

City of Anthony

LEASE AGREEMENT

THIS Lease Agreement (“AGREEMENT”) is made and entered into effective as of the date of its execution by the last of the parties hereto to execute the same, by and between the City of Anthony, Anthony, Kansas (“LESSOR”), and Tracy Copenhaver (“LESSEE”).

WITNESSETH:

Whereas, LESSOR owns and operates the Anthony Municipal Airport (“Airport”), and the LESSOR is willing to lease to the LESSEE certain premises hereinafter more fully described and located on said AIRPORT upon the terms and conditions stated herein.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, LESSOR leases to LESSEE the real estate described as follows:

The West 123.27 feet of the South 105.00 feet of Lot Six (6) at Anthony Municipal Airport (Legal Description attached as “Exhibit A – Land Lease”)

Hereinafter referred to as the (“LEASED PREMISES”), subject to the provisions and for the consideration hereinafter stated.

1. TERM: The Term of this AGREEMENT commences on the 15th day of March 2022, and terminates on the 31st day of December 2054 (“INITIAL TERM”). Provided that the LESSEE is in compliance with all the terms and conditions of this AGREEMENT, LESSEE shall have the option to extend the INITIAL TERM of the AGREEMENT for one successive thirty (30) year period (“OPTION TERM”) upon written notice given to and accepted by LESSOR not less than sixty (60) days prior to the last day of the Initial Term.

2. USE OF THE LEASED PREMISES: Allowable uses include: aircraft hangaring, tie down of the aircraft, aircraft maintenance, aircraft fueling or defueling, aircraft and parts sales, aircraft washing, other legal aeronautical business, and/or other related uses of the LESSEE. LESSEE hereby agrees that the LEASED PREMISES shall be utilized primarily for the following purpose(s): _____ and has submitted plans and specifications and received approval for such use. LESSEE shall not change this use without first submitting plans and specifications to make said request and obtaining LESSOR’S written consent and approval. The installation, operation, and storage of flammable fuel and/or storage tanks is prohibited, if the fuel being stored is available on the airport from the LESSOR. The installation, operation and storage of flammable fuel and/or storage tanks for fuels other than those available from the LESSOR is permitted with the following conditions: 1) LESSEE must meet all current requirements and regulations for the storage and dispensing of fuel as set forth by KDHE; 2) LESSEE must meet all requirements as set forth in the LESSOR’s Spill Prevention Control and Countermeasure Plan for the airport; 3) no underground fuel storage is permitted, and 4) at such time that the LESSOR would begin to provide the fuel that the LESSEE is storing and dispensing, the LESSEE shall remove at their own expense all storage and dispensing equipment and facilities. Exemptions from the requirement to purchase fuel available on the airport can be granted for Agricultural Spray Operations due to simultaneous fueling and chemical loading needs. LESEE’s

receiving said exemption are still required to follow the installation, operation, and storage conditions listed above.

3. AIRPORT: LESSOR reserves the right (but shall not be obligated to LESSEE) to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport. LESSOR reserves the right further to develop or improve the landing area and all publicly owned air navigation facilities of the Airport as it sees fit, without interference or hindrance. LESSOR reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction.

4. RENT: LESSEE agrees to pay LESSOR as rent for the LEASED PREMISES \$0.05 per square foot equaling \$ **647.17 annually** for the term(s) of this AGREEMENT based on the LEASED PREMISES being **12,943.35 square feet**. Annual rent payments shall be due by January 1 of each calendar year with the initial payment due at signing pro-rated to December 31st of the current year. The rent payable by LESSEE maybe increased annually by a percentage amount equal to the percentage increase (“Increase”) in the Consumer Price Index (“CPI”). The Increase in the CPI shall be measured by comparing (a) the CPI figure in effect on the first month of the applicable year against (b) the CPI figure in effect on the first day of the prior year of the AGREEMENT. In no event shall such annual increase exceed three percent (3%).

All payments shall be made in advance of the first day of each year to LESSOR or to such agents and at such places as LESSOR shall designate.

5. UTILITIES: LESSEE, at its expense shall pay for electricity, water, and gas (“UTILITIES”) charges to the LEASED PREMISES. LESSOR shall not be liable under any circumstances for loss or injury to property or persons occurring through, in connection with, or incidental to the furnishing of UTILITIES.

6. ALTERATIONS: LESSEE shall make no alterations, additions, or improvements without first obtaining LESSOR’S written consent and approval of applicable plans and specifications prior to beginning any work. Unless otherwise provided by written agreement, all alterations, improvements, and changes be done at the cost of LESSEE, shall be the property of LESSEE, and shall remain upon and be surrendered with the LEASED PREMISES at the termination of this AGREEMENT if not removed or sold within 90 days of the date of notice of termination. All property remaining after said 90 days shall become property of the City of Anthony Municipal Airport.

7. MAINTENANCE: LESSEE agrees to and shall keep the LEASED PREMISES in good repair, and shall be responsible for making all necessary repairs except such as may be required as a result of damage caused by the negligent and/or willful acts of LESSOR, LESSOR’S officers, directors, representatives, employees, agents, servants, invitees, patrons, customers, contractors, vendors, subcontractors, passengers, successors, assigns, and/or suppliers. Subject to Article 10, LESSEE shall, at its sole cost and expense, make such repairs. The LESSOR will be responsible for mowing the LEASED PREMISES; however, the LESSEE shall be responsible for weed-eating and weed-control two (2) feet out from the buildings located on the LEASED PREMISES all the way around said buildings.

8. CONDITION OF PREMISES: LESSEE acknowledges and agrees that the LEASED PREMISES is in a good and tenantable condition, and LESSEE further agrees, at the termination of this AGREEMENT, to surrender the LEASED PREMISES to LESSOR in as good condition and repair as reasonable and proper use thereof during the term of this AGREEMENT will permit, ordinary wear and tear excepted. LESSOR shall keep and maintain in good order, condition, and repair the buildings located on the LEASED PREMISES.

9. LESSEE’S CONDUCT: It is understood and agreed that LESSEE will not knowingly use or permit upon the LEASED PREMISES anything that will invalidate any policies of insurance now or hereafter carried on

the LEASED PREMISES or that will increase the rate of insurance on the LEASED PREMISES; that LESSEE will not use or permit upon the LEASED PREMISES anything that may be dangerous to life or limb; that LESSEE will not in any manner deface or injure the LEASED PREMISES or any part thereof.

LESSEE agrees to comply with the laws of the United States, this State, all local ordinances and resolutions, and all rules and regulations adopted and/or amended from time to time by LESSOR or the FAA for the operation of the Airport and conduct on, in or around the LEASED PREMISES and the Airport. LESSEE agrees to timely make any report required by any governmental body or regulatory agency having jurisdiction of said Airport, said report to be made to the proper agency or governmental body with a copy to LESSOR.

LESSEE agrees to not overload the floors or permit anything to be done upon the LEASED PREMISES in any way creating a nuisance.

Within ten (10) days after receipt, LESSOR and LESSEE shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of any applicable laws relating to any portion of the LEASED PREMISES; any claims made or threatened in writing regarding noncompliance with applicable laws and relating to any portion of the LEASED PREMISES; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with any applicable laws and relation to any portion of the LEASED PREMISES.

10. INDEMNIFICATION: Except as expressly otherwise stated in this AGREEMENT, LESSEE covenants and agrees, as further consideration for this AGREEMENT that it shall indemnify, release and save harmless LESSOR, LESSOR'S officers, directors, representatives, employees and/or agents from and against any and all claims, costs, damages, suits, causes of action, judgments, loss of or damage to property, and/or injuries to or death of any person or persons sustained in, on or about the LEASED PREMISES or the Airport property, to the extent such loss arises from the negligent and/or willful acts of LESSEE, LESSEE'S officers, directors, representatives, employees, agents, servants, invitees, patrons, customers, contractors, vendors, subcontractors, passengers, successors, assigns and/or suppliers.

11. WAIVER OF LESSEE'S DAMAGES: LESSOR shall not be liable to LESSEE for any act or negligence of any of LESSOR'S tenants or by the owner or Lessee of adjoining or contiguous property to the LEASED PREMISES.

12. INSURANCE REQUIRED: LESSEE shall obtain and keep in full force during the term of this lease, including any extension thereof, liability insurance with limits of at least \$1,000,000 and property insurance in an amount sufficient to cover Section 13 of this AGREEMENT. The City of Anthony/Anthony Municipal Airport shall be listed as an additional insured on said insurance and a certificate verifying such shall accompany this lease at the time of signing.

13. DAMAGE TO PROPERTY: LESSEE shall, at LESSEE's expense, be responsible to repair, reconstruct, or remove any such structures owned by LESSEE, or repair any such land owned by LESSOR, in accordance with City Code requirements, which has been damaged by fire or other casualty and in the event of removal of such structures, return said property to original condition as described in section eight of this AGREEMENT.

14. ENTRY BY LESSOR OR AGENT: LESSEE shall permit LESSOR, its agents and representatives to enter the LEASED PREMISES by passkeys, or otherwise, to examine the same upon reasonable written notice and at reasonable times or to show the LAND to persons wishing to lease the same, and to place on

the door and walls of the LEASED PREMISES a "For Rent" notice for two (2) months prior to the termination of the AGREEMENT if deemed necessary by LESSOR.

15. RE-ENTRY FOR BREACH – RE-LETTING: In the event of any breach or default of this AGREEMENT by LESSEE, then LESSOR, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the LEASED PREMISES. Such property may be removed and stored in any other place on LESSOR'S premises and facilities, or in any other place, for the account of, and at the expense and the risk of, LESSEE. LESSEE agrees LESSOR shall not be deemed guilty of trespass for such re-entry and hereby expressly waives and releases LESSOR of and from any loss or damage, which may be occasioned by such re-entry. Should LESSOR elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this AGREEMENT or it may from time to time, without terminating this AGREEMENT, re-let the LEASED PREMISES or any part thereof for such term or terms and at such rental or rentals and upon such other terms and conditions as LESSOR in its sole discretion may deem advisable, with the right to make alterations and repairs to the LEASED PREMISES. Rentals received by LESSOR from such re-letting shall be applied first to the payment of rent then due and unpaid hereunder; second, to the payment of any indebtedness, other than rent, due hereunder from LESSEE to LESSOR; third, to the payment of any cost of such re-letting; fourth, to the payment of the cost of any alterations and repairs to the LEASED PREMISES, and the residue, if any, shall be held by LESSOR and applied in payment of future rent as the same may become due and payable hereunder. Should such rentals received from such re-letting during any month be less than that agreed to be paid during that month by LESSEE hereunder, then LESSEE shall pay such deficiency to LESSOR. Such deficiency shall be calculated and paid monthly. No such re-entry or re-taking possession of the LEASED PREMISES by LESSOR shall be construed as an election on its part to terminate this AGREEMENT, unless a written notice of such intention be given to LESSEE, or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such re-letting without termination, LESSOR may at any time hereafter elect to terminate this AGREEMENT for such previous breach.

16. EVENTS OF DEFAULT: The following shall constitute a material default on the part of the LESSEE:

- (A) The failure of LESSEE to pay and deliver to LESSOR any LESSEE payment after same is due and within ten (10) days after written demand by LESSOR.
- (B) The failure of LESSEE to comply with any other provision of this AGREEMENT as soon as is reasonably practical and in any event within thirty (30) days after written demand by LESSOR, except that if any non-monetary failure is not capable of being cured within such thirty (30) day period, LESSEE shall be given a reasonable time to cure such failure so long as LESSEE has timely commenced curing such failure within the thirty (30) day period and thereafter diligently proceeds to completely cure such failure as soon as possible.
- (C) If any voluntary or involuntary petition or similar pleading under any section or sections of any bankruptcy act shall be filed by or against LESSEE or any voluntary or involuntary proceedings in any court shall be instituted to declare LESSEE insolvent or unable to pay LESSEE'S debts, and in the case of an involuntary petition or proceeding if same is not dismissed within ninety (90) days from the date it is filed, or if LESSEE makes an assignment for the benefit of its creditors, or if a receiver is appointed for any property of LESSEE or if LESSEE'S leasehold interest is levied upon under execution or is attached by process of law, and not discharged or dismissed within ninety (90) days, or LESSOR adequately secured by bond or otherwise.

17. BUILDING RESTRICTION LINE: This lease is made with the stipulation that if the improvements on the LEASED PREMISES are currently within the Building Restriction Line as of the date of the executed LEASE AGREEMENT and need to be relocated or removed at a later date, then they will be moved at the LESSEE'S expense when necessary or required by the LESSOR, KDOT, FAA, or any other governmental entity with such jurisdiction to require the relocation or removal of the improvements. However, if the improvements on the LEASED PREMISES are not currently within the Building Restriction Line as of the date of the executed LEASE AGREEMENT but become part of a designated Future Building Restriction Line due to FAA requirement and/or the expansion of the Airport, then the improvements will be relocated to another location at the Airport at the LESSOR'S expense. In the event that it is not possible to relocate the improvements, then the LESSOR will purchase the LESSEE'S improvements on the LEASED PREMISES at fair market value, determined by the appraisal of the improvements by three appraisers, one selected each by the LESSOR and the LESSEE and the third selected by the two previously selected appraisers, with the appraisal being paid for by the LESSOR.

18. SUBLEASE, ASSIGNMENT, SALE, OR TRANSFER: The LESSEE shall not sublease, assign, sell or transfer this contract agreement or any right hereunder to any person, corporation, or association, without prior written consent by the LESSOR. Such sublease, assignment, sale, or transfer without the prior written consent of the LESSOR shall be grounds, at the option of the LESSOR, for the LESSOR to immediately terminate this contract agreement.

19. ABANDONMENT: LESSEE shall not vacate or abandon the LEASED PREMISES at any time during the term of the AGREEMENT without the prior written consent of the LESSOR.

20. CONDEMNATION: If the whole or any part of the LEASED PREMISES shall be taken or condemned by any competent authority for any public or quasi-public use or purpose, then, and in that event, at LESSEE'S option, the term of this AGREEMENT shall cease and terminate from the date when the possession of the part so taken shall be required for such use or purpose, the award to be shared by LESSEE and LESSOR based upon the remaining term of the Lease. The current rental, however, shall in any case be apportioned in the same manner as provided hereinbefore in Section 13.

21. SIGNS: LESSEE shall not have the right to install signs on the LEASED PREMISES or anywhere else on the Anthony Municipal Airport premise without the written consent of the LESSOR. All signs shall comply with Federal Aviation Administration regulations and City of Anthony and Anthony Municipal Airport regulations.

22. WAIVER: The waiver by LESSOR of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or other term, covenant, or condition herein contained. The acceptance of rent hereunder shall not be construed to be a waiver of any breach by LESSEE of any term, covenant, or condition of this AGREEMENT.

23. COMPLIANCE WITH LESSOR'S RULES AND REGULATIONS: LESSEE agrees to abide by all rules and regulations which LESSOR may issue from time to time for the purpose of safety and fire protection relating to the LEASED PREMISES.

24. TAXES: LESSEE shall pay all real estate taxes accruing against the LEASED PREMISES, if any, during the term of this AGREEMENT.

25. NOTICES: Any notices or demands required or permitted by law or any provision of this AGREEMENT, shall be in writing and mailed by United States mail, postage prepaid, registered, or certified mail with return receipt requested, to the following addresses:

TO LESSOR:

City of Anthony
P.O. Box 504
Anthony, KS 67003

TO LESSEE:

NAME _____
ADDRESS _____
CITY, STATE ZIP CODE _____

26. GENERAL PROVISIONS:

- A. LESSEE shall not use, or permit the use of, the LEASED PREMISES, or any part thereof, for any purpose or use other than those authorized by this AGREEMENT.
- B. This AGREEMENT shall be governed by the laws of the State of Kansas.
- C. This AGREEMENT is made for the sole and exclusive benefit of the LESSOR and LESSEE and is not made for the benefit of any third party.
- D. In the event of any ambiguity in any of the terms of this AGREEMENT, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
- E. All covenants, stipulations and agreements in this AGREEMENT shall extend to and bind each party hereto, and its legal representatives.
- F. This AGREEMENT shall not become effective until it has been fully and properly executed by both parties hereto.
- G. The titles of the several sections of this AGREEMENT are inserted herein for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
- H. The LESSEE and any of his or her representatives do hereby covenant and agree as a covenant running with the LEASED PREMISES that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this AGREEMENT for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the LESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- I. The LESSEE and any of his or representatives do hereby covenant and agree as a covenant running with the LEASED PREMISES 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 said facilities, (2) that in the construction of any improvements on, over, or under such LEASED PREMISES 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 otherwise be subjected to discrimination, (3) that the LESSEE shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

- J. The provision of this AGREEMENT shall be severable and if any provision shall be invalid, void, or unenforceable, in whole or in part, for any reason, the remaining provisions shall remain in full force and effect; provided the purpose of the remaining valid, effective, and enforceable provisions is not frustrated; and provided further that no party is substantially and materially prejudiced thereby.
- K. This AGREEMENT contains the entire agreement of the parties and supersedes any and all prior agreements between the parties, either written or oral, with respect to the transactions contemplated hereby. It may not be changed or terminated orally but may only be changed by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, renewal, discharge, or termination is sought.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day, month and year first above written.

LESSOR: City of Anthony

LESSEE: Tracy Copenhaver

Mayor

Date: _____

Date: _____

ATTEST:

WITNESS:

City Clerk/Administrator

Date: _____

Title: _____

Date: _____