

COMMERCIAL AVIATION LEASE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF MATAGORDA §

This Airport Lease Agreement (“Lease”) is hereby made and entered into effective as of _____, 2022 (the “Effective Date”), by and between the City of Bay City (“Lessor”), a Texas home-rule municipality, and Williams Field Services - Gulf Coast Company LLC, a Delaware limited liability company (successor to Williams Field Services – Gulf Coast Company, L.P.) (“Lessee”). For convenience, Lessor and Lessee shall sometimes be referred to herein individually as a “party” and collectively as “parties.”

W I T N E S S E T H

WHEREAS, Lessor owns the Bay City Regional Airport located in the Bay City, Matagorda County, Texas with a street address of 3598 FM 2540 N, Bay City, TX 77414 (the “Airport”);

WHEREAS, Lessor desires to lease the Premises (as defined in Section 1.1) located at the Airport to Lessee for aviation and business purposes, as further described on Exhibit A attached hereto and incorporated herein (the "Premises");

WHEREAS, Lessee desires to lease the Premises from Lessor in accordance with the terms and conditions expressed in this Lease;

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants of the parties as expressed in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

SECTION 1. LEASED AREA.

1.1 Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, and subject to the terms, conditions and considerations stated herein, does hereby lease to Lessee and Lessee does hereby accept from Lessor the following premises (“the Premises”), located at the Airport:

- a) Airport grounds located North of the Terminal building, South of T. Stanley Drive and West of Airport Road. The area of the Airport grounds to be leased is 5,670 square feet and is depicted in Exhibit A.

SECTION 2. TERM.

2.1 The primary term of this Lease shall be for a period of two (2) years (the "Primary Term") commencing on the Effective Date, unless sooner terminated in accordance with the provisions of this Lease. At the end of the Primary Term, and if Lessee is not in default, as set forth in Section 11 of this Lease, Lessee will have an option to extend the term of this Lease for one (1) additional four (4) year term, (the "Extended Term"). The Primary Term together with the Extended Term, if any, is hereinafter referred to as the "Term".

2.2 Lessee will have the option to terminate this Lease at any time after eighteen (18) months into the Primary Term without incurring a penalty or fee and without being responsible for Rent after the effective date of such termination. Lessee may exercise this option by providing Lessor with thirty (30) days' prior written notice.

2.3 Lessee agrees that upon the expiration or termination of this Lease, any fixtures or permanent improvements attached to and located on the Premises shall become the property of Lessor.

2.4 Any holding over by Lessee after the expiration or termination of this Lease, in whatever manner its termination may be brought about, shall not operate as a renewal of this Lease, but during the period of such holding over Lessee shall be a tenant at will of Lessor and shall pay to Lessor a sum equal to one hundred fifty percent (150%) of the calculated yearly Rent in effect on the last day prior to termination of the Lease for each day Lessee occupies the premises after such termination. In addition, Lessor retains all rights allowable by law and equity to remove Lessee from the premises and recover damages therefrom.

2.5 In the event that the Premises are abandoned or vacated by Lessee, Lessor shall have the right, but not the obligation, to re-let the premises for the remainder of the Term. If the payments received through such re-letting are less than the Rent provided for herein for such periods, Lessee shall pay the deficiency between the Rent for such periods and the payments received through re-letting.

SECTION 3. CONSIDERATION.

3.1 As consideration for the lease of the Premises, Lessee agrees to pay the following in monthly installments (collectively, the "Base Rent") for the Primary Term:

- a) 2,990 square feet of Airport grounds located North of the Terminal building, South of T. Stanley Drive and West of Airport Road - \$39.86 dollars per month which is equivalent to \$478.40 per year.
- b) Utility Fee - \$400.00 dollars per month, which is equivalent to \$4,800.00 per year ("Utility Fee"). The Utility Fee payment includes all utility fees (power, water, sewer, and garbage collection.)
- c) Parking Lot / Sidewalk - \$1,666.60 dollars per month, which is equivalent to \$20,000.00 for the first year of the Primary Term of the Lease. \$1,000.00

dollars per month, which is equivalent to \$12,000.00 dollars per year for the second year of the Primary Term.

3.1a As consideration for the lease of the Premises, Lessee agrees to pay the following in monthly installments (collectively, the "Base Rent") for the Extended Term:

- a) 5,670 square feet of Airport grounds located North of the Terminal building, South of T. Stanley Drive and West of Airport Road - \$75.60 dollars per month which is equivalent to \$907.20 per year.
- b) Utility Fee - \$400.00 dollars per month, which is equivalent to \$4,800.00 per year ("Utility Fee"). The Utility Fee payment includes all utility fees (power, water, sewer, and garbage collection.)

3.2 Base Rent shall be payable in monthly installments on or before each month of the Term with the first such installment being due on or before the Effective Date. Additional Rent, if any shall be due and payable at the same time as the next scheduled payment of Base Rent. All Base Rent and Additional Rent (collectively, the "Rent") shall be paid as the same become due, by mail or delivery to the Airport Office, Attn: Airport Manager, 3598 FM 2540 North, Bay City, Texas 77414. Rent includes all related utility fees.

3.3 In the event Lessee fails to remit Rent when the same is due, and such payments remain unpaid for ten (10) days after the date due, a late payment fee of \$50.00 shall be charged to Lessee. Failure to pay Rent or any late payments as provided for in this Lease for a period of thirty (30) days after the date said payment is due will be considered a condition of default.

3.4 The Base Rent and other fees may be adjusted upwards to reflect changes in the cost of living and operation, as reflected by fluctuations in the Consumer Price Index (CPI) for all Urban Customers, on October 1st of any year during the Term by the City, which date is the beginning of the City's fiscal year. Said change shall not be arbitrary and is intended to be the "market rate" The CPI April report is used to determine the "market rate" for the fiscal year. In no event, however, will the Base Rent and other fees be adjusted upwards in excess of five percent (5%) in a given fiscal year. Notice of any change shall be given to Lessee in writing of any change on or before October 1st of each year. If no notice is given, the Base Rent and other fees have not changed. If notice is given, Lessee may object to said change and terminate the lease with 90 days' notice to City. Base rent and fees for Lessee during the 90-day period shall be at rates previously agreed upon and paid by Lessee.

SECTION 4. COVENANTS AND CONDITIONS

4.1 Lessee covenants and agrees that it will use the Premises solely for its business use, office use, aviation business related purposes as required by Chapter 18 Aviation, of Lessor's Code of Ordinances which can be found at the following link: https://www.municode.com/library/tx/bay_city/codes/code_of_ordinances?nodeId=PTIICOOR

[CH18AV](#), unless Lessee obtains a written permit from City Council and the State of Texas approving a commercial use that is different from the permitted uses and purposes described in this paragraph. Lessee shall have exclusive right to occupy the Premises and to use the Premises for the uses and purposes described in this paragraph as long as Lessee is not in default of this Lease.

4.2 Lessee shall maintain the Premises and the improvements and appurtenances thereto, in a presentable condition consistent with good business practice and in a safe, neat, sightly, and good physical condition. Lessee shall receive approval from the Lessor on the paint scheme of improvements when required to be addressed for presentable conditions. Such approval shall not be unreasonably delayed or withheld. Lessee shall enclose any building, and/or temporary structure on all sides, in such a way to conceal all plumbing, foundations and/or supports and to prevent unauthorized entry. Lessee shall repair all damages to the Premises and equipment located thereon caused by its employees, patrons, its operation thereon, vandalism, malicious mischief, as well as damages caused from weather conditions, acts of God, etc.

4.3 Lessee agrees that all construction and/or installation on the Premises shall be in accordance with ADA Accessibility Guidelines for Buildings and Facilities, as amended. Lessee further agrees that all buildings, and/or temporary structures with anchoring against overturning, uplift, and sliding in a wind event.

4.4 If Lessee fails to undertake its maintenance obligations hereunder within thirty (30) days after receipt of the Lessor's notice, then Lessor shall have the right to perform such maintenance for the Lessee at Lessee's expense.

4.5 Lessee shall use the provided garbage dumpster and/or the provided recycling trailer for the handling and disposal of all trash, garbage and other refuse caused or created as a result of the operation of its business. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner on or about the Premises shall not be permitted.

4.6 Lessee shall also purchase, store, and maintain in proper condition readily accessible fire extinguishers in a number and of a type approved by fire underwriters for the particular hazard involved.

4.7 Lessee will be allowed to place signage on the Premises as specified in Lessor's Zoning Ordinances, as amended. Detached signs and flashing lighted signs are strictly prohibited.

4.8 Lessee covenants and agrees to comply with all Applicable Laws, all rules and regulations of the Police, Fire and Health Departments, all rules and regulations established by Lessor for the operation of the Airport as such laws, rules and regulations currently exist or may hereafter be amended or adopted. It is understood and agreed that if Lessor gives notice to Lessee of any such violation on the part of Lessee or any of its officers, agents, employees, contractors, subcontractors, licensees or invitees, Lessee shall immediately cease and desist from such violations, and take all necessary steps to ensure that such violation is corrected and that such violation does not reoccur.

4.9 Lessee shall, at its own risk, cost, and expense, obtain and keep in effect all licenses and permits necessary for the operation of its business on the Premises.

4.10 Lessor reserves the right to contract with any other person or business which might be in direct or indirect competition with Lessee. It is understood that this Lease does not in any way grant exclusive right to Lessee to perform any aeronautical function at the Airport, including, but not limited to, aircraft maintenance or repair.

4.11 Lessee shall comply with all applicable Federal Aviation Administration and Texas Department of Transportation rules and regulations. All activities of Lessee shall be conducted so as not to interfere with other Airport traffic, including, but not limited to, runway(s), taxiways, ramps, aprons and fueling points.

SECTION 5. INDEPENDENT CONTRACTOR.

5.1 It is expressly understood and agreed: (a) that Lessee shall operate hereunder as an independent contractor as to all rights and privileges granted herein and not as an agent, representative or employee of Lessor; (b) that Lessee shall have exclusive control of and the exclusive right to control the details of its operations on the Premises and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, or subcontractors; (c) that the doctrine of respondent superior shall not apply as between Lessor and Lessee, its officers, agents, employees, contractors and subcontractors; and (d) that nothing herein shall be construed as creating a relationship of employer-employee, principal-agent, partner or joint venture or enterprise or any such similar relationship between Lessor and Lessee

SECTION 6. INDEMNIFICATION.

6.1 Lessee agrees to indemnify and hold harmless the Lessor and its agents, employees, and representatives from and against all liability for any and all claims, suits, demands, and/or actions arising from or based upon negligent acts or omissions arising out of Lessee's occupancy of the Premises or use of the Airport and/or activities conducted in connection with this Lease except to the extent caused by the negligent acts or omissions of Lessor and its agents, employees and representatives. Such indemnification shall include, but is not limited to, acts or omissions on the part of Lessee's contractors, subcontractors, and sub-lessee. Lessee shall also indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the Premises demised hereunder arising as a result of Lessee's conduct or activity.

Lessee's indemnity obligations extend to any and all such claims, suits, demands, and/or actions regardless of the type of relief sought thereby, and whether such relief is in the form of damages, judgments, and costs and reasonable attorney's fees and expenses, or any other legal or equitable form of remedy. This Indemnity Provision shall apply regardless of the nature of the injury or harm alleged, whether for injury or death to persons or damage to property, and whether such claims be alleged at common law, or statutory or constitutional claims, or otherwise.

Lessor assumes no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to defects or conditions which may now exist, or which may hereafter arise upon the Premises except to the extent that such defects or conditions are due to the negligence of Lessor, its employees or agents or the failure of Lessor to comply with the provisions of this Lease.

It is expressly understood and agreed that Lessor shall not be liable or responsible for the negligence of Lessee, its agents, servants, employees, and customers. Lessee further agrees that Lessee shall at all times exercise reasonable precautions for the safety of and shall be solely responsible for the safety of Lessee's agents, representatives, employees, members, patrons, visitors, contractors and subcontractors (if any), and/or sub-lessee, and other persons, as well as for the protection of supplies and equipment and the property of Lessee or other persons. Lessee further agrees to comply with all applicable provisions of Federal, State, and municipal safety laws, regulations, and ordinances.

6.2 Lessor shall in no way be responsible for any property belonging to Lessee, its officers, agents, employees, contractors, subcontractors, licensees, or invitees which may be stolen, destroyed or in any way damaged, and Lessee hereby indemnifies and holds harmless Lessor, its officers, agents, servants and employees from and against any and all such claims.

SECTION 7. INSURANCE.

7.1 As a condition precedent to Lessee's right to operate at the Airport, Lessee shall continuously maintain in effect during the term of this Lease and any extension thereof, at Lessee's expense, the following insurance coverage:

- a) Comprehensive General (Public) Liability Insurance covering the Leased Premises, the Lessee, and Lessee's activities at the Airport. Liability insurance limits shall be in the following minimum amounts: Bodily Injury, including Death and Property Damage: \$1,000,000 combined single limit coverage, on a per occurrence or claims made basis/\$1,000,000 aggregate limit. The required insurance coverage can be satisfied by Lessee in-whole or in-part with insurance, self-insurance, or any combination thereof.
- b) Aircraft Liability to cover all flight operations of Lessee.
- c) Fire and extended coverage to cover 80% of the full replacement value for all facilities erected by Lessee during this Lease. This coverage shall include for theft, vandalism, malicious mischief, as well as damages caused from weather conditions, acts of God, etc.

7.2 All policies shall name the Lessor as an additional named insured and provide for a minimum of thirty (30) days written notice to the Lessor prior to the effective date of any cancellation, material change, or lapse of such policies. Notwithstanding other provisions herein contained, Lessor may cancel this Lease with notice to Lessee should Lessee's insurance lapse for a period of thirty (30) days or more. Lessor may elect to reinstate and revive such Lease after such

insurance obligation is cured by Lessee. Lessor shall be listed as a Certificate Holder on Lessee's insurance and shall receive notification of any lapse

7.3 Any insurance policy herein required or procured by Lessee shall contain an express waiver of any right or subrogation by the insurance company against the Lessor.

SECTION 8. ENVIRONMENTAL PROVISIONS.

8.1 Lessee agrees to properly store, collect, and dispose of all chemicals and chemical residues, and petroleum products and residues, including oil and gas samples; to properly store, confine, collect and dispose of all paint, including paint spray in the atmosphere, and paint products; and to comply with all local, state and federal regulations governing the storage, handling or disposal of such chemicals, petroleum products and paints. In the event of any accident or spillage by Lessee of any petroleum product, chemical, toxic compound, Hazardous Materials (as defined below) on or at the Premises, Lessee shall comply with all federal, state and local laws, rules, and regulations pertaining thereto, including notification of proper authorities, safety of all persons potentially affected, evacuation of the Premises, if necessary, clean-up and disposal. Additionally, Lessee shall be solely responsible for all costs associated with any spillage of any such compounds or wastes on or at the Premises, and for the clean-up and disposal of any such compounds, including Hazardous Materials, on the Premises, in accordance with applicable laws, rules and regulations.

8.2 Lessee agrees to comply with all Environmental Requirements (as defined below) regarding the conduct of Lessee's business on the Premises.

8.3 As used in Section 8, the following terms have the meanings set forth below:

"Hazardous Materials" shall mean any substance which is or contains (a) any "hazardous substance" as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) ("CERCLA") or any regulations promulgated under or pursuant to CERCLA; (b) any "hazardous waste" as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C §6901 et seq.) ("RCRA") or regulations promulgated under or pursuant to CERCLA; (c) any substance regulated by the Toxic Substance Control Act (15 U.S.C. §525 et seq.); (d) asbestos and asbestos containing material, in any form, whether friable or non-friable; (e) polychlorinated biphenyls; (f) radon gas; and (g) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Property. Hazardous Materials shall also include, without limitation, any substance, the presence of which on the Premises: (i) requires reporting, investigation or remediation under Environmental Requirements; (ii) causes or threatens to cause a nuisance on the Premises or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Premises or adjacent property; or (iii) which, if emanated or migrated from the Premises, could constitute trespass.

“Environmental Requirements” shall mean all laws ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivision in which the Premises is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to pollution, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water ground water or land or soil).

8.4 Lessee agrees to provide company protocol regarding the safe handling, storing and transporting of oil and gas samples collected and transported by Lessee.

8.5 Lessee acknowledges and agrees that the sale of oil, aviation fuels or any other type of fuel by Lessee is prohibited on the Premises.

SECTION 9. NO ASSIGNMENT.

9.1 Lessee shall not have the right to sublet or assign all or any part of its rights, privileges, or duties under this Lease. Notwithstanding the foregoing, Lessee shall not require Lessor’s consent to any sublease or assignment of this Lease to one of its affiliates, so long as affiliate is engaged in aviation services. Lessor expressly consents to the use of the Premises by any entity providing aviation services to Lessee.

SECTION 10. INSPECTION.

10.1 Upon a minimum of twenty-four (24) hours’ notice, Lessor shall have the right to enter the Premises for inspection at reasonable times during normal business hours.

SECTION 11. DEFAULT.

11.1 Each of the following shall constitute an event of default by Lessee:

- A. Lessee shall fail to pay any Rent as provided for in this Lease and such failure shall continue for a period of thirty (30) days after the date said payment is due.
- B. Lessee neglects or fails to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Lessee's part to be performed or any way observed, other than non-payment of Rent, and if such neglect or failure should continue for a period of thirty (30) days after delivery to Lessee of written notice of such neglect or failure.

11.2 In the event of failure to pay Rent after receiving notice of Default by Lessor, as well as any curative period, Lessor will have the option to:

- A. Terminate this Lease, resume possession of the Premises and recover immediately from Lessee the amount, if any, that the Rent exceeds the fair rental value of the Premises for the remainder of the Term, reduced to present worth; or
- B. Resume possession and re-let the property for the remainder of the Term for the account of Lessee and recover any outstanding amounts at the end of the Term or at the time each payment of Rent comes due under this Lease, whichever Lessor may choose.

11.3 If either party fails to perform or breaches any provision of this Lease, and after giving 30 days' written notice the failure or breach continues for ten (10) days after said written notice specifying the required performance has been given to the party failing to perform, either:

- A. The party giving notice may institute action in court to terminate this Lease or to require the other party to complete performance of the Lease; or
- B. The party may, after thirty (30) days written notice to the other, comply with the Lease and correct any failure or breach, with the costs of the compliance payable on demand to the other party.

SECTION 12. TERMINATION.

12.1 Lessee agrees and covenants that it will, at the end of the Term or upon the earlier termination of this Lease pursuant to the provisions hereof, peaceably deliver up unto Lessor the Premises and all appurtenances or improvements thereon in a good state of repair, ordinary wear and tear excepted, and vacant, unencumbered and in good and tenantable condition.

SECTION 13. ATTORNEY'S FEES AND COSTS

13.1 The prevailing party in any action arising between Lessor and Lessee under this Lease shall be entitled to its reasonable attorney fees and costs.

SECTION 14. NOTICE.

14.1 Any notice required by this Lease to be sent to Lessor shall be sufficient if hand delivered or sent by registered mail, postage prepaid, addressed to: James Mason Airport Manager, 3598 FM 2540 North, Bay City, Texas, 77414. Any notice required by this Lease to be sent to Lessee shall be sufficient if sent by registered mail, postage prepaid, addressed to Williams Field Services – Gulf Coast Company, LLCP.O. Box 316, 4367 CR 403, Markham, TX 77456, Attn: Operations Manager, with a copy to Williams Field Services – Gulf Coast Company, LLC, One Williams Center, 720 NE, Tulsa, Oklahoma 74172, Attn: Mgr-Facilities, Corporate Real Estate, or to such other address as the parties may designate to each other in writing from time to time.

SECTION 15. GOVERNING LAW AND VENUE.

15.1 This Lease shall be enforceable and construed under the laws of the State of Texas and venue for any action brought to interpret or enforce this Lease shall lie in a court that has jurisdiction in Matagorda County, Texas.

SECTION 16. SOVEREIGN IMMUNITY.

16.1 Nothing in this lease is intended to or shall have the effect of waiving any privileges or immunities afforded the Lessor under the laws of the State of Texas including, but not limited to, sovereign immunity, governmental immunity, or official immunity, and it is expressly agreed that the Lessor retains all such privileges and immunities afforded under such laws.

SECTION 17. MISCELLANEOUS PROVISIONS

17.1 This Lease and any attachments or Exhibits hereto constitute the entire agreement by the parties hereto concerning the lease of the Premises. Any prior or contemporaneous oral or written agreements which purport to vary from the terms hereof shall be void. Any change or modification hereof shall be in writing signed by both parties.

17.2 The "Section" captions and heading are inserted solely for the convenience of reference and are not part of nor intended to govern, limit, or aid in the construction of any provision hereof.

17.3 The parties to this Lease hereby acknowledge and agree that they have the power, right, and authority to enter into this Lease.

17.4 If any section, paragraph, sentence, or phrase entered in this Lease is held to be illegal or unenforceable by a court of competent jurisdiction, such illegality or unenforceability shall not affect the remainder of this Lease and, to this end, the provisions of this Lease are declared to be severable.

17.5 The Lessor shall not be required to perform any term, condition, or covenant in the Lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, civil riots, floods, actions of the State or Federal government and any other cause not reasonably within the control of the Lessor.

17.6 Lessee shall at their own expense relocate the AT&T service line and pedestal to a location near the Premises, determined by the Airport Manager and depicted on Exhibit A.

17.7 Lessor shall at their own expense install a concrete parking lot as depicted on Exhibit A to provide parking for employees and visitors. Parking lot shall be designed in compliance with ADA requirements.

17.8 Lessee shall at their own expense add additional security cameras to the exterior and interior of any fixtures if so desired. The installation shall be completed by the Lessor's contracted vendor.

17.9 Lessee shall at their own expense contract with an Internet provider for services. Lessee shall insure all lines associated with this and all other services are located underground and that no service lines are suspended in the air. All service line locations must be approved by the Airport Manager prior to install.

17.10 Lessee shall at their own expense connect the plumbing, electrical wiring, or similar installations, on the Premises due to Lessee's use thereof, Lessee will make such changes and installations at its sole cost and expense, subject to Lessor's approval, and such changes shall be made in accordance with all applicable federal, state, and municipal laws and regulations (collectively, "Applicable Laws").

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the _____ day of _____, 2022.

City of Bay City, Texas

Williams Field Services – Gulf Coast Company, LLC

BY: _____
James Mason, Airport Manager

BY: _____
By: _____
Name: _____
Title: _____

ATTEST:

Jeanna Thompson, City Secretary

APPROVED AS TO FORM:

Anne Marie Odefey, City Attorney
Roberts, Odefey, Witte & Wall, LLP Attorneys At Law