



## Council Agenda Report

**From:** Dick McKinley, Public Works Director  
Roger Oxborrow, Airport Coordinator

**Subject:** Airport Leasing Policy Adoption

**Date:** June 6, 2017

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### Facts

1. The City of Paso Robles operates the Municipal Airport for the benefit of the flying public and the community.
2. A significant portion of airport operating revenue is derived from long-term leases of airport land.
3. In order to maintain proper business and operating practices and to effectively compete in the real estate market, sound leasing policies must be adopted and adhered to.
4. In 2015, the Airport Advisory Committee initiated a review and update of the Airport Leasing Policy in an effort to bring it more in to line with current market practices and demand for airport property.
5. When the Airport Commission was created in December 2016, a first priority was the completion of the advisory committee's work to produce an accurate and viable leasing policy for the airport.
6. After numerous public meetings, public input, and discussion, the Airport Commission has completed its effort at creating an Airport Leasing Policy. At its regular meeting of May 25, 2017, the Airport Commission took unanimous action to recommend to the City Council the adoption of the Airport Leasing Policy document (copy attached).

### Options

1. Do nothing;
2. Adopt the Airport Leasing Policy, either as presented or with refinements;
3. Request additional review and discussion.

### Analysis and Conclusions

The policy document presented represents many hours of engagement by interested citizens, Commission members and airport users. While leases are negotiated on a case-by-case basis, the leasing policy document helps both parties to understand the parameters of a successful agreement. New leases are negotiated by City staff, and for larger leases with the assistance of a real estate professional. Draft leases are reviewed by the Airport Commission and approved by the City Council.

### Fiscal Impact

The leasing policy, itself, provides no impact to the Airport Enterprise Fund. It does, however, pave the way for new leasing opportunities, which would then generate increased revenues to the airport. Leasing revenues are the single largest source of revenue for the Airport Fund.

**Recommendation**

Adopt the Airport Leasing Policy as presented.

**Attachments**

1. Draft Airport Leasing Policy



## PASO ROBLES MUNICIPAL AIRPORT

# AIRPORT LEASING POLICY

CITY OF PASO ROBLES

A POLICY TO GOVERN THE DRAFTING  
AND MANAGEMENT OF LEASES  
AT THE  
PASO ROBLES MUNICIPAL AIRPORT

Adopted \_\_\_\_\_

# AIRPORT LEASING POLICY

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## **Section 1 - General Statement of Policy**

Airport Operated for Benefit of the Public. Through its Leases, and by other means, the City will ensure that the Airport is operated for the use and benefit of the public and is made available to all types, kinds and classes of aeronautical activities.

As an Airport Sponsor and recipient of Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grants, the City of Paso Robles (hereinafter, City) is obligated to operate the Paso Robles Municipal Airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activities on fair and reasonable terms and conditions without unjust discrimination. Further, the City leases property at the Airport for certain non-aeronautic uses to provide economic development to the community, and funding for the aeronautic activities at the Airport. Given these obligations, the City hereby establishes this policy to set forth a standardized system and process for leasing property at the Airport.

In furtherance of this objective, the City leases airport property based on the following principles:

- Promotion of aeronautic and aeronautic-compatible enterprise fund activities for the benefit of the Paso Robles-area community
- Preservation of the City's investment in the Airport
- Facilitation of orderly management of the Airport
- Ensuring consistent quality of facilities at the Airport
- Providing equitable and uniform treatment of all Lessees
- Ensuring compliance with applicable laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application and acceptance of Federal Funds
- Enabling conformity with the FAA approved Airport Layout Plan. (Exhibit 'A')
- Making the Airport available for public use on reasonable terms without unjust discrimination
- Maintaining a fee and rental structure with the goal of financial self-sufficiency for the Airport

Persons seeking to provide a Commercial Aeronautical Activity at the Airport shall also be obligated to adhere to the requirements set forth in the Airport Minimum Standards and Airport Rules & Regulations.

## **Section 2 - Definitions**

For purposes of this Leasing Policy, the following definitions shall apply:

Aeronautical Activities or Services: means any activity or service conducted at the Airport that involves, makes possible or is required for the operation of aircraft, or that contributes to or is required for the safety of such operations.

Airport: means Paso Robles Municipal Airport and all of the area, buildings, facilities, and

improvements within the exterior boundaries of such airport as it now exists, or as it may hereafter be extended or enlarged.

Airport Manager: means the individual employed and authorized by the City Manager to oversee the operations, maintenance and finances of the Airport, or the person authorized by the Airport Manager to act for or on behalf of the Airport Manager, with respect to any particular matter. The Airport Manager is the primary contact for the FAA.

Airport Leasing Policy: means this document as established and amended from time to time by the City, to govern the safe, orderly, and efficient leasing of Airport property.

Airport Layout Plan (ALP): means the FAA approved and Airport adopted drawing, as may be amended from time to time, which reflects an agreement between the FAA and Airport depicting the physical layout of the Airport. The ALP identifies the location and configuration of current and proposed runways, taxiways, buildings, roadways, utilities, nav aids, etc. The ALP also includes the proposed allocation of Airport land and/or improvements to specific uses and/or development. The ALP reflects the existing and proposed allocation of areas of the Airport to specific operations and support functional usage.

Airport Minimum Standards: means the “Airport Minimum Standards for Commercial Aeronautical Service Providers at the Paso Robles Municipal Airport” (<http://www.prcity.com/government/departments/publicworks/airport/pdf/MinimumStandards.pdf>) as adopted by the City, and amended from time to time.

Airport Sponsor: means the City of Paso Robles under the FAA.

Applicant: means a Person submitting an application to the City to Lease Airport property.

City: means the City of Paso Robles, owner and operator of the Airport, acting by or through the Paso Robles City Council, the City Manager, the Public Works Director, the Airport Manager, or any duly authorized employee, agent or instrumentality of the City of Paso Robles. Discretion, opinions and approvals of ‘City’ under this section refer to the responsibilities and authorities delegated to the City Council, the Airport Commission and designated City staff members as may be assigned these tasks through adopted policy.

City Council: means the legislative body that governs the City of Paso Robles.

Commercial Aeronautical Activity: means an Aeronautical Activity for commercial purposes as defined in the Minimum Standards.

FAA: means Federal Aviation Administration.

General Aviation: means all phases of aviation other than military aviation and scheduled or non-scheduled commercial air carrier operations.

Lease: means a contract between the City and any Person wherein the City grants the use or occupancy of Airport property and certain leasehold interests for a specified period in

Lessee – means any Person obtaining a Lease from the City to occupy space and hold certain leasehold interests at the Airport.

Person: means and includes any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

Rules and Regulations: means the policies, procedures, and regulations, established and amended from time to time by the City Council, to govern the safe, orderly, and efficient use of the Airport.

Shall: the word ‘shall’ is always mandatory and not merely directory.

State: means the State of California.

Sublease: means a written agreement, approved by the City, stating the terms and conditions under which a third party leases space from a Lessee for the purpose of providing aeronautical or non-aeronautical services or activities at the Airport.

Term: means the total period of time in which that Lease may or might remain in effect. (For instance, a Lease for an initial period of 5 years, which may potentially be extended for an additional 5-year period, is a Lease for a term of 10 years).

### **Section 3 - Exclusive Rights**

- A. Federal law forbids the granting of an exclusive right to provide aeronautical services at an airport on which federal funds have been expended. An exclusive right is a power, privilege or other right excluding or debarring another from enjoying or exercising a like power, privilege or right. The City will not grant any such special privilege or monopoly in the use of public use Airport facilities.
- B. It is the policy of this City not to enter into or promote any understanding, commitment, or express agreement to exclude other reasonably qualified Lessees; the presence on the Airport of only one Lessee engaged in a particular aeronautical service(s) will not, in and of itself, indicate that an exclusive right has been granted. Accordingly, those who desire to enter into a Lease with the City to engage in an aeronautical activity should neither expect nor request the City to exclude others who desire to engage in the same or similar activities. The opportunity to engage in an aeronautical activity shall be made available to those meeting reasonable qualifications and standards relevant to such activity and as space may be available at the Airport for such an activity.

### **Section 4 – Requests for Leases**

- A. . Written Application Required. Any Person desiring to enter into a Lease with the City for permission to occupy Airport property shall make written application to the City for such permission

- B. Applicant Must Demonstrate Qualifications. If an Applicant is seeking to engage in a Commercial Aeronautical Activity, he/she shall also provide all application information and materials required by the Airport Minimum Standards. Application materials shall consist of a fully executed Application Cover Sheet, all the information specified in this Leasing Policy, the Airport's Minimum Standards, if applicable, and all documentation deemed necessary by the City for a full and complete analysis of the Applicant's qualifications. The Cover Sheet shall include the benefit that will accrue to the aviation public, not-for-profit entities, and commercial activities, from the Applicant's proposed use of Airport property.
- C. Space Limited to Demonstrated Need. A single aeronautical activity, although meeting all reasonable standards and qualifications, shall be limited to a lease of such space as is needed for that activity. When an Applicant seeks to lease property from the City, he/she must provide evidence of demonstrated need for the Airport property in question. The City will only agree to lease the amount of land justifiably required for the specific use. Additional land for unsubstantiated future expansions is not allowed.

## **Section 5 – Application Documents**

Each application for Lease of Airport Property shall be in writing and in sufficient detail to discern the complete qualifications of the Applicant and shall include, as a minimum, the following:

- A Cover Sheet briefly describing the proposal, the offered lease rate, and other key summary information, accompanied by a Written Application including the details listed below.
- A. The name, address, electronic mail address, and telephone number of the Applicant.
- B. The amount, size, and location of the land and/or facilities desired to be leased.
- C. Descriptions and cost estimates of any proposed capital improvements to be undertaken by the applicant, or proposed to be provided by another party. This specifically includes tenant improvements if the lease proposal is for an existing building.
- D. The types and amounts of insurance coverage to be maintained for the proposed use of Airport property.
- E. A current financial statement prepared or certified by an independent certified public accountant and certified by the Chief Financial Officer of the Applicant. The City shall consider financial statements in evaluating the Applicant's financial ability to construct capital improvements (see C above), occupy Airport property, and enter into a Lease of Airport property.
- To the extent allowed by law (if any), proposed applications for Leases, and the financial terms thereof, shall initially be maintained as confidential, for discussion between staff and the Applicant, and for discussion among staff, the Applicant and the City Council and Airport Commission in executive session only.



- F. Evidence, in a form acceptable to the City, of the Applicant's financial ability to complete construction of proposed capital improvements (see C above) in one of the following forms:
1. A performance bond in the amount equal to the cost for constructing the proposed improvements.
  2. An irrevocable letter of credit guaranteeing funds to complete the project
  3. An escrow agreement administered by a title and escrow company; or
  4. A trust administered by a commercial bank.

### **Section 6 - Action on Application**

After an application has been completed and materials are submitted in accordance with Section 5, it will be reviewed by the City and a determination made regarding approval.

The City may deny any application if, in the City's opinion, any one or more of the following:

- A. The Applicant's proposed use of Airport property or construction of leasehold improvements will create a safety hazard on the Airport.
- B. The granting of the application will require the City to spend funds, supply labor or materials in connection with the proposed activity, or the activity is expected to result in a financial loss to the City.
- C. Inappropriate, inadequate, or insufficient space exists at the Airport to accommodate the proposed activity or business.
- D. The development or construction on the Airport necessary to accommodate the proposed business does not conform to land uses specified on the FAA-approved ALP.
- E. The development or use of the area requested by the Applicant will result in congestion of aircraft or buildings or will result in unduly interfering with other Airport operations.
- F. The Applicant does not meet the requirements of the Airport Leasing Policy.
- G. The Applicant has either intentionally or unintentionally misrepresented or omitted any pertinent information in the application or in supporting documents.
- H. The Applicant has a record of violating the Rules and Regulations of the Airport or of any other airport, FAA regulations, or any other federal, State, or local statutes, laws, rules, or regulations.
- I. The Applicant has defaulted in the performance of any lease or any other agreement with the City or other airport(s).
- J. The Applicant does not, in the opinion of the City, exhibit adequate financial responsibility to undertake the project based upon financial information provided.

- K. The Applicant cannot provide acceptable surety in the amount required by the City.
- L. The proposed activity or development is not in the best interest of the Airport or the public.

### **Section 7 – Competitive Request for Proposal Process**

Upon receipt of an application determined by the City to be complete, the City may issue a public notice of its intent to consider awarding a lease to the Applicant. The purpose of such action, should the City in its sole discretion determine it to be appropriate, is to gauge the level of market demand and competitiveness for the proposed activity or use of the site at the Airport.

Among the factors that can help determine whether competitive bidding should be utilized are:

- the size and proposed use of the property.
- level of market demand for use of Airport property.
- whether the property is going to be used for aeronautical or non-aeronautical purposes.
- whether the property developed or vacant. If it is vacant, what is the proposed use; what type of improvements will be developed; how many employees will be working there? Is there infrastructure (such as utility lines) already in place or will they need to be installed, and if so, by whom?
- the financial strength and experience of the proposed tenant
- the economic impact that the proposed project will have on the Airport and/or the City. Will it generate new revenue for the City or generate new activity at the Airport?

If issued, the notice shall invite other interested and qualified Applicants interested in the space to be occupied by the Applicant to submit written expressions of interest in the Airport property under consideration, on or before the date on which the City will consider approving the Applicant's Lease at a City Council meeting. The notice will also list the criteria to be utilized by the City in making its selection.

In the event the City receives no other expressions of interest in the Airport property in question, the City may proceed to grant or deny the Applicant's request based on the merits of the application and without further advertisement. Should the City receive written expressions of interest from one or more other potential Applicants interested in obtaining a Lease for the property in question, the City shall postpone making its decision on the Applicant's request for a Lease until such time as the City has had an opportunity to collect materials from the other potential Applicants and to negotiate with each interested party to ascertain which party is willing and able to enter into a Lease that will be most advantageous to the City and the public using the Airport. (To the extent allowed by law, all such applications shall be treated as confidential, for discussion between staff and Applicants, and among staff, the Applicants and the City's Council and Commission in executive session only).

In making its final decision regarding the use or disposition of the Airport premises and privileges in question, the City may reject a higher (financial) application and accept a lower one from a responsible Applicant, and award the lease in question to the lower bidder, if, in the

City's opinion, some reason affecting the interest of the City, or the public using the Airport, makes it advisable to do so. An objective of City policy is to attract interested potential lessees. Lease rates and specified lease terms are firm but may contain the ability for City to approve negotiation of such prices and terms if it is found to be in the best interest of the City and the airport.

## **Section 8 - Standards for Leasing Airport Property**

A. Lease Classification. The City will address each airport lease and/or proposed airport lease for the purpose of definition and relevance to airport use according to the following classifications:

- Non-commercial Hangar – Primarily for private aircraft storage; The City will determine if smaller parcels or additional infrastructure provisions are necessary.
- Non-commercial Multi-Tenant – A proposed development of a number of private hangars under one project which affords multiple tenants the benefits of larger economy of scale to offset the burdens of project development costs.
- Commercial Aviation (FBO) – Any commercial service facility allowing single or multiple aviation service disciplines to be accommodated on one site.
- Non-aviation Commercial/Industrial – Any entity that provides benefit to the airport, the community, or the local economic base through services or employment provided, which remains compatible with the Airport existence. This category could well include Hotels, Conference and Recreational uses.
- Public Facility – Government sponsored and publicly operated uses that provide benefit to the airport, aviation, or the local community are part of this category.
- Non-profit Entities – A number of uses qualify as non-profit organizations and valid services that benefit not only aviation, but also a variety of public causes and concerns. Rental agreements are therefore justified.
- Unimproved Land – The occasional need to enter into leases and use agreements for uses which utilize larger amounts of land but without specific definition or qualification. The farming contract maintains vast portions of airport property not otherwise utilized. Occasional airport/aircraft operations require large areas for specific short-term purposes.

B. Requests for Additional Space. If the need for additional space becomes apparent for or in connection with a new or expanded activity, one not authorized by the Lessee's existing Lease, the request for additional space may be treated by the City as one for a new Lease.

C. Lease Term. The Term is categorized according to the following considerations:

1. Operating space within an existing (City-owned) building where minimal initial investment is required to start up the operation.

2. Long-term development of unimproved land.
3. The designation of the facility or proposed property on the ALP.
4. The Lessee's proposed use of the property.
5. The Lessee's proposed capital investment in facilities.

While subject to specific negotiations between the City and each Lessee, the City would generally offer Terms as follows:

1. Existing Facilities Requiring No Capital Investment: 5 -10 years
2. Leases for construction on unimproved land: All uses – 35 years
3. Leases for construction of facilities requiring greater investment or providing greater benefit to the airport and the community – Options to Extend in 5-year increments, up to a total of 55 years.

In considering a request for an Option to Extend, the City will consider whether the Lessee is or has been in default of any terms and conditions of its Lease as well as the structural integrity, safety, and appearance of the leasehold improvements. Upon receipt of a request to exercise an Option to Extend, the City shall inspect the leasehold improvements for condition and appearance and viability for continued occupancy. The actual lease agreement shall be reviewed for compliance with its terms and conditions.

D. Lease Expiration. At least one year prior to the expiration of the lease agreement, the City shall contact the Lessee to advise the Lessee of the upcoming termination and the alternatives available to the Lessee as part of the termination process. The City shall also inspect the building and site improvements to determine their condition and suitability for the safe and legal occupancy for the remaining option period and other future uses. The following options are available:

1. So long as the lease remains in good standing at its conclusion, the lessee may request an extension of the lease term. The City's approval, while not automatic, shall not be unreasonably withheld.
2. If, after City inspection, it is determined that the building improvements are not suitable to remain on site, or to be released, the City has the right to require Lessee to remove the building improvements and return the lease site to a bare and clean condition. Site improvements (Curb, gutter, utilities, etc.) may remain.
3. If favorable, the Lessee is allowed, under the lease, to sell his leasehold interest and improvements, whereupon the City agrees to enter into a lease agreement with the new leasehold owner, if the leasehold owner meets the required qualifications as specified herein. If the buyer qualifies to obtain a Lease with the City, the City shall offer such Lease in accordance with the terms, conditions and rates then in effect. The term of the new Lease will be determined by the City consistent with the policies in 8.E (Lease Term). The original Lease will remain in full force and effect until the City and the buyer of the improvements have entered into a new Lease. The original Lessee must comply with all terms and conditions of the Lease until a new one is executed and in effect. At that point, the original Lease is automatically terminated by mutual agreement of the parties.

4. The Lessee has the right to remove all building improvements and relocate elsewhere, off the lease site, prior to the termination of the lease term.

Given an opportunity to review all available options, the Lessee shall, at least six months prior to the expiration of the lease agreement, notify the City of any intentions to exercise the rights contained herein. In the event of D.3. above, the Lessee shall work with the City to agree on a process and timeline to remove the building improvements and restore the site.

The City shall, at least three months prior to the expiration of the lease agreement, provide draft documents of any agreements required to effect the transition at the lease conclusion.

- E. Reversion. Upon termination of a Lease whereby improvements to Airport property were made by the Lessee. If no other arrangement for sale or transfer of improvements has taken place as specified in the sections above, the Lessee shall agree that all said improvements as well as the property leased to it, shall, without compensation from the City, become the property of the City. Under no circumstances shall the party to such a Lease be entitled to any payment by reason of the value of its business, franchise, or improvements.
- F. Leases for Private Aeronautical Uses. The City is required to operate the Airport for the maximum use and benefit of the public, and must retain the ability to make reasonable provision for essential support services for those who use the Airport; nevertheless, some private aeronautical uses may be beneficial to the City; for instance, a private flying club might be a desirable and compatible use. Proposed Leases for private aeronautical uses will be evaluated on a case-by-case basis, taking into account long-term plans for the development of the Airport, the benefits which may be derived from the proposed Lease, the potential costs of the proposed Lease to the City, the availability of suitable space, the potential for conflict or interference with the public uses of the Airport, and any other factors the City deems relevant.
- G. Adherence to Airport Layout Plan (ALP) Required. The ALP depicts the entire property of the Airport and identifies existing facilities and plans for future development. The ALP reflects the existing and proposed allocation of areas of the Airport to specific operations and support functional usage. No use, occupancy, construction, modification or improvement that is inconsistent with the Airport's FAA-approved ALP shall be viewed as desirable by the City. The conversion of any area of the Airport to a substantially different use than that shown in the approved ALP could adversely affect the safety, utility or efficiency of the Airport. Only upon a determination by the City that a particular construction, modification or improvement would serve the needs of the Airport public for facilities or services, and that a change in circumstances is evident such that the need for space for such facilities or services was not anticipated at the time the most recent ALP was submitted to the FAA for approval, will the City consider making application to the FAA for approval of a revision of the ALP pursuant to the request of an Applicant or Lessee. Nothing contained in this policy shall require the City to make such application.

- H. Development of Vacant Airport Property. Any application for permission to develop vacant airport properties shall include, in addition to all other required materials, a site plan depicting the nature and location of the proposed development. Before actual development, the site plan must be approved by the City.
- I. Liens or Encumbrances to Airport Property. The tenant is given the right by the City to mortgage its interest in the Lease, under one or more leasehold Mortgage(s) and assign its interest in this Lease, as collateral security for such Mortgage(s) to secure any bona fide loan upon the condition that all rights acquired under such leasehold Mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in the Lease.
- J. Financing Airport Development. The City is under no obligation to provide financing, or to make any improvements to Airport property to facilitate leasehold improvements proposed by an existing or prospective Lessee. If such a Lessee cannot demonstrate the financial means to implement and pay for such development that may be an indication that the proposed development would not be in the best interests of the City or the public using the Airport. Nevertheless, once an Applicant or Lessee has demonstrated the requisite financial responsibility, the City may choose to pursue any federal, state or City funds to contribute to the leasehold improvements, if in doing so there would be no diversion of funds away from capital improvements or the Airport capital budget program planned by the City.
- K. General Rights and Privileges Granted. Airport Leases are designed to accomplish one or more of three basic rights or privileges: the right for a Person to use the landing area and other public Airport facilities in common with others so authorized; the right to occupy Airport Property, and to use exclusively, certain designated premises; and/or the commercial privilege or the franchise right to offer goods and services to the public who use the Airport. The City will not enter any Lease without receipt of adequate consideration for the rights granted therein.
- L. Control Over Operations. Any Lease granting the right to serve the public on the premises of the Airport shall be subject to terms and conditions reserving to the City sufficient control over operations to ensure that the Lessee will treat patrons fairly. The Lessee must agree to make available its services and facilities on fair and reasonable terms, and without unjust discrimination.
- M. Control over Aeronautical Activity and Development. The City will enter into no Lease that would require it to divest itself of the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, or the right to prevent any Lessee from erecting, or permitting to be erected, any building or other structures that might limit the usefulness of the Airport or constitute a hazard to aircraft. The City will enter into no Lease that would require it to divest itself of, or limit its right to develop or improve the Airport as it sees fit, regardless of the desires or views of any Lessee and without interference or hindrance from such a party.

- N. Airport Minimum Standards. The Airport Minimum Standards set forth the qualifications which must be met by a Lessee conducting certain aeronautical activities at the Airport. They establish a basis for practical negotiations between the City and potential Lessees offering such activities; however, prospective Lessees should be aware that the City, if presented with a choice between multiple potential Lessees for a single space or facility, will give preference to Lessees who can offer the City and the public the highest standard of quality and service which may well exceed the Airport Minimum Standards for a proposed activity. Existing and prospective Lessees shall understand that the City may increase its Airport Minimum Standards from time to time, in order to ensure a higher quality of service to the public. Only in the rare circumstance, where the aviation community at the Airport has encountered difficulty in attracting a competent service entity, shall the City consider waiving an Airport Minimum Standard to allow a period of initial development. In all other circumstances, it is the policy of the City not to enter into Leases with Lessees who cannot meet the applicable Airport Minimum Standards.
- O. Off-Premises Access. The City will not enter into Leases which grant access to public landing areas by aircraft normally stored and serviced on land adjacent to, but not a part of the Airport.
- P. Waivers of Immunity. The City will enter into no Leases that require it to waive any sovereign, governmental or other immunity to which it may be entitled, or that would require it to submit to the laws of any state other than those of the State of California.
- Q. Indemnification. Every Lessee desiring to Lease Airport property shall agree to indemnify and hold the City, its officers, officials, agents, representatives and employees from and against any and all injuries, damage or harm, or any nature whatsoever, which may result from its use or occupancy of Airport property.

### **Section 9 - Written Agreement**

All Persons, prior to the commencement of construction of leasehold improvements or operation of an Aeronautical Activity as defined herein, shall enter into a Lease with the City setting forth the terms and conditions by which the Person shall occupy and use Airport property. Leases entered into by the City are designed to protect the public interest and may contain more restrictive clauses than private sector leases, are to be in a form approved by the City's legal counsel and shall, at a minimum; conform to local/regional standards of tenant responsibility and liability.

Each Lease shall include all provisions required by law and obligations placed upon the City by all federal and State agencies including, but not limited to, compliance with all federal, state and local laws and regulations pertaining to the use of the leased premises. Other Lease provisions contain standard language, developed through continuous review and revision of the document for conformance to FAA regulations, real estate law, changing economic conditions and other risks associated with land ownership. A sample of that document is available for review.

## **Section 10 - FAA Required Lease Provisions**

In addition to the minimum terms and conditions listed in Section 9, each Lease shall contain provisions requiring the Lessee to furnish services on a reasonable basis to all users thereof, and charge reasonable and not unjustly discriminatory, prices for each unit or service, provided that the lessee may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

## **Section 11 – Rentals, Rates, Fees, and Charges**

- A. Financially Self-Sufficient. The City has an obligation to make the Airport as self-sufficient as possible under the circumstances existing at the Airport at any given point in time. Toward this end, the City, through its Leases, and by other means available to it, shall endeavor to recover the cost of providing its facilities, through rentals, fees or other charges. All Leases shall provide for adequate consideration to be received by the City in compensation for the rights and privileges therein granted. It shall be the policy of the City to seek Lease terms and conditions that, while fair and nondiscriminatory, provide the most advantageous returns to the City.
  
- B. No Unjustifiably Discriminatory Rates. Each Lessee shall be subject to rates, fees, rentals and other charges (e.g., fuel flowage fees, hangar rentals, percentages of gross volume of business, etc.) as may be currently applicable to, or being received from others making the same or similar uses of the Airport, utilizing the same or similar facilities. Nevertheless, in respect to a contractual commitment from any Lessee, the City may charge different rates to similar users of the Airport if such rates are nondiscriminatory in purpose. Differences in values of properties involved, and the extent of use made of common use facilities may be factors to be considered. Seldom will each Airport user have properties of the same value nor will their use and impact upon common facilities be the same. If one Lessee is in what is considered a prime location, and another is in a less advantageous area, there could logically be a differential in the fees and charges, to reflect this advantage of location. This factor might also influence the rental value of the property. If one Lessee rents office and/or hangar space and another builds its own facilities, this would provide justification for different rental and fee structures; these two Lessees would not be considered essentially similar as to rates and charges even though they offer the same services to the public.
  
- C. Rental Rate. The City has an obligation to make the Airport as self-sufficient as possible under the circumstances existing at the Airport at any given point in time. Toward this end, the City, through its Leases, and by other means available to it, shall endeavor to recover the cost of providing its facilities, through rentals, fees and other charges, All leases shall provide for adequate consideration to be received by the City in compensation for the rights and privileges therein granted. It shall be the policy of the City to seek Lease terms and conditions that, while fair and nondiscriminatory, provide the most advantageous returns to the City.



Competition may determine applicable rates and charges. In situations where leases are awarded as the result of competition, said Leases shall be subject to the financial terms and conditions proposed therein. Leases obtained through this process may offer returns that are higher than those being received from existing leases at a given point in time.

The alternative in a rental process is to define a rental rate based on the current market value of the subject property and then negotiating within an adopted range of pricing, based on the relative merits and local benefits identified for the particular lease agreement.

The range of rental price negotiation currently allowed to the City under this policy is no more than  $\frac{3}{4}$  of a cent per square foot of raw land Below the market price and no more than 1 (One) cent Above the market price of the land.

- D. Periodic Adjustment of Rates. Providing for adjustments to rental rates and Airport user fees facilitates parity of rates and charges between new and long-standing Lessees and enables the Airport to remain as self-sustaining as possible under the circumstances existing at any given point in time. Each lease shall be adjusted annually in accordance with the City's adopted escalation policy and based on the Consumer Price Index for all Urban Consumers San Francisco-Oakland Metropolitan area published immediately before the Adjustment Date. All leases with a term of five years or more shall contain provisions subjecting the rental rates to a periodic adjustment of rent based on a current appraisal of comparable properties within the airport area.

Under no circumstances will the rental rates be adjusted to amounts less than the current rate in effect at the time of the review. Under no circumstance will any single adjustment exceed 5% of the current rental rate in effect at the time of the review.

- E. "Pioneer" Periods Disfavored. In the case of a new general aviation Lessee, offering services not previously available to the public at this Airport, the City may choose to offer reduced rental rates or other inducements to obtain a Lessee, recognizing that it may well be a non-profit venture during its pioneering period. In such circumstances, the "incentive rate" shall be offered only during a specific "pioneer" period, and shall be defined to end on a specified date. Future Lessees coming on the Airport following the pioneer period will be expected to pay the comparable standard rates and charges based on then-current values, rates and charges, and the City shall not be obligated to offer subsequent Lessees a pioneer period. Nor shall it generally be appropriate to offer an established Lessee the benefit of an additional period of reduced rates or other financial inducements, beyond the Lessee's initial pioneer period.

- F. Diligent Bookkeeping Required. Income from a Lessee's Airport operations must be fully accounted for, and adequate records must be kept to evidence amounts due to the City for the various rentals, fees and charges applicable to the Lessee's operations at the Airport. The City shall be entitled to have access to such records upon request.

## **Section 12 – Construction of Leasehold Improvements**

Through its leasing activities, the City seeks to promote consistent, attractive, and compatible high quality development and facilities at the Airport. In addition, it desires to encourage private sector investment in Airport facilities, develop and maintain aesthetic excellence, and high standards of environmental protection. Finally, it desires to create standards of development that maintain the character of the Airport and ensure all construction meets and exceeds all applicable safety standards and requirements.

Each Lease issued by the City shall include the specific development requirements for the construction of leasehold improvements on the Airport; however, following are general provisions and policies applicable to each Airport Lease:

- A. No leasehold improvements shall be designed, planned, constructed, reconstructed, or remodeled without the prior written approval of the City.
- B. Any structure or facility to be constructed or placed upon the Airport shall be constructed in a manner to conform to all safety and environmental regulations of the State of California and the City, and shall be in compliance with the City's current site development requirements, building codes, zoning regulations, and fire regulations as well as FAA design standards.
- C. Responsibility for obtaining appropriate approvals from government authorities and complying with their various regulations, policies and standards shall be that of the Lessee. Potential tenants should be advised that any work done at the Airport may require compliance with not only state by also federal prevailing wage requirements.
- D. Lessees shall obtain at their sole expense all permits required for their construction program and shall pay all taxes, permits, inspection fees, and licenses required for the construction and operation of their facilities and businesses.
- E. The design of any leasehold improvement is to be carried out under the direction of a registered architect or engineer. All design drawings are to be prepared by a registered architect or engineer. Construction drawings are to be certified by their respective professional disciplines – architectural, structural, mechanical, electrical, and civil engineers.
- F. The City may provide infrastructure for the proposed leasehold improvements. Absent the availability of City funding of such improvements, each Lessee may be responsible

for and incur the expenses for connection to all leasehold improvements and facility requirements including public roadways, aprons, taxiways, electrical power, communications, water, sewer and natural gas.

At the City's option, an agreement may be made whereby qualified infrastructure improvements to serve a specific lease site may be financed by the prospective tenant and then reimbursed by the City through a credit in monthly rents due to the City.

Infrastructure constructed to serve a specific lease site that also benefits neighboring lease sites, may be additionally financed by a Reimbursement Agreement, created and administered by the City and executed with the neighboring lease sites when they develop.

The final details of each reimbursement shall be determined through negotiation between the City and the prospective tenant at the time the lease agreement is developed.

- G. Lessees shall obtain the prior written approval from the City to modify, improve, add to or delete facilities from their leased area. If any structure is erected, placed, or altered upon in any other manner than in accordance with plans and specifications approved by the City, such construction will be considered to have been undertaken without approval. This restriction is applicable to landscaping plans as well as architectural plans.
- H. Lessees shall suppress, at their own expense, and to the satisfaction of the FAA, all electromagnetic interference with radio guidance, safety devices or with any electric or electronic equipment or installations on or associated with the Airport
- I. The City assumes no responsibility with regard to the ability of the Lessee to complete construction or otherwise meet the Terms and Conditions of its Lease nor does it assume any responsibility for an error, fault or omission in the plans and specifications that have been approved. The City reserves the right to serve notice that action must be taken to remedy any improper situations.
- J. Noise, dust, odors, storm water detention, water quality, and smoke generation are of particular concern in the design and operation of any facility on the Airport. Therefore, the design and construction of all facilities shall comply with all federal, state, and local environmental regulations applicable to the Airport.
- K. The City or its representative(s) shall have the right at reasonable times to visit sites and enter buildings that are completed or in the process of being built, changed, repaired, moved or demolished.