

Fixed Base Operator (FBO) Agreement

This Agreement made and entered into this [redacted] day of [redacted], [redacted] by and between the City of Hutchinson, a Minnesota Municipal Corporation, existing by and under the laws of the State of Minnesota, hereinafter referred to as the Owner, and [redacted], 1710 Butler Field Dr SW, Hutchinson, MN, hereinafter referred to as the Operator.

Whereas, the Owner owns and operates an airport known as Hutchinson Municipal Airport – Butler Field, and the Owner is desirous of have services provided at the airport, the Owner grants to the Operator certain rights to conduct operations at the airport, together with the right to use and enjoy individually and in common with others airport facilities; and

Whereas, the Operator may engage in the business of selling aviation fuel, oils and lubricants, maintaining and operating aircraft repair and servicing facilities in connection with said business, providing for flight instruction, and providing other aviation-related services described herein or as may be agreed upon under separate agreement, the Operator desires to be granted these rights from the Owner;

Now, Therefore, for and in consideration of the covenants of this agreement the Operator shall have the following rights and easements on and to the airport upon the following terms and conditions:

1. TERM OF AGREEMENT

This Agreement shall remain in effect for a period of ten (10) years from the date of its execution, provided the agreement is reviewed by the Owner and Operator every three (3) years, notwithstanding any provisions herein for renegotiation of terms. The Owner and Operator may extend this Agreement for not more than a ten (10) year term upon termination of the initial term with the same review periods. The Owner reserves the right to request qualifications from operators every ten years, as described in Hutchinson Airport Minimum Standards.

2. USE OF AIRPORT FACILITIES BY OPERATOR

- a. Rental Agreements. The Operator shall enter into a separate rental agreements with the Owner for rights to use and occupy certain airport facilities.
- b. Ingress and Egress. The Operator is granted rights of ingress and egress from facilities rented by the Operator, said rights extending to the Operator's employees, customers, passengers, guests, invitees and other patrons of the Operator in common with other users of the airport.
- c. Use in Common. The Operator shall have the right to use, in common with others so authorized, common areas of the airport, including runways, taxiways, aprons, roadways, airfield lighting, signals, other conveniences for the take-off, flying and landing of aircraft, and the airport parking areas, appurtenances and improvements thereon. This section shall not restrict the right of the Owner to charge fees for the use of such areas. Use in common with others shall be subject to regulations of governmental agencies having jurisdiction at the airport.

- d. Accommodations in the Use of Facilities. The Operator agrees to make reasonable accommodations to the Operator's services in order to make the facilities available for municipal events approved by the Owner, such as fly-in events, air shows or open-house events. The Operator shall receive permission from the Owner prior to holding such events that may be sponsored solely by the Operator.
- e. Maintenance of Facilities. The Operator shall pay or perform the following:
 - i. *Utilities.* The Operator shall pay the entire cost of utilities necessary for heating, cooling, lighting, communications or any other utility serving facilities occupied by the Operator in accordance with separate rental agreement(s).
 - ii. *Routine Maintenance.* The Operator shall maintain facilities occupied by the Operator in a safe, sanitary and clean condition, keep the surrounding land in good order and shall use reasonable care in the use thereof. The Operator shall be responsible for the cost for repairs necessitated by the negligence of the Operator or Operator's representatives. Repairs to facilities or related utility appurtenances shall be made by or be approved by the Owner. The Operator shall provide for routine janitorial activities in and adjacent to the facilities occupied by the Operator.
 - iii. *Snow Removal, Mowing and Weed Control.* In the absence of any subsequent agreement, snow removal, mowing and weed control shall be as follows: The Owner reserves the right to perform snow removal, mowing and weed control functions in whatever manner it deems necessary. The Owner intends to provide service up to a reasonable and safe distance from buildings, hangars, and structures. The Owner is not required to perform any snow removal, mowing or weed control function on rented facilities, but may plow snow, mow and perform weed control on, across, or adjacent to rented facilities to expedite operations. The Operator shall clear snow and ice from sidewalks, driveways and at doorways of the facilities described herein and shall perform any mowing or weed control function immediately adjacent to buildings that is not completed by the Owner.
 - iv. *Facility Casualty.* In the event of fire or other casualty affecting buildings and structures occupied or used by the Operator, the Owner shall repair, replace, or remove the damaged building or structure and restore the area to its original condition or terminate of this Agreement as provided herein. The determination of the Owner's intent shall be accomplished within 120 days of the date of the casualty occurring.
 - v. *Hazardous Materials.* The Operator shall be responsible for handling, storing or removal of hazardous materials in a manner consistent with state and federal regulations.
- f. Rental of Hangars. At the Operator's expense, the Operator may rent up to two (2) publicly owned hangars in accordance with the Owner's current policies affecting rental of airport-owned hangars.

- g. Signage and Advertisement. The Operator agrees that no signs or other advertising matter may be erected without the consent of the Owner.
- h. Security and Safety devices. The Operator agrees to install or permit the Owner to install, maintain, and operate proper security and safety devices, including but not limited to obstruction lights, on the facilities occupied by the Operator, as deemed necessary by the Owner.
- i. Peaceable Surrender. Upon termination of this agreement, the Operator shall peaceably surrender all rights provided herein.
- j. Construction of Separate Facilities. Only under separate agreement shall the Operator, at the Operator's own expense, erect, maintain and alter buildings or structures not described herein, providing such buildings or structures conform to requirements of the Owner and that necessary permits are obtained from State and local officials relating to the construction. All plans for buildings or structures shall be reviewed by and approved in writing by the Owner prior to construction. Title to such buildings or structures constructed by the Operator shall remain with the Operator and shall be transferrable upon consent of the Owner. The Operator shall provide an insurance certificate and performance bond to the Owner in the amounts prescribed by the Owner. This provision shall not limit the Owner from accepting a letter of surety or any other instrument satisfactory to the Owners that shall be approved by the Owner in lieu of the performance bond.

3. RIGHTS OF THE OPERATOR

- a. Non-exclusive Rights. The Operator shall have the right of conducting a business on the airport under the terms and conditions as set forth, provided, however, this agreement shall not be construed in any manner to grant the Operator, or those claiming under this agreement, the exclusive right to use the premises or facilities of the airport other than those premises rented exclusively to the Operator under separate agreement.
- b. Business Rights. The Operator shall have the right and privilege to engage in, and shall provide services during normal business hours, as agreed upon, the business of: ramp services upon request of pilots, maintaining and servicing aircraft; provisions for flight instruction; provisions for aircraft rental; operating and maintaining fueling facilities; and, providing fuel, oil, lubricants and consumables. The right to conduct these activities shall apply to aircraft of other persons as well as aircraft belonging to the Operator. The Operator has the right to install, operate, maintain, repair and store all equipment necessary for the conduct of the Operator's business, subject to the approval of the Owner and in the interest of safety and convenience for users of the airport. Said business activities shall be subject to the laws of the Federal Government, the State of Minnesota, the ordinances of the Owner, and the requirements of the Federal Aviation Administration and the Minnesota Department of Transportation or any other duly authorized governmental agency.

- c. Quiet Enjoyment. So long as the Operator conducts business in a fair, reasonable and workmanlike manner, the Operator shall peaceably have and enjoy the rights and privileges granted in this agreement for its term.

4. RESPONSIBILITIES OF THE OPERATOR

- a. Rent and User Fees. The Operator agrees to pay the Owner for the rights granted herein the following user fees:

A per-gallon user fee shall be paid for all aviation fuel delivered to the Operator at the airport by any supplier during each year. User fees shall be: \$0.080 per gallon for 0-25,000 gallons; \$0.085 for 25,001 to 50,000 gallons; and \$0.100 per gallon for over 50,000 gallons delivered in any year.

- b. Revision of Rates. It is agreed and understood between the Owner and Operator that rates herein specified may be subject to reexamination and readjustment at the end of each year of this agreement, provided that any readjustment of present rates shall be reasonable and uniform as compared with other rates charged at the airport. The Owner shall give rate revisions due regard to the value of the facilities, the improvements used, and the expense to the Owner of the Operator's activities. In addition, the Owner shall consider the Consumer Price Index identified by the U.S. Department of Labor, Bureau of Labor Statistics, for all items calculated for Minneapolis-St. Paul, Minnesota and Wisconsin.
- c. Body Approving Rate Revisions. All rate revisions shall be adopted by the City of Hutchinson City Council and the Operator shall pay rates to the Owner in accordance with the Owner's rates/fees schedule.
- d. Failure to Pay. In the event the Operator fails to pay the Owner any charges identified in this agreement or as may be customary and reasonable for services provided by the Owner, a finance charge computed on a periodic rate of 1½% per month will be charged upon any outstanding balance of amounts previously due but unpaid. Finance charges shall be computed using the outstanding balance, including any previous balance, current charges, and less credit for payments made within the period. The finance charge made herein is equivalent of an ANNUAL PERCENTAGE RATE of 18% per annum.
- e. Laws and Regulations. During the term of this agreement, the Operator agrees to observe and obey all laws, ordinances, rules and regulations promulgated and enforced by the Owner or by any other proper authority having jurisdiction over the conduct of operations at the airport.
- f. Taxes. In addition to rents and user fees identified in this agreement, the Operator shall pay any taxes, assessments, licenses, fees, or other charges that may be levied or assessed upon the Operator's business activities, upon facilities occupied, or any other function under the control of the Operator. Upon request by the Owner, the Operator shall provide proof of such payment.

- g. Activities in Cooperation with the Owner. The Operator is responsible for the actions and negligence of all employees, whether actual employees of the Operator or independent contractors of the Operator. The Owner and Operator may, under separate agreement, make provision for activities to be performed by the Operator that are not specifically identified or implied by this agreement. The Operator also agrees to, if required by the Owner, to perform the following activities in cooperation with the Owner:
- i. *Assistance to Airport Users.* The Operator agrees that as part of the consideration for this agreement, the Operator and the Operator's representatives shall assist all patrons of the airport, to include providing information about the airport, services available at the airport, and about the community. The Operator shall assist pilots, upon their request, by performing services including the handling of aircraft, tying down of aircraft, and other incidentals to the securing of aircraft for which reasonable fees may be charged to pilots by the Operator.
 - ii. *Flight records.* The Operator shall maintain flight records of operations at the airport and/or collect such other data as may be required by the Owner, as directed by Federal Aviation Administration, the Minnesota Department of Transportation, or any other public agency having regulatory jurisdiction at the airport.
 - iii. *Participation in Committees.* The Operator agrees to reasonably participate in and be a member of committees that are in place or established by the Owner that relate to airport operations.
- h. Financial Disclosure. The Operator shall furnish such evidence as may be reasonably requested by the Owner to show the Operator is financially capable of providing the business services and maintaining the facilities identified in this agreement. Semi-annual financial reports shall be submitted by the Operator to the Owner for the first year of this Agreement. For years following, the frequency of reporting shall be agreed to by the Owner and Operator.
- i. Hours of Operation. The Operator agrees to maintain operations during a schedule of hours. Said schedule shall be approved by the Owner. Hours of operation shall not be reduced below the minimum indicated without the written consent of the City, except during any period when the airport is closed by lawful authority restricting the use in such a manner as would interfere with use of the airport by the Operator for its business operations.
 - j. Business Licenses. The Operator shall be responsible to meet and to provide, upon request, verification of all licensure requirements of the United States and State of Minnesota governments necessary to conduct business operations and legally comply with the terms of this agreement. The Operator shall act at all times under the rules and regulations of Federal Aviation Administration, Minnesota Department of Transportation Aeronautics Division and rules and regulations of the Owner or any other authority having jurisdiction over conduct of operations at the airport.

- k. Installation of Business Equipment. The Operator shall receive written approval and shall obtain all necessary regulatory permits prior to permanent installation of equipment necessary for the conduct of the Operator's business activities. Any leasehold improvements, including repairs, improvements, alterations or fixtures, other than those of a removable nature, made or installed by the Operator in any building shall become and be the property of the Owner, unless otherwise provided for prior to their installation.
- l. Routine Duties Performed on Behalf of the Owner. The Operator shall perform the following duties daily:
- Wind up fuel hoses and inspect fuel tanks and conduct daily fuel system inspections.
 - Report any defects or deficiencies with lighting, safety devices, navigational aids, airport infrastructure or airport facilities to the Owner.
 - Observe airfield conditions and ensure notices to airmen (NOTAMs) about airport conditions are kept up-to-date.
 - Check hangar doors and other doors for security.
 - Maintain public restrooms, arrival-departure facilities in a clean, neat and sanitary manner.
 - Maintain grounds around 1700, 1710 and 1720 Butler Field Dr SW.
 - Perform maintenance activities identified in the Airport's Storm Water Pollution Prevention Plan (SWPPP), supplied by the Owner.
- m. Permitted Business Activities. The Operator shall put forth every effort consistent with good business practices to service all aircraft, promote sales, provide for student instruction, charter business, agricultural aviation, or any other aviation service herein described or agreed to by the Operator and Owner. The Operator agrees to supply any equipment said business activities shall warrant for service to airport patrons. The Operator shall perform, at the Operator's sole expense, the following business activities in accordance with the following limitations placed on such use and occupancy:
- Conduct business during normal business hours.
 - Conduct ramp services, such as towing, tire repair, windscreen washing, etc. at the request of pilots.
 - Conduct aircraft engine and accessory repair and maintenance by certified mechanics, and provide sales and service related to oils, lubricants, and consumables.
 - Make arrangements for primary flight training, which training shall include courses for attaining private, commercial, and instructor's certificates.
 - Make arrangements for aircraft rental.
 - Operate the City-owned fueling facility, to include sale of aviation fuels: Jet A fuel and 100LL Avgas.
 - Operator may also operate a fuel truck under separate agreement with Owner.
 - Upon request, conduct other private operations, which may include storing, moving, and recovery of aircraft.

- Conduct of the sale of aircraft, aircraft accessories, aircraft parts, and products used in connection with the servicing, sale or handling of aircraft.
 - Operator may also conduct charter service under separate agreement with Owner.
 - Custom crop spraying, crop seeding, insect control programs, or aerial farm survey programs, and aerial commercial advertising programs of all types in accordance with existing regulations.
 - Conduct of such other activities as may be mutually agreed upon by the Owner and Operator under separate agreement.
- n. City-owned Hangars and Aircraft Tie-downs. The Operator shall furnish services necessary for the storage of aircraft if facilities are available, and shall provide service and equipment necessary for tie-downs upon request. The Operator agrees to keep equipment in serviceable and adequate condition. The Operator may make reasonable charges for services exceeding those customarily associated with tie-downs, but may not charge tie-down fees.
- i. Owner's Hangars. The Operator shall report to the Owner all inquiries made regarding the rental of available City-owned hangar space and shall notify the Owner of any maintenance issues or any change in status of hangar tenants that may be reported to the Operator within two business days.
- ii. Short-term and Transient Hangar Rental. The Operator may, for short terms not exceeding thirty (30) days, rent available City-owned hangar space to transient aircraft at rates established by the Owner. The Operator shall report, on forms prescribed by the Owner, certification of all short-term hangar rentals. All rental fees for short-term hangar rental shall be collected by the Operator and ninety percent (90%) of those fees shall be paid to the Owner at regular accounting intervals. The Owner may grant the Operator permission, at the Owner's discretion, to store aircraft under the Operator's care in unoccupied hangar space, if said hangar space is not currently rented. However, should transient aircraft request hangar space the Operator is using, the Operator shall surrender the requested hangar space to the transient aircraft. The Operator's use of unoccupied hangar space is limited to a daily basis only.
- o. Fueling Operations. The Operator shall make aviation fuel available for purchase, including Jet A fuel and 100LL Avgas, and shall be responsible for acquisition, storage, billing and collection costs associated with the sale of aviation fuel. User fees for fueling operations identified herein shall be the Operator's only expense in maintaining the fuel tanks, fuel lines, pumps, hoses and appurtenances.
- The Operator shall establish reasonable fuel price schedules. Fuel price schedules shall be favorable to onsite, based aircraft and shall identify any other price discounts provided by the Operator.

- The Operator shall maintain accurate records of aviation fuel tested, dispensed and provide a description of processes by which it was dispensed by any means and retain reports of fuel transactions. The Owner may review all fuel transactions, upon request. The Operator shall, upon request from the Owner or other governmental agency peaceably surrender accurate fueling records.
- The Operator shall conduct and document ongoing inspections of the fuel system on forms prescribed by the Owner.
- The Operator may purchase and utilize remote fueling equipment to dispense aviation fuels to aircraft upon request. The total weight of any one piece of said equipment shall never exceed 12,500 pounds of axle weight. Remote fueling equipment must be parked on a concrete pad or be moved to unpaved areas when temperatures exceed fifty degrees Fahrenheit (50°) so as to avoid damage to pavements.

5. OWNER RIGHTS

- a. Control of Facilities. The Owner or its authorized representative shall have control, under the Owner's direction, of airport activities, except as to the conduct of Operator's business as permitted herein and limited by this agreement. The Owner or its authorized representative shall have sole and general control and supervision of all activities of the public or other persons on the airport, consistent with reasonable regulation of the airport and reasonable conduct of airport business. The Owner shall have the sole authority to make airport flying regulations applicable to private, commercial or publicly owned aircraft for flying, taking off or being in or about the airport. Regulations enacted by the Owner shall comply with Federal Aviation Administration and State of Minnesota Department of Transportation, Office of Aeronautics regulations or the regulations of any other public agency having regulatory authority at the airport.
- b. Airport Closings. The Owner may, during any period, close the airport for any reason. When the airport shall be closed by any lawful authority, except for short-term weather related closures, restricting the use of the airport in such a manner as to interfere with the use of same by the Operator for business operations, the rent shall abate for that period, as provided for in written permission granted by the Owner.
- c. Airport Development. The Owner reserves the right to further develop or improve the airport as it sees fit, regardless of the desires or views for the Operator, and without interference or hindrance by the Operator. If the development requires the relocation of the Operator, the Owner agrees to provide a comparable location and similar facilities to the Operator.

- d. Renegotiation of Rights, Privileges and Obligations. The Owner reserves the right to initiate renegotiation of rights, privileges and obligations under this agreement should it be determined by the Owner that activities of the Operator have caused material changes in the utilization of the Owner's resources because of the Operator's activities.
- e. Access to Facilities. The Owner or its authorized representative has the right to enter upon any premises occupied by the Operator at any time for the purpose of conducting the business of the airport, performing maintenance activities or making inspection of the same, if such inspection is deemed expedient to the end that conditions of this agreement are being fully performed.
- f. Use of Airport Facilities. The Owner reserves the right to all airport land, buildings, structures, facilities and all other areas of the airport for its own use. The Owner shall have control of and may use any land, buildings, structures, facilities and other areas for any municipal purpose, including rental, at any time and at the sole discretion of the Owner.
- g. Maintenance of Facilities. The Owner reserves the right, but shall not be obligated to the Operator, to maintain and keep in repair the landing area of the airport and publicly owned facilities of said airport in accordance with the Owner's policies and practices, together with the right to direct and control all activities of the Operator in such regard. The Owner shall conduct all maintenance activities at the Owner's discretion and is not obligated to the Operator to perform any specific maintenance activity.
- h. Protection of Property. The Owner reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent the Operator from erecting, or permitting to be erected, any building or structure which, in the opinion of the Owner, would limit the usefulness of the airport or constitute a hazard to aircraft. The Operator shall, upon approval by the Owner, prepare and submit to the Federal Aviation Administration, FAA form 7460-1, "Notice of Proposed Construction or Alteration", as required by Federal Aviation Regulation Part 77.
- i. Acts by the Owner. Any decision, determination or act of the Owner in the field of legislative action made in good faith and upon information then submitted to the Owner in respect to the sufficiency of any operation by any person at the airport, or in respect to any regulation it may adopt in respect to use of the airport by the Operator, or any other persons, shall be binding upon the Operator at all times.
- j. Use by Other Governments. During a time of war or national emergency or upon declaration of an emergency, the Owner may possess and use all airport land, buildings, structures, and facilities for military, naval, or emergency response uses by the United States, the State of Minnesota or other governmental agencies engaged in a response.

- k. Non-Exclusivity. This Agreement shall not be construed to grant the Operator exclusive right for the use of facilities at the airport for which Federal or State funds have been, are to be, or may be expended. The Operator's use of buildings, facilities and areas of said airport described in this Agreement shall be subordinate to any undertaking by the Owner for the maintenance, development, expansion, extension or improvement of the airport.
- l. Servicing of Aircraft by Aircraft Owners-Operators. It is understood by the Operator that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the airport from performing any services to its own aircraft with its own representatives or employees, including, but not limited to, maintenance and repairs the aircraft owner-operator may choose to perform.

6. LIABILITY

- a. Liability of Operator. The Operator shall and will be liable for every claim and demand of whatsoever nature made on behalf of or by any party for any wrongful act or omission on the part of the Operator and the Operator's representatives and from all loss and damage for reasons of such actions or omissions, this to include any operations by the Operator upon the airport included herein, or any other activities hereinafter agreed to by the Owner and Operator. The Operator agrees to hold the Owner free and harmless from loss from each and every claim and demand of whatever nature, made on behalf of or by any person or persons, for any wrongful, careless or negligent act or omission on the part of the Operator, the Operator's agents, servants, or employees and from all loss and damages by reason of such acts or omissions.
- b. Operator's Insurance. Insurance policies shall be approved by the City of Hutchinson City Attorney as to legal form before it is filed, and shall contain a provision that the same may not be cancelled before the expiration of its term except upon 30 days' written notice to the City. The Operator shall maintain suitable insurance coverage to protect the Owner and Operator against loss, property damage or injury to persons due to any operations conducted by the Operator, including at least the following:
 - General liability of not less than \$ [REDACTED] per occurrence and \$ [REDACTED] aggregate, to cover all aspects of Operator's business activities including but not limited to property damage, bodily injury, negligence, errors and omissions, environmental liabilities and all other aspects of the Operator's intended use and operations.
 - Workers' Compensation insurance in compliance with State of Minnesota law.
 - Unemployment insurance in compliance with State of Minnesota law.
 - Other types of coverage that is or may be mandated by State of Minnesota law.
 - The naming of the Owner as an additional insured on all policies and the requiring of a current certificate of insurance to be provided to the Owner.
 - Operators contracting for air taxi service, rentals and/or related air services shall comply with FAR 135, Part 298, Subsection 42 C.A.B. Economic Regulations.

- c. Fueling Operations Liability. The Operator agrees to comply with all Federal, State, County and local regulations regarding the dispensing of fuel. The Operator further agrees to save and hold harmless the Owner from any and all liability occasioned by the disbursement of aviation by the Operator or Operator's representatives, including but not limited to regulatory agency fines for violations, attorneys fees, cleanup costs, and any other damages of any kind caused by dispensing of aviation fuel. This agreement shall not require the Owner to make any improvement to fueling equipment owned by the Operator.
- d. Owner's Insurance. The Owner shall maintain insurance coverage against loss by fire, wind and other hazards for buildings and property owned by the Owner at the airport. The Owner shall further maintain insurance protecting third persons against damage by fire or other casualty to aircraft or other personal property of third persons, stored, placed or otherwise lawfully located in any building or area on said airport within the control, use, occupancy or possession of the Owner, whereby the Owner is protected from liability to third persons for negligence by the Owner and its representatives.

7. NONDISCRIMINATION PROVISIONS

- a. Fair and Nondiscriminatory Services. The Operator agrees to furnish services on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for services, provided that the Operator may make reasonable and nondiscriminatory discounts, rebates or other similar price reductions to volume customers. The Operator further agrees that no charges shall be made for any services offered that is in excess of any fee or charge included in a schedule of fees and charges posted on the premises occupied and used by the Operator.
- b. Title VI, Civil Rights Assurances. The Operator and the Operator's representatives agree 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 facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services there on, no person 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, (3) that the Operator 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, and as the Regulations may be amended.

- c. Affirmative Action. The Operator assures that an affirmative action program, as required by 14 CFR Part 152, Subpart E, shall be undertaken to insure that no person on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Operator shall assure covered sub-organizations undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

8. ENFORCEMENT OF THE AGREEMENT AND TERMINATION

- a. Enforcement of Agreement. The Operator agrees to pay reasonable attorney fees and costs incurred by the Owner for enforcing any of the rights or obligations provided for in this Agreement. The Operator further agrees that upon termination of this Agreement at any time or for any reason, the Operator shall fully settle and pay all accounts to the Owner before removing any property. Upon settlement of said accounts, the Operator shall have the right to freely remove all aircraft, tools, and trade equipment which are solely owned by the Operator from the aforementioned facilities and from the property of the Owner.
- b. Transfer of Agreement. The Operator shall not, at any time during the term of this agreement, assign or transfer this agreement or any interest therein without the written consent of the Owner, notwithstanding that the Operator shall have the right to lease portions of facilities constructed by the Operator which are not needed by the Operator in the conduct of business to a party approved by the Owner.
- c. Notice of Termination. This Agreement may be terminated by either party upon giving sixty (60) days written notice to the other party.
- d. Default of Agreement. The Operator shall be deemed in default and shall terminate upon the following conditions, as provided herein:
- Failure to pay fees and charges described herein within 30 days after the due date;
 - The filing of a petition under the Federal Bankruptcy Act or any amendment, including a petition for reorganization or other arrangement;
 - The commencement of a proceeding for dissolution or for the appointment of a receiver;
 - The making of any assignment for the benefit of creditors;
 - Violation of any restrictions in this agreement, or failure to keep any of its covenants after written notice to cease such violation and failure to correct such violation within thirty (30) days;
 - Abandonment of the premises.

- e. Termination of the Agreement. The Owner and Operator agree that in case of a failure on the part of the Operator to comply fully with provisions in this agreement, or to settle or pay amounts due at regular accounting intervals, or the Operator's failure to diligently and faithfully perform any of the terms of this agreement to the end that such operations shall be operated efficiently and properly, at the sole subjective judgment of the Owner, such failure shall constitute grounds for terminating this Agreement by the Owner at its option and shall give the Owner the right to re-enter and take possession of the premises described in this Agreement; however, that before so terminating this Agreement, the Owner shall provide written notice to the Operator specifying particulars in which the Operator has failed to comply with the terms of this agreement and shall extend to the Operator reasonable time, but not less than fifteen (15) days in which to correct the objections assigned as grounds for terminating this agreement.

- f. Renegotiation of the Agreement. In the event any aforementioned facilities suffer casualty or in the event of substantial changes to the extent or character of activities described in this agreement, which shall cause substantial injury or undue hardship upon either party by reason of any of the provisions of this agreement which either party would not have made, had such change occurred during the term of the agreement or any extension provided in this agreement, then the injured party may request a renegotiation of the rights, privileges and obligations under this agreement, but not of the term or option of extension provided in this agreement. The Owner may also initiate renegotiation of the rights, privileges and obligations under this agreement should it be determined by the Owner that activities of the Operator have caused material changes in the expenditure of resources by the Owner that relate to the Operator's activities.

- g. Agreement Validity. It is specifically agreed between the Owner and Operator that if any provision of this agreement or the application of any of its provisions to any situation, person or circumstances is held to be invalid, such provision, as to such situation, person or circumstances shall be deemed to be exorcised from this agreement, and the invalidity thereof to such situation, person or circumstance shall not affect any other provisions of this agreement or application of such provisions other to those to which it is invalid. This agreement shall be applied and shall be effective in every situation, circumstance and to every person insofar as its validity extends.

- h. Rights after Termination. In the event of termination for default by the Operator, the Owner shall have the right at once and without further notice to the Operator, or surety, to enter and take possession of the premises occupied by the Operator, by force or otherwise, and expel, oust and remove any and all parties who may occupy any portion of the premises or airport covered by this agreement, and any and all goods and chattels belonging to the Operator or the Operator's associates which may be found, without being liable for prosecution or to any claim for damages.

Upon such termination by the Owner, all rights, powers and privileges of the Operator shall cease, the Operator shall immediately vacate any and all space occupied, and shall make no claim of any kind whatsoever against the Owner, its agents or representatives, by reason of such termination, or any act incident thereto. In the event of termination for any cause which is determined by the Owner to be beyond the control and without the fault or negligence of the Operator, payment to the Owner shall immediately cease, and the Operator shall be entitled to have monies which have been prepaid or advanced to the Owner predicated on occupancy of the premises to the end of the period, if any, refunded to the Operator by the Owner. The Operator shall, in addition to other rights provided for by law, be permitted to remove tools, operating supplies, inventories, and other property of the Operator in a manner agreed upon by the parties.

9. GENERAL PROVISIONS

- a. Subordination Provision. This agreement shall be subordinate to the provisions of any existing or future agreement between the Owner and the United States or the State of Minnesota, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the airport. Furthermore, this agreement may be amended to include provisions required by agreements between the Owner and federal or state government.
- b. Venue for causes of action. The laws of the State of Minnesota shall govern this agreement and the venue for any causes of action shall be McLeod County, Minnesota.
- c. Notices. All notices under this agreement shall be sent to the following addresses. Tenant is responsible for notifying the City of mailing address changes.

If to the Owner: City of Hutchinson
 Airport Manager
 Hutchinson Municipal Airport – Butler Field
 111 Hassan St SE
 Hutchinson, MN 55350

If to the Operator: 

HANGAR RENTAL AGREEMENT BETWEEN CITY OF
HUTCHINSON AND ASI JET AG, LLC

This agreement, made this [redacted] day of [redacted], by and between the CITY OF HUTCHINSON (the "City") and ASI Jet Ag, LLC (the "Tenant"), is for the purpose of outlining the rights and responsibilities of the parties to this Agreement. The parties to this Agreement do agree as follows:

1. **Lease of airport property:** The Tenant leases from the City aircraft hangars located at 1710 and 1720 Butler Field Dr SW, Hutchinson, MN 55350. The hangars being further described on a map located at the City Public Works Department office. The hangars are situated upon the Hutchinson Municipal Airport, Butler Field, an airport owned by the City. The hangars are leased together with land and any improvements associated with it.
2. **Use of the airport:** The Tenant has the privilege of using public portions of the airport in common with other users. Use of the airport by the Tenant is subject the rules and conditions as now exist or may be enacted in the future by the Federal, State or City governments. The Tenant is subject to customary charges for such use as may be established from time to time by the Federal, State or City governments.
3. **Term of this agreement:** The term of this agreement begin the date on which this agreement has been signed and approved by the City Council and shall continue month to month, until the agreement is modified by mutual consent, until notice of termination is given in accordance with provisions herein, or until no more than one year has passed.

4. **Lease payments:** The Tenant agrees to pay to the City:

A sum of \$ [redacted] per month is payable net 30 days from the date of invoice. Lease payments shall include hangar space and any improvements associated with it. Lease payments shall not be refundable.

If after one year the Tenant shall rent the hangars from the City, the City will amend rates up to \$ [redacted] per month, payable net 30 days from the date of invoice. Following revisions shall be reasonable and uniform as compared with other fees and rents charged at the City's airport. The City shall give future lease rate revisions due regard to the value of the property leased, the improvements used, and the expense to the City of the Tenant's operations and the consumer price index for Minneapolis-St. Paul, Minnesota and Wisconsin, as calculated by the United State Department of Labor, Bureau of Labor Statistics. Any revisions shall be adopted by the City Council.

5. **Municipal utilities:**

The Tenant is required to remain connected to on-site natural gas, electric, water, sewer, waste treatment utilities, and other municipal utilities.

6. **Placement of improvements on leased property:**

- A) The Tenant agrees that any improvements made by the Tenant shall be placed and maintained at no cost to the City. Permanent improvements shall only be made upon receipt of written permission from the City. In the event improvements are moved or fall into disrepair or disuse during the terms of this agreement, the City may terminate the lease without further obligation to the Tenant.

- B) Improvements placed upon leased property shall be placed and maintained in compliance with applicable regulations. Improvements and any attachments and appurtenances thereto, excluding those on publicly accessible apron, ramps, parking areas, and driveways up to and associated with the improvement, shall be considered as being located entirely upon the premises.
 - C) Tenant shall ensure that improvements conform to design standards described by the City, including planning and building codes. These design standards may include, but are not limited to, color, style, size, signs and placards, and other aesthetic requirements; as well as engineering requirements including, placement of improvements upon the lot, drainage considerations, apron or approach design standards, prescribed floor elevations, placement of utility services, and firewalls.
 - D) The Tenant shall, without cost to the City and in addition to written authority from the City, obtain the necessary regulatory authority and any permits from agencies relating to placement of and modifications to improvements prior to construction.
6. **Use and maintenance of leased property:** Tenant, at their own cost and expense, shall take good care of the leased property and any facilities placed thereon.
- A) The Tenant agrees that all aircraft mechanic work involving engine repair, other than inspections, minor repairs to fuselage systems or electronics of any aircraft, shall be completed in Hangar 1710, unless specific written approval is granted by the City. The Tenant shall keep and maintain the property in good order and repair and in a clean and neat condition. Tenants shall not permit any waste or nuisance on the leased property nor permit anything on the leased property to interfere with the rights of other Tenants of the City or users of the airport. In the event the property is not properly maintained, the City may, after notifying the Tenant, cause the property to be maintained. The costs of maintenance and an administrative fee will be billed to the Tenant and become their responsibility. Unpaid billings constitute a default.
 - B) Tenants may not store any property outside, except for property commonly stored outdoors, including but not limited to refuse containers, liquid petroleum tanks, etc., provided such property is properly secured.
 - C) The cost for customary maintenance routinely performed by the City, related to areas affecting the value or use of leased properties are included in the lease costs charged for the property, including snow removal, grounds maintenance and maintenance of public apron areas.
 - E) The City performs snow removal throughout the City on a priority basis. The City reserves the right to perform snow removal functions whenever, and in whatever manner, it deems necessary. The City intends to provide service up to a reasonable and safe distance from the Tenant's premises. In any case, snow removal immediately adjacent to the Tenant's premises is the Tenant's responsibility. The City is not required to perform any snow removal function on leased property, but may plow snow on or adjacent to leased properties to expedite other snow removal operations at the airport.

- F) Mowing and weed control immediately adjacent to the Tenant's premises are the Tenant's responsibility. The City reserves the right to perform mowing and weed control functions whenever and in whatever manner it deems necessary. The City intends to provide service up to a reasonable and safe distance from the Tenant's premises. The City may mow or perform weed control on or adjacent to leased properties to expedite other maintenance operations.
- G) The City shall establish the standards by which public apron, ramp areas, and other paved surfaces are maintained. The City intends to provide service up to a reasonable and safe distance from the Tenant's premises. In any case, the Tenant is responsible for maintaining ramp areas and other paved surfaces immediately adjacent to the Tenant's premises.
- H) The Tenant agrees to make reasonable accommodations for the use of leased property for events approved by the City, including fly-ins, air shows, and open house events. The Tenant shall obtain permission from the City prior to hosting such events.
- I) The Tenant must allow the City to access to the premises for the purpose of conducting inspections of the premises to determine whether the Tenant is complying with the provisions of this agreement. The occupant may be a party to any compliance inspection, and the City is required to notify the occupant, under Section 15 of this agreement, and make reasonable accommodation to the Tenant before conducting compliance inspections.
- J) The Tenant is responsible for the proper handling, storage and removal of all hazardous materials in accordance with state and federal regulations.

7. Taxes, assessments, and other charges:

- A) In addition to other charges identified in this agreement, the Tenant shall pay any taxes, assessments, licenses, fees, or other charges that may be levied or assessed upon the Tenant's business, property or premises, or as a result of any activity of the Tenant. If the City incurs costs on the Tenant's behalf, those costs shall be billed to the Tenant. Upon request by the City, the Tenant shall provide proof payment of such additional charges.
- B) The Tenant shall pay all rates and charges for any utility used or consumed in connection with or in the leased property during the term of this agreement and shall be subject to all city ordinances and policies regarding gas, water, wastewater, and electric service at the airport. The Tenant shall install and maintain appropriate utility meters and pay billings for utility service prepared by the City, based upon rates paid by the City to the utility service provider. Billings shall indicate the cost of the utility service to the City. Unpaid billings for utilities constitute a default.
- C) In the event the Tenant fails to pay the lease payments, taxes, assessments, fees, or other charges due, the City shall notify the Tenant of the default. If the Tenant fails to cure such default within 60 days, the City shall have the right to terminate this lease in accordance with section 8 of this Agreement.

8. Termination provisions:

- A) At the termination of this lease the Tenant has the privilege of removing property placed upon the leased lot by the Tenant, including any permanent improvements that were previously approved by the City. The Tenant shall obtain all required permits and regulatory authority for removing property. Tenant shall ensure the site is restored to original condition, normal wear and tear excepted. The Tenant shall have a period of ninety (90) days from the termination date to remove property. If the Tenant does not remove the property within ninety (90) days, the City may retain ownership of the property for any municipal purpose or otherwise cause the property to be removed at the Tenant's expense.
- B) If the leased premises becomes deserted, abandoned or vacated, the City may terminate the lease. If the Tenant's interest in the property is taken by process of law, the City may terminate the lease. If the leased premises are destroyed, the City or Tenant shall have the right to terminate this agreement upon giving written notice, with response, to the other party.
- C) Should the Tenant default in the performance of any terms, conditions or covenants of this agreement not otherwise specified, and should the default continue for a period of more than thirty (30) days after the City serves the Tenant with written notice, the City may terminate the lease. Serving the Tenant with written notice includes reasonable attempts by the City to contact the Tenant, and may include use of certified mail with return receipt and/or personal service. This may be done with or without terminating this agreement and without prejudice to any other remedy for lease payments or breach of covenant. In any such event the City may terminate this agreement by giving written notice of the termination. The rights and remedies given to the City are, and shall be deemed to be, cumulative, and the exercise of one shall not be deemed to be an election excluding the exercise by the City at any other or different time of a different or inconsistent remedy.
- D) Should the leased property be declared condemned, because the airport is closed to the public, or the property is needed for another municipal purpose, the City shall provide the Tenant with at least ninety-days (90 days) notice of such action.

9. Liability provisions:

- A) The Tenant agrees to defend, indemnify and hold harmless, including reasonable attorneys' fees, the City and all its agents and employees from any and all claims, demands, actions or causes of action of whatever nature or for loss of or damage to property or injury to persons occurring on or about the above described premises arising out of or by reason of the execution or the performance of the services provided in accordance with this agreement. The City shall not be liable to any extent for, nor will the Tenant make any claim against the City for nor on account of any injury, loss or damage resulting from the Tenant's property or use thereof, including any claims by third parties.
- B) The Tenant shall obtain and keep current a liability insurance policy with the City as a named additional insured and shall be in a form acceptable to the City. Inability to keep adequate insurance coverage shall be considered a default.

