Fair Market Value ("FMV"). FMV for Airport facilities can be determined by reference to negotiated fees charged for similar uses of the Airport or by appraisal of comparable properties. Airport property identified for Non-Aeronautical Uses may be leased without seeking competitive proposals when it is in the best interest of Airport; however, in situations where known competition exists, the Authority's solicitation process will be followed in the procurement of Non-Aeronautical Tenants.

#### **NON-AERONAUTICAL AGREEMENT TYPES**

Non-Aeronautical Agreements include any agreements that do not involve or are not directly related to the operation of aircraft and do not require use of the airfield for commercial or non-

commercial activities. Non-Aeronautical Agreements primarily include Non-Aeronautical Airport Use and Lease Agreements and Non-Aeronautical Airport Use Agreements.

**Approval Process for Non-Aeronautical Use and Lease Agreements:**

- (1) The President or designee shall have the authority to approve and execute any and all documents necessary to complete all Non-Aeronautical Lease Agreements.
- (2) All Agreements shall be approved as to form and content by the Authority’s Attorney or designee.
- (3) The Mobile Airport Authority’s designated Attorney's Office shall be responsible for obtaining approval of the Agreement from the Finance Division for adequacy of insurance coverage and other provisions needed to protect the Authority from exposure to risk.
- (4) The President shall be the Attestor and Final Signator of the Agreement.

To ensure consistency among Non-Aeronautical Agreements, Checklist for Non-Aeronautical Agreements, should be used as a guide to ensure that certain terms and conditions are not inadvertently omitted from future Agreements.

**SOLICITATION**

The Airport may decide to issue a solicitation for certain Agreements, but in some cases Airport property may be leased without seeking competitive proposals when it is in the best interest of the Airport or community and described/offered through a document such as the Airport Master Plan or ALP. However, if multiple parties have expressed interest in a particular type of development or parcel, MAA will issue a formal competitive solicitation to ensure equitable treatment of interested parties.

The Airport strives to ensure nondiscrimination on the basis of race, color, sex, sexual orientation or national origin in the award and administration of all contracts and leases, and to create a level playing field on which small businesses, including Disadvantaged Business Enterprises (DBE), can compete fairly for leases, construction, procurement, and professional service contracts.

To ensure consistency among Airport Use and Lease Agreements, Attachment A, Checklist for Aeronautical Agreements and Attachment B, Checklist for Non-Aeronautical Agreements, should be used as a guide to ensure that essential terms and conditions are included in future Agreements.

**NOMINAL RATE AGREEMENTS**

Market conditions may not always permit an airport to establish fees that are sufficiently high enough to recover aeronautical costs, while being sufficiently low enough to attract and retain



commercial aeronautical services. In such circumstances, an airport's decision to charge rates that are below those needed to achieve Self-sustainability, in order to assure that services are provided to the public, is not inherently inconsistent with the federal obligation to make the Airport as Self-sustaining as possible, given its particular circumstances. Accordingly, airports must maintain a fee and rental structure that makes the it as financially Self-sustaining as possible under the particular circumstances at that Airport.

Further, while FAA regulations provide guidance on how aeronautical and non-aeronautical property should ideally be used; there are a few limited exceptions to the general rule. Below are the criteria and circumstances in which Airport property may be leased for nominal amounts:

1. **Property for Community Purposes:** Property may be made available at less than fair market value on a limited basis provided all of the following conditions exist:

The property is not needed for Aeronautical Use,

- a. The property is not generating airport revenue and there are no near-term prospects for producing revenue;
- b. The community purpose will not impact/interfere with any Aeronautical Use of the airport;
- c. Allowing the community purpose will maintain or enhance positive community relations in support of the airport;
- d. The proposed community use of the property is consistent with the ALP; and
- e. The proposed community use is consistent with other requirements, such as certain surplus and non-surplus property federal obligations requiring the production of revenue by all airport parcels.

Acceptable community purpose uses include public parks and recreation facilities, including bike or jogging paths.

2. **Not-for-profit Aviation Organizations:** Property may be made available on a limited basis for less than FMV to Not-for-Profit Aviation Organizations for property that is not generating airport revenue, if there are no near-term prospects for producing revenue as follows:

- a. Reduced rental rates may be charged to aviation museums and aeronautical secondary and post-secondary education programs conducted by accredited education institutions to the extent that civil aviation receives reasonable tangible or intangible benefits from such use.
- b. An airport may charge reduced rental rates to Civil Air Patrol units operating aircraft at the airport.
- c. The airport may offset the value of any services that police or fire fighting units provide to the airport against the applicable airport fees, as in-kind services. (Note: These units are expected to pay reasonable fees for Aeronautical Use.)

3. **Transit Projects and Systems:** If the Airport owns a transit system and its use is for the transportation of airport passengers, property, employees, and visitors, the airport may make its property available at less than FMV rent for public transit Terminals, right-of-ways, and related

facilities without violating the Revenue Use Policy or Self-sustaining requirements.

4. **Military aeronautical units:** The Airport may provide facilities to military units with aeronautical missions at nominal lease rates. Examples of such military units are:

- a. Air National Guard,
- b. Army National Guard,
- c. U.S. Air Force Reserve,
- d. U.S. Coast Guard, and
- e. Civil Air Patrol.

These units generally provide services that directly benefit Airport operators and safety. This exception does not apply to military units with no aeronautical mission on the Airport.

**The rationale and justification for granting any nominal value lease should be clearly outlined in the lease agreement and/or documented in the lease file.**

#### **NON-TENANT BUSINESS PERMITS**

Airport Permits are issued on a short-term temporary basis by the Airport's Operations Division to authorize access to businesses/individuals who seek Airport access for business purposes. Businesses/individuals are not allowed to access the Airport without the formal permission of the President. The permit articulates the non-negotiated terms and conditions for which noncompliance is cause of immediate revocation.

As a general principle, the ADO or FAA Regional Airports Division does not support airport requests to enter into any agreement that grants "through-the-fence" access to the airfield for aeronautical businesses that would compete with an on airport aeronautical service provider such as a FBO, as this can result in an economic competitive advantage for "through-the-fence" Operators to the detriment of on-Airport Tenants. Further, fees assessed to off-site enterprises, as "through-the-fence" operators, should be charged no less than a similar fee charged to similar on Airport Operators.

It is important to remember that users having access to the airport under a "through-the-fence" agreement are not protected by the Airport's federal obligations to the FAA. The Airport may simply deny "through-the-fence" access if it so chooses. The Airport may also charge any fee it sees fit to those outside the Airport.

#### **Approval for Non-Tenant Business Permits:**

1. The Permit Agreements are approved and issued by the President or designee.
2. Businesses/Individuals who require access to the Airport must complete the appropriate permit application request form.
3. Applicants must demonstrate compliance with the Airport Rules and Regulations and

Minimum Standards.

4. Permits must be displayed as required.
5. Application and supporting documentation to be retained by the Operations Division.
6. Permits must be renewed annually.

## **MONITORING AND COMPLIANCE**

Contract monitoring and compliance are key components of lease management and administration. The Airport must ensure that its Tenants are in compliance with the terms and conditions outlined in their contracts. The Finance Division is responsible for follow up and enforcement of the majority of contractual requirements outlined in the Airport's lease agreements. The Finance Division is responsible for implementing, monitoring, and compliance strategies to ensure the following:

- a. The development of a lease management system;
- b. Maintenance of contract documents and correspondence;
- c. Annual and periodic Tenant site visits and Inspections;
- d. Monitoring and follow up to ensure timely action on regarding expirations, extensions and other date sensitive requirements (i.e.; Insurance renewals, performance bond renewals, capital investment requirements, construction completion requirements etc.);
  - e. Minimum Annual Guarantee (MAG) Adjustments;
- f. Tenant relations and contract negotiations;
- g. Follow up contact with Tenants and reminders regarding outstanding contract requirements; and
- h. Compliance with the Federal Aviation Administration's Code of Federal Regulations, Airport Grant Assurances, Airport Master Plan, FAA Title VI, Airport Layout Plan, Airport Rules and Regulations, and Minimum Standards for Airport Aeronautical Services and Aeronautical Activity Providers ("Minimum Standards"), FAA Revenue Use Plan, Disadvantaged Business Enterprise ("DBE") plans, and the Airport's Schedule of Rates and Charges, as exists or as may be amended in the future.

## **DEBT COLLECTION PROCEDURES**

The Airport's Finance and Administration Division is responsible for a variety of contract compliance activities including rent collection, debt collection, Consumer Price Index ("CPI") adjustments, audits and other financial requirements, as outlined in the individual lease agreements. Most importantly, the Finance and Administration Division is responsible for the collection of all revenue due to the Airport and shall attempt to collect past due debts by following

the collection procedures established herein. If there is a conflict between an agreement between the Authority and Debtor, the agreement shall rule; however, agreements executed after the implementation of these Leasing Procedures, should include language reflecting these Debt Collection Procedures.

### **OVER DUE ACCOUNTS**

Payments not received within thirty (30) days following the stated due date or “Grace Period”, are considered Overdue Accounts and shall be subject to applicable interest and penalties immediately following the Grace Period or as otherwise required by the agreement between the Authority and Debtor. On the first day following the Grace Period, the Finance and Administration Division will forward a Past Due Notice advising the Debtor that the payment is overdue and that the amount due will begin accruing interest and penalties, as of the first day following the Grace Period.

### **PAST DUE NOTICES**

At a minimum, Past Due Notices must be sent via e-mail or in writing (need to have legal determine best practice/method of notice and progression) on the first day following the Grace Period and every thirty (30) days; thereafter, until the debt plus applicable interest and penalties has been satisfied or the account is determined to be delinquent. Any waiver of interest and penalties required by the agreement requires written justification of hardship and must be approved in advance by the President. Interest may be waived if payment arrangements have been made and approved in advance by the President.

### **DELINQUENT ACCOUNTS**

If payment in full, plus applicable interest and penalties, is not received within ninety (90) days following the due date, the overdue receivable shall be deemed a Delinquent Account. All Delinquent Accounts shall be referred to the Authority’s designated Attorney’s Office to determine how the debt will be collected, i.e., a debt collection agency or collections bureau etc. At this point any further communication will come from the Mobile Airport Authority’s designated Attorney’s Office to ensure that appropriate legal procedures are followed to collect the debt. The Authority and its designated Attorney’s Office must consider on a case by case basis whether or not agreements for delinquent accounts should be terminated and/or whether or not to pursue legal action such as eviction proceedings or other legal filings. The President must approve any write-offs of delinquent or uncollectible accounts.

### **TERM DURATION**

In general, the duration for land leases is much longer than that for facility leases. On average land leases run 25-35 years vs. 3-5 years for facility leases. This allows Tenants making Capital Investments in the Airport, which will ultimately accrue to the Airport, to amortize their investments and make a reasonable profit. The FAA considers leases that exceed fifty (50) years to be a disposal of property in that the lease will likely exceed the useful life of the structures constructed on the property.

## **LAND LEASES**

Land Leases granted for development projects tend to carry longer lease terms than leases granted for the lease of existing facilities, given such Tenants make an investment in Airport land that must be amortized over an adequate length of time for the business to be viable. It is common for a Lease for unimproved land at the Airport to include a requirement that, within a certain time period, the Tenant must construct a specific type of building to accommodate an approved list of services. This generally depends on the Airport's forecasted needs at the time and the demand for Airport land. Any entity desiring to establish a Lease to engage in any activity at the Airport must do so in accordance with Airport's Minimum Standards and Rules and Regulations, as may be amended by the Authority.

## **SUGGESTED TERMS FOR DEVELOPMENT PROJECTS**

The ability of prospective Tenants to secure adequate funding is a critical issue that can impact the ability of the Airport to attract good Tenants and must be considered in any decision regarding Lease duration. Opinions about the needed duration of a Lease that is required in order to amortize a loan vary. This is because the amount of time required to recoup an investment is dependent on a number of factors that vary from loan to loan and airport to airport. Factors may include, but are not limited to, the construction loan amount, type of service(s) provided, expected useful life of the building to be constructed, amortization period for the building and the particular circumstances at the airport in terms of activity levels, aircraft operations, sales volume potential and others.

In general, Land Leases should be of sufficient length to permit a Tenant making a substantial Capital Investment to fully amortize the Capital Investment over the Term of the agreement and receive a reasonable rate of return on the investment.

Equitable Terms will be determined on a case by case basis; however, generally acceptable Terms for specified levels of investment in Airport facilities and infrastructure follow:

### **Suggested Investment Levels for Land Lease Terms**

<b>Capital Investment Level</b>	<b>Recommended Lease Term</b>
<b>\$0.00-\$200,000</b>	<b>5-10 years</b>
<b>\$200,001-\$500,000</b>	<b>10-25 years</b>
<b>\$500,001-\$800,000</b>	<b>25-30 years</b>
<b>\$800,001-\$1,500,000</b>	<b>30-35 years</b>
<b>\$1,500,001-\$3,500,000</b>	<b>35-40 years</b>
<b>Over \$3,500,001</b>	<b>Negotiable (Over 40 years)</b>

It is the Airport's position that if a desirable prospective Tenant cannot secure funding for their proposed improvements, based upon the Airport's recommended length of Term, that consideration will be given for a longer term as long as it is not substantially different from Terms that have been offered to other similarly situated Tenants, operating similar businesses at similar investment costs.

#### REVERSION OF CAPITAL IMPROVEMENTS:

Upon the termination of a Lease whereby improvements to Airport property were made by the Lessee, if no other arrangement for sale or transfer of improvements has taken place [as specified in the applicable sections herein], the Lessee shall agree that all said improvements as well as the property leased to it, shall, without compensation from the Authority, become the property of the Authority. Under no circumstances shall the party to such Lease be entitled to any payment by reason of the value of its business, franchise or improvements.

#### **FACILITY LEASES**

Facilities and Hangar space leased to aviation businesses for the provision of aircraft maintenance, fueling or other services may be for a period of 3-5 years and may or may not be renewable, depending on Tenant performance and future Airport plans. After the Lease period, the premises are offered in a competitive process and the previous Tenant may again compete with other potential Tenants for the premises. Under this arrangement, the Tenant is generally required to carry out only minor maintenance and landscaping.

Facility leases for tie-downs for aircraft, T-hangars and conventional Hangar space both for the storage of aircraft and for the provision of aeronautical services are handled through the Airport's Fixed Based Operator ("FBO") for facilities located on their Premises.

#### **SUBLEASE OF LEASED PREMISES**

Although the Airport prefers to directly lease most of its property and facilities, due to the size and availability within current facilities, Subleases for portions of facilities to other businesses to provide a more complete set of services is acceptable. Subleases are generally appropriate, with written approval of the President, if an Airport Tenant wishes to sublease space to another business providing complementary services. Whether a particular sublease arrangement will be approved or not largely depends on the situation and the market. Aviation businesses typically operate with very small profit margins; therefore, if space is not needed for the Tenant's own purposes, the ability to get approval for Subleases can be critical to the Operator's financial well-being. In addition, there are many small and specialized operators that could not afford the cost to develop their own facilities, but may be in the market to sublease small amounts of space from a larger Tenant. This type of sublease is generally granted as long as the business subleasing space agrees

to comply with the Minimum Standards and has obtained all relevant licenses and permits.

### **SUBLEASE OF ENTIRE PREMISE**

Subleases of entire commercial aeronautical facilities or assignments of an entire commercial aeronautical facility (generally to a successor in interest such as a merger partner or someone buying the business) are generally appropriate, with written approval from the President, if the entire leasehold is transferred to a merger partner or someone buying the business. This allows the Airport to maintain the range of services that was previously available on the Airport and maintain its attractiveness to other Tenants. This type of Sublease is generally granted as long as the business subleasing space is financially able to do so and agrees to comply with the Minimum Standards that apply to the specific type of service to be provided and has obtained all relevant licenses and permits.

### **T-HANGAR SUBLEASES**

Subleases for T-hangars or private aircraft storage are handled directly through an Airport Tenant, given the T-hangar facility was originally constructed by the Tenant on its Premises. With the exception of the T-hangar leases and federal government agreements, all other Subleases require the President's approval. Such approval must be submitted in writing and shall not be unreasonably withheld. The President shall provide any approval or denial of a request to sublease in writing.

### **SUMMARY**

MAA plays a vital role in the transportation of passengers and cargo in regional, national, and in the near future, international commerce. Accordingly, MAA strives to be as Self-sustaining as possible and thus, well-structured lease agreements are essential to the Airport's success. The Airport must ensure that it structures lease agreements to protect current and future interests and generate sufficient revenue to operate the Airport. To ensure self-sustainability and retain flexibility with Tenants, lease agreements may take on various forms and include differing stipulations based upon the function, location, and types of Tenants involved. Many leases will be unique in their development and execution while others will adhere to specific standards identified in these Leasing Procedures. Regardless, ensuring a uniform approach and rationale to such decision-making is essential. Existing and prospective Tenants should be treated equitably, but not necessarily the same depending on individual circumstances. In such cases, the Airport must decide whether the circumstances of a particular lease arrangement are unique enough to deviate from standard terms and contract language or whether doing so would represent a substantial deviation from its approach and/or possibly violate FAA Grant Assurances.

As such, the President, in his or her sole discretion, has the right to waive any standard(s) contained herein if such action(s) benefits(s) the Authority and does not violate city, state, or federal policy. In all respects, these standards are subject and subordinate to federal regulations, as currently exists or as may be amended in the future.

**APPENDIX 1**  
**DEPARTMENTAL PROCEDURES FOR**  
**AIRPORT PROPERTY LEASING**

Terms & Definitions

Aeronautical Activity or Use	Any activity which involves, makes possible, or is required for the operation of aircraft or which contributes to, or is required for, the safety of such operations and shall include, all activities commonly conducted at Airports.
Aeronautical Agreements	Agreements that contain terms and conditions for Aeronautical Activity providers that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe.
Airport	KMOB, KBFM, and BAX, owned and operated by the Mobile Airport Authority, including all real property easements or any other interest therein as well as all improvements and appurtenances thereto, structures, buildings, fixtures, and all tangible personal property or interest in any of the foregoing, now or hereafter owned, leased, or operated by Authority.
Airports District Office (“ADO”)	FAA Jackson Airports District Office 100 West Cross St., Suite B Jackson, MS 39208-2307
Airport Improvement Program (“AIP”)	FAA program that provides grants to public agencies and, in some cases, to private owners and entities for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems (NPIAS).
Airport Layout Plan (“ALP”)	A scaled drawing of the existing and planned land and facilities necessary for the development and operation of an airport that are used for planning, verifying airport data, obstruction evaluation, and project coordination.
Airport Master Plan	The planning document that sets forth the concept for the long-term development of the Airport, providing guidelines for future Airport development sufficient to satisfy aviation demand in a financially feasible manner, addressing the



	aviation, environmental, and socio-economic issues existing in the community.
Airport Sponsor	An Airport owner, such as the Authority, that has accepted Airport Improvement Program (“AIP”) funding.
Airport Sponsor Grant Assurances (“Grant Assurances”)	The obligations that the Airport agrees to when it accepts Airport Improvement Program (“AIP”) grant funding for the planning and development of the Airport.
Airport Tenant or Tenant	Any person, leasing property or facilities at the Airport under a valid Lease.
Airport Use Agreement	Non-revenue generating tri-party Agreements between the Airport, a Lessee and a Sub-lessee.
Airport Use and Lease Agreement	Airport Use and Lease Agreements are standard agreements between the Mobile Airport Authority and a Lessee for Airport property and/or facilities outside the terminal building.
Aviation Department	The Mobile Airport Authority department that manages the daily operations of the Mobile Regional Airport and Mobile Downtown Airport at Brookley.
Attestor	One who bears witness to; certify; declare to be correct, true, or genuine; declare the truth of, in words or writing, affirming in an official capacity.
Capital Investment or Improvements	The improvements, structures and fixtures installed by a Tenant including, without limitation, finish-out work on floors, ceilings, demising walls and store facades; storefront signage; panel boxes and hook-ups to utilities; wires and conduits infrastructure; decorations; furniture; equipment; shelves; counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate Concession Operations.
Attorney’s Office	The Mobile Airport Authority designated Attorney providing legal counsel and representation to the President and the Authority in any suit, action or proceeding filed by or against them.
Civil Air Patrol	A congressionally chartered, federally supported non-profit corporation that serves as the official civilian auxiliary of the United States Air Force (USAF), performing emergency services such as

	<p>assisting the USAF on search missions, and offering aerospace-education and youth programs: founded 1941.</p>
Consumer Price Index (“CPI”)	<p>A program that produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. The CPI is a statistical estimate constructed using the prices of a sample of representative items whose prices are collected periodically. The CPI is commonly used as an index for adjusting lease rates and charges.</p>
Debtor	<p>A person, business or Tenant owing a sum of money to the Authority for the rights and privileges granted via its agreement with the Authority.</p>
Delinquent Account	<p>Any account that is past due by ninety (90) days or more.</p>
Department of Transportation (“DOT”)	<p>The federal agency that coordinates the planning and development of a safe, viable, and balanced state transportation system serving all regions of the state to assure the compatibility of all components, including multimodal facilities.</p>
Disadvantaged Business Enterprise (“DBE”)	<p>A for-profit small business concern where socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations.</p>
FAA Office of Airports (several different offices)	<p>The airport organization responsible for all programs related to airport safety and inspections and standards for airport design, construction, and operation (including international harmonization of airport standards) and is also responsible for national airport planning and environmental and social requirements and establishes policies related to airport rates and charges, compliance with grant assurances, and airport privatization.</p>
Fair Market Value	<p>An estimate of the market value of a property, based on what a knowledgeable, willing, and unpressured buyer would probably pay to a knowledgeable, willing, and unpressured seller in the market. An estimate of fair market value may be founded either on precedent or extrapolation.</p>

Federal Aviation Administration (“FAA”)	The Federal Aviation Administration of the United States is a national authority with powers to regulate all aspects of civil aviation. These include the construction and operation of airports, the management of air traffic, the certification of personnel and aircraft, and the protection of United States’ assets during the launch or reentry of commercial space vehicles.
Financial Self-Sufficiency citation?	To ensure that the revenues generated by the tenants and users of the Airport will be sufficient to satisfy the combined operating and capital requirements of the Airport without subsidy by the Authority.
Fixed Based Operator (“FBO”)	A commercial business granted the right by an airport to operate on the airport and provide aeronautical services such as fueling, hangar leasing, tie-downs and parking, aircraft rentals, aircraft maintenance, flight instruction and other aviation-related services.
Grace Period	Fifteen (15) days following the stated payment due date identified in an agreement.
Hangar	A large building with extensive floor area used for storing and maintaining aircraft.
Invitation for Bid (“IFB”)	A competitive solicitation released by the Authority to invite providers to submit a fee proposal for a specific project or service to be furnished.
Lease	A contract between the Authority and a Tenant for the use of property and facilities for specified activities in exchange for periodic payment.
Leasing Procedures	A procedures document that outlines best practices for leasing property at the Mobile Regional Airport and Mobile Downtown Airport at Brookley.
Lessee	A tenant leasing property and facilities from the Airport Authority.
Minimum Standards for Airport Aeronautical Service and Aeronautical Activity Providers (“Minimum Standards”)	The qualifications and criteria that have been established by Authority as minimum requirements that must be met as a condition for the right to conduct a commercial Aeronautical Activity on the Airport, as now exists or as may be amended in the future.
Mobile Airport Authority (“MAA”)	The Airport Sponsor and governmental entity

	possessing ownership, custody, control and management of the Mobile Regional Airport and Mobile Downtown Airport at Brookley, located in Mobile County, State of Alabama.
Non-Aeronautical Activity or Use	All activities that do not involve or are not directly related to the operation of aircraft.
Obligated Airport	Any public airport having signed grant assurances/agreements to receive Airport Improvement Program funding from the Federal Aviation Administration.
Past Due Notice	A notice sent via e-mail or in writing providing notice to a Debtor that is sent on the first day following the Grace Period and every thirty (30) days following until the debt plus interest and penalties has been satisfied.
Premises	A Tenant's occupied land and/or facilities or portion thereof along with improvements used to carry out business activities, as identified in the Tenant's Lease with Authority.
President	The appointed official who directs the administration and authorized in writing by Mobile Airport Authority or applicable law to act for the Mobile Airport Authority with respect to any or all matters pertaining to Airport administration.
Real Estate Management	The Department responsible for all airport owned real estate and property management,.
Request for Proposal ("RFP")	A competitive solicitation released by the Authority to encourage providers of a particular service or asset to submit business proposals, including a technical proposal and a fee proposal.
Revenue Use Policy	Policies and procedures established within the Federal Register concerning the use of Airport revenue.
Signator	An authorized representative who signs or joins in signing the Lease.
Signatory Airline	An airline that has signed an agreement to provide air service for a five (5) year term, leasing at least the minimum amount of space required, as outlined in the Airline-Airport Use and Lease Agreement, as currently exists or as may be amended in the future.
Specialized Aeronautical Service	A single service provider or specialized

Operators (“SASO”)	aeronautical service provider performing less than the full services for an FBO.
Airport Sponsor	The entity that is legally responsible for the management and operation of an airport, including the fulfillment of the requirements of laws and regulations related thereto.
Sublease	A contract used by an existing Tenant to lease a portion or all of the land, building and/or facilities leased from the Airport to another entity under specified terms and conditions.
Self-sustaining	The Airport maintains rates, charges and fees that conform with the grant assurances and ensure the Airport’s financial solvency without reliance on outside funding.
Sub-Tenant	A person occupying Airport property under a sublease with an existing tenant.
T-hangar	An enclosed metal structure designed to hold aircraft in protective storage, primarily used for private aircraft
Term	A fixed or limited period of time for which contract terms and conditions are applicable.
Terminal	The passenger terminal building and associated curbside entrance areas and adjoining landscaped areas located within the real property of the Airport.

## **Attachment A- Checklist for Aeronautical Agreements**

### **SOLICITATION**

- When property and/or facilities become available, the Authority may issue a targeted request for proposals (“RFP”) for specific services or facilities that are consistent with the most current demand forecast, Airport Master Plan and Layout Plan (“ALP”).
- The Authority maintains the right, but not the duty, to seek competitive proposals for all aeronautical services contemplated at the Airport.
- Any RFPs, Invitations for Bids (“IFBs”) and other types of solicitations will be released by the Authority and shall be reviewed, evaluated and awarded in accordance with the Authority’s Policies.
- The Airport may choose to directly negotiate an agreement to bring specified aeronautical services to the Airport (described/offered through a document such as the Airport Master Plan or ALP) that ultimately benefits the aviation community and the Authority.
- The Airport may renegotiate an existing Agreement and Term when the incumbent Tenant plans to make or has made a considerable, recent, unamortized capital investment in the facilities that ultimately benefits the aviation community and the Authority.
- Prior to issuing a competitive solicitation for aeronautical providers, the Airport should review the provisions of such agreements in place at other airports, including comparable airports, to determine industry standards, best practices and market rates.
- Competitive solicitations should include minimum qualifications to ensure a level of experience, capability, or business volume is used as a threshold for consideration in the acceptance of bids or proposals.
- Businesses expressing interest in a particular business opportunity or parcel of land should be included on a notice list to ensure competition among interested and qualified providers.
- Advertisements should be placed in the local paper and in airport trade publications, websites, and newsletters to increase awareness of business opportunities.
- The Airport may use a real estate marketing firm to promote business opportunities or market specified parcels of land to prospective developers.

### **PREMISES**

- Property and facilities should be offered in “as is” condition.
- Agreements should include a clearly defined drawing, legal description of metes and bounds, or a reference a specific location on the ALP.
- For the most part, property designated as “Aeronautical” on the Airport’s ALP should be used only for Aeronautical purposes. Incidental Non-Aeronautical Use on an interim basis of aeronautically designated property may be acceptable; however, such use must be approved by the Federal Aviation Administration’s (“FAA”) Airports District Office (“ADO”) in advance.
- The premises should only include the land and/or facilities that the aeronautical Tenant or Sub-tenant can reasonably use.
- The Agreement should specify improvements that will be made by the operator/developer

along with improvements to be made by the Airport, if any.

- A provision for expansion and contraction and/or relocation, at the Airport's discretion, should be included whenever possible.
- Agreements should not include options or rights of first refusal for other Airport property and/or facilities that the operator will not immediately require.
- Agreements should not grant a right of first refusal that would allow a Tenant to control a majority or all aeronautical property on the Airport that can be developed.
- Lessees providing Hangar space for private and corporate aircraft storage (e.g., T-hangar Agreement) may do so without the written consent of the Authority; however, the Airport shall require and maintain a current list of all T-hangar Tenants along with a current copy of the current T-hangar agreement being used.

## **RIGHTS & OBLIGATIONS**

- Agreements should not grant an explicit or implied exclusive right to conduct a particular business or activity at the Airport.
- Agreements should include a detailed scope of services identifying the type(s) of aeronautical services authorized and reference the Section(s) of the Minimum Standards that are applicable to the authorized activities.
- Scopes of services should match the facilities specifications outlined in the Minimum Standards and should be reflective of the Tenant's comprehensive and ancillary needs to conduct the specified aeronautical activities.
- Agreements should require adherence to the Airport's Security Program, Minimum Standards and Airport Rules and Regulations, as exists or as may be amended in the future.
- Agreements should require that any uses not explicitly authorized in the Agreement require the prior written approval of the President.
- Agreements should articulate the requirement to adhere to applicable local ordinances, building codes, fire codes, etc.
- Agreements should adequately include language requiring compliance with 49 CFR Part 26, Disadvantaged Business Enterprise ("DBE") regulations, when federal funding is used for development projects.
- Tenant improvements should be subject to review through 14 CFR Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace, and should not interfere with the taking off and landing of aircraft.

## **TERM**

- The Term for existing facilities requiring no capital investment should not exceed five (5) years unless special circumstances exist and FAA approval is sought and received.
- The Term should not exceed a period that is reasonably necessary to amortize a Tenant's capital investment in the facilities.
- Depending upon the extent of facilities development, ground leases carrying 25 - 35 year terms should be sufficient to retire debt financing.
- The Term for a ground lease with a Tenant constructing facilities should not exceed 35

years or a lesser period needed to sufficiently retire debt financing, providing Tenant a reasonable return on investment.

- The FAA may consider leases that exceed 50 years to be a disposal of property in that the term of the lease will likely exceed the useful life of the structures erected on the property.
- Terms exceeding 35 years should be submitted to the FAA for review and approval; Lease Terms that exceed 50 years are generally not accepted by the FAA as per FAA Order 5190.6B, 12.3(b)(3).
- On a case by case basis, the Authority may consider a significantly longer term to support Airport property development (assuming FAA approval) and to allow for the amortization of an investment based on the following criteria:
  1. Significant initial capital investment requiring longer amortization schedule.
  2. Significant additional capital investment in current Leasehold Improvements.
  3. Business activities provide needed services to other Airport Tenants and users.
  4. Significant job creation.
  5. Public infrastructure extension which will benefit other parcels (e.g., roads, water, sewer).
  6. Increases potential to attract other new aviation businesses.
- Airport should control the right to exercise any options or must consent to requests to extend; in some cases, a mutual option to extend may be considered.
- The Airport should include a Termination for Convenience clause whenever possible.
- If an extension option is automatic or controlled by the Tenant, the FAA considers the extension option to be a part of the original term.
- Renewal options shall be granted based upon a review of Lessee's performance and shall only be exercised given compliance with all terms and conditions of the lease and a determination that the structural integrity, safety, and appearance of the facilities meet Authority standards and appears to be able to meet them for the extension period.

## **PAYMENT OF FEES**

- All ground leases with terms of more than five (5) years should contain an escalation provision and should be based upon a recognized economic index, such as the Consumer Price Index ("CPI") or local, state, or federal cost of living indexes.
- Rental rates for Airport land and/or facilities for aeronautical purposes must be reasonable and not unjustly discriminatory.
- Rates should be determined by independent appraisal(s) and/or by direct comparison with the prevailing rental rate of comparable property for similar uses of the Airport.
- Rates may be set differently for individual Tenants based on the following rationale:
  1. The value of property to be leased
  2. The amount and kind of the Tenant's investment
  3. The value of the business opportunity (for those providing services to the public)
  4. The amount of use projected of common facilities
  5. The type of use being conducted
  6. The degree of competition for the facility being leased



Agreements that contain nominal lease rates must include the rationale and justification for leasing those properties for nominal rates or justification must be documented in the lease file when appropriate.

Nominal lease rates must be consistent with FAA guidelines for such leases, as more fully set forth herein and in Section VII.F of the FAA's Revenue Use Policy.

#### **TITLE**

The title to any Tenant constructed facilities or improvements on Airport property should vest with the Authority at the expiration of the lease.

The President must approve all design and construction plans in advance and in writing.

Tenants must provide complete Computer-Aided Design ("CAD") files upon construction completion.

Tenant Capital Investments must be documented in the lease file in accordance with the Lease Agreement.

The Airport should retain the right to require removal of any improvements that will not be needed or will exceed their useful life at the end of the agreement or once the title of facilities vests in the Airport.

Trade fixtures, supplies, products, and personal property, which have not assumed the nature of leasehold improvements or fixtures to real property may be removed by Tenants at the expiration of the Lease.

#### **SUBORDINATION**

Agreements should be subordinate to the Airport's federal obligations and any existing or future agreements the Authority may enter into with the federal government.

#### **ASSIGNMENT & SUBLETTING**

Airport should retain the right to approve in advance any assignment, sale, transfer or Sublease by the Tenant of its leasehold interest.

Airport may require a lease assignment or transfer fee of two percent (2%) of the gross selling or transfer price or two percent (2%) of the appraised fair market value, whichever is greater, to be paid to the Authority in conjunction with any lease transfer or assignment.

A transfer shall be construed as any transaction involving twenty-five percent (25%) or more of the stock or ownership in the leasehold entity.

Subleases must be pre-approved by the President prior to execution of the Sublease and the Airport Use Agreement, authorizing the Sublease.

Executed Subleases must be incorporated into the authorizing Use Agreement as an Exhibit.

#### **FAA OPINION ON REVIEW**

FAA's interest in the Airport's leases is confined to the individual lease's impact on the Airport's federal obligations.

The Airport should not construe the FAA's acceptance of a lease as an endorsement of the entire document.

- The ADO or Regional Airports Division reviews a lease and determines it does not appear to violate any federal compliance obligations.
- The ADO will advise the Airport that the FAA has no objection to the agreement; the FAA does not approve leases, nor does it endorse or become a party to Tenant lease agreements.

#### **MAINTENANCE**

- Maintenance obligations should be clearly defined for each party to the agreement.
- Maintenance support services of any kind should not be performed by the Airport, unless there is a means for the Airport to recover such costs.
- The Airport should ensure that pest control is solely the Tenant's responsibility.
- Agreements should include the Airport's right to enter into facilities to perform maintenance and repairs, for emergency access, and for inspection of the facilities.

#### **LEASEHOLD MORTGAGE**

- The right to mortgage the lease should be limited to the leasehold rights and should explicitly prohibit the mortgaging of any Airport property.

#### **BREACH**

- Agreements must identify what constitutes a breach and provide parties with an opportunity to cure and provide the Airport with the explicit ability to terminate the lease for uncured breaches.

#### **INSURANCE**

- Agreements will contain insurance provisions for the types and amounts of insurance coverages outlined in the Minimum Standards and as approved by the Authority.
- Signed Agreements will not be executed by the Authority without the accompanying insurance certificates evidencing required levels of coverage.
- Agreements shall also meet all State of Alabama insurance requirements.

#### **PERFORMANCE GUARANTEE**

- Whenever possible, agreements should require a performance guarantee in an amount that guarantees performance under the provisions of the agreement; typically, equal to the greater of an established amount or three (3) months of projected rent.
- Signed Agreements will not be executed by the Authority without the accompanying performance guarantee.
- Agreements should specify a development schedule for facility construction and improvements.
- Construction contracts, bonds, permits, and insurance must be provided prior to construction commencement.
- Agreements should stipulate penalties or permit the Airport to take back the premises if the Tenant fails to construct improvements or perform under the terms of the Agreement.

## **NONDISCRIMINATION CLAUSE**

Agreements must ensure that the Tenant, personal representatives, successors in interest, and assigns covenants and agrees that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities being leased;

2. In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and

3. That the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as currently exists or as may be amended in the future.

Agreement should include that in the event of breach of any of the above nondiscrimination covenants, the Airport shall have the right to terminate the lease and reclaim its facilities and/or property.

## **PROHIBITION AGAINST EXCLUSIVE RIGHTS**

Aeronautical Agreements shall not grant power, privilege, or other rights excluding or debarring another from enjoying or exercising a like power, privilege or right, as it limits the usefulness of the Airport and deprives the public of the benefits of competitive enterprise.

Prohibition against exclusive rights does not apply to the Airport; Airport may elect to provide any or all of the aeronautical services at its Airport, and to be the exclusive provider of those services.

The Airport can deny an individual or prospective aeronautical service provider the right to engage in an on-site Aeronautical Activity for reasons of safety and efficiency if the kind of activity (e.g., skydiving, sailplanes, ultralights) would adversely impact the safety and efficiency of another Aeronautical Activity at the Airport, typically fixed-wing operations.

## **Attachment B- Checklist for Non-Aeronautical Agreements**

### **Checklist Review for Non-Aeronautical Agreements:**

#### **SOLICITATION**

- When property and/or facilities become available, the Authority may issue a targeted request for proposals (“RFP”) for specific services or space that are consistent with the most current demand forecast, Airport Master Plan and Layout Plan (“ALP”).
- The Authority maintains the right, but not the duty, to seek competitive proposals for all Non-Aeronautical services contemplated at the Airport.
- Any RFPs, Invitations for Bids (“IFBs”) and other types of solicitations will be released by the Authority and shall be reviewed, evaluated and awarded in accordance with the Authority’s Procurement Policy.
- The Airport may choose to directly negotiate an agreement to bring specified Non-aeronautical services to the Airport (described/offered through a document such as the Airport Master Plan or ALP) that ultimately benefits the aviation community and the Authority.
- The Airport may renegotiate an existing Agreement and Term when the incumbent Tenant plans to make or has made a considerable, recent, unamortized capital investment in the facilities that ultimately benefits the aviation community and the Authority.
- Prior to issuing a competitive solicitation for Non-Aeronautical providers, the Airport should review the provisions of such agreements in place at other airports, including comparable airports, to determine industry standards, best practices and market rates.
- Competitive solicitations should include minimum qualifications to ensure a level of experience, capability, or business volume is used as a threshold for consideration in the acceptance of bids or proposals.
- Businesses expressing interest in a particular business opportunity or parcel of land should be included on a notice list provided to ensure competition among interested and qualified providers.
- Advertisements should be placed in the local paper and in airport trade publications, websites and newsletters to increase awareness of business opportunities.
- The Airport may use a real estate marketing firm to promote business opportunities or market specified parcels of land to prospective developers.

#### **PREMISES**

- Property and facilities should be offered in “as is” condition.
- Agreements should include a clearly defined drawing, legal description of metes and bounds, or a reference a specific location on the ALP.
- Non-Aeronautical development projects should represent the highest-and-best use of the property, as described in the Airport Master Plan for specified parcels.
- Agreements should only include the land and/or facilities that the Tenant or Sub-tenant can reasonably use.

- The Agreement should specify improvements that will be made by the operator/developer along with improvements to be made by the Airport, if any.
- A provision for expansion and contraction and/or relocation, at the Airport's discretion, should be included whenever possible.
- Agreements should not include options or rights of first refusal for other airport property and/or facilities that the operator will not immediately require.
- Activities should be limited to ensure there are no negative impacts to the Airport and its aeronautical Tenants' operations.
- Only property that is not needed for Aeronautical Uses should be leased for non-aeronautical purposes.
- For the most part, property designated as "Aeronautical" on the Airport's ALP should be used only for Aeronautical purposes; incidental Non-Aeronautical use on an interim basis of aeronautically designated property may be acceptable; however, such use must receive prior concurrence from the Federal Aviation Administration's ("FAA") Airports District Office ("ADO").
- Non-Aeronautical activities should be compatible with and not conflict with aeronautical operations at the Airport.

## **RIGHTS & OBLIGATIONS**

- Agreements should not grant an explicit or implied exclusive right to conduct a particular business or activity at the Airport.
- Agreements should include a detailed scope of services identifying the type(s) of Non-Aeronautical services authorized.
- Agreements should require adherence to the Airport's Security Program, Minimum Standards and Airport Rules and Regulations, as exists or as may be amended in the future.
- Leases should require any uses not explicitly authorized in the Agreement to require the prior written approval of the President.
- Lessees should be required to adhere to applicable local ordinances, building codes, fire codes, etc.
- Agreements should include a minority business enterprise goal, depending on the type of funding that is being used to develop the facilities.
- Minority enterprise outreach to local community to increase participation by small, minority and women-owned businesses must take place prior to issuing an RFP or Bid to ensure inclusion.
- Agreements must contain an escape clause, requiring Non-Aeronautical Tenants to vacate the premises on thirty (30) days' notice upon receipt of such request by a prospective aeronautical Tenant interested in providing authorized aeronautical activities.
- Tenant improvements should be subject to review through 14 CFR Part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace, and should not interfere with the taking off and landing of aircraft.

## **TERM**

- The Term for the lease of existing facilities, requiring no Capital Investment, should not exceed a five (5) year term.
- Temporary Non-Aeronautical Use of aeronautically designated property (if approved by the FAA) should be interim, preferably on a month to month basis.
- The Term for Non-Aeronautical Use of Non-Aeronautically designated property should not exceed a period that is reasonably necessary to amortize a Tenant's capital investment and provide a reasonable return on investment for facilities or space within the Terminal building.
- Depending upon the extent of facilities development, ground leases carrying 25 - 35 year terms should be sufficient to retire debt financing.
- The Term for a ground lease with a Tenant constructing facilities should not exceed 35 years or a lesser period needed to sufficiently retire debt financing, providing Tenant a reasonable return on investment.
- The FAA may consider leases that exceed fifty (50) years to be a disposal of property in that the term of the lease will likely exceed the useful life of the structures erected on the property.
- Terms exceeding thirty-five (35) years should be submitted to the FAA for review and approval; Lease terms that exceed fifty (50) years are generally not accepted by the FAA as per FAA Order 5190.6B, 12.3(b)(3).
- On a case by case basis, the Authority may consider a significantly longer term to support Airport property development (assuming FAA approval) and to allow for the amortization of an investment based on the following criteria:
  1. Significant initial capital investment requiring longer amortization schedule.
  2. Significant additional capital investment in current Leasehold Improvements.
  3. Business activities provide needed services to other Airport Tenants and users.
  4. Significant job creation.
  5. Public infrastructure extension which will benefit other parcels (e.g., roads, water, sewer).
  6. Increases potential to attract other new aviation businesses.
- Airport should control the right to exercise any options or must consent to requests to extend; in some cases, a mutual option to extend may be considered.
- The Airport should include a Termination for Convenience clause whenever possible.
- If an extension option is automatic or controlled by the Tenant, the FAA considers the extension option to be a part of the original term.
- Renewal options shall be granted based upon a review of Lessee's performance and shall only be exercised given compliance with all terms and conditions of the lease and a determination that the structural integrity, safety, and appearance of the facilities meet Authority standards and appears to be able to meet them for the extension period.

## **PAYMENT OF FEES**

- All Non-Aeronautical leases with terms of more than five (5) years should contain an escalation provision and should be based upon a recognized economic index, such as the Consumer Price Index ("CPI") or local, state, or federal cost of living indexes.
- Rates charged for Non-Aeronautical use of the Airport must be based on FMV.

- FMV of Airport facilities may be determined by reference to negotiated fees charged for similar uses of the Airport or by appraisal of comparable properties.
- Agreements that contain nominal lease rates must include the rationale and justification for leasing those properties for nominal rates or justification must be documented in the lease file when appropriate.
- Nominal lease rates must be consistent with FAA guidelines for such leases, as more fully set forth herein and in Section VII.E and G of the FAA’s Revenue Use Policy.

**TITLE**

- The title to any Tenant constructed facilities or improvements on Airport property should vest with the Authority at the expiration of the lease.
- The President must approve all design and construction plans in advance and in writing.
- Tenants must provide complete Computer-Aided Design (“CAD”) files upon construction completion.
- Tenant Capital Investments must be documented in the lease file in accordance with the Lease Agreement.
- The Airport should retain the right to require removal of any improvements that will not be needed or will exceed their useful life at the end of the agreement or once the title of facilities vests in the Airport.
- Trade fixtures, supplies, products, and personal property, which have not assumed the nature of leasehold improvements or fixtures to real property may be removed by Tenants at the expiration of the Lease.

**SUBORDINATION**

- Agreements should be subordinate to the Airport’s federal obligations and any existing or future agreements the Authority may enter into with the federal government.

**ASSIGNMENT & SUBLETTING**

- Airport should retain the right to approve in advance any assignment, sale, transfer or Sublease by the Tenant of its leasehold interest.
- Airport may require a lease assignment or transfer fee of two percent (2%) of the gross selling or transfer price or two percent (2%) of the appraised fair market value, whichever is greater, to be paid to the Authority in conjunction with any lease transfer or assignment.
- A transfer shall be construed as any transaction involving twenty-five percent (25%) or more of the stock or ownership in the leasehold entity.
- Subleases must be pre-approved by the President prior to execution of the Sublease and the Airport Use Agreement, authorizing the Sublease.
- Executed Subleases must be incorporated into the authorizing Use Agreement as an Exhibit.

**FAA OPINION ON REVIEW**

- FAA’s interest in Airport Leases is confined to the individual lease’s impact on the airport’s federal obligations.

- The Airport should not construe the acceptance of the lease as an endorsement of the entire document.
- The ADO or regional airports division reviews a lease and determines it does not appear to violate any federal compliance obligations.
- The ADO will advise the airport that FAA has no objection to the agreement; the FAA does not approve leases, nor does it endorse or become a party to Tenant lease agreements.

#### **MAINTENANCE**

- Maintenance obligations should be clearly defined for each party to the agreement.
- Maintenance support services of any kind should not be performed by the Airport, unless there is a means for the Airport to recover such costs.
- The Airport should ensure that pest control is solely the Tenant's responsibility.
- Agreements should include the Airport's right to enter into facilities to perform maintenance, emergency access and repairs and for inspection of the facilities.
- Agreements should specify that any improvements not contemplated in the original Agreement.

#### **LEASEHOLD MORTGAGE**

- The right to mortgage the lease should be limited to the leasehold rights and should explicitly prohibit the mortgaging of any Airport property.

#### **BREACH**

- All leases must identify what constitutes a breach of the agreement and provide parties with an opportunity to cure, and provide the airport with the explicit ability to terminate the lease for uncured breaches.

#### **INSURANCE**

- Agreements will contain insurance provisions for the types and amounts of insurance coverages outlined in the Minimum Standards and as approved by the Authority.
- Signed Agreements will not be executed by the Authority without the accompanying insurance certificates evidencing required levels of coverage.
- Agreements shall also meet all state of Alabama insurance requirements.

#### **PERFORMANCE GUARANTEE**

- Whenever possible, agreements should require a performance guarantee in an amount that guarantees performance under the provisions of the agreement; typically, equal to the greater of an established amount or three (3) months of projected rent.
- Signed Agreements will not be executed by the President without the accompanying performance guarantee.
- Agreements should specify a development schedule for facility construction and improvements.
- Construction contracts, bonds, permits and insurance must be provided prior to construction commencement.



Agreements should stipulate penalties or permit the Airport to take back the premises if the Tenant fails to construct improvements or perform under the terms of the Agreement.

#### **NONDISCRIMINATION CLAUSE**

Agreements must ensure that the Tenant, personal representatives, successors in interest, and assigns covenants and agrees that:

1. No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities being leased;

2. In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination; and

3. That the Tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as currently exists or as may be amended in the future.

Agreement should include that in the event of breach of any of the above nondiscrimination covenants, the Airport shall have the right to terminate the lease and reclaim its facilities and/or property.