

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

LAND LEASE ON AIRPORT

Lease No: DTFAWN-15- L - 00025

Geographical Location: Falcon Field Airport, Mesa, Arizona

THIS LEASE is hereby entered into by **City of Mesa-Falcon Field Airport** whose address is **4800 E. Falcon Dr., Mesa, AZ 85215-2506** hereinafter referred to as the Lessor and the United States of America, herein after referred to as the Government. This lease shall become effective when it is fully executed by all parties. The terms and provisions of this lease, and the conditions herein, bind the Lessor and the Lessor's administrators, successors, and assigns.

WITNESSETH: The parties hereto, for the consideration hereinafter mentioned covenant and agree as follows:

1. PREMISES:

The Lessor hereby leases to the Government the following described property, hereinafter referred to as the premises:

Air Traffic Control Tower (ATCT) Site Lease:

A parcel of land approximately 0.423 acres of land as shown on attached drawing

A. Together with a right-of-way for ingress to and egress from the premises; (For Government Employees, their Agents and Assigns) a right-of-way for establishing and maintaining a pole line or pole lines for extending electric power and/or telecommunication lines to the premises; and a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over said lands and adjoining lands of the Lessor, and unless herein described otherwise, to be by routes reasonably determined to be the most convenient to the Government. To include right-of-way for power, sewer and telephone along Falcon Drive and permission to connect to water line at administration building.

B. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of Government facilities.

C. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government.

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1.3.1 Land On an Airport

Revised January 2014

OMB Control No. 2120-0595

2. TERM (AUG-02):

To have and to hold, for the term commencing on **01/01/2015** and continuing through **09/30/2035** inclusive, PROVIDED, that adequate appropriations are available from year to year for the payment of rentals.

3. CONSIDERATION (NO COST) (AUG-02):

The Government shall pay the Lessor no monetary consideration in the form of rental, it being mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.

4. CANCELLATION (AUG-02):

The Government may terminate this lease, in whole or in part, if the Real Estate Contracting Officer (RECO) determines that a termination is in the best interest of the Government. The RECO shall terminate by delivering to the lessor a written notice specifying the effective date of the termination. The termination notice shall be delivered by registered mail; return receipt requested and mailed at least **30** days before the effective termination date.

5. INTERFERENCE WITH GOVERNMENT OPERATIONS (OCT-96):

The Lessor agrees not to erect or allow to be erected any structure or obstruction of whatsoever kind or nature on the site or adjoining land within the airport boundaries that may interfere with the proper operation of the facilities installed by the Government under the terms of this Lease unless consent hereto shall first be secured from the Government in writing.

6. FUNDING RESPONSIBILITY FOR GOVERNMENT FACILITIES (OCT-96):

The Lessor agrees that any relocation, replacement, or modification of any existing or future Government facilities covered by this Lease during its term or any renewal thereof made necessary by airport improvements or changes which in the Government's opinion interfere with the technical and/or operational characteristics of the Government facilities will be at the expense of the Lessor, except when such improvements or changes are made at the written request of the Government. In the event such relocation's, replacements, or modifications are necessitated due to causes not attributable to either the Lessor or the Government, funding responsibility shall be determined by the Government.

7. QUIET ENJOYMENT (OCT-96):

The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.

8. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (JAN-14):

A. Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in

{00154506.4}

1.3.1 Land On an Airport

Revised January 2014

OMB Control No. 2120-0595

consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate non-disturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

9. NOTIFICATION OF CHANGE OF LAND TITLE (AUG-02):

If the Lessor sells or otherwise conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting said demised premises, they shall immediately notify the Government, in writing, of any such transfer or conveyance affecting the demised premises within 30 calendar days after completion of the "change

{00154506.4}

1.3.1 Land On an Airport

Revised January 2014

OMB Control No. 2120-0595

in property rights". Concurrent with the written notification, the Lessor shall provide the Government copies of the legal document(s) (acceptable to local authorities) for transferring and or conveying the property rights.

10. NOTICES (OCT-96):

All notices/correspondence shall be in writing, reference the lease number, and be addressed as follows:

TO LESSOR:

City of Mesa-Falcon Field Airport
4800 E. Falcon Drive
Mesa, AZ 85215-2506

TO GOVERNMENT:

FEDERAL AVIATION ADMINISTRATION
REAL ESTATE & UTILITIES GROUP, ALO-820
1601 LIND AVENUE SW
RENTON, WA 98057-3356
RE: DTFAWN-15-L-00025

11. CONTRACT DISPUTES (Nov. 03):

A. All contract disputes and arising under or related to this lease contract shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A Lessor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

B. All Contract Disputes shall be in writing and shall be filed at the following address:

Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave, S.W.,
Room 323,
Washington, DC 20591,
Telephone: (202) 267-3290,
Facsimile: (202) 267-3720

C. A contract dispute against the FAA shall be filed with the ODRA within two (2) years of the accrual of the lease contract claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA. The full text of the Contract Dispute

{00154506.4}

1.3.1 Land On an Airport
Revised January 2014

OMB Control No. 2120-0595

clause is incorporated by reference. Upon request the full text will be provided by the RECO.

12. PROTEST (NOV-03):

A. Protests concerning Federal Aviation Administration Screening Information Requests (SIRs) or awards of lease contracts shall be resolved through the Federal Aviation Administration (FAA) dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and shall apply only to final agency decisions. A protestor may seek review of a final FAA decision only after its administrative remedies have been exhausted.

B. Offerors initially should attempt to resolve any issues concerning potential protests with the Real Estate Contracting Officer.

C. Protests shall be in writing and shall be filed at:

Office of Dispute Resolution for Acquisition, AGC-70,
Federal Aviation Administration,
800 Independence Ave, S.W.,
Room 323,
Washington, DC 20591,
Telephone: (202) 267-3290,
Facsimile: (202) 267-3720

At the same time as filing the protest with the ODRA, the protestor shall serve a copy of the protest on the Real Estate Contracting Officer (RECO).

D. A protest is considered to be filed on the date it is received by the ODRA and shall be filed:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the RECO, not later than five (5) business days after the date on which the RECO holds that debriefing. The full text of the Protest clause is incorporated by reference. Upon request the full text will be provided by the RECO.

13. ANTI-KICKBACK (OCT-96):

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States Government or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

{00154506.4}

1.3.1 Land On an Airport
Revised January 2014

OMB Control No. 2120-0595

14. COVENANT AGAINST CONTINGENT FEES (AUG-02):

The Lessor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.

15. OFFICIALS NOT TO BENEFIT (OCT-96):

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

16. NON-RESTORATION (OCT-96):

It is hereby agreed between the parties, that upon termination of its occupancy, the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property which is the subject matter of this lease. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor.

17. HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00):

The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises. The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises not directly attributable to the installation, operation and/or maintenance of the (type of facility) facility.

18. EXAMINATION OF RECORDS (AUG-02):

The Comptroller General of the United States, the Administrator of FAA or a duly authorized representative from either shall, until 3 years after final payment under this contract have access to and the right to examine any of the Lessor's directly pertinent books, documents, paper, or other records involving transactions related to this contract.

19. LEASE SUCCESSION (AUG-02):

This Lease supersedes lease no. DTFA08-82-L-10426 and all other previous agreements between the parties for the leased property described in this document.

20 ATTACHMENTS & EXHIBITS:

- Attachment "A" – ATCT Operation Agreement
- Exhibit "A" – ATCT Site Parcel Exhibit and Legal Description

{00154506.4}

1.3.1 Land On an Airport
Revised January 2014

OMB Control No. 2120-0595

21. SIGNATURE BLOCK (AUG-02):

IN WITNESS WHEREOF, the parties hereto have signed their names:

LESSOR: CITY OF MESA

(Signature) Date:_____

(Official Title)

UNITED STATES OF AMERICA:

(Signature) Date:_____

Real Estate Contracting Officer