



REQUEST FOR PROPOSALS

FOR

FULL SERVICE FIXED BASE OPERATOR

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REQUEST FOR PROPOSALS

Sealed proposals addressed to Mr. Mike R. Perez, City Manager, City of McAllen, will be received on **December 01, 2009** until **3:00 p.m.**, in the Purchasing and Contracting Department (3rd Floor of McAllen City Hall). Proposals must be in the City of McAllen's possession on or before the aforementioned date and time (no late proposals will be accepted).

FULL SERVICE FIXED BASE OPERATOR McALLEN-MILLER INTERNATIONAL AIRPORT

The City of McAllen (hereinafter referred to as ("City")) requests proposals for the lease, operation and appropriate improvement of a Fixed Base Operator (FBO) leasehold at McAllen-Miller International Airport (Airport). The Airport is owned by the City of McAllen and operated by the Department of Aviation. All proposers are required to submit a proposal guarantee in the amount of fifty thousand dollars (\$50,000.00) payable without condition to the City of McAllen. This proposal guarantee may be in the form of a Bid Bond from a reliable surety company licensed to operate in the State of Texas or a certified cashier's check, payable without recourse to the City of McAllen.

The City of McAllen (hereinafter referred to as ("City")) requests proposals for the lease, operation and appropriate improvement of a Fixed Base Operator (FBO) leasehold at McAllen-Miller International Airport (Airport). The Airport is owned by the City of McAllen and operated by the Department of Aviation.

Bidders receiving a "NOTICE TO BIDDERS" and/or "REQUEST FOR BIDS" notice in the mail or reading same in the newspaper are advised that the bidding documents can be downloaded from the City of McAllen web page address: www.mcallen.net/bids, or may obtain copies of same by contacting the office of:

SANDRA ZAMORA, DIRECTOR OF PURCHASING AND CONTRACTING, LOCATED AT 1300 HOUSTON AVENUE, McALLEN, TX 78501 by calling (956) 681-1130 or by e-mailing your request to the following e-mail address: szamora@mcallen.net.

Be advised that if your company **downloaded the bidding documents from the web page and is contemplating on bidding this project you must register** with the Purchasing and Contracting Department, so that any changes/additions via Addendum form can be forwarded to your company. (Register with the Purchasing & Contracting Department by phone, fax, or e-mail. Please include your company name, address, phone and fax number, as well as, contact person). Questions concerning this project may be directed to Phil Brown, Director, by calling (956) 681-1527.

The City of McAllen reserves the right to refuse and reject any or all proposals and to waive any or all formalities or technicalities or to accept the proposal to be the best and most advantageous to the City, and hold the proposals for a period of **60** days without taking action. Proposals submitted past the aforementioned date and time will not be accepted.

Hand-deliver Bids: 1300 Houston Avenue, Purchasing & Contracting Department (3rd Floor)
If using Land Courier (i.e., FedEx, UPS): 1300 Houston Avenue, Purchasing & Contracting Department (3rd Floor),
McAllen, Texas 78501
Mail Bids: P.O. Box 220, McAllen, TX 78505-0220

A pre-proposal conference will be held **October 27, 2009** at **10:00 a.m.**, in the Large Conference Room (2nd Floor) of McAllen City Hall. All prospective bidders are encouraged to be in attendance.

Envelopes must be clearly marked: **Project No. 12-09-S02-01**
FIXED BASE OPERATOR 2009

INFORMATION TO RESPONDENTS
FULL-SERVICE FIX BASED OPERATOR (FBO)

I. Purpose

The City of McAllen is soliciting competitive proposals for lease, operation and appropriate improvement of a Fixed Base Operator (FBO) leasehold at McAllen-Miller International Airport (Airport). The Airport is owned by the City of McAllen and operated by the Department of Aviation.

Award of the Full-Service Fixed Based Operator (FBO) Lease Agreement includes the non-exclusive right, privilege, and obligation to provide 24-hour full-service fixed based operator services to general aviation and limited service for commercial air carriers and cargo operators.

II. History and Current Situation

McAllen-Miller International Airport is a primary non-hub commercial service airport with approximately 60,000 annual operations and 100 based aircraft. The airport is a designated port of entry and is a popular border crossing point for general aviation prop and turbojet traffic. General Aviation (GA) Federal Inspection Services (FIS) are available on the first level of the terminal building and can be accessed through a dedicated GA FIS ramp adjacent to the terminal. The airport hosts four (4) commercial service passenger airlines that provide daily flights to domestic destinations. Continental Airlines, American Airlines, Delta Air Lines, and Allegiant Air provide at least 14 flights daily.

The airport serves a market area that includes the Northern Rio Grande Valley and Northeastern Mexico. The market area population on the U.S. side of the U.S.-Mexico border is approximately 700,000 people. Estimates of the population in the neighboring town of Reynosa, Mexico, range from 750,000 to 1,000,000 people. Principal economic activities include agriculture, manufacturing, distribution and warehousing. The region also attracts a large number of shoppers from Mexico and seasonal retirees from the Northern regions of the United States.

McAllen-Miller International Airport has two designated FBO areas of sufficient size to accommodate (2) full-service FBO areas. (See Attachment C) Currently both areas are leased to McCreery Aviation, Inc. To distinguish between the two areas, the area for which proposals are being solicited is commonly known as the "South FBO." The South FBO consists of a terminal building, approximately 3,066 square feet, two hangars, approximately 12,054 square feet and 12,226 square feet, and a set of T-hangars approximately 7,751 and 8,149 square feet each and comprised of 8 individual hangars (16 total individual hangars). All of the facilities in the South FBO are owned by the City of McAllen.

The South FBO lease to McCreery Aviation, Inc, expires on May 1, 2010. It is the City's intent to enter into negotiations with a selected operator in sufficient time to complete a lease in sufficient time for the selected operator to occupy and begin operations in the South FBO on or about May 1, 2010.

INFORMATION TO RESPONDENTS Continued:

Respondents to this RFP may choose to submit a proposal to:

- Lease or Purchase and repair/remodel/refurbish the existing hangars
- Purchase the existing structures from the City of McAllen, and demolish and replace with new structures. The purchase price for the existing structures will be mutually agreed upon between both parties.

Either option requires the successful proposer to meet all requirements of an FBO as established by the McAllen-Miller International Airport's Minimum Standards.

III. Services Required

The successful FBO proposer will be required to provide, but will not be limited to the following services:

- a. Aircraft arrival guidance
- b. Flight line servicing
- c. Storage and sale of Into-Plane Aviation Fuel and Petroleum Products
- d. Major airframe, power plant and avionics maintenance service to aircraft and service to aircraft equipment and accessories as required by aircraft operating or based at the airport
- e. Ramp assistance to aircraft
- f. Aircraft parking and tie-down services
- g. Patron/passenger services, including flight planning and weather briefing
- h. Transportation services between the Leased Premises and other places of origin and destination on the Airport for FBO's patrons arriving on non-commercial aircraft
- i. Emergency services to disabled aircraft within its Leased Premises or on any runway or taxiway at the request of the owner or operator of the disabled aircraft or the Director of Aviation, or his designated representative
- j. Provide services for minor maintenance functions in an area immediately adjacent to FBO's hangars and ramps, excluding the General Aviation apron(s).
- k. Other such services associated with the business of a Full-Service FBO, subject to consent in writing by Director of Aviation

INFORMATION TO RESPONDENTS Continued:

IV. Services and Equipment

In addition to the services described in Section III above, the successful FBO proposer shall provide passenger and cargo aircraft ground support services on the Leased Premises (and to military aircraft upon lease and non-leased parking area) as required. Limited services shall also be provided to scheduled and non-scheduled air transportation operators, domestic and foreign, who are, and who are not parties to agreements with the City authorizing the use of the main public terminal facility at the Airport. Such services shall include provision within the Leased Premises of aircraft tugs, service trucks, generators, passenger loading ramps, baggage handling facilities, aviation fuels, lubricants, water, lavatory and cleaning services, and trash and waste removal, as well as arranging for the provision of surface transportation equipment for the transportation of passengers and/or cargo between the Leased Premises and other points on the Airport. Limited services for scheduled and non-scheduled carriers and cargo operators authorized to operate from terminal may include, but are not limited to services such as fueling, and minor repairs.

The services described above shall be provided by the successful FBO proposer and should be comparable to the type of services currently offered by the North FBO. The intent is to ensure the highest level of service reasonably attainable by the aviation community and the public at a competitive rate. The City does not guarantee to the successful respondent any customer base or level of patronage.

Respondents may either choose utilize the mobile fueling option or install a fuel storage system containing safety fixtures and filtration systems to assure airline-type quality.

If the respondent chooses to install a fuel storage system, it is required to have at least one (1) storage tank for each type of fuel the Operator will provide. The storage system must include adequate fuel spill prevention features and containment capabilities, together with an approved fuel spill containment and countermeasure control plan, and must comply with all environmental laws and regulations as may be amended from time to time.

All fuel dispensers shall meet all applicable safety requirements, with reliable metering devices subject to annual independent inspection and certification. Parking areas for mobile dispensers shall comply with all applicable local, state, and federal safety requirements including secondary containment requirements.

The FBO shall provide or arrange in a reasonable manner for the provision of sufficient equipment, supplies, and availability of parts equivalent to that required for certification as an FAA approved repair station. Also, all equipment shall be maintained and operated in accordance with all applicable local, state, and federal industrial codes.

V. Site Development

INFORMATION TO RESPONDENTS Continued:

The successful FBO proposer shall be required to comply with the following site development provisions:

- a. Provide adequate outside parking, storage, mobility of aircraft, and ground equipment parking.
- b. Site shall include a fully enclosed floor space structure with a minimum of 15,000 square feet for conducting the licensed aeronautical activities, and shall incorporate into this structure public facilities consisting of lounge, offices, public restrooms, and telephone facilities.
- c. Provide land support areas within the designated South FBO for, but not limited to, automobile parking for employees and customers, and pedestrian access (including disabled individuals) to offices, lounges, and aircraft.
- d. Provide sufficient area within the designated South FBO for permanent storage tanks in such fuel storage area on the Airport as may be specified by the City.

VI. Airport Fueling and Spill Protection

The successful FBO proposer is required to provide as an essential service, the storage and sale of into-plane aviation fuel and petroleum products.

VII. Hours of Operations

The successful FBO proposer shall offer twenty-four (24) hour service, every day, including holidays, or during such other hours as may be mutually agreed to by the Director of Aviation and the Operator.

VIII. Personnel and Training

The person with managing responsibility for the FBO shall be trained and qualified for the position held, as specified in FAR Part 139. FBO operators/entities serving the public shall document initial training and testing of supervisors and line personnel directly involved in servicing aircraft.

IX. Business Plan

Each proposer must include a Business Plan with its proposal entitled "Business Plan – FBO Leasehold". The business plan should include, but not be limited to the following:

- a. List of FBO activities and services to be provided

INFORMATION TO RESPONDENTS Continued:

- b. Sketches or drawings showing any development/improvement plans for the facilities
- c. Marketing plans for the primary business to be conducted
- d. Amenities to be included to attract business to the operation
- e. A financial analysis including both capital development costs and payback, as well as operating costs projected through at least the first full three (3) years of business
- f. Names, addresses, and backgrounds of principals operating the business
- g. Names, addresses and backgrounds of persons who will manage the business on site (if different from Subparagraph f)
- h. A brief description of principals' experience in operating FBO businesses and understanding of FBO business practices
- i. Anticipated source of financing for capital improvements and short-term operating costs for at least the first full year
- j. Description of plans regarding fueling. How many types of fuel are anticipated? How will fuel be dispensed and managed? List of proposed fuel suppliers
- k. A brief description of your anticipated Storm Water Protection Plan and Spill Prevention Counter and Control measures, and how you will mitigate typical environmental issues encountered by FBO operators

X. Proposal Requirements

Each proposal must address the following issues on the forms in Exhibit A or in attachments as appropriate:

1. Name, position, phone and fax numbers of contact person
2. Names of principals in the firm; years firm has been in business
3. Organizational Chart with the number of staff by discipline including those required in Section VIII
4. List at least three (3) references, with dates, names, addresses and phone numbers of representatives who can be contacted and attest to proposer's FBO experience and knowledge of FBO operations
5. Proposed Business Plan

INFORMATION TO RESPONDENTS Continued:

6. DBE/MBE/WBE and Affirmative Action status of firm
7. Proposer shall demonstrate experience in the management and services provided by Fixed Based Operator
8. Any other items which the proposer deems necessary
9. Submit a completed Authorization for Release of Information form. This form is required for the individual submitting and signing the proposal. If the proposer is a Partnership or Joint Venture, both partners or each of the Joint Venturers must submit a form. If the proposer is a corporation, the authorized officer(s) must submit a form.

The proposer must demonstrate financial responsibility by providing the past three (3) fiscal years' financial statements prepared in accordance with generally accepted accounting principles and with an independent CPA's statement attached to each statement. At a minimum, the bidder shall submit a Balance Sheet, Statement of Changes in Fiscal Position, Income Statement and all accompanying footnotes.

The proposer must be licensed to do business in the State of Texas. All proposers are required to submit a proposal guarantee in the amount of fifty thousand dollars (\$50,000.00) payable without condition to the City of McAllen. This proposal guarantee may be in the form of a Bid Bond from a reliable surety company licensed to operate in the State of Texas or a certified cashier's check, payable without recourse to the City of McAllen.

1. The security may be held by the City for a period no longer than sixty (60) days after award of the contract. The security will be returned (without interest) to all respondents except the successful proposer, which will be held until a performance bond is received.
2. The successful proposer shall enter into an agreement with the City within forty-five (45) days after award of the contract by the McAllen City Commission, or shall forfeit the Fifty Thousand Dollar (\$50,000) deposit or bond as liquidated damages. The McAllen City Commission may grant additional time to execute an agreement if warranted. The agreement will be binding upon execution.

The City reserves the right to reject any proposal that does not specifically include the above minimum qualifications.

All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by the proposer should be clearly noted on the pages where confidential information is contained; however, the Airport cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by the proposer may not be considered confidential under Texas Law, or pursuant to a Court order.

INFORMATION TO RESPONDENTS Continued:

Additional operational data is attached as Exhibit B, to assist proposer in determining Full-Service FBO requirements.

XI. The Agreement

Goals - The Agreement, a draft of which is included as Appendix I, is substantially similar to the final contract to be executed by the successful FBO proposer. The successful FBO proposer shall be granted the rights to operate as a Full-Service FBO in the area designated by the Director of Aviation.

The Airport's specific goals for a FBO lease agreement include, but are not limited to, the following:

1. Ensuring the safe conduct of aeronautical activities at the Airport
2. Providing a level of customer service that will further the efforts of the Airport in attracting new users
3. Providing the Airport with maximum flexibility to meet the public's general aviation needs.

Transition Period - The current South FBO Lease Agreement will expire on May 1, 2010. In the interest of keeping the current customer base, the City will work closely with the current FBO tenant and the selected FBO proposer to effectuate a smooth transition. The selected proposer should be prepared to provide at least basic fueling services as of the effective date of the Lease Agreement. The selected FBO proposer should also be prepared to assume all subleases of existing tenants as of the effective date of the lease. Respondents should include a transition plan for either the demolition of the existing hangars and construction of new hangars or the rehabilitation of the existing hangars. The City will permit limited FBO services for a period of thirty (30) days from the effective date of the lease. After the sixty (60) day period, full FBO services must be available to the public.

Designated FBO Lease Area - The designated FBO lease area for the proposed FBO encompasses approximately 152,000 square feet available for building, hangar, parking, and support area improvements and 191,162 square feet available for ramp and aircraft parking space. The total area designated for the FBO area is approximately 343,000 square feet. These square footages are approximate and shall be determined by an official survey of the property.

Expansion for Aeronautical Purposes - During the term of this FBO Lease Agreement, the City of McAllen plans capacity expansion of air carrier, air cargo, and general aviation areas. A clause in the FBO Lease Agreement will be included giving the FBO a specified period of time from the date of written notice to vacate areas that are required for expansion of aeronautical services. If the provision of this clause is executed, the square footage of the leasehold will be reduced, and as a result, the annual rental fee will be adjusted accordingly.

INFORMATION TO RESPONDENTS Continued:

Insurance - The City shall be named as an additional insured. The successful proposer shall be required to provide and maintain the following types of insurance, at a minimum, in the limits specified by the City and as amended from time to time:

1. Aircraft Liability: \$ 100,000 per seat
\$1,000,000 per accident
2. Comprehensive General Liability to Include Premises Liability, Products and Completed Operations Liability and Hangar Keepers Legal Liability:
\$ 1,000,000 Combined Single Limit Bodily Injury and Property Damage, Each Occurrence
3. Workers Compensation and Employers Liability: Statutory Limits
4. Other activities insured as established by Director of Aviation.
5. Certificates or other documentation evidencing the existence of such insurance shall be kept on file with the Department of Aviation. Notice of cancellation of any such insurance shall be given to the Director of Aviation at least thirty (30) days prior to cancellation.

The insurance policy shall contain a waiver of subrogation endorsement in favor of the City and thirty (30) days notice of termination to be delivered to the Director of Aviation in the event the policy is canceled or ceases to exist for any reason.

Obligations of the Selected FBO Proposer

1. Making appropriate improvements on the FBO leasehold
2. Providing custodial and landscaping services in leased area
3. Employing trained personnel, who shall be clean, courteous, efficient, and neat in appearance
4. Paying all taxes assessed against Lessee's furnishings, equipment, or stocks of merchandise and supplies, including obtaining and paying for all permits, licenses, or other authorizations required by authority of law in connection with the operation of its business at the airport
5. Complying with applicable federal, state, and local laws, regulations, and ordinances, etc., including the rules and regulations governing the use and operation of the Airport, including the Americans with Disabilities Act

INFORMATION TO RESPONDENTS Continued:

6. Keeping accurate records and books of account in accordance with Generally Accepted Accounting Principles (GAAP) in order to submit timely monthly statements to the City
7. Complying with and obtaining all appropriate permits for any construction on the leased premises, and comply will all appropriate codes, regulations, and ordinances of the City of McAllen and the State of Texas
8. Remaining open for the purpose of providing services for such periods as may be necessary to meet reasonable demands for services
9. Mitigating all environmental hazards possible with proper storage, handling, and disposal of all fuels, lubricants, and other materials utilized in the operation of an FBO
10. Providing the Department of Aviation with a listing of subleasing tenants and location of their sublease locations.

Rates and Charges - For the rights and privileges set forth in this RFP, the selected FBO proposer shall pay the following to the City

1. A minimum annual rental rate payable in monthly installments based on rates and charges approved by the City and calculated based on the type and amount of area leased. Current approved rental rates are:
 - a. Ground Lease/Fuel Farm: \$0.30 per square foot per year
 - b. Ramp Lease: \$0.02 per square foot per year
 - c. Parking Lot/Support Areas: \$0.02 per square foot per year
 - d. City owned hangars \$2.40 per square foot per year
2. Fixed Base Operator's Permit fee: \$125.00 per month
3. A fuel flowage fee: \$0.06 per gallon, payable monthly

Rates and charges are subject to change each January 1st during the term of the agreement or any renewals or extensions. The annual adjustment shall not exceed the change in the cost of living as measured by the Consumer Price Index-(U) as established by the U.S. Department of Labor.

XII. Terms

The selected FBO proposer will be granted the right, for a fifteen (15) year period, to establish and operate a Full-Service FBO on the grounds of the McAllen-Miller International Airport. The agreement shall contain a provision allowing the successful FBO proposer to have an opportunity two (2) five-year (5-year) lease renewal options. Upon acceptance of the proposal, a final FBO lease agreement will be prepared by the City and will be signed by the successful FBO proposer.

INFORMATION TO RESPONDENTS Continued:

XIII. Evaluation Process & Criteria

The following shall be taken into consideration when selecting the successful proposer:

1. FBO Experience
2. Fiscal Responsibility
3. Proposed Business Plan
4. Proposed Customer Service Enhancements or Improvements
5. Site Development Proposal
6. Proposed Transition Plan for Existing Tenants
7. Additional Aeronautical Services Provided
8. Proposed Staffing and Organizational Structure
9. Oral Presentation to the City Commission, if required by the City Commission

Any other factors the City may consider pertinent to the selection of the successful proposer shall be considered at the sole discretion of the City. The above shall not be construed to limit the City in any way as to evaluation criteria. The order of importance placed on each of the above is at the discretion of the City. The above list shall not be construed to indicate order of importance placed on any single factor.

XIV. Leasehold Award

It is estimated that this FBO leasehold will be awarded after the authorization is given by the City Manager to negotiate an FBO lease agreement. A copy of a substantially completed lease agreement is attached. Therefore, the intention of ranking the interested firms through the proposed evaluation process is to award the FBO leasehold to the selected firm based on qualifications and rank/rating. The City does not guarantee that an FBO Lease Agreement will be awarded as a result of the RFP.

XV. Inquiries

Any informational questions for this request for proposals should be directed to Philip K. Brown, Director of Aviation at the McAllen International Airport by calling (956) 681-1500.

XVI. Conflict of Language

In the event of any discrepancy between the Request for Proposal and the FBO Lease Agreement entered into after selection by the City, the terms of the FBO Lease Agreement shall prevail.

INFORMATION TO RESPONDENTS Continued:

XVII. Response Deadline

Responses to the RFP must be addressed to Mike R. Perez, City Manager, City of McAllen and received at the Purchasing and Contracting Department, (3rd Floor, City Hall, 1300 Houston Avenue (P. O. Box 220, McAllen, TX 78505-0220), McAllen, TX 78501), by 3:00 p.m., December 01, 2009 for consideration. Fifteen (15) complete sets of the response consisting of the minimum number of typewritten pages sufficient to provide necessary information shall be submitted no later than this date and time in a sealed envelope indicating that its contents are in response to the Request for Proposals for **“FULL SERVICE FIXED BASE OPERATOR (FBO)”**.

RFPs will be accepted in person, by United States Mail, or by private courier service. No RFPs will be accepted by oral communication, telephone, electronic mail, telegraphic transmission, or facsimile transmission. RFPs may be withdrawn prior to the above scheduled time set for closing. Alterations made before RFP closing must be initiated by respondents guaranteeing authenticity.

Hand-deliver Bids: 1300 Houston Avenue, Purchasing & Contracting Department (3rd Floor)

If using Land Courier (i.e., FedEx, UPS): 1300 Houston Avenue, Purchasing & Contracting Department (3rd Floor), McAllen, Texas 78501

Mail Bids: P.O. Box 220, McAllen, TX 78505-0220

XVIII. Addenda and Modifications

Any changes, additions, or clarifications to the RFP are made by amendments (addenda). Any respondent in doubt as to the true meaning of any part of the RFP or other documents may request an interpretation from the Purchasing and Contracting Department. At the request of the respondent, or in the event the Purchasing and Contracting Department deems the interpretation to be substantive, the interpretation will be made by written addendum issued by the Purchasing and Contracting Department. Such addendum will be sent to all respondents receiving the original RFP and will become part of the RFP package having the same binding effect as provisions of the original RFP. No verbal explanations or interpretations will be binding. In order to have a request for interpretation considered, the request must be submitted in writing and must be received by the City of McAllen Purchasing and Contracting Department no later than five (5) days prior to the RFP closing date. The City does not assume responsibility for the receipt of any addendum sent to respondents.

XIX. Request for Proposals Preparation Costs

Issuance of this RFP does not commit the City of McAllen, in any way, to pay any costs incurred in the preparation and submission of an RFP. All costs related to the preparation and submission of this RFP shall be borne by the respondent.

INFORMATION TO RESPONDENTS Continued:

XX. Equal Employment Opportunity

Respondent agrees that they will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age, disability, or in any way violate Title VII of 1964 Civil Rights Act and amendments, except as permitted by said laws.

XXI. Anti-Lobbying Provision

During the period between RFP submission date and the contract award, respondents, including their agents and representatives, shall not directly discuss or promote their RFP with any member of the McAllen City Commission or City staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations. Violation of this provision may result in the rejection of the respondent's RFP.

XXII. Authorization to Bind Respondent to Statement of Qualifications

RFPs MUST give full firm name and address of respondent, and be manually signed. Failure to do so will disqualify your RFP. Person signing bid must show title or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Respondent whether corporation, partnership, or individual, shall also be stated in the RFP. A corporation shall execute the RFP by its duly authorized officers in accordance with its corporate by-laws and shall also list the state in which it is incorporated. A partnership Respondent shall give full names and addresses of all partners. All partners shall execute the proposal. Partnership and Individual Respondent/Bidder shall state in the proposal the names and addresses of all persons with a vested interest therein. The place of residence of each Respondent, or the office address in the case of a firm or company, with county and state and telephone number, shall be given after the signature.

XXIII. Confidential Information

Any information deemed to be confidential by the respondent should be clearly noted on the pages where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential by the bidder may not be considered confidential under Texas Law, or pursuant to a Court order.

XXIV. Audit

The City of McAllen reserves the right to audit the respondent's books and records relating to the performance of this contract. The City of McAllen, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, to examine, and to make copies

INFORMATION TO RESPONDENTS Continued:

XXIV. Audit (Continued):

of or extracts from the books of account and records maintained by the vendor(s) with respect to the Supply/Service and/or Purchase Contract. If such audit shall disclose overpayment by City to vendor, written notice of such overpayment shall be provided to the vendor and the amount of overpayment shall be promptly reimbursed by vendor to the City. In the event any such overpayment is not paid within ten (10) business days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.

XXV. Jurisdiction

Service Contract(s) executed as part of this solicitation shall be subject to and governed under the laws of the State of Texas. Any and all obligations and payments are due and performable and payable in Hidalgo County, Texas.

XXVI. Venue

The parties agree that venue for purposes of any and all lawsuits, cause of action, arbitration, and/or any other dispute(s) shall be in Hidalgo County, Texas.

XXVII. Conflict of Interest

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of McAllen not later than the 7th business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

For more information or to obtain Questionnaire CIQ go to the Texas Ethics Commission web page at www.ethics.state.tx.us/forms/CIQ.pdf.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS "C" MISDEMEANOR.

Failure to manually sign the RFP will disqualify it.

THE CITY OF MCALLEN RESERVES THE RIGHT TO REFUSE AND REJECT ANY OR ALL RFP'S, AND TO WAIVE ANY OR ALL FORMALITIES OR TECHNICALITIES, AND TO MAKE SUCH AWARDS OF CONTRACT AS MAY BE DEEMED TO BE THE BEST AND MOST ADVANTAGEOUS TO THE CITY OF MCALLEN.

Confidential Information

Respondents are advised that all confidential records must be submitted in a separate sealed envelope and marked accordingly.

EXHIBIT A

REQUIRED FORMS

Proposer must fill out and submit all applicable forms

EXHIBIT A
CONTACT PERSON

Name

Position or Title

Telephone Number

Fax Number

EXHIBIT A

BUSINESS INFORMATION

- A. Name of Firm (exactly as it is to appear on the Agreement):
- B. Principal Office Address:
- C. Telephone Number:
- D. Contact Person/Title:
- E. Form of Business Entity: (check one and complete appropriate statement)
- ☐ Partnership
- ☐ Corporation
- ☐ Joint/Venture
- ☐ Individual/Sole Proprietor (no additional page required)
- F. Individual authorized to execute a contract on behalf of business entity:

Name

Title

Address

EXHIBIT A
FINANCIAL INFORMATION

Fidelity Information

Have you or any entities in which you have had an ownership interest ever had a fidelity bond canceled or forfeited?

Yes () No (). If yes, state name of bonding company, date, amount of bond and reason for such cancellation or forfeiture.

Bankruptcy Information

Have you or any entities in which you have had an ownership interest ever been declared bankrupt?

Yes () No (). If yes, attach statement setting forth date, court jurisdiction, amount of liabilities and amount of assets, type (e.g. Chapter 7 or 11), and resolution or current status.

Credit References (Attach Sheet)

Provide names, titles, addresses and phone numbers of at least five (5) persons/firms (banks and vendors) your company has done business with for at least the most recent three (3) years.

EXHIBIT A

ORGANIZATION STRUCTURE

Attach an organizational chart depicting the proposed on-site organizational structure. Provide the number of each position by discipline, if applicable.

EXHIBIT A

PROPOSER'S SIGNATURE

No proposal shall be accepted which has not been signed and notarized in ink in the appropriate space below:

If Proposer is an INDIVIDUAL, sign here:

Name

Doing Business As

State of _____

County of _____

Subscribed and sworn before me this _____ day of _____, 2009.

Notary

My Commission Expires:

(SEAL)

EXHIBIT A

PROPOSER'S SIGNATURE Continued:

If Proposer is a PARTNERSHIP or JOINT VENTURE, at least two (2) Partners or each of the Joint Venturers must sign here:

Partnership or Joint Venture Name

By: _____

By: _____

State of _____

County of _____

Subscribed and sworn before me this _____ day of _____, 2009.

Notary

My Commission Expires:

(SEAL)

EXHIBIT A

PROPOSER'S SIGNATURE Continued:

If Proposer is a CORPORATION, the duly authorized officer(s) must sign as follows:

Corporation Name

By: _____

Title

By: _____

Title

Dated: _____

(Affix corporate seal if applicable)

State of _____

County of _____

Subscribed and sworn before me this _____ day of _____,
2009.

Notary

My Commission Expires:

(SEAL)

EXHIBIT A

PARTNERSHIP STATEMENT

If a PARTNERSHIP, answer the following:

- A. Date of Organization? _____
- B. General Partnership () Limited Partnership ()
- C. Partnership Agreement Recorded? Yes () No ()
- D. Has the Partnership done business in Texas?
- Yes () No ()
- If yes, when?/where? _____

- E. Name, address, and partnership shares of each partner:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT OWNERSHIP</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- F. If any partner is not an individual, the appropriate business entity statement must also be completed.
- G. A certified copy of the partnership agreement must be submitted.

EXHIBIT A

CORPORATION STATEMENT

If a CORPORATION, answer the following:

A. When incorporated?/Where? _____

B. Is the corporation authorized to do business in Texas?

1. Yes () No (). If so, as of what date? _____

2. If Texas is not state of incorporation:

a. Address of registered office in Texas:

b. Name of registered agent in Texas at such office:

C. The Corporation is held: Publicly () Privately ()

D. Furnish the name, title and address of each officer, director and principal shareholders owning 10% or more of the corporation's issued stock.

OFFICER'S NAME

ADDRESS

POSITION

EXHIBIT A

CORPORATION STATEMENT

(page 2)

DIRECTOR'S NAME

ADDRESS

TITLE

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

PRINCIPAL
SHAREHOLDERS

ADDRESS

PERCENT
OWNERSHIP

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- F. If any principal shareholder is not an individual, the appropriate business entity statement must also be completed for such shareholder.

EXHIBIT A

JOINT VENTURE STATEMENT

If a JOINT VENTURE, answer the following:

A. Date of Organization? _____

B. Joint Venture Agreement recorded? Yes () No ()

C. Have the Joint Venturers done business in Texas?

Yes () No () If yes, when and where?

D. Name, Address, and Percent Ownership of each Joint Venturer:

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENT OWNERSHIP</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. If any joint venturer is not an individual, the appropriate business entity statement must also be completed for such joint venturer.

F. A certified copy of the joint venture agreement must be submitted with the proposal.

EXHIBIT A

REFERENCES

List at least three references. Include point of contact, business name, address, phone number, airport name (if applicable) and other pertinent information:

1. _____

2. _____

3. _____

EXHIBIT A

PROPOSED MANAGER

Name

Current Employment

Attach a resume with references.

EXHIBIT A

DISADVANTAGE BUSINESS ENTERPRISE (DBE) FORM

If Proposer is certified as a Disadvantage Business Enterprise (DBE) through the Texas Unified Certification Program (TUCP), provide the following information:

Name of DBE Firm: _____

State Registration No. _____

If Proposer is certified as a Disadvantage Business Enterprise (DBE) in a state other than Texas provided the following information.

Name DBE Firm: _____

State Issuing DBE Certification: _____

State Agency Issuing DBE Certification: _____

State Registration No: _____

If Proposer intends to use DBE subcontractor or supplier to satisfy the any requirements of the bid/proposal specifications, provide the following information for each subcontractor or supplier:

Name of DBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by firm: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

This form is required for the individual submitting and signing the proposal. If the proposer is a Partnership or Joint Venture, both partners or each of the Joint Venturers must submit this form. If the proposer is a corporation, the authorized officer(s) must submit this form.

I authorize any duly accredited representative of the City of McAllen, including those from the Department of Aviation, to obtain information relating to my activities from law enforcement, financial or lending institutions, credit bureaus, consumer reporting agencies and other airports where proposer may have had or currently has business dealings. This information includes, but is not limited to performance history, criminal history record, arrest, conviction, and financial and credit history.

I further authorize the City of McAllen and the Department of Aviation to request criminal history record information from criminal justice agencies.

I direct you to release such information upon request of the duly accredited representative agency regardless of any agreement I may have made with you previously to the contrary.

I understand that the information you release is for official use by the City of McAllen for the purpose of my response to the Request for Proposals for the South Fixed Based Operator, and such information may be disclosed and released as authorized by law.

I release any individual, including records custodians, from all liability for damages that are alleged or found to be applied to you by me or any third parties on account of compliance or any attempts to comply with this authorization. This release is binding in the future, on my heirs, assigns, associates and personal representative(s) of any nature. Copies that show my signature are as valid as the original release signed by me.

Full Name (PRINT OR TYPED)

SIGNATURE

Date

Other Names or Last Names Used

Date of Birth

Social Security Number

Drivers License No./State

Current Address**Street****City/State****Zip Code**

EXHIBIT B

OPERATIONAL DATA

Operational Data for Calendar Years 2004-2009

EXHIBIT B

OPERATIONAL DATA

Fuel Pumped (Gallons)						
Month	2004	2005	2006	2007	2008	2009
January	132,235	130,075	136,019	154,503	129,737	86,253
February	132,571	114,814	146,572	164,754	138,468	90,787
March	133,251	126,621	146,928	214,106	109,929	96,224
April	113,660	115,542	135,349	170,186	101,938	87,744
May	124,167	106,910	152,487	164,605	114,083	76,054
June	143,187	129,371	124,837	145,269	112,145	89,056
July	122,069	110,833	103,133	112,850	88,982	89,180
August	126,507	148,578	163,574	135,931	103,121	
September	152,124	124,582	136,680	125,823	112,832	
October	136,243	117,381	151,254	113,256	115,453	
November	166,683	128,808	152,254	127,320	85,329	
December	115,985	115,351	153,707	119,958	92,310	
	1,598,682	1,468,866	1,702,794	1,748,561	1,304,327	615,298
Aircraft Operations						
Month	2004	2005	2006	2007	2008	2009
January	4,812	4,938	4,934	4,397	4,758	4,864
February	4,835	4,584	4,937	4,996	5,028	4,157
March	5,762	5,851	6,428	5,782	4,904	4,598
April	4,834	5,487	5,622	5,568	5,155	4,265
May	4,783	4,964	5,402	5,532	5,652	4,585
June	5,516	4,990	4,839	5,406	5,165	4,880
July	5,579	4,618	4,608	5,328	4,058	4,363
August	5,525	5,887	5,501	5,322	4,668	
September	4,915	4,618	5,047	4,593	4,295	
October	5,466	5,218	5,414	5,063	4,655	
November	5,641	5,103	5,912	4,916	4,155	
December	5,200	4,912	4,793	5,299	3,906	
	62,868	61,170	63,437	62,202	56,399	31,712
Based Aircraft						
	2004	2005	2006	2007	2008	2009
Total	104	105	107	105*	105*	104
<i>*Represents an average of 2004, 2005, and 2006</i>						

EXHIBIT C

DESGINATED FBO LEASE AREA

EXHIBIT C

Designated South FBO

Area outlined in Red is the designated South FBO.

Official Survey of South FBO designated area is attached as C-1.



EXHIBIT C-1
SURVEY

SOUTH FBO DESIGNATED AREAS		
AREA	DESC.	AREA (SF)
1	TERMINAL BUILDING	3,066
2	HANGAR 6	12,054
3	T HANGAR 1	7,751
4	T HANGAR 2	8,149
5	HANGAR 3	12,226
6	LANDSCAPE 1	6,746
7	LANDSCAPE 2	5,285
8	VACANT 1	35,051
9	VACANT 2	11,455
10	PAVEMENT 1	23,530
11	PAVEMENT 2	16,209
12	PAVEMENT 3	10,931
13	PAVEMENT 4	191,162

McAlLEN
INTERNATIONAL AIRPORT
SOUTH FBO
DESIGNATED AREAS 2010

ENGINEERING DEPARTMENT
City of McAllen

DATE: 09/23/09
SURVEYED BY: AMBUSTED
DRAWN BY: MB
CHECKED BY: MB
PROJECT NO: MC-XXXX

DATE: 11/14/09
SCALE: 1" = 100'
SHEET NO: 1 OF 1

\\CityOfMcAllen\Projects\Airport Buildings\CAD\Garbato\Airport.dgn
11/14/09 3:11:42 PM
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APPENDIX I
FIXED BASE OPERATOR
LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), dated as of the _____ day of _____, 2009, is entered into by and between the City of McAllen, a municipal corporation of Hidalgo County, Texas (LESSOR) and <COMPANY TO BE DETERMINED> (LESSEE):

WHEREAS, LESSOR owns and operates the airport known as the McAllen-Miller International Airport, hereinafter referred to as "Airport", with the power to lease premises and facilities and to grant rights and privileges with respect to them; and

WHEREAS, LESSEE is engaged in the business of providing Fixed Base Operator services and desires to lease for such purposes certain premises at the Airport and to obtain certain rights and privileges; and

WHEREAS, LESSOR desires to lease to LESSEE, and LESSEE desires to lease from LESSOR, certain demised premises located at the Airport.

1. **Designated FBO Area.** LESSOR has designated an FBO Area, herein after referred to as "South FBO" area, and as such encompasses approximately [REDACTED] square feet that is available for buildings, hangars, parking, and support improvements and 390,688 square feet of improved ramp space. The total area designated for the North FBO area is [REDACTED] square feet. The designated South FBO Area is depicted in Exhibit A, which is attached hereto and made a part hereof.

APPENDIX I—DRAFT LEASE AGREEMENT

2. **Leased Premises.** LESSOR hereby leases to LESSEE and LESSEE hereby leases and takes from LESSOR, the premises identified on Exhibit A which is attached hereto and made a part hereof for all purposes, together with the right of ingress and egress to and from the leased portion of the Airport ("Premises"); provided, however, that said right of ingress and egress shall be held in common with all other lawful users of LESSOR'S Airport. LESSOR, or his authorized representative shall have the right to enter any of LESSEE's improvements located on the leased premises to ensure compliance with terms and conditions herein. LESSOR shall contact LESSEE during normal business hours to gain entrance unless deemed an emergency by the Director of Aviation or his representative.
3. **Term.** The term of this Lease shall be for fifteen (15) years commencing on <Day, Month, Year>, and expiring on <Day, Month, Year>, unless sooner terminated pursuant to the provisions herein. At the termination of this lease, and provided that the LESSEE is not in default of any of the obligations imposed upon it by this Lease, the LESSEE is hereby given and granted the first option and right to lease said property for an additional five (5) year period upon the terms and conditions then offered by the LESSOR. A second five (5) year period shall be available upon termination of the first five (5) year period under the terms and conditions then offered by the LESSOR and provided that the LESSEE is not in default of any of the obligations imposed upon it by this Lease. Written notice of the intention or desire to exercise the options shall be received by LESSOR no earlier than one hundred twenty (120) days prior to the termination of the term in effect. Such option(s) for additional term(s) shall be referenced as amendments to this original lease. If, during the base term of this Lease, LESSEE desires to make capital improvements to the Premises in excess of \$350,000, LESSEE and LESSOR shall negotiate in good faith to extend the base term of the Lease, if said extension is necessary for LESSEE to obtain financing.

During the term of this Lease, LESSOR agrees that it will not enter into an agreement (lease or otherwise) with another Fixed Based Operator at the McAllen Miller International Airport that contains terms and conditions that are more favorable than the terms and conditions contained in this Lease.

4. **Minimum Annual Rent:** As consideration for the use and enjoyment of the described Premises, LESSEE promises and agrees to pay LESSOR as rent for the Premises a Minimum Annual Rental Rate (herein so called) due and payable on a monthly basis. Such monthly payment must be received in hand without demand therefore by the Department of Aviation on or before the tenth (10th) day of each month during the term hereof. The Minimum Annual Rental Rate shall be the sum of all lease rent for the Premises, and shall be calculated by multiplying the approved annual rental rate by the rented square footage. LESSEE agrees and acknowledges that the Minimum Annual Rental Rate and monthly payments calculated in Exhibit C, attached hereto and made a part hereof, are true and

APPENDIX I—DRAFT LEASE AGREEMENT

accurate. In the event this Lease commences or terminates other than the last day of any particular month, all rentals hereunder shall be prorated.

LESSEE agrees that the Minimum Annual Rental Rate provided in Exhibit B, is subject to change by LESSOR effective each January 1st under the terms hereof during the term of this lease or any renewals or extensions thereof. Such annual adjustment shall not exceed the change in the cost of living as measured by the Consumer Price Index-(U) as established by the U.S. Department of Labor. The first adjustment shall not be made before twelve (12) months after the effective date of this Lease.

5. **Values of Building and Hangars.** Within thirty (30) days from the date of this Lease or upon completion of construction for new hangars, LESSEE will establish the value of buildings, hangars, and other improvements on the Premises utilizing a professional appraiser who is mutually acceptable to LESSOR and LESSEE. LESSOR reserves the right to solely appraise any or all properties. Established values shall be attached hereto and made a part hereof. Values will be attached using the format in Exhibit C.
6. **Holding Over.** In the event LESSEE shall continue to conduct business as a Fixed Base Operator (FBO) at the airport beyond the term of the agreement, such holding over shall not constitute a renewal of this Lease, but shall be a month-to-month tenancy only. The amount of rent paid during this hold over period shall be the same rent chargeable at the termination of this Lease, plus twenty-five (25%) percent. Any holding over after the expiration of this lease shall be on a month-to-month basis. Any hold over may be terminated by LESSOR during the term thereof upon thirty (30) days written notice to LESSEE.
7. **Services.** During the term hereof, LESSEE shall use and occupy the Premises for the purpose of conducting LESSEE's business as a Full-Service FBO in accordance with the terms of the Fixed Base Operator's Permit attached hereto as Exhibit D and/or as may be amended from time to time by the City of McAllen Board of Commissioners.

Upon commencement of this agreement, the LESSOR agrees to permit limited FBO services for a period of _____ days in order to effectuate a transition between.

Minimum FBO service required and authorized under this Lease will be those approved by LESSOR's Board of Commissioners in the Airport Operations Plan, adopted pursuant to Section 18-76 of the City Code of Ordinances, in effect on this Lease's execution and as may be amended from time to time. In addition, LESSEE may provide any other Fixed Based Operator or related services.

At all times, the aircraft shop shall be operated and maintained in accordance with standards set forth for an FAA approved repair station as outlined in FAA

Comment [a1]: The time frame will be negotiated, based upon successful respondent's development plan.

APPENDIX I—DRAFT LEASE AGREEMENT

Regulation Part 145, as amended (or a superceding publication), or as an alternative, LESSEE shall employ full-time an FAA-authorized inspector.

The minimum FBO services required and authorized under this Lease shall be provided directly by LESSEE's employees using LESSEE's assets (e.g., aircraft, vehicles, equipment, improvements, etc.) and LESSEE's resources. Such services may not be provided indirectly by third parties and third party assets and resources may not be utilized by LESSEE to provide such services.

8. **Hours of Operation.** LESSEE shall offer twenty-four (24) hour service, every day, including holidays, or during such other hours as may be mutually agreed to by the Director of Aviation and the LESSEE.
9. **Ingress and Egress.** Upon the paying of rents and performing the covenants of this Lease, LESSEE shall have the right to use the landing field, runways, taxiways, public ramps, commercial and non-commercial roadways and navigational aids and facilities at the airport and the airspace immediately above it for aviation purposes, including testing, takeoffs, landings, taxiing, towing, fueling by mobile tank trucks, loading and unloading in an emergency, and/or removing damaged or stalled aircraft when called from the Airport.

LESSEE acknowledges and agrees that the Director of Aviation, at his sole discretion, shall designate areas for vehicular parking. The rights granted under this paragraph do not grant any person the right to park or cause to be parked any vehicle on any ramp or in front of or adjacent to any hangar, other than in an area specifically designated by the Director of Aviation for vehicular parking.

All areas designated by Director of Aviation for vehicular parking shall be identified in Exhibit A hereunto attached and made part of this Lease.

10. **Utilities and Services.** LESSEE, at its sole cost and expense, shall hook up, connect, and/or secure its own utilities and services and pay for said utilities and services.
11. **Signs.** LESSEE shall have the right to install, erect and attach signs to the Premises in accordance with the Sign Ordinance of the City of McAllen. LESSEE shall maintain any such signs in good repair at its sole cost and expense. Prior to sign erection, LESSEE shall obtain written approval from the Director of Aviation after review of sign design and content.
12. **Repairs and Maintenance.** LESSEE shall, at its own expense, undertake all maintenance and repair obligations of all improvements, fixtures, and inventory (except the ramp) in the Premises and undertake all maintenance and repair obligations of the mechanical systems of the Premises, including heating, ventilation, water, and air conditioning systems.

APPENDIX I—DRAFT LEASE AGREEMENT

LESSEE agrees to keep the improvements on Premises in good condition and repair, maintain the improvements within South FBO Area and to keep same in a clean, neat and orderly condition and to keep premises clear of any weeds, grass, unsightly growth and collection of materials or trash that would create an unsightly condition or a fire hazard, all in accordance with standards and regulations prescribed by LESSOR. LESSEE agrees to keep the exterior of the hangars located on the leased premises painted, and if in the opinion of the Director of Aviation the exterior of said hangars require painting, it will be the duty and obligation of LESSEE to paint same in the manner and color required within thirty (30) days after written notice to do so.

13. **Fuel Flowage Fee.** In addition to any other fees, LESSEE shall pay a fuel flowage fee, as established by the City of McAllen and as amended from time to time for each gallon of fuel sold by LESSEE. The aforesaid flowage fee is presently six cents (\$0.06) per gallon on all fuel sold to aircraft by LESSEE on the Premises in the immediately preceding calendar month. Exempt aircraft includes scheduled airlines and airline-type aircraft—DC-9 and larger—operating as charter and freight flights. Such payment must be received in hand without demand therefore by the Department of Aviation of the City of McAllen on or before the tenth (10th) day of each month during the term hereof. The LESSOR shall have the right and privilege, with reasonable advance notice, to inspect and audit, during normal business hours, the bills, receipts, and records pertaining to the purchase of said petroleum products for the purpose of verifying the correctness of the fee payments tendered by LESSEE. LESSEE agrees to file with the LESSOR on forms prescribed by LESSOR showing the number of gallons of fuel sold by LESSEE in order that the money due as fees may be shown. This report shall be filed no later than the tenth (10th) day of the month following the sale of said fuel along with the payment of this fee simultaneously. Non-submittal of any payment or report shall constitute default of this Lease.
14. **Fuel Facilities.** LESSEE is required to maintain and operate its current fuel facilities within the Premises throughout the term of this Lease for the purpose of providing fuel for aircraft requiring the LESSEE's FBO-related services. In addition, LESSEE shall comply with all federal, state and local laws and regulations governing the installation, operation and maintenance of all fueling facilities, equipment and dispensing trucks.
15. **Based Aircraft/Helicopters Report.** LESSEE shall provide to LESSOR an annual listing of all aircraft and helicopters based on the premises. The listing shall include the aircraft/helicopter owner's name and address, tail registration number, type of aircraft, year, make, model, and number of engines. This report shall be due within twenty (20) business days upon commencement of this lease and by October 1st of each contract year. LESSOR reserves the right to request an updated list at any time. LESSEE shall provide an updated list upon request within ten (10) business days without being assessed a penalty as provided under Paragraph 18 of this Lease.

Comment [a2]: This is dependent upon whether successful respondent chooses to install a fuel farm or provide mobile fueling.

APPENDIX I—DRAFT LEASE AGREEMENT

16. **Permit Fee.** As consideration for the issuance of a Fixed Base Operator's Permit, and the privileges granted hereunder, LESSEE promises and agrees to pay to LESSOR the ONE HUNDRED AND TWENTY-FIVE DOLLARS and NO/100ths (\$125.00) per month, to be due and payable on or before the tenth (10th) day of each month during the term hereof. Non-submittal of permit fee shall constitute default of this Lease.
17. **Place of Payment.** All fees and rental payments shall be made at the office of the Director of Aviation located in the terminal building or such other place LESSOR may direct LESSEE in writing. It may also be mailed to: McAllen-Miller International Airport, 2500 S. Bicentennial Blvd., Suite 100, McAllen, TX 78503.
18. **Delinquent Fees.** Delinquent fees shall be assessed on all late payments/late reports after the expiration of the established grace periods. Delinquent fees shall be assessed as follows:
- a. Monthly payments on Minimum Annual Rental Rate - One and one-half percent (1 ½%) of the entire amount due LESSOR, or \$500.00, whichever is greater.
 - b. Fuel Flowage Fee – Fifty dollars (\$50.00) per occurrence.
 - c. Permit Fee – Fifty dollars (\$50.00) per occurrence.
 - d. Based Aircraft/Helicopter Report – Two hundred dollars (\$200.00) per occurrence.
 - e. Monthly Fuel Flowage Report – One hundred dollars (\$100.00) per occurrence.
19. **Construction of Improvements.** LESSOR hereby grants LESSEE the first option and rights to make improvements on the Premises depicted in Exhibit A. If at any time during this Lease LESSEE determines that LESSEE no longer has a need for any area(s) within the Premises, LESSEE shall notify LESSOR in writing requesting such area(s) be relinquished to LESSOR. If LESSOR agrees, such area(s) will be excluded from the Lease. In addition, LESSOR has the right to request from LESSEE in writing to relinquish any area(s) not being utilized (e.g. area is not being leased or used by LESSEE, area is vacant or unimproved) by LESSEE, if in the opinion of the LESSOR the area(s) can be utilized by another party to enhance current aeronautical activities/services or to provide an aeronautical activity/service not available at the Airport. If LESSEE agrees, the area(s) shall be relinquished to LESSOR. Upon relinquishment under either scenario, the Lease Annual Rental Rate shall be re-calculated; taking into account any capital improvements LESSEE may have made towards the relinquished area(s).

APPENDIX I—DRAFT LEASE AGREEMENT

Prior to the start of any construction, LESSEE shall submit plans to the Director of Aviation for review and approval. LESSEE shall also submit a *Notice of Proposed Construction or Alteration* to the Director of Aviation for approval and submission to the Federal Aviation Administration.

The LESSEE shall within 120 days of executing this Lease Agreement, demolish hangar(s) (identified as _____ on Exhibit A) located at <address> and construct within 180 days a new hangar(s) of comparable size or larger that can reasonably be expected to have a useful life for the full term of the lease agreement. The time period for demolition and construction shall be no more than 300 days from the execution date of this agreement. During the demolition and construction period, the lease rate for the <identified hangars> shall be at the currently approved Ground Lease Rate.

Comment [a3]: This entire section is dependent upon the proposer's plans for development—either rehabilitation, reconstruction or demolition and reconstruction.

If LESSEE fails to start demolition of the <identified city owned hangar(s)> within the 120 day period commencing from the execution date of this lease agreement, the LESSEE shall pay the currently approved City Owned Hangar Rate. This rate shall be retroactively applied back to the execution date of this lease and until construction is complete.

If LESSEE fails to complete the demolition and construction of a new hangar(s) within the allotted 300 day time period of the execution of this Lease Agreement, the lease rate shall be adjusted to the approved City Owned Hangar Rate and shall be retroactively applied back to the execution date of this Lease Agreement and remain in effect beyond the 300th day until the end of this Lease Agreement or completion of a replacement hangar for the <identified city owned hangar(s)>.

LESSEE shall provide exact square footage of hangar space and parking space, and establish value based on actual construction cost of such hangar space and parking space within thirty (30) days of construction completion, pursuant to the terms and conditions outlined in Section 5 of this agreement.

If construction plans require security fencing to be relocated, the security fencing plan shall be submitted to the Director of Aviation prior to construction. Replaced security fencing shall be installed by LESSEE in accordance with the approved Airport Security Plan after construction is complete. LESSEE shall provide temporary security fencing during construction, if required, in accordance with the approved Airport Security Plan.

Construction and improvements shall comply with all applicable City codes and FAR Part 77, Objects Affecting Navigable Airspace. FAA Form 7460-1, Notice of Proposed Construction or Alteration, shall be completed by LESSEE ninety (90) days prior to any construction and shall present a copy of the aeronautical study from the FAA to the Director of Aviation stating no hazard to air navigation. The

APPENDIX I—DRAFT LEASE AGREEMENT

Director of Aviation shall approve construction plans prior to start of any construction and may establish additional construction standards.

20. **Fuel Price Comparison.** LESSEE agrees to submit to a quarterly review of per gallon fuel prices on both jet and 100LL fuels. LESSOR will compare prices against those airports with similar operational characteristics such as Laredo, Harlingen, Brownsville, and other airports that LESSOR deems comparable. **In the LESSOR's opinion, if the LESSEE's fuel prices are not comparable with those other facilities, LESSOR will notify LESSEE of such findings, and LESSEE agrees to align its fuel prices with the other comparable facilities.**
21. **Audit.** LESSOR shall have the right during each calendar or fiscal year to authorize an audit of LESSEE's records pertaining to its operation on the airport. Such audits shall be undertaken by the LESSOR's staff or a firm of certified public accountants, satisfactory to LESSOR. The cost of such audit shall be paid by LESSOR, unless the results of such audit reveal a discrepancy of more than three percent (3%) between the gallons reported on the monthly fuel flowage report and the gallons determined by audit. In case of such discrepancy, the full cost of the audit shall be paid by LESSEE. Any additional auditing expense resulting from LESSEE's inability or refusal to provide records as required by the auditor shall be paid by LESSEE. The LESSEE shall forthwith pay to the LESSOR the full amount of fees due based upon the results of the audit if a discrepancy exists. This amount shall be paid within thirty (30) days of written notice by LESSOR.
22. **Default.** The occurrence of any of the following shall constitute a default under this Lease:
- a. LESSEE fails to pay any sum as required hereunder and such failure continues for fifteen (15) days after LESSEE receives written notice from LESSOR of failure to pay;
 - b. LESSEE abandons the Premises for a period of more than thirty (30) days; or
 - c. Either party fails to observe and perform any other provisions of this Lease and such failure continues for thirty (30) days after written notice thereof by the non-defaulting party; provided, however, that if the default cannot reasonably be cured within said thirty (30) day period, the defaulting party shall not be deemed to be in default if such party timely commences to cure the default and therefore diligently prosecutes the same to completion.
23. **Remedies Upon Default.** Upon the occurrence of any event or default hereunder, the non-defaulting party may take any one or more of the following actions:

APPENDIX I—DRAFT LEASE AGREEMENT

- a. If LESSEE is the defaulting party, LESSOR may maintain this Lease in full force and effect and recover any and all rent and other monetary charges as they become due, without terminating LESSEE's right to possession, regardless of whether LESSEE shall have abandoned the Premises. If LESSOR elects not to terminate this Lease, LESSOR shall have the right to attempt to re-let the Premises on behalf of LESSEE upon such conditions and for such a term and to do all acts necessary to maintain or preserve the Premises as LESSOR deems reasonable and necessary, including the removal of all persons and property from the Premises without having deemed to have elected to terminate this Lease. Any property so removed may be disposed of or stored in a public warehouse or elsewhere, at LESSOR's election at the cost of and for the account of LESSEE. Notwithstanding that LESSOR fails to elect to terminate this Lease initially, LESSOR at any time thereafter may elect to terminate this Lease as a result of such previous and then existing default of LESSEE;
- b. If LESSOR is the defaulting party, LESSEE may terminate this Lease by written notice to LESSOR, in which event this Lease shall be ended as to LESSEE and all of LESSEE's rights shall be forfeited and lapsed, as fully as if this Lease had expired by lapse of time. In such event, LESSEE shall be required to vacate the Demised Premises immediately and surrender same to LESSOR. In the event of termination in accordance with this provision, the rental or any other sums payable by LESSEE pursuant to this Lease that have accrued hereunder but are unpaid, shall be immediately due and payable by LESSEE to LESSOR;
- c. Exercise any right available in law or in equity.

- 24. **Rights Cumulative.** The rights and remedies hereunder shall be cumulative and shall not be exclusive of one another, and the non-defaulting party shall have the right to pursue any one or more of them. A failure to take any action on account of a default if such default persists or is repeated, shall not be deemed a waiver of any default.
- 25. **Taxes and Additional Charges.** During the term hereof, LESSEE shall be responsible for all ad valorem taxes levied or assessed against LESSEE's equipment, furniture, fixtures, personal property or LESSEE's business operations.
- 26. **Mechanics and Materialmen's Liens.** LESSEE shall not create or permit to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, artisans, or materialmen for work or materials alleged to be done or furnished in connection with the Premises), encumbrance, or other charge upon the Premises or any part thereof.

APPENDIX I—DRAFT LEASE AGREEMENT

27. **Compliance with Laws, Rules and Regulations.** LESSEE shall, at its sole expense, observe and comply with the statutes, rules and regulations of all governmental authorities applicable to the conduct of LESSEE's business and in addition, those rules, ordinances, and regulations of the LESSOR. Any penalties and costs levied as a result of the LESSEE's breach of any of the above shall be borne by the LESSEE.
28. **Environmental.** LESSEE shall handle, store and dispose of petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it on the airport in accordance with all applicable federal, state, and local statutes, regulations, rules and ordinances. No waste or disposable materials shall be released on the ground or in the storm sewer. Should such materials be spilled or escape from storage or in any way through activities of the LESSEE, the LESSEE shall be responsible for the clean up, containment and otherwise abatement of such contamination at LESSEE's sole cost and expense. Further, LESSEE shall notify the LESSOR and appropriate governmental agency(ies) of such occurrence immediately. Should the LESSEE fail to do so, the LESSOR may take any reasonable and appropriate action in the LESSEE's stead. The cost of such remedial action by the LESSOR shall be paid by the LESSEE. Any fines levied against LESSOR for such negligent activities shall be borne by the LESSEE.
29. **Indemnity and Hold Harmless.** LESSEE, to the extent permissible under Texas law, hereby releases and will defend, indemnify and hold harmless LESSOR, its employees and agents, from any and against any and all liability, claims, penalties, fines, causes of action, suits, liens, losses, loss of use, damage, costs and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, charged to or recoverable from the LESSOR, its officers and employees and agents by reason of:
- a. Any occurrence in, upon, or at the Premises, caused by the negligence or omission of LESSEE, its officers, directors, employees and agents; or
 - b. Any occupancy, use, or misuse of the Premises, or the areas surrounding the Premises or the service areas, parking areas, pedestrian areas, pedestrian walks or driveways in or around the Premises, by LESSEE, its officers, directors, employees and agents; or
 - c. Any occurrence elsewhere on the Premises occasioned by negligence or omission of LESSEE; or
 - d. Any environmental damage of any kind whatsoever which occurred on account of or in connection with the use of the Premises by LESSEE or LESSEE tenants on or after the date that the LESSEE takes possession of such Premises.

LESSOR hereby, to the extent permissible under Texas law, releases and will defend, indemnify and hold harmless LESSEE, its officers, directors, employees, and agents from and against any and all liability, claims, penalties,

APPENDIX I—DRAFT LEASE AGREEMENT

finances, causes of action, suits, liens, losses, loss of use, damages, cost and expenses of any kind (including legal fees and litigation costs) which may be suffered by, accrued against, charged to or recoverable from LESSEE, its officers, directors, employees, and agents by reason of any occurrence in, upon, or at the Demised Premises, caused by the negligence or omission of LESSOR, its officers, directors, employees, and agents.

LESSEE shall be given prompt and reasonable notice of any claim made or actions instituted which in any way affect the LESSEE or its insurer, and the LESSEE shall have the right to investigate, compromise, and defend the same to the extent of its own interest. Any final judgment rendered against LESSOR for any cause for which LESSEE is liable hereunder shall be conclusive against LESSEE as to liability and amount.

30. **Aircraft Parking.** LESSEE agrees that a minimum of seventy-five percent (75%) of any leased ramp space which was originally constructed with Federal funding will be made available to the general public for the parking of aircraft; provided, however, that LESSEE shall have the right to charge reasonable aircraft parking, tie-down and service fees for the use of all ramp space lease herein and services provided in conjunction therewith, subject to approval by LESSOR of said rates. Determination of the area of ramp space so constructed with Federal funds shall be made according to the records and as shown on Exhibit A.
31. **Airport Operations.** The Premises are a part of the LESSOR's Airport property and LESSEE agrees that it will at all times make use of said leased premises in such manner as not to interfere with the operation of aircraft in, on, and out of the Airport and will comply with all valid regulations imposed upon the operation of said airport by any legal authority and will comply with LESSOR's Airport Operations Manual, and any amendments thereto, and will comply with all Federal laws, rules and regulations pertaining to said airport. LESSEE shall indemnify and hold harmless the LESSOR, its officers and employees from any charges, fines or penalties that may be assessed or levied by the FAA, the Texas Aeronautics Commission, the Transportation Security Administration, or any agency by reason of LESSEE's failure to comply with such laws, rules and regulations.

LESSEE agrees that prior to the commencement of operations as an FBO upon the Premises, it will obtain a permit from LESSOR for such purpose, which permit form is attached hereto as Exhibit D.

32. **Lease Termination.** This Lease shall terminate without action by either party at the end of the initial term or any renewal term.

LESSEE may terminate this Lease after the happening of one or more of the following events:

APPENDIX I—DRAFT LEASE AGREEMENT

- a. The permanent abandonment of the airport;
- b. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the airport, or any substantial part or parts thereof, in such a manner as substantially to restrict LESSEE for a period of at least thirty (30) days from operating thereon;
- c. The default by LESSOR in the performance of any covenant or agreement herein required to be performed by LESSOR and the failure of LESSOR to remedy such default for a period of thirty (30) days after receipt from LESSEE of written notice to remedy same.

LESSEE may exercise such right of termination by written notice to LESSOR at any time after the occurrence of any such events. LESSEE will give LESSOR as much notice as possible to allow LESSOR to find a new operator, and may negotiate the timeframe for the LESSEE to cease operations.

LESSOR may terminate this Lease in the event LESSEE shall:

- a. Be in arrears in the payment of the whole or any part of the rent or other fees required for a period of thirty (30) days after the time such payments become due;
- b. Make a general assignment for creditors' benefit;
- c. File a voluntary or involuntary bankruptcy petition;
- d. Discontinue any of the required commercial aviation operations as outlined in Paragraph 7;
- e. Default in the performance of any of the covenants, agreements and conditions required herein to be kept and performed by LESSEE, and such default continues for a period of thirty (30) days after receipt of written notice from LESSOR of said default;
- f. Have a Receiver appointed by a court of competent jurisdiction to manage Lessee's operations;
- g. Violate LESSOR'S rules, regulations or provisions of this Lease and such default continues for a period of thirty (30) days after receipt of written notice from LESSOR of said default.

At the time of entering into this lease agreement, it is specified that LESSOR has plans for expansion of LESSOR's facilities at LESSOR's McAllen-Miller International Airport. It is specifically agreed that, should such expansion and/or construction require the utilization by LESSOR of any part of that real property which is the subject of this lease agreement, LESSEE shall vacate, within one hundred eighty (180) days of receipt of written notice by LESSOR of LESSOR's need to utilize such real property for purposes of airport expansion and/or construction, such part of the premises as specified in LESSOR's notice. If LESSOR gives notice, as stated hereinabove, that LESSOR requests any portion of the premises, LESSOR may, at LESSEE's option, terminate or amend the lease at the expiration of the aforesaid one hundred eighty (180) days. If

APPENDIX I—DRAFT LEASE AGREEMENT

available, LESSOR shall provide another space, where LESSEE, at LESSEE's expense, may relocate its hangar or improvements if LESSEE is not in default.

If LESSEE is given notice to vacate by LESSOR, the LESSOR shall pay LESSEE the "remaining value" of improvements on the property described herein. For purposes of this lease, the "remaining value" of improvements shall be computed by using the "straight line amortization" method as follows:

- a. For buildings, hangers and other improvements whose appraised values were determined pursuant to Paragraph 5 - Each year's amortization is calculated by dividing the appraised value as determined pursuant to Paragraph 5 by twenty-five (25) years. The result will then be the Paragraph 5 appraised value of improvements less the product of the annual amortization times the number of years that have elapsed on the Lease, prorated to the nearest month;
- b. For buildings, hangars and other improvements constructed, installed, erected, etc. after the effective date of this Lease - Each year's amortization is calculated by dividing the actual cost of the improvement by twenty-five (25) years. The result will then be the actual cost of the improvements less the product of the annual amortization times the number of years that have elapsed on the Lease, prorated to the nearest month.

The results calculated under subparagraphs "a" and "b" above shall be added together to yield the "remaining value." Only LESSOR-approved hangars, buildings or other improvements listed in Exhibit C shall be so calculated and paid to LESSEE.

33. **Non-Discrimination.** LESSEE agrees to furnish service on a fair, equal, and non-discriminatory basis to all users thereof and to charge fair, reasonable, and non-discriminatory prices for each unit or service, provided that the LESSEE may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

LESSEE, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

- a. No person on the grounds of race, color, sex, creed, age, handicap or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination in the use of the facilities located on the Premises;
- b. The LESSEE shall use the Premises in compliance with all other conditions imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Program

APPENDIX I—DRAFT LEASE AGREEMENT

of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of any of the above non-discrimination covenants, the LESSOR shall have the right to terminate the Lease, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or entered into by the parties thereto.

34. **Security Plan.** Within thirty (30) days after execution of this Lease, LESSEE shall provide to the Director of Aviation for the City of McAllen, for his approval, a security plan for the Premises which meets the requirements of Transportation Security Administration (TSA) regulations. Upon approval of the plan by the Director of Aviation, LESSEE shall fully implement said security plan and remain in compliance with it during the full term hereof. LESSEE will not allow unauthorized access to the airport operations area, and will comply with all security directives in 49 CFR Part 1542, Airport Security and the Airport's Security Plan, as amended, at all times. LESSEE agrees that the LESSEE shall be liable for any fines levied on the LESSOR for any violations due to negligence or noncompliance on the part of the LESSEE. Any fine or judgment rendered against LESSOR for any cause for which LESSEE is liable hereunder shall be conclusive against LESSEE as to liability and amount.
35. **Insurance.** The LESSOR shall be named as an additional insured. LESSEE shall be required to provide and maintain the following types of insurance, at a minimum, in the limits specified by the LESSOR and as amended from time to time:
1. Aircraft Liability: \$ 100,000 per seat
\$1,000,000 per accident
 2. Comprehensive General Liability to Include Premises Liability,
Products and Completed Operations Liability and Hangar Keepers
Legal Liability: \$ 1,000,000 Combined Single
Limit Bodily Injury and Property
Damage, Each Occurrence
 3. Workers Compensation and Employers Liability: Statutory Limits
 4. Other activities insured as established by Director of Aviation.
 5. Certificates or other documentation evidencing the existence of
such insurance shall be kept on file with the Department of
Aviation. Notice of cancellation of any such insurance shall be
given to the Director of Aviation at least thirty (30) days prior to
cancellation.

APPENDIX I—DRAFT LEASE AGREEMENT

Provided, however, that during the term or renewal hereof, should the limits of liability for Texas municipalities be increased under the provisions of the Texas Torts Claims Act, then the amount of liability coverage provided herein shall be increased by LESSEE to such amounts as set out in the Texas Tort Claims Act upon the effective date of any such increase. In addition, LESSEE shall provide proof of general fire and casualty insurance in an amount equal to the replacement costs of the buildings as furnished in writing by LESSOR and as amended from time to time, but not more frequently than annually, covering the buildings and other improvements shown in Exhibit A with the City of McAllen being listed as an additional insured. LESSEE will furnish satisfactory proof or evidence to LESSOR that LESSEE has paid the premiums for said insurance or any renewals thereof. Both premiums for said insurance shall contain a waiver of subrogation endorsement in favor of LESSOR and thirty (30) days notice of termination to be delivered to LESSOR in the event the policy is canceled or ceases to exist for any reason.

36. **Casualty Loss.** If the Premises, or any structures or improvements on the Premises, should be damaged or destroyed by fire, tornado or other casualty, LESSEE shall give immediate written notice of the damage or destruction to LESSOR, including a description of the damage and, as far as known to LESSEE, the cause of damage. Should any building or buildings constituting the Premises be totally or partially destroyed for any causes enumerated in the preceding paragraph, and not through the negligence or omission of LESSEE and should any of such buildings be impossible to repair or rebuild any such building or buildings within one hundred and twenty (120) days and at a cost not to exceed the insurance coverage under such general fire and casualty insurance as provided for in Paragraph 35 of this Lease, then this Lease shall be terminated as to any such building so damaged or destroyed and rent shall be abated for the unexpired portion of this Lease as to such building based on the square footage of the damaged or destroyed building(s) as it relates to the total square footage of the buildings leased hereunder, effective as of the date of written notification from LESSEE as provided for in this paragraph. The LESSEE at its own expense shall demolish and remove from the Airport and damaged buildings or hangars

It is specifically provided that the LESSOR is under no obligation to repair or rebuild any damage or destroyed building or buildings under the provisions in this Section unless all costs for such repair or rebuilding are recoverable under the proceeds of insurance as provided for by Lease under the provisions in Paragraph 35 above. Should any of such building be capable of being replaced or repaired as provided for hereunder, then the rent attributable to such building based on the proration of square footage of the subject building over the total square footage of all buildings leased hereunder shall be abated during the period of rebuilding or replacement.

APPENDIX I—DRAFT LEASE AGREEMENT

37. **Assignment and Subletting.** It is expressly agreed and understood that LESSEE shall always remain directly liable to LESSOR for the performance of all terms and conditions of this Lease. LESSEE shall not assign this Lease, nor permit any transfer by operation of law of LESSEE's interest created hereby, without prior express written consent of LESSOR, which shall not be unreasonably withheld.

LESSEE acknowledges and agrees that if any authorization to sublease is granted by the LESSOR, it is for the specific purpose of conducting aeronautical activities on the Premises by the sublessees and that no other activity is implied or granted.

LESSEE shall submit a list reporting all subleases on the Premises on quarterly basis. Reports shall be received no later than fifteen (15) days ending the preceding quarter and shall contain the following information on each sublessee;

- a. Sublessee name;
- b. Area of sublease;
- c. Square Footage of Sublease;and
- d. Aeronautical Activity of Sublessee

38. **Surrender.** Prior to the expiration or earlier termination of this Lease, LESSOR and LESSEE shall make a bona fide, good faith effort to negotiate an extension of this Lease or enter into a new lease. If LESSOR does not extend this lease or enter into a new lease with LESSEE, LESSOR shall compensate LESSEE for the "remaining value" of the improvements, as determined under Paragraph 32, made by LESSEE and upon completion of the transaction, LESSEE shall surrender the Premises to LESSOR in good condition, broom clean, reasonable wear and tear excepted. Should LESSEE remain in possession of the Premises, or any portion thereof, after the expiration or earlier termination of this Lease and if LESSOR does not extend this Lease or enter into a new Lease with LESSEE, LESSEE shall become a LESSEE from month-to-month and shall be liable to pay monthly rental at the rate provided hereunder, as long as LESSEE remains in the Premises. Such tenancy shall be subject to all terms and conditions of this Lease.

If LESSOR does not extend this Lease or enter into a new lease with LESSEE, LESSEE shall have the option of removing any and all improvements to the Leased Premises and restoring the land to a level and clean condition within one hundred eighty (180) days from the date of expiration or earlier termination of this Lease. At the time of such removal, LESSEE will be required to obtain a removal and/or moving permit from LESSOR. A condition of the issuance of such permit, LESSEE shall deposit a sufficient sum of money with a financial institution or obtain an appropriate bond from a bonding company to guarantee and cover the cost of removal of improvements and restoring the land to a level and clean condition should the LESSEE fail to do so. Upon completion of the removal of all

APPENDIX I—DRAFT LEASE AGREEMENT

improvements, the deposit or the portion of the deposit remaining shall be returned to LESSEE. If LESSEE fails to remove the improvements within the time specified, said improvements shall become the property of LESSOR.

39. **LESSOR's Reserved Rights.** LESSOR at its sole discretion reserves the right to further develop or improve the aircraft operating area of the airport as it sees fit and to take any action it considers necessary to protect the aerial approaches of the airport against obstructions, together with the right to prevent LESSEE from erecting or permitting to be erected, any building or other structure on the airport which, in the opinion of LESSOR would limit the usefulness of the airport or constitute a hazard to aircraft.
40. **Governing Law.** This Lease shall be governed by and construed under the laws of the State of Texas. Venue shall be in Hidalgo County.
41. **Entire Agreement/Amendment.** This Lease and subsequent amendments constitutes the complete agreement of the parties with respect to the subject matter hereof and supersedes all previous agreements, representations, and understandings concerning the same, whether written or oral. The provisions of this Lease may be modified, amended or waived only by a written instrument, executed by LESSOR and LESSEE.
42. **Waiver.** A waiver by either party to this Lease of any breach of the covenants, conditions or agreements contained herein shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements.
43. **Notices.** All notice periods begin on the date the notice is mailed and sent via facsimile. Any and all notices or other communications required or permitted to be given pursuant to this agreement shall be in writing and shall be considered as properly given if sent by facsimile and sent via any nationally recognized overnight courier service, and addressed as follows:

When to LESSOR

CITY OF MCALLEN

Attn: Director of Aviation

McAllen-Miller International Airport

2500 S. Bicentennial Blvd., Suite 100

McAllen, TX 78502-4797

Phone: (956)681-1500

FAX Number: (956)681-1510

When to LESSEE

Contact Information

Either party, from time to time, may change its address by written notice to the other party. Notices hereunder shall be deemed effective when delivered, or three (3) days after deposit in the United States Mail, first class, postage prepaid.

APPENDIX I—DRAFT LEASE AGREEMENT

44. **Excusable Delay.** Whenever a period of time is herein prescribed for action to be taken by either party, with the exception of the payment of money, a party shall not be liable or responsible, and there shall be excluded from any computation for such period of time, any delays due to any matter which is reasonably beyond the control of the party to perform, including without limitation, delays due to strikes, lockouts, labor disputes, riots, acts of God, shortages of labor or materials, war, government laws, regulations or restrictions.
45. **Severability.** If any of the provisions of this Lease shall be determined to be invalid, unenforceable or illegal, the remaining provisions shall nevertheless continue in full force and effect and this Lease shall be enforced to the fullest extent permitted by law.

APPENDIX I—DRAFT LEASE AGREEMENT

IN WITNESS WHEREOF, LESSEE and LESSOR have executed this Lease Agreement as of the date and year first written above.

LESSOR
CITY OF McALLEN

By: _____
Mike R. Perez, City Manager

ATTEST:

Annette Villarreal, City Secretary

LESSEE
<COMPANY TO BE NAMED>

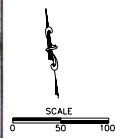
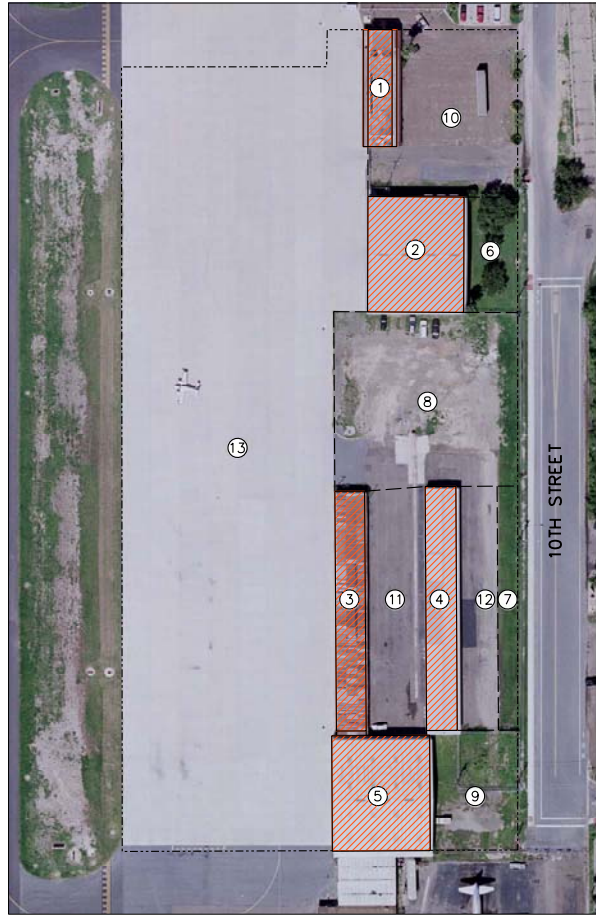
By: _____
<NAME, TITLE>

Approved as to form:

Kevin Pagan, City Attorney

Exhibit A—Designated South FBO and Leased Areas
Exhibit B—Rental Fee Calculation
Exhibit C—Hangar Valuation and Straight Line Depreciation Schedule
Exhibit D—FBO Permit

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SOUTH FBO DESIGNATED AREAS		
AREA	DESC.	AREA (SF)
1	TERMINAL BUILDING	3,066
2	HANGAR 6	12,054
3	T HANGAR 1	7,751
4	T HANGAR 2	8,149
5	HANGAR 3	12,226
6	LANDSCAPE 1	6,746
7	LANDSCAPE 2	5,285
8	VACANT 1	35,051
9	VACANT 2	11,455
10	PAVEMENT 1	23,530
11	PAVEMENT 2	16,209
12	PAVEMENT 3	10,931
13	PAVEMENT 4	191,162



FILE NAME: INT. AIRPORT
DATE: 09/23/09
TURNED IN BY: AMBIO/EC
DESIGNED BY: JS
DRAWN BY: MB
CHECKED BY: JS
PROJECT NO: EX-XXXX

McAllen INTERNATIONAL AIRPORT
SOUTH FBO
DESIGNATED AREAS 2010

ENGINEERING DEPARTMENT
City of McAllen

HOR: 1" = 100'
VERT: 1" = 100'
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EXHIBIT B
RENTAL FEE CALCULATION

BUILDING, HANGAR, and FUEL GROUND LEASE AREAS				
Identified Area	Lease Area (Sq Ft)	Approved Rate	Annual Fee	Monthly Rent
Terminal Bldg.	4,712	\$ 2.40	\$ 11,308.80	\$ 942.40
Hangar #2	12,566	\$ 2.40	\$ 30,158.40	\$ 2,513.20
Hangar #3	13,356	\$ 0.30	\$ 4,006.80	\$ 333.90
T-Hangars	17,000	\$ 0.30	\$ 5,100.00	\$ 425.00
	47,634		\$ 50,574.00	\$ 4,214.50

Approved Rates are: City Owned Structure (\$2.40 per sq. ft. and Ground Lease \$.30 per sq. ft.)

RAMP GROUND LEASE AREA				
Identified Area	Lease Area (Sq Ft)	Approved Rate	Annual Fee	Monthly Rent
Ramp	390,688	\$ 0.02	\$ 7,813.76	\$ 651.15

PARKING LOT & SUPPORT GROUND LEASE AREAS				
Identified Area	Lease Area (Sq Ft)	Approved Rate	Annual Fee	Monthly Rent
Parking Lot #1	4,000	\$ 0.02	\$ 80.00	\$ 6.67
Parking Lot #2	7,000	\$ 0.02	\$ 140.00	\$ 11.67
	11,000		\$ 220.00	\$ 18.33

Minimum Annual Rental Fee:	\$ 58,607.76
Monthly Payable Fee:	\$ 4,883.98

FBO Lease Agreement

Established Unamortized Value				
Hangar as Identified in Exhibit A	Address	Building Sq Ft	Unamortized Value Established Method	Unamortized Value
Area #1		to be determined	Appraisal or Construction Cost	
Area #2		to be determined	Appraisal or Construction Cost	
Area #4		to be determined	Appraisal or Construction Cost	
Area #5		to be determined	Appraisal or Construction Cost	
Area #6		to be determined	Appraisal or Construction Cost	

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