

ACTION SHEET
CITY COUNCIL COMMITTEE MEETING OF 02/25/15
ITEM FROM FINANCE COMMITTEE MEETING OF 02/16/15

ISSUE:

26. Request for Approval of an Ordinance Approving a Lease Between the City of Santa Fe and Jet Center at Santa Fe Real Estate, LLC for Three Parcels of City Owned Land Totaling 2.77 Acres, More or Less, Located at the Santa Fe Municipal Airport for Development of Such Property for the Purpose of Providing Fixed Base Operation Services and Other Related Purposes. (Councilor Ives) (Jon Bulthuis)

Committee Review:

City Council (request to publish) (approved)	01/28/15
Public Works Committee (approved)	02/09/15
City Council (public hearing)	02/25/15

Fiscal Impact – Yes

FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, FEBRUARY 9, 2015**

ITEM 9

REQUEST FOR APPROVAL OF AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND JET CENTER AT SANTA FE REAL ESTATE, LLC FOR THREE PARCELS OF CITY OWNED LAND TOTALING 2.77 ACRES, MORE OR LESS, LOCATED AT THE SANTA FE MUNICIPAL AIRPORT FOR DEVELOPMENT OF SUCH PROPERTY FOR THE PURPOSE OF PROVIDING FIXED BASE OPERATION SERVICES AND OTHER RELATED PURPOSES **(COUNCILOR IVES) (JON BULTHUIS)**

PUBLIC WORKS COMMITTEE ACTION: Approved

FUNDING SOURCE:

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE	X		
COUNCILOR DIMAS	X		
COUNCILOR DOMINGUEZ	X		
COUNCILOR RIVERA	X		

City of Santa Fe, New Mexico

memo

DATE: February 4, 2015

TO: Public Works Committee

FROM: Jon Bulthuis, Transportation Department Director JB/BM

RE: Bill No. 2015-4: Lease at Santa Fe Municipal Airport Between the City of Santa Fe and Jet Center at Santa Fe Real Estate, LLC for Development of a New Fixed Base Operation

Item and Issue

The City of Santa Fe has been presented with a business proposal to establish a new fixed base operation (FBO), at the Santa Fe Municipal Airport (SAF), that would provide “. . . a first-in-class FBO option to local aircraft operators, transient, and the general flying public.” The business plan, contained in the attached proposal, has been reviewed and determined to be viable. The proponents, Jet Center at Santa Fe, LLC, have been vetted and determined to have the necessary experience, and the required capacity, to develop and sustain the proposed operation. As such, a lease document has been negotiated between the City of Santa Fe and Jet Center at Santa Fe, LLC which is presented for your consideration and approval.

Background and Summary

Although not always the case, at present, Santa Fe Municipal Airport is served by only one FBO, Landmark Aviation. The lease agreement proposed will allow a second business to provide FBO services (i.e. fuel/lubricant sales, loading and unloading of passengers/baggage/mail/freight, hangar rental, aircraft maintenance/cleaning, etc.) to SAF users and establish a competitive marketplace for such services. It should be noted that the Federal Aviation Administration (FAA) promotes fair competition at federally-obligated, public use airports for the benefit of aeronautical users. Advisory Circular No. 150/5190-6 clearly explains that “It is FAA policy that the sponsor of a federally obligated airport will not grant an exclusive right for the use of the airport to any person providing, or intending to provide, aeronautical services or commodities to the public and will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct aeronautical activities.”

On January 8, 2015, the Airport Advisory Board voted in favor of providing conceptual approval for development of a new fixed base operation at the Santa Fe Municipal Airport and to have staff to

facilitate such development. Although the city is required to consider such proposals, and not unreasonable prevent competition as described in the previous paragraph, the desire of the Airport Advisory Board for a second FBO was positively expressed through an affirmative vote to facilitate such development.

Since first communicating with Jet Center at Santa Fe, LLC, owners about their business proposal in late 2014, city staff have been in the process of evaluating and negotiating the terms of the required lease agreement to assure that it not only complies with the Federal Aviation Administration's grant assurances, but that it also serves the best interest of the City of Santa Fe's Municipal Airport and the associated aviation community. City staff was assisted in this process by FRASCA & Associates, a financial consulting firm with specialty expertise in assisting airports in strategic business planning, the successful implementation of their capital development programs, lease negotiation for facilities with airlines and other tenants, and developing public/private partnerships.

In the negotiation process, agreement was reached for the lease terms to include pre-payment of rent on building 3002, adjacent to the existing city owned terminal, which may be used to relocate administrative offices now housed in the existing terminal building. This opportunity will allow the redesign/remodel of the terminal to better address passenger needs and comfort without the constraint of requiring administrative staff to occupy the terminal building.

In addition, the terms of the new lease will generate additional revenue for the airport, year after year, and the associated construction activity will generate new gross receipts tax revenue for the city at large, as detailed in the accompanying fiscal impact report, in addition to the creation of new private sector jobs.

As noted previously, the owners of Jet Center at Santa Fe, LLC, have been vetted and determined to have the necessary experience, and the required capacity, to develop and sustain the proposed operation. I have contacted references provided, all of which provided strong, supportive, and positive endorsements of both the character and capacity of the proponents in being able to successfully complete the proposed endeavor. I also contacted the City of Scottsdale regarding the ownership group and their work in establishing Air Center Scottsdale, \$20M FBO facility. Once again, I heard very positive testimonials about the group and their success in establishing Air Center Scottsdale in a cooperative manner with the city.

I have attached communications from Mr. Marc Coan, President of SkyMachines, who has expressed concerns regarding the proposed lease. However, Kelley Brennan, City Attorney, has provided a detailed response to Mr. Coan's declarations that afford assurance that the proposed agreement both complies with FAA grant assurances and serves the best interest of the City of Santa Fe's Municipal Airport and the associated aviation community.

Action Recommended

Staff recommends that the Public Works Committee approve Bill No. 2015-4: Lease at Santa Fe Municipal Airport between the City of Santa Fe and Jet Center at Santa Fe Real Estate, LLC that will facilitate development of a New Fixed Base Operation at the Santa Fe Municipal Airport.

CITY OF SANTA FE, NEW MEXICO
PROPOSED AMENDMENT(S) TO BILL NO. 2015-4, Exhibit A
Santa Fe Jet Center Lease

Mayor and Members of the City Council:

I propose the following amendment(s) to Bill No. 2015-4, Exhibit A:

1. On page 13, of the 2/25/15 City Council packet, *delete* paragraph E., and *insert* the following, in lieu thereof:

“E. Lessee may not commence any construction, erection, installation, alteration or maintenance (except routine maintenance) work (each such undertaking, a Project) on the Premises without first obtaining the written approval of Lessor and the Federal Aviation Administration. Each request for Lessor’s approval for a Project shall include, at a minimum, a master development plan for the Premises showing each Project, a schedule for commencement through completion of all the work of the Project, construction drawings and specifications for the Project, proof of required insurance, the names of all contractors (general and subcontractors) who will be working on the Premises, with license numbers, performance and payment bonds, if required, and such other reasonable submittals as the Lessor may require.”

2. On page 16, of the 2/25/15 City Council packet, *delete* paragraph K., and *insert* the following, in lieu thereof:

“K. Fees Deferred; Credit for Rent. All fees required by this Paragraph 6 shall be deferred for a period (the Deferral Period) of the later of (a) six (6) months from the Effective Date of this Lease or (b) the date the Lessee has received \$350,000 in “adjusted gross receipts”, as that term is defined in Paragraph 6.C.2 above. At the end of the Deferral Period, the accrued but deferred fees (the Deferred Fees) shall be calculated and such sum shall then be amortized, together with interest at the rate of Three Percent (3%) per year over the remaining first ten (10) years of the Initial Term and be paid in monthly increments upon the same schedule as Annual Rent is paid, provided that Lessee may at any time prepay any or all such Deferred Fees remaining due. Lessee shall receive a credit for prepaid rent for that portion of Parcel B that was not available for Lessee’s use until the Landmark Lease was terminated and the parcels reconfigured.”

3. On pages 19 and 20, of the 2/25/15 City Council packet, *delete* paragraph 9., and *insert* the following, in lieu thereof:

“9. **INDEMNIFICATION.** To the fullest extent permitted by law, Lessee agrees to defend, indemnify and hold harmless Lessor, its directors, officers, employees and agents from any loss, liability, claims, suits, actions, regulatory proceedings, or expenses, including attorney’s fees for injury to or death of any person, or any loss or destruction of any property arising out of or attributable to Lessee’s negligent use or occupancy of the Premises, except any loss, liability, claims, suits, actions, regulatory proceedings or expenses caused by the negligence or willful misconduct of the Lessor, its agents or employees. Lessee expressly waives any and all claims against Lessor for any compensation for any and all losses or damage sustained by reasons of any defect, deficiency or impairment of any electrical service system or electrical appliances or wires serving the Premises. The defense and indemnification obligations of Lessee under this Lease Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein. It is agreed that if

any part of this indemnification is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification provision shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be binding upon Lessee. This indemnification agreement shall survive the termination of this Agreement.”

Respectfully submitted,

Councilor Peter Ives

ADOPTED: _____

NOT ADOPTED: _____

DATE: _____

Yolanda Y. Vigil, City Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2015-4

INTRODUCED BY:

Councilor Peter Ives

AN ORDINANCE

APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND JET CENTER AT SANTA FE REAL ESTATE, LLC FOR THREE PARCELS OF CITY OWNED LAND TOTALING 2.77 ACRES, MORE OR LESS, LOCATED AT THE SANTA FE MUNICIPAL AIRPORT FOR DEVELOPMENT OF SUCH PROPERTY FOR THE PURPOSE OF PROVIDING FIXED BASE OPERATION SERVICES AND OTHER RELATED PURPOSES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. The City of Santa Fe hereby approves a certain lease dated _____, 2015, entered into between the City of Santa Fe and Jet Center At Santa Fe Real Estate, LLC, which is attached hereto as Exhibit "A" and made a part hereof, for three parcels of land totaling approximately 2.77 acres located at the Santa Fe Municipal Airport, which expires on _____, 2045, (the "Lease Agreement").

Section 2. This Ordinance shall be effective forty-five days after the date of adoption, unless a referendum is held pursuant to Section 3-54-1 NMSA 1978.

1 **Section 3.** This Ordinance shall be published as required by Section 3-17-3 NMSA
2 1978 and such publication shall contain the following information:

3 A. **Term of Lease Agreement.** The term of the Lease Agreement shall be thirty
4 (30) years.

5 B. **Property to be Leased.** The City of Santa Fe shall lease to Jet Center at Santa
6 Fe Real Estate, LLC, a total of 2.77 acres, more or less, of land comprised of three parcels
7 identified as Parcels B, C and D, located at the Santa Fe Municipal Airport, and more fully
8 described under the Lease Agreement.

9 C. **Appraised Value of the Leasehold Premises.** The appraised value of the
10 leasehold premises is estimated to be \$158,000 as follows: Parcel B, \$49,000; Parcel C, \$68,000;
11 and Parcel D, \$41,000.

12 D. **Payment terms of the Lease.**

13 (1) The annual rent for Parcel B is \$4,860.00, payable in equal monthly
14 increments in advance on the first day of each month, together with certain other fees set
15 out in the Lease Agreement.

16 (2) The annual rent for Parcel C is \$6,819.00, payable in equal monthly
17 increments in advance on the first day of each month, together with certain other fees set
18 out in the Lease Agreement.

19 (3) The annual rent for Parcel D is \$4,084.00, payable in equal monthly
20 increments in advance on the first day of each month, together with certain other fees set
21 out in the Lease Agreement.

22 E. **Lessee.** The Lessee is Jet Center At Santa Fe Real Estate, LLC, Attention, John
23 Marchman, c/o Felker, Ish, Ritchie & Geer, P.A., 911 Old Pecos Trail, Santa Fe, NM 87505.

24 F. **Purpose of the Lease.** The purpose of the lease is for the lessee to use and
25 occupy the premises for the development of such property for the purpose of providing fixed base

1 operation services and other related purposes more fully described under the Lease Agreement.

2 APPROVED AS TO FORM:

3 

4
5 KELLEY A. BRENNAN, CITY ATTORNEY

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 *M/Legislation/Bills 2015/2015-4 Airport Lease – Jet Center Lease*

**SANTA FE MUNICIPAL AIRPORT LEASE AGREEMENT
JET CENTER AT SANTA FE REAL ESTATE, LLC**

THIS LEASE AGREEMENT (Lease) is made and entered into this ___ day of _____, 2015, by and between the CITY OF SANTA FE, NEW MEXICO, a municipality and political subdivision of the State of New Mexico (Lessor), and JET CENTER AT SANTA FE REAL ESTATE, LLC, a New Mexico limited liability company (Lessee) (collectively, the Parties).

WHEREAS, the Lessor owns and operates the Santa Fe Municipal Airport (Airport), located in Santa Fe County, New Mexico; and

WHEREAS, Fixed Base Operation (FBO) services are essential to the proper accommodation of general aviation at the Airport; and

WHEREAS, in 1986 the Lessor enacted the Airport Minimum Standards Ordinance, Santa Fe City Code (SFCC) § 3-2, adopting by reference the "Santa Fe Municipal Airport Minimum Standards and Requirements on the Conduct of Commercial Aeronautical Services" (as amended, or as they may be amended from time to time, the Minimum Standards and Requirements), regulating, without limitation, the provision of FBO services at the Airport; and

WHEREAS, the Lessee in September 2014 submitted to Lessor a proposal to develop certain real property at the Airport for the purpose of providing FBO services, which proposal was revised in accordance with discussions between the Parties in December 2014 (the Proposal); and

WHEREAS, the Proposal incorporates a phased development plan (the Development Plan) for certain real property at the Airport to provide FBO services, which the Parties have agreed will be commenced and completed within five (5) years of the effective date of this Lease; and

WHEREAS, the Lessor deems it advantageous for the operation of the Airport to provide for additional FBO services at the Airport, and to lease to Lessee such premises and to grant to Lessee such rights, privileges and uses as are necessary for Lessee to provide FBO services at the Airport, all as set forth herein; and

WHEREAS, the Lessee is authorized to provide FBO services at the Airport; and

WHEREAS, both Parties have the right and power to enter into this Lease for the purposes and upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. EFFECTIVE DATE. This Lease shall become effective upon the later of its execution by both Parties and the satisfaction of any and all requirements upon which this Lease is conditioned, including, without limitation, approvals of any regulatory body and the issuance of



any license or permit and the completion of Lessee's due diligence inspections of the Premises, such as completion of a Phase 1 environmental assessment.

2. LEASED PREMISES. Lessor leases to the Lessee and the Lessee leases from the Lessor that certain real property located at the Airport and identified as Lease Parcel B (Parcel B), Lease Parcel C (Parcel C), and Lease Parcel D (Parcel D), all as more particularly shown on **Exhibit A** attached hereto and made a part hereof, containing a total of 120,666.00 square feet, more or less (collectively, the Premises), together with the unimpeded right of access thereto. It is understood and agreed by the Parties with respect to the Premises that (a) a portion of the southern boundary of Parcel B as shown on the Development Plan encroaches upon an approximately 14,000 square foot lease parcel (the Landmark Lease Area) leased by Lessor to LM U.S. Corp Acquisition, Inc. d/b/a Landmark Aviation, as it is the successor to Santa Fe Air Center, LLC (Landmark); (b) the area within said encroachment is necessary for the Lessee to carry out the Development Plan and provide its FBO services; (c) the Lessor has the right under its May 27, 2009 lease with Landmark for the Landmark Lease Area (the Landmark Lease) to terminate the Landmark Lease upon payment of the balance of the purchase price then due for the building constructed by Landmark's predecessor on the Landmark Lease Area (Building 3002); (d) Lessor anticipates expanding its existing terminal building (the Airport Terminal) and may at some future time wish to utilize Building 3002 in conjunction with that expansion; (e) the Landmark Lease Area and Building 3002 are underutilized to provide FBO services; (f) in order to effectuate the Development Plan, this Lease and Lessor's future expansion plans, the Lessor must terminate the Landmark Lease; and (g) Lessee's prepaid rent for the Premises, which is intended, without limitation, to secure the commencement and completion of the Development Plan in order to assure timely provision of the Authorized Services, as hereinafter defined, can and will be used to pay down the balance of the Building 3002 purchase price and to terminate the Landmark Lease in accordance with its terms.

Upon termination of the Landmark Lease, the Landmark Lease Area and Lot B shall be reconfigured as shown on Exhibit A, with the reconfigured Landmark Lease Area to be identified thereafter as Parcel A. Thereafter the Lessor may, but need not, lease to the Lessee any or all of Parcel A and/or any rights appurtenant thereto, including, without limitation, the exclusive right to use the ramp areas located west of Building 3002, all upon such terms and conditions as the Parties may then agree, taking into account Lessor's future needs relating to the expansion of the Airport Terminal.

3. USE OF THE PREMISES AND RIGHT TO CONSTRUCT.

A. The Lessee shall use the Premises in accordance with the Proposal and the Development Plan solely to provide FBO services (collectively, the Authorized Services) at the Airport as follows:

1. Parcel B shall be used for the construction (which term shall throughout this Lease include the installation and erection of preassembled or modular structures), operation and maintenance of a passenger terminal and hangars and any and all uses and improvements commonly appurtenant thereto consistent with the Minimum Standards and Requirements; and

2. Parcel C shall be reserved for future development, including, without limitation, construction, operation and maintenance of hangars, and any and all uses and improvements commonly appurtenant thereto consistent with the Minimum Standards and Requirements; and

3. Parcel D shall be used for the construction, operation and maintenance of a tank farm and any and all uses and improvements commonly appurtenant thereto consistent with the Minimum Standards and Requirements.

4. In addition to the foregoing uses and services required to be provided by Lessee on the Premises, the Lessee is authorized, but not required, with the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed, to provide as Authorized Services the following services and engage in the following uses:

- a. Ramp service at other common areas of the Airport and at other leased areas with such Lessee's permission, including into-plane delivery of aircraft fuel, lubricants and other related aviation products; loading and unloading of passengers, baggage, mail and freight; and providing of ramp equipment, aircraft cleaning and other services for air carriers and other persons or firms;
- b. Special flight services, including aerial advertising and aerial photographs;
- c. The sale of new and used aircraft, aircraft parts, navigation equipment, and new and used radio and electronic equipment;
- d. The demonstration of aircraft for sale;
- e. Flight training, including ground school;
- f. Aircraft rental;
- g. Aircraft charter operations conducted by Lessee or a subcontractor of Lessee;
- h. Aircraft maintenance and avionics installation and repair;
- i. To operate a full service fixed base aviation facility, together with all other normal, reasonable and related activities except as may be excluded herein and to be consistent with the Minimum Standards and Requirements;
- j. Car rental services provided Lessee pays Lessor the same rates and fees as may be uniformly imposed by Lessor on other car rental agencies at the airport;
- k. Any other general aviation services not specifically provided for herein which are approved in advance by Lessor.

The Premises shall not be used for any other purposes without the prior written consent of the Lessor, which shall not be unreasonably withheld, conditioned, or delayed.

B. It is not the intent of this Lease to grant to Lessee the exclusive right to provide any or all of the Authorized Services at the Airport during the Term of this Lease. Lessor reserves the right, in its sole discretion, to grant to others certain rights and privileges at the Airport which may be similar in whole or in part to those granted to Lessee under this Lease.

Notwithstanding the foregoing, Lessor covenants and agrees that:

1. It shall enforce the Minimum Standards and Requirements and all other City ordinances for all aeronautical uses at the Airport;
2. Any other operator providing FBO services will not be permitted to operate on the Airport under rates, terms or conditions more favorable than those set out in this Lease; and
3. Lessor will not permit the provision of any FBO services at the Airport except under an approved Lease.

C. Subject to the requirements set out elsewhere herein, the Lessee shall have the right to construct, erect, install, maintain and alter buildings or other structures upon the Premises, provided that any such buildings or structures are consistent with the Minimum Standards and Requirements, the Building Code requirements of the New Mexico Construction Industries Division, and any City of Santa Fe ordinance now or hereafter in effect. Title to such construction, installations, and equipment, shall remain in the Lessee during the term of this Lease, but shall pass to the Lessor upon expiration or earlier termination of this Lease in accordance with its terms.

D. Lessor shall provide reasonable easements for access and utilities to serve the Premises. Subject to any reservations of right by Lessor set out elsewhere herein, Lessee shall have priority use of the ramp areas adjacent to each of Parcel B, Parcel C and Parcel D.

E. Lessee may not commence any construction, erection, installation, alteration or maintenance (except routine maintenance) work on the Premises without first obtaining the written approval of Lessor and the Federal Aviation Administration. Lessee shall provide a schedule for commencement through completion of all such work at the time it submits plans for such work to the Lessor for review and approval.

F. Upon receipt of Lessor's written approval, which shall not be unreasonably withheld, conditioned or delayed, Lessee shall have the right to remodel, remove, demolish or destroy any present or future structures or improvements constructed on the Premises without compensation to Lessor, so long as the Premises are left in a safe and sightly condition.

4. TERM OF LEASE.

A. Term. This Lease shall be for a thirty (30) year term beginning on _____, 2015, and terminating on _____, 2045 (the Initial Term). Upon expiration or other

termination of the Initial Term or any Extended Term as provided for herein, Lessee shall peacefully surrender and vacate the Premises.

B. Option to Renew. Lessor hereby grants to Lessee the option to renew this Lease for two (2) additional successive five (5) year terms (each, an Extended Term) upon the same terms and conditions as those set forth in this Lease for the Initial Term. Lessee shall notify Lessor in writing of its intention to exercise its renewal option not less than ninety (90) days before the expiration of the Initial Term or any Extended Term; otherwise, the option shall be deemed to have been waived and may not be exercised.

At the expiration of this Lease, Lessee shall have the first right to lease or purchase the Premises if Lessor decides to further lease or sell the Premises, at fair market value, based on the then-current appraised value, as determined by a certified real estate appraiser within six months prior to the expiration of this Lease.

C. Termination. Lessee may terminate this Lease at any time, by giving sixty (60) days prior written notice to the Lessor, or otherwise in accordance with Paragraph 11 of this Lease. Lessor may terminate this Lease in accordance with Paragraph 10 of this Lease. Upon termination of this Lease by either party, the Lessee's rights to use the Premises shall cease and the Lessee shall peacefully vacate the Premises, removing its personal property, including, without limitation, items such as signs, trade fixtures, hoists, and conveyors, at its own expense within 48 hours of written notification of termination by Lessor. All permanent leasehold improvements shall, upon termination, be and become the property of the Lessor. Termination by the Lessor shall not relieve the Lessee of liability for any damages sustained by the Lessor caused by Lessee's breach of this Lease.

5. HOLDOVER. In the absence of a new lease agreement entered into before the expiration of the Initial Term or any Extended Term under this Lease, Lessee shall be allowed to hold over for a period not to exceed sixty (60) days from the expiration date of such term. Holding over by the Lessee after the expiration of the Initial Term or any Extended Term under this Lease, whether with or without the consent of the Lessor, shall not operate to extend or renew this Lease. Any such holding over shall be construed as a tenancy from month to month at the rents reserved in this Lease under the terms herein.

6. RENT AND FEES. The Lessee agrees to pay to the Lessor, at the office of the Airport Manager, at the Airport, or at such place as the Lessor may designate from time to time, for the use of the Premises the following rents and fees:

A. Annual Rent. Lessee shall pay to Lessor as annual rent for the Premises (Annual Rent) the following amounts:

1. Total Annual Rent for Parcel B shall be Four Thousand Eight Hundred Sixty and 00/100 Dollars (\$4,860.00), payable in equal monthly increments of Four Hundred Five and 00/100 Dollars (\$405.00) in advance on the first day of each month.

2. Total Annual Rent for Parcel C shall be Six Thousand Eight Hundred Nineteen and 00/100 Dollars (\$6,819.00), payable in equal monthly increments of Five Hundred Sixty Eight and 25/100 (\$568.25) in advance on the first day of each month.

3. Total Annual Rent for Parcel D shall be Four Thousand Eighty Four and 00/100 Dollars (\$4,084.00), payable in equal monthly increments of Three Hundred Forty and 33/100 Dollars (\$340.33) in advance on the first day of each month.

B. Pre-payment of Annual Rent. Lessee shall pre-pay two (2) years' Annual Rent for Parcel B, Parcel C and Parcel D on or before the Effective Date of this Lease. Lessor shall use such prepaid Annual Rent to pay the balance remaining due on the purchase price of Building 3002 and upon such payment, terminate the Landmark Lease in accordance with its terms and conditions and reconfigure Parcel B and Parcel A, formerly the Landmark Lease Area.

C. Adjustments to Annual Rent. The Annual Rent as computed above shall be adjusted at the end of every three (3) year period during the Initial Term and any Extended Term for the following three (3) year period to reflect the average annual percentage rate increase in the cost of living index published by the United States Bureau of Labor Statistics, or any successor agency, for the three (3) years immediately preceding such adjustment. The first such adjustment under this paragraph shall take place on the third anniversary of the date of this Lease, and then on the anniversary date every third year thereafter. In no event shall Annual Rent be adjusted downward.

D. Adjustment to Annual Rent Upon Ten Year Reappraisal of Premises. On the tenth (10th) anniversary of the date of this Lease and every ten (10) years thereafter, the Premises shall be reappraised and the Annual Rent adjusted upward or downward to reflect the new appraised value. Each such adjustment shall become effective on the first day of the second month after such anniversary date.

E. Relocation of F 111. Lessee agrees that, as additional rent, it will pay for the costs for relocating the F-111 from its current location on Parcel C to the proposed location south of Airport Road, as shown on Exhibit "A". In addition, Lessee agrees to fence an area adjacent to the relocated F-111 for dogs to run. The moving of the F-111 and the fencing of the dog area will occur prior to Lessee commencing construction on Parcel C.

F. Penalties for Failure to Pay Annual Rent. If Lessee fails to make any Annual Rent payment by the tenth (10th) day of the month for which such rent is due, the Lessee shall pay a finance charge of One Half of One Percent (½%) per month (6% percent annually) on such past due payment for each month or partial month thereafter that any payment due remains unpaid.

G. Percentage and Fuel Flowage Fees. Lessee shall pay to Lessor the following:

1. A sum of Seven Cents (\$0.07) per gallon on all aviation fuel sold by Lessee, except for fuel used by Lessee in the provision of FBO services. Provided, however, that from

time to time, fuel flowage fees shall be adjusted pursuant to the rate set forth in any appraisal of fuel flowage fees done for the Airport.

2. A sum equal to Two Percent (2.0%) of the adjusted gross receipts from all business conducted and carried on by Lessee upon the Premises. The term "adjusted gross receipts" as used in this Lease shall include the aggregate amount of all sales made, and services performed, including charter operations conducted by the Lessee to or from the Airport, for cash, on credit or otherwise, of every kind, name and nature. Adjusted gross receipts shall also include the aggregate value of all goods, wares and merchandise received for property services, at the selling price thereof, as if the same had been sold for cash. Adjusted gross receipts shall not include: (a) fuel sales; (b) sales of new and used aircraft; (c) transient tie down fees; (d) ramp parking fees; (e) landing fees; (f) federal, state and municipal sales taxes, excise taxes, gross receipts taxes and all other similar taxes separately stated and/or collected from customers; and (g) bad debts and uncollectible accounts. This adjusted gross receipts fee shall be increased in the amount and at such time as any other similar FBO services provider at the Airport is required under the terms of its lease to pay a higher adjusted gross receipts fee.

H. Transient Tie Down and Parking Fees. Lessee agrees to remit to Lessor Seventy Five Percent (75%) of all transient tie down and ramp parking fees collected by Lessee on aircraft tied down or parked at the Airport in areas other than the Premises that are designated by the Lessor from time to time for the Lessee's use. The Lessor reserves the right to adjust such fees as necessary to reflect its costs and Airport conditions.

I. Transient Landing Fees. Lessee agrees to remit to Lessor Eighty Percent (80%) of all transient landing fees collected by Lessee on transient aircraft serviced by Lessee at the Airport. Lessor reserves the right to adjust or modify such fees as necessary to reflect its costs and Airport conditions.

J. Security and Fire Protection Fees. Lessor reserves the right to impose fair and equitable fees for security and fire protection provided by Lessor.

K. Fees Deferred; Credit for Rent. All fees required by this Paragraph 6 shall be deferred for a period (the Deferral Period) of the later of (a) six (6) months from the Effective Date of this Lease or (b) the date the Lessee has received \$350,000 in "adjusted gross receipts", as that term is defined in Paragraph 6.C.2 above. At the end of the Deferral Period, the accrued but deferred fees shall be calculated and such sum shall then be amortized over the remaining first ten (10) years of the Initial Term and be paid in monthly increments upon the same schedule as Annual Rent is paid. Lessee shall receive a credit for prepaid rent for that portion of Parcel B that was not available for Lessee's use until the Landmark Lease was terminated and the parcels reconfigured.

L. Late Payment Penalty. If the payments specified in Paragraph 6 C, D, E, and F herein, are not received by the tenth (10th) day of each month following the month of sale, Lessee shall pay a finance charge of 1/2% per month (6 % annually) on such past due payment for each month or partial month thereafter that any payment due is not made.

M. Monthly Statement. The Lessee shall submit a detailed statement to the Lessor to accompany the payment, on a form satisfactory to the Lessor, showing the gross revenues of the Lessee upon which compensation to the Lessor is payable under this Lease for the preceding calendar month. The statement shall show such reasonable detail and breakdown by the Lessee's payment for percentage fees and fuel flowage fees due. The Lessee shall include with the breakdown payment of all rents, fees and charges due to Lessor hereunder for the preceding calendar month's business. Such statement shall contain, at a minimum, all monthly activities and shall be subscribed and sworn to as correct by the Lessee, one of the Lessee's officers, its local manager or certified by a licensed accountant.

7. RECORDS AND AUDIT.

A. In addition to the monthly statement required under Paragraph 6 I above, Lessee shall provide and maintain true and accurate records of retail fuel sales and adjusted gross receipts under this Lease for a period of six (6) years from the date the record is made.

B. All records, accounts, books, delivery receipts and data on business activities maintained pursuant to Paragraph 7 A above, or elsewhere under this Lease shall be subject to inspection and audit by the Lessor at Lessor's expense at all reasonable times; provided, however, Lessor shall notify Lessee of any inspection or audit at least five (5) business day prior to any inspection or audit. However, if an audit reveals a discrepancy of more than five (5%) percent of the gross receipts reported and the gross receipts as determined by the audit for any 12 month period, and if Lessor requires an additional audit, the full cost of such additional audit shall be borne by the Lessee. Records shall be maintained for a period of not less than six (6) complete lease years.

C. The records and statements of business done by the Lessee along with any other information obtained or inspected pursuant to this provision shall be considered proprietary information and shall not be subject to use or disclosure by the Lessor for any purpose other than the ascertainment of rents, fees and charges under this Lease Agreement. Lessor may use information and data provided by the Lessee to compile gross receipts reports for airport activity reports provided the identity of the Lessee is not disclosed.

8. INSURANCE.

A. Insurance Required. Lessee shall, at its sole cost and expense, procure and maintain at all times during the term of this Lease insurance coverage with limits not less than those set forth herein with insurers and under forms of policies satisfactory to Lessor, acceptance of which shall not unreasonably be withheld. A binder of all insurance policies required by this Lease shall be provided to the Airport Manager no later than the time of execution of this Lease, including certificates of insurance, as well as respective policy endorsements thereof. Said policies shall be procured from insurance carrier(s) authorized to do business in the State of New Mexico and rated A-, VII or better by A. M. Best. Certificates and insurance policies shall name the Lessor, its directors, officers, employees, agents and trustees as additional insureds to all policies referenced in this Section, except the workers'

compensation and employer's liability, and property insurance policies. Lessee's insurance policies shall be primary and without right of contribution from any other insurance as may be carried by the Lessor, waive all rights of subrogation against the Lessor, inclusive of workers' compensation insurance, and provide not less than thirty (30) days written notice of cancellation or of any material change in coverage. However, Lessee shall be responsible for such notification to Lessor of cancellation or material change whether or not the insurer complies. Lessee shall promptly replace any policies terminated or canceled and shall ensure no gaps in coverage. Lessor has and hereby reserves for all purposes of this Lease the right to revise the insurance requirements set forth herein as to amounts, limitations and types of insurance, and Lessee hereby agrees to comply with such revised requirements upon reasonable notice from Lessor. Lessee is required to provide and maintain the following insurance and in the amounts indicated below:

1. Worker's Compensation and Employer's Liability. The Lessee shall comply with all applicable provisions of the New Mexico Worker's Compensation Act, the Subsequent Injury Act, and the Occupational Disease Disablement Law. Such insurance shall include coverage permitted under N.M. Stat. Ann. 52-1-10 NMSA 1978, for safety devices. The Lessee shall procure and maintain complete Employer's Liability Insurance in an amount of not less than \$1,000,000 per accident for bodily injury or disease. If the Lessee elects to be self-insured, the Lessee shall comply with the applicable requirements of law. The Lessee shall require any subcontractor or sublessee similarly to provide such coverage, or qualify as a self-insured, for all their employees. The Lessor, its officers or employees shall not be responsible for any claims or actions occasioned by the Lessee's failure to comply with the provisions of this subparagraph. It is expressly understood that employees of the Lessee are not Lessor's employees for any purpose.
2. Aviation Commercial General Liability. The Lessee shall procure and maintain an aviation commercial general liability insurance policy for bodily injury, property damage and personal and advertising injury, including but not limited to, coverage for premises and operations, products and completed operations, and contractual liability in an amount not less than \$25,000,000 per occurrence.
3. Hangar-Keeper Legal Liability Coverage. The Lessee shall procure and maintain hangar-keeper's legal liability insurance with liability limits of not less than \$25,000,000 each aircraft/each loss.
4. Commercial Automobile Liability. The Lessee shall procure and maintain commercial automobile liability coverage for all owned, non-owned, leased or hired vehicles in an amount of not less than \$5,000,000 per accident for bodily injury and property damage.
5. Property Insurance. The Lessee shall procure and maintain "All Risk" property coverage against loss or damage to Lessee's structures, improvements, trade fixtures, business personal property and equipment caused by fire and lightning, vandalism and malicious mischief, with extended coverage. Such extended coverage shall include loss or damage by explosion, windstorm, riot, aircraft, vehicle damage and such other hazards

as are normally covered by such insurance. Coverage provided shall be at full replacement cost and the Lessor shall be named as loss payee under the policy.

6. Builder's Risk Insurance (Course of Construction). During construction, Lessee shall procure and maintain builder's risk insurance utilizing an "All Risk" or Special Causes of Loss form covering damages to the work with limits equal to the completed value of the project, with no coinsurance penalty provisions. The policy shall name Lessor as loss payee, as its interests may appear.

7. Environmental Insurance. The Lessee shall procure and maintain environmental impairment liability with limits of not less than \$5,000,000 per occurrence and in the aggregate. Such coverage shall protect against: bodily injury or property damage caused by Pollution Conditions, including damage to tangible property, the loss of use of such property that has not been physically injured or destroyed, and the diminished market value of a third party's property; remediation expenses, including investigating the nature and extent of the pollutant; monitoring, removing and disposing of the pollutant; and defense costs incurred in the investigation, settlement and defense of a claim. As used herein, the term Pollution Conditions means the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants upon land, the atmosphere or any watercourse or body of water.

B. Additional Requirements. If any of the policies required to be maintained by Lessee under this Lease are written on a claims-made basis, the following shall apply:

1. The retroactive date must be shown, and must be before the date of this Lease Agreement;
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after termination of the Lease;
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to this Lease Agreement, Lessee must purchase an extended reporting period for a minimum of five (5) years after termination of the Lease Agreement;

9. INDEMNIFICATION. To the fullest extent permitted by law, Lessee agrees to defend, indemnify and hold harmless Lessor, its directors, officers, employees and agents from any loss, liability, claims, suits, actions, regulatory proceedings, or expenses, including attorney's fees for injury to or death of any person, or any loss or destruction of any property arising out of or attributable, in whole or in part, to Lessee's negligent use or occupancy of the Premises, except any loss, liability, claims, suits, actions, regulatory proceedings or expenses caused by the sole negligence or sole willful misconduct of the Lessor, its agents or employees. Lessee expressly waives any and all claims against Lessor for any compensation for any and all losses or damage sustained by reasons of any defect, deficiency or impairment of any electrical service system or electrical appliances or wires serving the Premises. The defense and indemnification obligations

of Lessee under this Lease Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein. It is agreed that if any part of this indemnification is found to conflict with applicable laws, such part shall be unenforceable only insofar as it conflicts with said laws, and that this indemnification provision shall be judicially interpreted and rewritten to provide the broadest possible indemnification legally allowed and shall be binding upon Lessee. This indemnification agreement shall survive the termination of this Agreement.

10. TERMINATION BY LESSOR. Lessor may terminate this Lease by giving Lessee written notice of any alleged default under or breach of this Lease, provided that Lessee shall have thirty (30) days after receipt of such notice within which to cure such default or breach for any of the following:

A. Termination for Non-Payment. If the Lessee shall default in any payment obligations contained herein, and the default shall continue for 30 days after the effective date of written notice thereof to the Lessee, given by the Lessor in accordance with the provisions of this Lease, then the Lessor shall have the option to declare the Term ended, without forfeiture, waiver or release of the Lessor's rights to any sum of money due, and to recover and enjoy possession of the Premises, whether with or without process of law. In the event of termination for non-payment, Lessor may, at its option, attach a landlord's lien to any of the improvements or other property of Lessee on the Premises, and said improvements or property may not be removed from the Premises without Lessor's prior written approval.

B. Termination for Default other than Payment.

1. If the Lessee shall default in the performance of any terms, covenants, agreements or conditions of this Lease other than in the performance of payment obligations, as set forth above, including, without limitation, Lessee's failure to complete the Development Plan, as the same may be modified from time to time by the agreement of the Parties, and the default shall continue for thirty (30) days after written notice thereof to the Lessee, given by the Lessor in accordance with the provisions of this Lease, then the Lessor shall have the option to declare the Term ended, without forfeiture, waiver or release of the Lessor's rights to any sum of money due, and to recover and enjoy possession of the Premises, whether with or without process of law. However, if any default or breach may not reasonably and capably be cured within thirty (30) days after written notice thereof, and if Lessee promptly and diligently attempts to cure the default or breach, Lessor shall give Lessee reasonable additional time to cure the default or breach and Lessee shall pay Lessor for all costs incurred by Lessor as a result of Lessee's default and such payment shall be made promptly upon Lessee's receipt of written demand from Lessor.

2. No waiver of default by the Lessor of any of the terms, covenants, agreements or conditions hereof to be performed, kept and observed by the Lessee shall be construed to be a waiver of any subsequent default of any of the terms, covenants, agreements and conditions herein contained to be performed, kept and observed by the Lessee. The acceptance of Annual Rent or other fees by the Lessor for any period or periods after a default of any of the terms, covenants, agreements and conditions herein contained to be

performed, kept and observed by the Lessee, shall not be deemed a waiver of any right on the part of the Lessor to terminate this Lease for failure by the Lessee to so perform, keep or observe any of the terms, covenants, agreements or conditions of this Lease.

C. Other Termination. The Lessor may terminate this Lease Agreement only by giving the Lessee thirty (30) days written notice and opportunity to cure, with or without process of law, upon or after the happening of any one of the following events:

1. If Lessee fails to cure any default set forth in Paragraph 10 B. 1. of this Lease within the periods set forth therein, Lessor may declare this Lease to be terminated and to re-enter the Premises or any part thereof, with or without the process of law, to expel, remove and put out Lessee or any other persons occupying the Premises. Lessee shall pay all costs, including reasonable attorney's fees and expenses and court costs that may arise in enforcing the covenants, conditions and terms of this Lease.
2. The filing by the Lessee of a voluntary petition in bankruptcy, or the institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings.
3. The taking of a court of jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act.
4. The appointment of a receiver of the Lessee's assets.
5. The termination or other termination of any insurance policy issued in compliance with this Lease Agreement shall automatically terminate this Lease, unless another policy has been filed and approved pursuant to this Lease.
6. If the Lessee should breach any of the nondiscrimination covenants, Lessor shall have the right to terminate this Lease and to reenter and repossess said Premises and hold the same as if said Lease had never been made or issued.

11. TERMINATION BY THE LESSEE. The Lessee may terminate this Lease Agreement and terminate all or any of its obligations hereunder at any time that the Lessee is not in default in the payment of any rents or fees to the Lessor pursuant to this Lease by giving the Lessor sixty (60) days advance written notice of its intentions to discontinue its business activities at the Airport.

12. RIGHTS OF LESSOR. Lessor reserves the right to:

A. Operate the Airport in the best interest of the public and the right, without interference or hindrance, to maintain, improve, or further develop the landing area or public use facilities of the Airport as it sees fit, regardless of any protest of the Lessee and to lease additional space to other concessions at the Airport regardless of any objection of the Lessee. The Lessor may relocate the Lessee if the physical development of the Airport or the Airport Terminal requires relocation of the Lessee, provided the Lessor gives sixty (60) days' written notice to

the Lessee and the Lessor compensates the Lessee for the Premises in one of the two following methods, at the Lessor's expense:

Method A. If the Lessor determines it has vacant land available at the Airport which is generally comparable in location to that being taken for development, then the Lessee shall relocate the Lessee-owned facilities to the new location in substantially similar form to that then existing. The Lessor shall reimburse Lessee within sixty (60) days for Lessee's actual expenses of relocation of its facilities, subject to Lessor's prior approval of the reasonableness of such expenses.

Method B. If Lessor determines that Lessee cannot be relocated as described in Method A above, then Lessor shall purchase from Lessee the Lessee-owned facilities, to which title shall then pass in fee simple to Lessor. The amount to be paid by Lessor to Lessee shall be the fair market value of the improvements taken.

B. Enter upon the Premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Lease and any federal, state, or city laws, ordinances, regulations, rules and codes now or hereafter in effect.

13. RIGHTS OF LESSEE.

A. Lessee shall have the right, but shall not be required:

1. In common with others so authorized, to use common areas of the airport, including runways, taxiways, aprons, roadways, floodlights, landing lights, signals and other conveniences for the take-off, flying and landing of aircraft.
2. To the non-exclusive use, in common with others, of the Airport, appurtenances and improvements thereon, but this shall not restrict the right of the Lessor to charge visitors a fee for the use of such areas.
3. To install, operate, maintain, repair and store, subject to approval of Lessor in the interests of safety and the convenience of all concerned, all equipment necessary for the conduct of Lessee's business.
4. Of access to and from the Premises, limited to taxiways, streets, driveways and sidewalks designated for such purposes by the Lessor, and which right shall extend to Lessee's employees, passengers, guests and patrons.

B. Lessee is authorized, but not required, to provide the services set forth above in Paragraph 3 B. 4. a. through k.

C. So long as Lessee conducts its business in a fair, reasonable and workmanlike manner, to peaceably have and enjoy the Premises, and all the rights and privileges herein granted.

14. MAINTENANCE OF BUILDINGS AND STRUCTURES. Lessee shall maintain the structures on the Premises, keep the Premises in good order, make such repairs as are customary, remove abandoned equipment from the Premises and shall not deposit the same on or any portion of the Airport except on such areas as shall be reasonably designated by Lessor. The Lessee shall be responsible for providing all customary and necessary janitorial and custodial services on the Premises.

15. TRANSFER OF INTEREST. Except as otherwise provided herein, Lessee may not, without the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed at any time during the term of this Lease, sell, lease, assign, transfer or permit to be acquired, this Lease or any interest herein; provided, however, that Lessee may sublease the Premises to *Jet Center at Santa Fe Operations, LLC*, which shall be the operator of the FBO business located at the Premises and which shall be bound by all the terms and provisions of this Lease. Lessee may sublease any portion of the leasehold interest to parties who will provide aviation-related services permitted hereunder, and who accept the terms of this Lease Agreement pursuant to any sublease agreement. The Lessee shall, however, be permitted to enter into a leasehold mortgage, collateral assignment or security interest in the form approved by the Lessor, for construction and/or business operation financing purposes. However, the amount secured by such financing shall not exceed the value of the leasehold improvements on the Premises and the value of any other leasehold improvements owned by Lessee pursuant to leases (other than this Lease) between Lessor and Lessee. Leasing and subleasing of hangar and tie down space on the Premises, to individual aircraft owners, shall be allowed without Lessor's consent.

16. OBSERVATION OF LAWS, RULES AND REGULATIONS. Lessee and Lessor agree to observe and obey during the Term of this Lease, all laws, ordinances, minimum standards, rules and regulations promulgated and enforced by Lessor, and by any other proper authority having jurisdiction over the conduct of operations at the Airport, including the federal government, the state, the county and the City now or hereafter in effect.

17. UTILITIES, REFUSE AND SEWER. Lessee is responsible for providing all installation and service cost for all utility needs at Lessee's sole expense. Lessee agrees that if in the future Lessor decides to provide sewer or refuse service, then Lessee will pay a reasonable and fair charge for such service(s). Until such time, Lessee shall be responsible for its own sewer service and garbage disposal.

18. ALTERATIONS AND IMPROVEMENTS.

A. Lessee shall not make or suffer or permit to be made any alterations, additions or improvements whatsoever in or about the Premises without first obtaining the written consent of the Airport Manager. If Lessor gives such consent, all alterations or improvements shall be done solely at Lessee's expense and in accordance and in compliance with all applicable municipal, state and federal ordinances, laws, rules and regulations. Alterations or improvements shall be compatible with the general decor of the Airport Terminal or with such design standards as the Lessor may adopt from time to time. Lessee has Lessor's consent to place temporary buildings on the Premises prior to, and during, construction.

B. Lessee shall allow no liens of mechanics, materialmen, laborers, architects, artisans, contractors or subcontractors to be created against or imposed upon the Premises. Lessee shall, upon request by Lessor, provide a labor and materialman's bond to cover all work and materials and labor arising out of such alterations, additions or improvements. No default shall occur if Lessee contests the amount or validity of any such lien, and actively litigates such claim to conclusion. Lessee may bond against such lien, as may be allowed by law, without constituting a default hereunder.

C. Any and all alterations, additions and improvements, except shelving, trade fixtures and movable furniture, made at Lessee's sole expense after having first obtained the written consent of Lessor, in accordance with the provisions contained in this section, whether attached to the walls, floors, Premises or not, shall belong to Lessee but shall merge and become a permanent part of the Lessor's realty and vest in Lessor upon termination of this Lease and all such alterations, additions and improvements shall remain on the Premises and shall not be removed by Lessee at the termination of this Lease without the permission of Lessor. The shelving, trade fixtures and movable furniture, or both, which Lessee is privileged to remove, must be removed by Lessee at Lessee's sole expense on or before the termination of this Lease.

19. DESTRUCTION OF PREMISES. If at any time during the Term of this Lease, the Premises shall be totally or partially destroyed by fire, earthquake, flood, or other calamity, then Lessor shall have the option to rebuild or repair the same, providing such rebuilding or repairing shall be commenced within a period of thirty (30) days after receipt of notice in writing to Lessor by Lessee that such calamity has occurred. In such case a just and proportionate part of the rental payment per month shall be abated until such demised property shall have been rebuilt and repaired. In case, however, Lessor within thirty (30) days following receipt of notice in writing by Lessee of such damage or destruction elects not to rebuild or repair said property, Lessor shall so notify Lessee and thereupon this Lease shall terminate and become null and void.

20. FAIR AND NONDISCRIMINATORY SERVICES. Lessee, in the conduct of its authorized business activities shall furnish good, prompt and efficient service in compliance with all applicable laws, rules and regulations adequate to meet the demand for its services at the Airport, and shall furnish such service on a fair, equal and not unjustly discriminatory basis to all users thereof, and agrees to furnish such services at fair, equal and not unjustly discriminatory prices for each unit of sale or service; provided, however, that Lessee shall be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchases. Lessee agrees to operate the business in an ethical and professional manner and shall keep the Premises in a safe, clean, orderly and inviting condition at all times, satisfactory to the Lessor. Lessee shall not permit its employees or agents to solicit customers on public property.

21. TITLE VI. CIVIL RIGHTS ASSURANCES.

A. The Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration under this Lease, does hereby covenant and agree as a covenant running with the land that:

1. No person on the grounds of race, color, sex, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises.
2. In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.
3. The Lessee shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally- assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

B. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the service or benefits of any program or activity covered by this subject. The Lessee assures that it will require that its covered sub-organizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by CFR Part 152 Subpart E, to the same effect.

22. ENVIRONMENTAL PROTECTION.

A. Lessee shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of the Airport or surrounding property. Lessee shall provide, as necessary, a separate drainage, collection, and/or separation system to ensure that no untreated liquid waste from any type of operation, including vehicle cleaning, fueling, and oil change operations, will enter the Airport storm drainage or sanitary system.

B. Lessee shall, at all times, comply with all applicable laws, rules and regulations of the federal, state and local governmental agencies. Lessee shall not permit any activity which directly or indirectly produces objectionable or unlawful amounts or levels of air pollution, noise, glare, heat emission, electronic or radio interference with navigational and communications facilities for the operation of the Airport and for Airport use by aircraft, trash or refuse accumulation, vibration, prop-wash, or jet blast, or which is hazardous or

dangerous by reason or risk of explosion, fire or harmful emission. Any waste oil storage tanks shall be in approved containers and in accordance with all environmental and fire protection regulations.

C. Hazardous substances are any substance, material, or waste, (including any petroleum products, solvents, thinners, herbicides and soil sterilants and aircraft deicing fluids) which is or become designated, classified or regulated as being "toxic," "hazardous," a "pollutant," or is in the future given a similar designation under any federal state or local law, regulation or ordinance.

D. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all liabilities, claims, actions, foreseeable and unforeseeable consequential damages, costs and expenses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of Lessor's counsel) or loss directly or indirectly arising out of or resulting from the presence of any hazardous substance as a result of Lessee's or any sublessee's activities on the Premises, subsequent to the execution of this Lease but before, during or after construction, in or around any part of the property or the soil, groundwater or soil vapor on or under the property, including those incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work, or any resulting damages or injuries to the person or property of any parties or to any natural resources. Upon demand by Lessor, Lessee shall defend any investigation, action or proceeding alleging the presence of any hazardous substance as a result of Lessee's or its subtenant's occupancy of the leased property, in any such location which affects the property or which is brought against the Lessor, whether alone or together with Lessee or any other person, all at Lessee's own cost and by counsel to be approved by Lessor in the exercise of its reasonable judgment. Should Lessee fail to defend such action, then Lessor may elect to conduct its own defense at the expense of the Lessee. Lessee shall comply and cause all occupants of the property to comply with all laws, regulations, and ordinances governing or applicable to hazardous substances. Lessee acknowledges that hazardous substances may permanently and materially impair the value and use of real property. Lessee shall promptly notify Lessor if it knows, suspects or believes, there may be any hazardous substance in or around the property or in the soil, groundwater, or on or under the leased property, or that Lessee or the property may be subject to any threatened or pending investigation by any governmental agency under any law, regulation, or ordinance pertaining to any hazardous substance. Lessee shall have no obligation to defend, indemnify, or hold harmless Lessor from any claims, causes of action, or damages which arise on account of Lessor's own conduct, the conduct of third parties other than Lessee's subtenants, or which is attributable to pre-existing conditions or events over which Lessee exercises no control, even though the Premises may be impacted thereby.

23. NONEXCLUSIVE RIGHTS.

A. Lessee shall have the exclusive right and privilege of engaging in and conducting a business on the Premises under the terms and conditions set forth herein, provided, however, that this Lease shall not be construed in any manner to grant Lessee or those claiming under Lessee in this Lease the exclusive right to the use of the common areas and facilities of said airport other than the Premises.

B. Lessor shall have the right to lease other portions of the Airport or Airport Terminal to other lessees, including other ground, air and transportation services. Lessor shall not in the future lease any other Airport premises to any other lessees providing the same or similar services and activities authorized in Paragraph 13B of this Lease Agreement at rental rates or terms more favorable or less restrictive to the lessees than set forth in this Lease without Lessee's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. Lessee understands and agrees that nothing in this Lease shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended.

24. TAXES AND LICENSES.

A. The Lessee shall promptly pay any and all taxes, personal property tax, leasehold tax, gross receipts tax, transaction privilege tax or other exaction assessed or assessable and pay all license fees and permit fees applicable to the Lessee's operation, and acquire and keep current, all licenses, municipal, state or federal as the result of the Lessee's operations at the Airport pursuant to this Lease Agreement, and shall not allow any of said taxes, excises or licenses to become delinquent.

B. The Lessee shall not permit any mechanics' or materialman's or any other lien to be placed or foreclosed upon the Premises or improvements thereto. The Lessee shall have the ability to contest payment demand by a contractor. Should the Lessee withhold payments to a contractor, the Lessee shall be required, at the Lessor's option, to deposit with the Lessor or a court of competent jurisdiction, an amount equal to the amount in dispute.

25. LEASE OF PARCEL A TO LESSOR. Upon the termination of the Landmark Lease, Lessor will cause to be reconfigured the boundaries of Parcel A to remove any encroachment of Parcel B onto Parcel A. Thereafter the Lessor may, but need not, lease to the Lessee any or all of Parcel A and/or any rights appurtenant thereto, including, without limitation, the exclusive right to use the ramp area located west of Building 3002, all upon such terms and conditions as the Parties may then agree, taking into account Lessor's future needs relating to the expansion of the Airport Terminal. In the event that Lessor determines that it does not need to use Building 3002 for one (1) or more years, Lessor will lease Parcel A to Lessee for said period under a separate lease, upon similar terms and conditions to this Lease. Such Parcel A lease shall include the right to use the ramp area adjacent to Parcel A for the Parcel A lease term and, in the event that Lessor determines that it needs to use Building 3002, but not the ramp area, the right to use the ramp area appurtenant to the use of Parcel A shall be granted to Lessee under a separate agreement.

26. SUBORDINATE PROVISIONS. This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States or the State of New Mexico relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport.

27. OBSTRUCTIONS. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, 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 the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft. Lessee shall, upon approval by Lessor and prior to any construction of any nature within the boundaries of the Airport, prepare and submit to the Airport Manager and the Federal Aviation Administration, Airports District Office, 2601 Meacham Blvd, Ft Worth TX, 76137 one executed set (four copies) of FAA form 7460-1 "Notice of Proposed Construction or Alterations", as required by Federal Aviation Regulation Part 77. This notice must be submitted at least thirty (30) days prior to the date of the proposed construction/alteration or the date that an application for a construction permit is filed, whichever is earlier.

Should a Federal Aviation Administration Obstruction Evaluation determine that obstruction lights are needed or required on new construction, or should Federal Aviation Administration rules and regulations change to require obstruction lights on existing structures which previously did not require obstruction lights, Lessee agrees to install, maintain and operate such obstruction lights on the top of buildings or structures to be placed on the Premises. If Lessee fails to install, maintain and operate such obstruction lights then the Lessor shall have the right to install, maintain and operate the same at Lessee's expense.

28. AMENDMENT IN WRITING. No amendment between the Lessor and Lessee relative to the leasehold interest herein shall be valid and enforceable unless in writing and executed by both the Lessor and Lessee.

29. CHOICE OF LAW. In the event of contest or legal dispute regarding this Lease, this Lease shall be construed according to the laws of the State of New Mexico and any applicable City Ordinances.

30. APPROVALS, CONSENTS AND NOTICES. Notices required to be given to the Lessor shall be hand-delivered, sent via email, overnight courier service, or by certified mail, postage prepaid, addressed to:

Airport Manager
Santa Fe Municipal Airport
P.O. Box 909
Santa Fe New Mexico, 87504-0909
505.955._____
_____@santafenm.gov

With a copy to: City Manager
P.O. Box 909
Santa Fe New Mexico, 87504-0909
505.955._____
_____@santafenm.gov

City Attorney
P.O. Box 909
Santa Fe New Mexico, 87504-0909
505.955.6961
_____@santafenm.gov

Any approvals, consents and/or notices to be given to the Lessee shall be hand-delivered, sent via overnight courier service or sent by certified mail to:

Jet Center at Santa Fe Real Estate, LLC
Attn: John Marchman
c/o Felker, Ish, Ritchie, & Geer, P.A.
911 Old Pecos Trail
Santa Fe, NM 87505

or to such other addresses as may be provided from time to time by each of the Parties to the other in accordance with the notice requirements of this Paragraph 30.

31. PARAGRAPH HEADINGS. The paragraph and subparagraph headings contained in this Lease are inserted for reference and convenience and are not intended to define or limit the scope of any provision of this Lease.

32. INVALID PROVISIONS. In the event any covenant, condition or provision contained in this Lease is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, conditions or provisions contained in this Lease shall not affect the enforceability of the balance of this Lease; provided that the invalidity of such covenant, condition or provision does not materially prejudice either the Lessor or the Lessee in its respective rights and obligations contained in this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed as of the day and year first above written.

City of Santa Fe:

Javier M. Gonzales, Mayor

ATTEST:

Yolanda Y. Vigil, City Clerk

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X 2015-4 Resolution: _____
(A single FIR may be used for related bills and/or resolutions)

Short Title(s): AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND JET CENTER AT SANTA FE REAL ESTATE, LLC, OF CITY OWNED LAND LOCATED AT THE SANTA FE MUNICIPAL AIRPORT FOR THE PURPOSE OF PROVIDING FIXED BASE OPERATION SERVICES AND OTHER RELATED PURPOSES.

Sponsor(s): Councilor Ives
Reviewing Department(s): Transportation - Airport Division
Person Completing FIR: Jon Bulthuis Date: January 22, 2015 Phone: 955-2006

Reviewed by City Attorney: Vellay A. Beerman Date: 1/23/15
(Signature)

Reviewed by Finance Director: _____ Date: 1-23-2015
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution.

To enable the lease of city owned land to business enterprise committed to establishing a new fixed-based operation at the municipal airport.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

2. Revenue Sources:

a. To indicate new revenues and/or

b. Required for costs for which new expenditure budget is proposed above in item 1.

1	2	3	4	5	6
Type of Revenue	FY 2015	"R" Revenue Recurring or "NR" Non-recurring	FY 2016 +	"R" Costs - Recurring or "NR" Non-recurring	Fund Affected

Prepaid Rent	\$ 27,225	NR	\$ _____	_____	_____
GRT on Construction (8.1875 on 3.55M)	_____	_____	\$ 290,656	NR	_____
Ongoing Annual Rent Payments	_____	_____	\$ 15,763	R	_____
FBO Fees (+/- 60% market capture - no growth scenario)	_____	_____	\$ 169,506	R	_____
Temporary structure expense not incurred	_____	_____	\$ 80,000	R (two years)	_____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

The proposed development of a second fixed base operator (FBO) at the Santa Fe Municipal Airport would produce the revenues detailed above. Note that the \$27,225 in pre-paid rent will allow the City of Santa Fe to make a final payment on building 3002, currently being purchased from the existing FBO, and move administrative office functions from the terminal building in the likely event re-development plans for the terminal require the space now occupied by staff. Acquisition of building 3002, two-years ahead of schedule, makes it possible for the city to avoid the costs that would be involved in renting and siting a temporary building to house administrative functions during and after the terminal remodel project. Note that the anticipated FBO fees calculation assumes the new FBO will capture a portion of the existing FBO business currently being conducted at the airport, which will result in a reduction in revenue payments from the current provider of such services. However, it is not unrealistic to project that the market for such services will grow based on the likelihood that competition in the provision of FBO services will make SAF more competitive within the region.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

No.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

The airport would continue in the current state where only one fixed base operator exists and no competition is present for the business services provided. The Federal Aviation Administration strongly encourages airports to foster competition for such services in order to preclude having only one business entity control the supply of such services to the aviation community.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

No.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The aviation community would benefit from the completion inherent in the establishment of a second FBO, the airport itself would benefit from new rental and fee revenues, and the city itself would benefit from the GRT realized from the new construction to occur.

Form adopted: 01/12/05; revised 8/24/05; 4/17/08

PROPOSAL



JET CENTER
at • SANTA FE

JET CENTER AT SANTA FE

A NEW FIXED BASE OPERATION
SANTA FE MUNICIPAL AIRPORT
SANTA FE, NEW MEXICO





Executive Summary

Jet Center at Santa Fe, LLC, (JCASF) a new entity formed by the founders and former owners and operators of Santa Fe Air Center and its predecessors, propose to establish a new fixed base operation that will provide a first-in-class FBO option to the local aircraft operators, transient, and the general flying public.

JCASF is uniquely qualified with over 25 years of demonstrated success in the FBO business. We have over 19 years of experience in Santa Fe, having owned and operated Santa Fe Air Center and its predecessors including Santa Fe Jet Center and Capital Aviation. During this time period, working closely with the Airport Manager and The City of Santa Fe, Santa Fe Jet Center completed a new passenger terminal and over 130,000 square feet of hangar space. Ownership has also operated FBO's at other major airports including Scottsdale, AZ (KSDL), White Plains, NY (KHPN), Teterboro, NJ (KTEB) and West Palm Beach, FL (KPBI).

JCASF will pay to the City of Santa Fe as rent in advance "Prepaid Rent," an amount of approximately \$27,225. City will enter into a 30 year lease with two five (5) year options to extend with JCASF for Commercial Activities on the City of Santa Fe Airport including but not limited to line service and aircraft storage to include the Parcels B, C & D as described herein and identified in Exhibit "A".

City will use Prepaid Rents to pay the outstanding balance of its current note payable for the purchase of building 3002 slated for its future development purposes. Upon exercising its right of termination on the current lease, the City agrees to a lot split of the land contained in the prior lease and then to lease to JCASF the balance of Parcel B, which excludes Building 3002.

Rents due the City of Santa Fe from the leases described herein, will be credited against the Prepaid Rent until the Prepaid Rent amount is repaid in full. Beginning the month following the full repayment of Prepaid Rents, all rents due to City will be paid per terms of lease. In consideration of the initial construction costs and startup expenses that will be incurred by JCASF, all fees will be deferred for an initial period of time as defined in the lease.

JCASF will relocate the F-111 from its current site to the south of Airport Road (Exhibit "A"). This is consistent with future airport plans to accommodate new roads and a new airport entry. Additional hangars will be constructed on the current site of the F-111, identified as Parcel "C" in Exhibit "A," and will be included in the 30-year lease.

Qualifications

The owners and operators of Jet Center at Santa Fe are uniquely qualified with over 25 years of demonstrated financial capability and success in the development and operations of the FBO business, including over 19 years as operators and facility developers at the Santa Fe Municipal Airport:

- Our ownership group became active in Santa Fe with the acquisition of Post Aviation in 1986 and developed the company into a full-service FBO and MRO facility.
- Over the years, ownership has operated the business as Capital Aviation, International Aviation, Santa Fe Jet Center and Santa Fe Air Center. Working closely with the Airport Manager and The City of Santa Fe, we completed the following improvements at KSAF:
 - New 4,000 sq. ft. passenger terminal - Building 3005 (now Landmark Aviation);
 - Over 130,000 square feet of hangar construction, including:
 - G Hangar – Building 4009, (20,000 sq ft)
 - K Hangar - Building 1010, (22,000 sq ft)
 - Executive Hangars - Building 4010, (14,400 sq ft)
 - T-hangars - Buildings 4006 and 4007, approximately (23,000 sq ft)
 - Maintenance Hangar - Building 4002, (15,000 sq ft)
 - F Hangar - Building 4008, (16,000 sq ft)
- In 2002, ownership worked with the City of Scottsdale to develop and finance Air Center Scottsdale, a new \$20 million FBO facility consisting of 18,000 sq ft of world-class passenger terminal and offices and over 75,000 sq ft of modern hangar facilities. In addition to the FBO facilities, ownership developed the Air Center Cholla Airpark facility consisting of 16,000 sq ft of offices and over 75,000 sq ft of hangar facilities. Scottsdale Air Center also included an aircraft sales and aircraft management division.
- Ownership has also operated FBO's at other major airports including White Plains, NY (KHPN), Teterboro, NJ (KTEB) and West Palm Beach, FL (KPBI).
- Ownership owned and operated AirWest, LLC in Colorado Springs, A FAR Part 141 Flight School providing flight training to the US Air Force Academy through our own fleet maintained by our Part 145 repair station. The company also included a Part 91 management company and Part 135 charter business providing turbo prop, light and mid-sized jets to the southwestern US market.
- Ownership currently operates a Part 145 repair station at the Santa Fe and Santa Teresa, NM airports and an aircraft management, air charter and consulting group working with principles in the United States, Europe and Asia.
- Upon execution of the lease, funding of the development will include substantial cash infusion from the owners, financial assistance from our fuel suppliers and conventional lenders as needed for construction and long-term financing.

Recognition

We have demonstrated a legacy of exemplary customer service:

- Santa Fe Jet Center was 8-time recipient of ExxonMobil Aviation's Gold Service Award and consistently highly ranked in AIN's pilot surveys.
- Scottsdale Air Center was ranked the number 3 FBO in the United States by AIN's pilot survey in its second year of operation and continued to be ranked in the top 5 throughout our ownership period.

Development Plan

JCASF will enter into a long-term lease(s) with the City of Santa Fe for the following parcels (see attached drawing Exhibit "A"):

- 38,189 ft² of land identified as Parcel "B"
- 42,617 ft² of land identified as Parcel "C"
- 51,047 ft² of land identified as Parcel "D"

JCASF intends to develop the above lease parcels in three (3) phases as described below:

1. Phase 1 consists of the installation of temporary terminal and offices on Parcel "B" and the development of a fuel farm on Parcel "D" to begin immediate operations.
2. Phase 2 includes the design, development and construction of a 20,000 ft² hangar, associated parking and site work on Parcel "C" and construction of a new terminal building and office space on Parcel "B".
3. Phase 3 includes the removal of the temporary terminal, and in its place the development and construction of a new hangar and parking on Parcel "B" as designated in Exhibit "A".

Projected Capital Expenditures

Item	Projected Expenditure
Prepaid Rents	27,225
New Terminal Building	650,000
Temporary Building and Modifications	80,000
Hangar 1 - Approximately 20,000 sq. ft.	2,000,000
Hangar 2 - Approximately 10,000 sq. ft.	1,100,000
Fuel Farm	350,000
Ground Equipment	200,000
Fixtures and Furniture	100,000
Total Projected Capital Expenditures	\$ 4,752,000



Projected Revenues to City of Santa Fe

JCASF projects that the City of Santa Fe will earn approximately \$187,000 in leases and fees from JCASF in Year 1 of operations.

Leases

Lease Parcel	Ft ²	Annual Rent
Parcel "B"	38,189	6874
Parcel "C"	42,617	6819
Parcel "D"	51,047	4,084
Total	131,853	\$ 17,777

Other Fees

	Gross Amt	Rate	Total to City
Flowage Fees (gals)	1,275,093	\$0.07	\$ 89,256
Hotel lodgers and gross receipts taxes	\$40,000	15%	6,000
Rental car taxes and concessions	\$128,000	25%	32,000
Transient ramp fees	\$15,000	75%	11,250
Transient tie down fees	\$8,000	75%	6,000
Adjusted Gross Receipts	\$1,250,000	2%	25,000
Total Revenues (City)			\$ 169,506



Operations

Employees and Training

Approximately 15 new, local employees will be hired to handle line service, customer service, property maintenance, and provide management and accounting needs at an annual expense in excess of \$600,000.

We have a legacy of exemplary customer service. In our previous ownership of Santa Fe Air Center (and predecessors), SFAC was consistently highly ranked in AIN's pilot surveys and was an 8-time recipient of ExxonMobil Aviation's Gold Service Award. Additionally, during our ownership of Scottsdale Air Center, SAC was ranked the number 3 FBO in the United States by AIN's pilot survey in its second year of operation and continued to be ranked in the top 5 throughout our ownership period. The customer service program at Jet Center at Santa Fe will continue this legacy of providing exemplary service to pilots and the flying public.

Safety is the foundation of our culture. Our line service technicians will be highly trained using the NATA Safety First training program known as the industry standard in Line Service Specialist training.

Our customer service representatives will lead the industry by using Horizons Total FBO program. We will implement our proprietary arrival and departure module, which provides real time monitoring of aircraft work-in-process status to assist our CSR's to ensure the highest level of service with zero service defects.

Fuel Vendor

Our fuel training and quality control procedures will surpass the minimum requirements as outlined by both Envoy and United Airlines. Our selection of fuel vendor will align with our company values. This fuel vendor will not just supply our fuel but will assist us to ensure the highest quality fuel as outlined in ATA 103. We will lease our fuel trucks from this same fuel vendor, and install wireless electronic meters to ensure accurate fuel gallons at the time of delivery.

Our fuel farm will initially consist of 12,000-gallon Avgas and 20,000-gallon Jet double wall tanks with the ability to expand as necessary. We will work closely with the New Mexico Environmental Department Petroleum Storage Tank Bureau to ensure all New Mexico rules and regulations are closely followed. We will seek comments and approval from Envoy Air, United Airlines, United States Government Defense Logistic Agency and the Santa Fe Fire Department, ensuring that we exceed their stringent inspection requirements.

Maintenance

We will contract one or both of the existing on field maintenance companies to perform necessary line service, annual inspection, avionics inspection, heavy aircraft maintenance and any emergency maintenance required by our customers.



Equipment

Our support equipment will include of the following:

Jet Fuel Truck(s)
Avgas Fuel Truck
Tugs – conventional and Lektro
Tow Bars and heads, as needed
GPU's (Ground Power Unit)
Lavatory Cart
Potable Water Cart
Deicing cart
Golf Carts and service equipment
Catering Refrigerator, Dishwasher, Washer Dryer, Ice Machine
Safety equipment including chalks/cones, etc.
Radios/Base Station



Marketing

Jet Center at Santa Fe will promote the city's culture and special events by working with the Department of Economic Development and the Santa Fe Chamber of Commerce. JCASF will become members of National Business Aircraft Association (NBAA) and National Air Transport Association (NATA). Through these organizations we will work hand-in-hand to promote Santa Fe Municipal Airport and our rich culture and popular events that make Santa Fe a destination location. We will extend an invitation to the Department of Economic Development and the Santa Fe Chamber of Commerce to the yearly industry events to help market Santa Fe and showcase our community through our Aviation Gateway.

An aggressive direct sales effort will be focused on contract fuel customers including flight departments, 135 charter operators and program operators. We will employ a variety of web-based programs to aid the local and transient pilot with their fuel purchasing decision, giving them access to the most up-to-date information on the Santa Fe Municipal Airport and will help drive internet educated pilots to the best FBO in Santa Fe, Jet Center at Santa Fe.

JCASF will use proven and effective targeting methods including our proprietary CRM program that works in conjunction with Passur aircraft tracking program to monitor customer activity and target prospects. Our CRM program monitors all aircraft traffic in and out of the Southwest market. It tracks their base airport and will allow us to market Santa Fe as an alternative to other fuel stop airports in the Southwest.

We are currently developing a service enhancement website, specifically designed to provide hands-on, interactive communication that immediately responds to the ever-changing needs and wants of owner/operators. Not only will the website include service changes that can be made and reviewed on the spot, but also available are important weather updates, city coverage and local news, special event schedules, job "hot line" information, along with the latest incentives and giveaway programs for frequent visitors or high-volume users. Along with delivering current information, our website will be used to promote the image and services of the entire Santa Fe Municipal Airport.

Lastly, JCASF will participate in co-op programs and pilot loyalty programs provided by our fuel partner and other applicable fuel purchasing programs to continually drive traffic and encourage fuel and service purchases.

Economic Benefits of New FBO

The addition of Jet Center at Santa Fe will create increased competition at Santa Fe Municipal Airport directly increasing fuel flowage and revenues to the City of Santa Fe. A single source FBO on field has created inflated fuel pricing strategies. These high prices have reduced the quantity of fuel sold and reduced Airport revenues as pilots and flight departments have found alternative fuel supplies and modify their fuel purchasing habits by "tankering" fuel. We will monitor the fuel prices and offer another option to the pilot. With our knowledgeable CSR and sales strategies, we will encourage maximum uplift to increase fuel volumes through a variety of sales tools.

Other benefits:

- **Jobs:** Our projections are that an immediate creation of 15 new jobs at an annual payroll expense of \$600,000. According to the 2002 Santa Fe Airport Master Plan, the "Indirect Benefits" created by spending by airport employees and employers have a multiplier effect on the local economy. "For example, when an aircraft mechanic's wages are spent to purchase food, housing, clothing, and medical services, these dollars create more jobs and income in the general economy of the region through multiplier effects of respending." *Source: Santa Fe Airport Master Plan Appendix D, Economic Benefit Analysis, page D-4 and Table 13)*
- **Additional Services:** As the company grows, additional services may be provided such as aircraft charter, aircraft sales, aircraft management, aircraft maintenance, and other aviation related services each requiring additional employees. These services will also generate revenue for the Airport from fees and gross receipt payments as outlined in the proposed lease.
- **Ground Rents:** Additional direct income to the Airport will be generated by leasing in excess of 135,000 sq. ft. of vacant or underutilized properties on the airport. At current rates this would be approximately \$20,000 annually.
- **Other Fees:** Additional revenue to the Airport will be generated by the 2% gross receipts fee revenue. There are landing fees, transient ramp fees, rental car percentage charges, hotels and lodger fees, and flowage fees.
- **Increase Flowage Fees to City:** The pricing levels for fuel and other services now charged by the sole source are resulting in planes taking no fuel or reduced fuel, a practice known as "tankering." Fewer gallons purchased at Santa Fe Airport results in reduced flowage fees to the Airport. The addition of Jet Center at Santa Fe to the Airport will create a competitive environment where one does not currently exist. This will directly and positively impact fuel volumes as lower fuel prices discourage "tankering." As part of our marketing initiative, Jet Center at Santa Fe will target volume customers with discounts and other benefits to encourage the purchase of more fuel and services.
- **New Facilities:** Upon execution of the Lease Agreement, Jet Center at Santa Fe will also install a temporary executive terminal and offices, install a new fuel farm, purchase ground equipment, office furniture and support equipment increasing the assets of the Airport and providing substantial tax revenue to the various state, local, and federal agencies. Further, as our plan is fully implemented, we will construct additional buildings on the premises, which will create construction jobs for the community and local vendors.



PROPOSAL
Jet Center at Santa Fe
Santa Fe Municipal Airport

-
- **New park and more appealing entrance into the Airport from the new entrance road:** As proposed, during Phase 2 of our construction process, Jet Center Santa Fe has agreed to move the F-111 and fencing from Parcel "C" across Airport Road to its new location. This will create an updated and improved entrance to the Airport. In addition, Jet Center at Santa Fe has agreed to fence an adjoining parcel of approximately 5,000 ft² that can serve as a dog park for both transient passengers traveling with their pets as well as the community of Santa Fe.
 - **Prepaid Lease and Fees:** Upon execution of the Lease Agreement, Jet Center at Santa Fe will prepay rents and fees of approximately \$27,225 so that the City may complete the purchase of building #3002 for its expansion needs.
 - **Additional Hangars:** We intend to build 2 hangars of approximately 10,000 and 20,000 sq. ft. (maximum that will fit the parcels and meet building codes) that will house large corporate aircraft and regional jets. This will generate taxes from the construction and rental income, additional fuel sales and other services creating incremental revenue for the Airport. At the expiration of the lease these buildings will revert to City ownership.
 - **Promote Santa Fe and the Santa Fe Airport.** Jet Center at Santa Fe will attend numerous trade shows, conventions, and related activities to promote our business and the City of Santa Fe. We will provide visitor materials supplied to us by the Economic Development team, the Chamber of Commerce, and other groups or agencies that would like to participate. All of these activities drive economic benefits to the City.



Ownership of Santa Fe Jet Center

Members of LLC

Herb Marchman
Ron Tarrson
E. Martin Shaeffer
John Marchman

Herb Marchman has spent the last 30 years in general aviation as a pilot and FBO owner. Marchman was president of Santa Fe Jet Center, Inc. based in Santa Fe, NM, president of Scottsdale Air Center Operations and Scottsdale Air Center Real Estate in Scottsdale, AZ., member of the Board of Directors for International Aviation with FBO's in New York, New Jersey, and Florida. Marchman was Chairman of ExxonMobil Aviation advisory council for five years. In addition, Marchman was president of Air West, LLC, an aircraft charter, management, maintenance, and consulting business in Colorado Springs, CO. Marchman is currently CEO for Flight Partners Group, LLC, an international aircraft management, air charter, and consulting group working throughout the United States, Europe and Asia.

Ron Tarrson has been involved in private aviation since 1975 as a pilot and in ownership capacities of Fixed Base Operations and Aircraft Maintenance and Repair Facilities. Mr. Tarrson was a partner in Santa Fe Air Center and Scottsdale Air Center until its sale to Ross Aviation in 2005. He currently owns and operates Aero Services, a maintenance and avionics installation and repair facility with operations in Santa Fe, Albuquerque and Santa Theresa, NM. Mr. Tarrson holds an MBA from the University of Chicago and remains an active pilot.

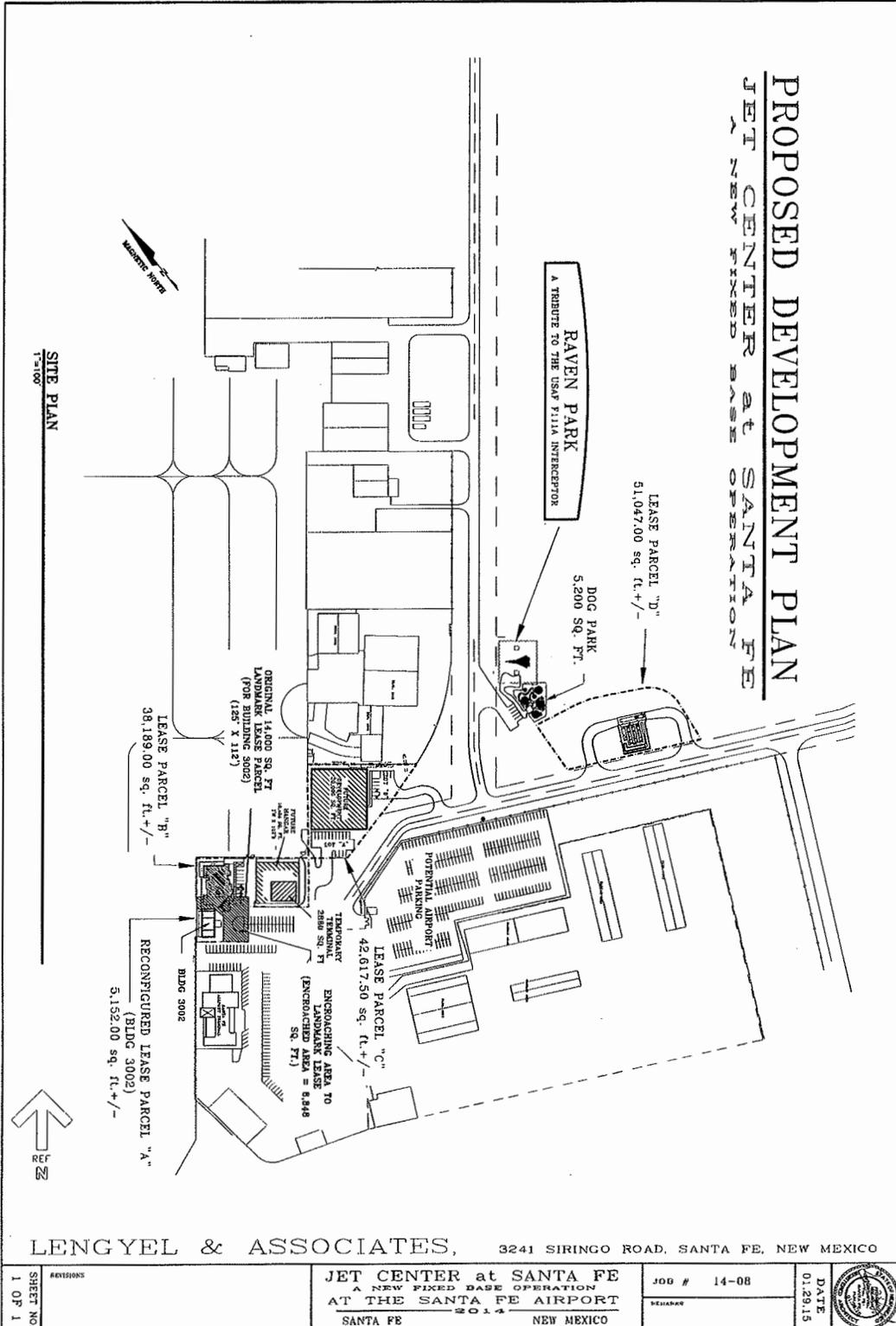
E. Martin Shaeffer has been a partner with Herb Marchman in several businesses since 1976. He was a partner in Santa Fe Jet Center, Inc., and Scottsdale Air Center Operations and Real Estate. Shaeffer is a lifetime resident of New Mexico and has operated a successful construction business until his retirement in 2006. Shaeffer is responsible for the design and construction for the Landmark Santa Fe Airport terminal in addition to approximately 125,000 sq. feet of hangar space on the airport. Shaeffer managed the development of 14 acres of land at the Scottsdale Airport that included over 150,000 sq. ft. of world-class terminal, office, maintenance, and hangar storage.

John Marchman brings 25 years of executive management, brand development and sales and marketing experience in the aviation, financial services, energy, technology, retail and CPG sectors. He has served as marketing advisor to ExxonMobil Aviation and its Aviatat FBO network and his firm has created and administered brand development and marketing programs for ExxonMobil Aviation. He is active with the National Business Aircraft Association. Marchman is currently president of Flight Partners Group, LLC, an international aircraft management, air charter and consulting group serving corporate flight departments, aviation attorneys, OEM's, aviation program operators, HNW individuals and institutional investors in the United States, Europe and Asia.

Additional ownership shares will be reserved for management and other investors.

EXHIBIT A

C:\AR\SANTA FE JET CENTER\02_02_09\FY11.dwg, 1/9/2015 10:28:11 AM DWG To PDF.plt



MEMO

DATE: February 20, 2015
TO: Governing Body
FROM: Zachary Shandler, Assistant City Attorney *ZS*
SUBJECT: Letter from Landmark Aviation

ITEM AND ISSUE:

On February 18, 2015, Landmark Aviation sent in a letter regarding the agenda item for the evening session at the February 25, 2015 Council meeting regarding "Jet Center at Santa Fe."

City staff is preparing a response, which will likely include brief clarifying language for the lease, for City Council review. We were unable to complete this task prior to the packet going to the printer, but intend to circulate the information via email and post it on the City webpage as soon as possible.



February 18, 2015

Via E-mail: kabrennan@santafenm.gov

Kelley A. Brennan
City Attorney
City of Santa Fe
200 Lincoln Ave.
Santa Fe, NM 87504-0909

Re: Proposed Lease for New FBO at SAF – Jet Centre at Santa Fe

Dear Ms. Brennan:

Thank you for your time, and that of John Bulthuis, in meeting with Greg Sutphin, Jeff Miller and me on Thursday, February 12, 2015. We enjoyed meeting you and appreciated your candor. Following up on that meeting and per your suggestion, this letter is intended to outline the serious concerns that Landmark Aviation has with the proposal for a new FBO at Santa Fe and with the proposed lease terms.

1. The City should reconsider allowing a second FBO

As we discussed, Landmark respectfully suggests that the establishment of a second FBO at Santa Fe is not a good business decision by the City. We now have had the opportunity to review Jet Center at Santa Fe, LLC's Proposal and we are more convinced that our suggestion is correct. While Landmark, as any other commercial enterprise, generally would like to see as little competition as is legally allowed we also recognize the need for it in many circumstances and we respect, in particular, an airport sponsor's obligation to allow more than one operator where appropriate and to avoid "exclusive rights". However, it is very clear that an airport sponsor's obligations in this regard are entirely subject to rational business criteria and that allowance of a single operator does not constitute an exclusive right.

In this instance, we suggest that the establishment of a second FBO does this City very little good. While the Proposal pays lip service to an alleged marketing effort to attract new business to the airport, it is woefully short on any detail on how and from where such new business of any significance is actually available. The reality is that, despite reasonable competitive pricing, the airport experiences no more than ten (10) transient flights on a good day. Landmark Aviation is a network of over 60 FBOs. A large part of our business model is to encourage our customers to use all of our locations. We are successful with this model, i.e., we experience a high rate of customers who may be based with us at one location also using us in many others. We have been at Santa Fe now since August 1, 2014. Despite our large national presence and this focus on network utilization by our customers, we have seen very little growth in transient business at Santa Fe. The reason for this is basic and it is not unique: Santa Fe is a destination airport. Typically, either an aircraft owner is based in Santa Fe or the owner has a singular reason for visiting. It is not a large business hub. Frankly, it is somewhat naïve to suggest, as Jet Center at Santa Fe has, that a single FBO facility will be able to do for transient traffic growth that which two large networks have not.

Kelley A. Brennan
February 18, 2015
Page 2

Instead, what the Proposal really suggests is a potential split of based customers. That is, the new FBO likely intends to solicit existing Landmark based customers to move to the new FBO facilities (if they ever are built – see discussion below). While this could in theory result in some lower pricing, it is a flawed concept. If the new operator wants to artificially discount prices to attract existing customers Landmark can match or beat the “discounts” even though existing prices are appropriate. Landmark also has the ability to incentivize existing customers with offers at 60+ other airports. While there is not a high volume of transient traffic into Santa Fe, the customer base here are transient customers at other airports. Accordingly, when those customers travel to 60+ other airports they can be serviced at Landmark locations at favorable rates. Although the new operator may have some modest success in taking based customers, the City will not gain at all. The gallons already are on the field. Our observation has been that in such situations at comparably sized airports a new operator quickly becomes unable to meet its financial commitments from operating revenue. Fuel volumes do not increase so the airport sponsor does not benefit from increased flowage or gross receipts fees. What actually can happen is a reduction in incentive to maintain facilities and service. In effect, the real potential exists to create two mediocre and unprofitable FBOs rather than focus on one superior FBO.

What is the incentive for the City to establish a second FBO? At our meeting last week, you and Mr. Bulthuis stated that this is not really a City initiative but suggested there have been “service issues” which may have led to it. We challenged you on the comment and requested from you a list of complaints and complainants which Mr. Bulthuis volunteered he would provide. We followed up on the request. To date we received only links to the last couple of years of monthly airport advisory board meeting minutes. Those minutes do not provide much or any insight into “service issues”. So, we are at a loss to understand what the complaints may have been and what has caused this initiative.

We have taken the liberty of enclosing an excerpt from National Air Transportation Association (NATA) literature (available on its website) which discusses these very criteria in a balanced fashion. We encourage the City to review this literature and to seek advice from industry experts. Groups like NATA and American Association of Airport Executives can certainly refer you to excellent consultants on the topic. Against this backdrop, we encourage the City to take seriously NATA’s advice in the attached excerpt and perform a true tactical analysis of: 1) demand capacity; 2) return on investment; 3) airport financial impact; and 4) an airport business marketing plan. Given the very brief time between the submission of the Proposal and the hearing on the lease we have to assume such analyses were not undertaken in detail, and we are not aware of any independent expert advisors being consulted or providing reports. We submit that after undertaking this analysis the objective conclusion will be that a second FBO is not warranted. If after thorough analysis the conclusion is otherwise, so be it. At that point, at least all parties will know that the venture has proper support.

2. If the City chooses not to reconsider, or if on thorough reconsideration the result is the same, the proposed lease requires significant modification to be fair

In short, the proposed lease has no teeth in it for the City and it provides the new FBO with significant and unfair competitive advantage over Landmark at Santa Fe. It is, in effect, a “free look” for the proposed new operator with very little consequence. Landmark is party to multiple leases with airport sponsors which have a capital improvements development component and we have seen dozens of other such leases. We cannot recall one such as this in which a proposal has been made by the FBO to build, but the lease is effectively silent on the point.

Section 3 of the proposed lease states that the parcels “shall be used for the construction” of various structures. However, that language is rendered only aspirational by the complete lack of any requirement to build within any time period at any minimum capital commitment, and by the lack of any consequence for failure to do so. Since there is no requirement in the lease for the new operator actually to build, the City’s remedies on default are effectively of no use if the new operator does not build (or does not spend what they said they would or does not build timely). Under the proposed terms, the new operator could put a fuel tank on skids at Parcel D, rent a truck, and start fueling aircraft. This is neither fair to Landmark as the existing operator burdened by the cost of a full infrastructure, nor does it benefit the City except for the very modest rent it will collect (which rent can go away on 60 days’ notice of termination of the lease at the discretion of the new operator).

The proposed lease should be modified with respect to the capital improvements commitment to an industry consistent standard which does at least the following:

1. Establish a minimum required capital improvements obligation on a monetary basis. The Proposal states \$4,180,000 in actual improvements (excluding ground equipment, pre-paid rent, and FF&E which can be removed). Other reports have suggested \$5,300,000. This requirement may allow for a modest professional fee cost inclusion but should not include FF&E or ground equipment which is transferable.
2. Establish what will be built on each parcel, i.e., hangar, terminal, fuel farm. Section 3 of the lease generally outlines this but, consistent with the Proposal, it should impose minimum square footage requirements for the buildings and minimum sizes for the fuel farm tanks. This is necessary in part because the 1986 Minimum Standards for the airport are not specific on these items and in part because the City should be interested to know what it contractually should expect in new infrastructure.
3. Establish a deadline by which improvements must be completed for occupancy and by which the full capital commitment is spent. Based on the scope of the Proposal, this should be no more than two (2) years.

Kelley A. Brennan
February 18, 2015
Page 4

4. Establish that failure to complete the improvements timely or failure to spend the required amount is a breach of the lease subject to its termination by the City.
5. Require that the new operator post payment and performance bonds in favor of the City and in the full amount of the capital commitment prior to beginning construction. This will allow the City to complete the project in the event the new operator defaults.
6. Eliminate the allowance of the new operator to conduct business from temporary facilities as this simply gives the new operator a low cost advantage not available to Landmark. The new operator should be allowed to operate only once its permanent facilities are completed. The quicker it builds, the quicker it is in legitimate business.

Again, we have not seen a development lease for an FBO without a similar structure in some form. By making these modifications the City will be secure that the improvements it has bargained for through a 30 year lease actually will be constructed. The new operator and Landmark also will be on a level playing field – which clearly is mandated by FAA Grant Assurances (we note the City's recent AIP grant funding). Once the new operator has completed the capital improvements, as did Landmark by way of its purchase of the entities which built its facilities, each FBO will be burdened by similar infrastructure costs affecting its operations and pricing. Anything short of these requirements for the new operator puts it at an unfair (and probably unlawful under the circumstances) competitive advantage to Landmark.

Other recommended lease modifications are:

1. Eliminate any waivers or deferrals of flowage fees and gross receipt taxes. Landmark is required to pay these so deferring for the new operator is an obvious unfair competitive advantage. Moreover, and particularly given that the fuel volumes sold by the new operator likely will result from aircraft already on the field, the City will not profit by the practice; in fact, it will lose money on those transferred gallons due to the deferral and long term repayment.
2. Require a self-service avgas station. Landmark is required to incur this cost; so must the new operator be.
3. Consider whether the initial 30 year term is too long for the proposed capital investment amount and whether 2.77 acres is sufficient space for an FBO (Landmark's total leasehold is approximately 20 acres). The four part analysis recommended above should establish this. We have seen market studies that 5 acres is an appropriate minimum land area for an FBO at comparable airports. On that basis an acceptable investment to term ratio would result in a lease term of about 23 years. At roughly half the acreage, the term presumably would be shorter.

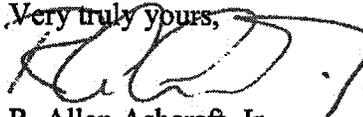
Kelley A. Brennan
February 18, 2015
Page 5

4. Eliminate the exclusive right to use the ramp West of Building 3002. We are not aware of a similar exclusive use of ramp space for Landmark at SAF. Moreover, this reference in Section 25 of the proposed new lease is very vague. It does not define the actual ramp that would be subject to the use. Finally, if the use is exclusive and more expansive than it should be, it creates possible interference with Landmark's access to airport facilities, including its own and areas at which Landmark provides service to its customers.
5. The lease term should start upon execution by the new operator and the City, not with allowance for diligence by the new operator. That diligence should be complete before the lease is signed. This is necessary in order to start the development time period and establish its deadline.

These are only the highlights of why the proposed lease is deficient and must be revised before it is implemented. Obviously, the largest issue is the construction commitment.

We again thank you for meeting with us and for considering the points raised in this letter. Landmark prides itself on a strong reputation of cooperation with its airport sponsors. If it will help, we would be happy to give you multiple sponsor references who will confirm our willingness to work effectively in partnership with the airport for its greater good. It is our fervent hope to have the same relationship with Santa Fe. However, as I advised when we met, this situation is a serious one. Managed correctly, whether by reconsideration of the City's business decision or by contracting with the new operator on appropriate terms, that kind of relationship can continue to be established and can be very productive. Managed incorrectly, it can be problematic. Landmark very much prefers the former and hopes the City shares that view. We are available for consultation at your convenience and will be in attendance at the February 25 meeting.

Very truly yours,



R. Allen Ashcraft, Jr.
Executive VP and General Counsel

RAA/scg
Attachment

Cc: John Bulthuis
Dan Bucaro
Ted Hamilton
Greg Sutphin
Jim Hopkins
Jeff Miller

How Many FBOs Are Enough? ... Guidelines For Evaluating Airport Competition

Introduction

In the United States, competition is the very lifeblood of a healthy operation. Conventional thinking says a robust head-to-head rivalry is the best way to deliver the greatest value to airport users with lower fuel and service prices often heading the list of benefits. The Federal Aviation Administration (FAA) is on record as supporting hearty competition, to the point that some airport sponsors believe that compliance with airport minimum standards automatically signifies a deal no one can refuse. Just as an airport sponsor has the fiduciary responsibility to the airport's strategic financial security to consider all proposals, they also have the duty to ensure that giving the nod to a new business will not unduly harm the current or future airport environment.

There is no simple mathematical formula to determine the appropriate number of *fixed base operations* (FBOs) or *specialized aviation service operations* (SASOs) at an airport. Current guidelines used by airport sponsors during the competitive decision process consist of little more than anecdotes. But there are reasonable steps that can be taken to determine whether an airport sponsor should accept or deny a new business proposal or accept a portion of a proposal and whether those proposals should be formally solicited. This paper is designed to offer visionary thinking from aviation-industry professionals that, while certainly not regulatory in nature, can well serve as the comprehensive genesis of the thought processes necessary to more effectively promote and protect the economic health of any airport.

Trying to understand whether competition at an airport represents an opportunity or a threat to existing businesses should start with a look at the airport environment itself.

The Airport Operating Environment

An FBO faces many of the same challenges found in any sort of retail operation. However, an airport service business differs from the typical retail store in at least two significant ways:

- In the continental United States, it is common practice that retail operations do not actually own property on the airport. In fact, through commonplace reversion clauses, the facilities constructed on-airport actually revert to ownership by the airport sponsor at the expiration of the leasehold; and
- While a local auto repair store or restaurant, for example, might only interact with the local municipality or county government for the authority to operate, the petition to launch a new FBO requires a solid understanding of airport competition guidelines from the FAA as well as the local airport sponsor long before the first customer sets foot on the property. Advisory Circular 5190-5 essentially holds an airport sponsor accountable for ensuring that on-field competition is fair and open to all who have the resources to respond to an airport opportunity [such as by way of a Request for Proposal (RFP)], or who may see the airport as a possible growth opportunity for their business.

The FAA, in fact, specifically ties an airport's ability to garner Airport Improvement Program (AIP) funds to an airport sponsor's responsibility to maintain a level playing field, whereby interested parties can engage in commercial aeronautical activities by meeting reasonable requirements commonly referred to as *minimum standards*. Minimum standards mean just that, *minimum* standards established by the airport that any operator must meet in order to conduct business of a certain type on the field. The type, level, and quality of products, services, and facilities offered can and often will exceed the minimum standards established by the airport. As the discussion about the application of minimum standards takes place, airport sponsors and service businesses are regularly confronted with challenging questions such as whether or not a single FBO already constitutes a violation of grant assurances, or whether the marketplace should decide how

many FBOs an airport can successfully support, or even what the criteria could or should be for an airport sponsor to consider when rejecting an applicant.

Initial Analysis

Before an airport sponsor entertains or solicits proposals from prospective operators, it is incumbent upon the airport sponsor and the airport management team to provide existing and prospective operators with the “opportunity to be successful.” This does not mean the airport sponsor has an obligation to “guarantee success.” It does, however, put the impetus on the airport sponsor to create an operating environment that is conducive to success, which, in turn, if successfully achieved, maximizes the benefit of the facility and level of services to the community.

This can be accomplished by ensuring that the airport has a current Airport Business Plan, a current Airport Master Plan (and Airport Layout Plan), current Primary Guiding Documents, and a current schedule of rates and charges – all of which must be uniformly applied and consistently enforced.

Key Attributes

Some key airport attributes to consider during a proposal evaluation include, but are not limited to:

- the availability of land as depicted in the current Airport Layout Plan;
- the existence of Primary Guiding Documents such as Lease/Rates and Charges Policy, Minimum Standards, Rules and Regulations, and Development Guidelines;
- Airport Rates and Charges, including land rents, improvement rents, commercial fees, landing fees, and fuel flowage fees;
- the number of FBOs and SASOs;
- the number and type of based aircraft;
- general aviation fuel volumes; air carrier fuel volumes,
- aircraft operations; and

- a multitude of other local, regional, and national market and economic factors and trends.

A Regulatory Checklist

One of the most important elements to effectively evaluating a new FBO business proposal is a thorough understanding of regulatory measures including those promulgated by federal, state, and local government agencies having jurisdiction over the airport and its users. The federal government has had the language on the books about competitive airport issues since 1938. Most frequently quoted as it relates to the number of FBOs at an airport is FAA Airport Assurance 23. In short, it states: "(The airport sponsor) will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public." Despite the brevity of the statement, this assurance is frequently misinterpreted. Many airport sponsors believe they will violate the assurance if there is only one FBO at the airport.

The FAA's Airport Compliance Handbook, Order 5190.6A, says a single activity on an airport does not necessarily translate into an exclusive right. "The presence on an airport of only one enterprise engaged in any aeronautical activity will not be considered a violation of this policy if there is no understanding, commitment, express agreement, or apparent intent to exclude other reasonably qualified enterprises." The agency clarifies its concerns by stating, "In many instances, the volume of business may not be sufficient to attract more than one such enterprise. As long as the opportunity to engage in an aeronautical activity is available to those meeting reasonable qualification and standards relevant to such activity, the fact that only one enterprise takes advantage of the opportunity does not constitute the grant of an exclusive right."

Interestingly, some airport sponsors believe that once they have more than one FBO established, they can no longer be found in violation of Airport Assurance 23. That is also not true. FAA Advisory Circular 150/5190-5 defines Exclusive Rights: "A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred either by express

agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties, but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.”

This same FAA document outlines the purpose and the process for developing minimum standards as “the minimum requirements to be met as a condition for the right to conduct an aeronautical activity at an airport.” According to the FAA, minimum standards must “promote safety in all airport activities, maintaining a higher quality of service for airport users, protecting airport users from unlicensed and unauthorized products and services, enhancing the availability of adequate services for all airport users, and promoting the orderly development of airport land.” That said, it is not the role, per se, of the FAA to make a final decision about a new FBO on any airport.

One of the keys to maintaining compliance with Airport Assurance 23 is the development, implementation, and consistent enforcement of the minimum standards. Minimum standards need to be objectively and uniformly applied to all FBOs and SASOs. The FAA recommends [AC 150/5190-5] that minimum standards be tailored for a specific airport and not simply be a copy of another airport’s document using a “fill in the blank” approach. While the FAA does not specifically approve minimum standards, the agency encourages airport operators to show them to their FAA regional office personnel for comment.

Airport Assurance 22, Economic Nondiscrimination, states: “(The airport sponsor) will make the airport available for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.” Further, it states, “The sponsor may establish reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.”

The FAA is often quoted as saying, “Every FBO has the right to go broke.” This does not imply that the airport sponsor must lease land and/or improvements to a company that will, based upon the sponsor’s due diligence analysis, most likely be unsuccessful, as in being unable to fulfill the company’s lease obligations. In addition, it does not mean that an airport sponsor must lease land and/or improvements to entities that seek to engage in activities that will have a detrimental impact on safe airport operations, even if the company is willing to meet the airport’s minimum standards.

Some Basic Documentation

To ensure the provision related to uninterrupted quality of aviation products, services, and facilities to airport users, the airport sponsor must also decide whether it should solicit new business proposals through an RFP process, or simply wait for companies to take notice and inquire on their own.

For airports focused on proactively developing new business opportunities, an RFP may be the most effective approach, since strategic results can be extremely difficult to project when an airport sponsor takes a wait-and-see attitude. [One caveat: The U.S. has a number of well-designed airports on the verge of economic failure because sponsors thought simply building the facility would be enough to entice tenants and, in turn, customers.]

The airport sponsor also needs a variety of tactical information about the facility; at a minimum, three separate analyses are recommended: a demand/capacity analysis; a Return on Investment/Internal Rate of Return analysis; and an airport financial impact analysis.

- *Demand/Capacity Analysis* – A demand/capacity analysis identifies and quantifies the type, level, and quality of FBO or SASO products, services, and facilities provided at an airport and compares it to the level of “demand” being driven by existing customers and anticipated demand from future ones. The primary objective is to identify any service deficiencies on the field.

- *Return on Investment (ROI) and Internal Rate of Return (IRR) Analysis* – An ROI analysis will determine the feasibility and/or viability of a prospective operator to add, or expand existing products, services, and/or facilities. This analysis can also be used to ascertain the financial impact of adding capacity to the existing airport operators. The first step in conducting an ROI / IRR analysis is to estimate the present capital investment, cash flows, and net profit of the existing operator(s). The next step is an estimate of the prospective operator’s capital investment needed in order to deliver some minimum level of products and services that meet the airport’s goals, while also addressing the deficiencies identified in the demand/capacity analysis. Finally, the cash flow and net profit of the existing and prospective operator should be estimated by projecting the revenue stream for each operator based upon the level of demand that exists or can be reasonably anticipated in the future. Once existing and forecasted investments, cash flows, and net profits are estimated for each operator predicated upon the underlying market share assumptions, the ROI and the more complex IRR analysis can be calculated.
- *Airport Financial Impact Analysis* – It is critical for the airport sponsor to fully quantify the impact of any expansion of products or services prior to soliciting new business proposals. Positive financial impacts may include increased rents and fees generated by the new operator, increased rents and fees generated by new based and/or transient aircraft owners/operators, and increased investment in leasehold improvements that may revert to the airport sponsor in the future. Negative financial impacts might require an improvement or enhancement of the airport infrastructure, increased maintenance or labor requirements of that infrastructure, decreased rents and fees from potential overcapacity issues as could be the case where operators pay a percentage of gross receipts or gross margin. In an overcapacity regime, the fees paid to the airport sponsor will typically decline.

- *Airport Business/Marketing Plan* – Although a well-designed airport business plan should clearly outline the goals of the facility, it is often not clear about precisely what action the airport sponsors should take in order to achieve their goals. Hence, there is a need for a marketing plan to develop and focus a distinct set of tactics necessary to achieve the airport objectives, whether they are financial or operational. Even a simple marketing plan should include strategic directions to issues and crisis management, community and media relations, advertising and trade show management, as well as specific financial objectives. A good marketing plan should also be sophisticated enough to segment customers by behavior, rather than demographics.

Working the Numbers

Regardless of whether a proposal is solicited or unsolicited, the evaluation process is the same. If the application was solicited, it is assumed that each of the three analyses and a marketing plan outlining a strategic direction for the airport has already been completed. If the proposal was not solicited, it would be highly beneficial for the airport sponsor to complete these items to gain a better understanding of the feasibility and/or viability of the proposal, as well as the potential impacts of a new business upon existing operators. While the discussion prior to selection or rejection of a proposal need not necessarily be long, it should be comprehensive.

A negative conclusion in itself may not appear as sufficient grounds to deny an unsolicited proposal. On the other hand, if the outcome of the Airport Financial Impact Analysis indicates that the proposal will have an adverse financial impact on the airport, there may indeed be reasonable grounds to deny a proposal.

Minimum standards that are current, reasonable, and appropriate for the airport are one of the most valuable tools that can be used to evaluate any proposal. The minimum requirements that should be identified in the document include, but are not limited to: qualifications and experience; scope of activity; land and improvements; facilities; certification; licensing; personnel; equipment; hours of activity; and insurance for each

type of commercial aeronautical activity. If a proposal does not meet the airport's minimum requirements, the airport sponsor can readily reject the proposal.

To ensure the consistent delivery of quality products and services, it is highly recommended that any prospect be required to submit a business plan to the airport sponsor describing how it will develop, operate, manage, and market the new operation. An inability to develop a solid business plan should be an immediate red flag and possibly offer enough evidence to reject the proposal.

The airport sponsor has a fiduciary responsibility to establish and collect market-based rents and cost-based fees. It is imperative that the financial credibility of the prospective tenant be ascertained, potentially through an analysis of current and future capacity to acquire and/or develop the required and proposed improvements and facilities, and to acquire and/or lease the required or proposed vehicles and equipment. An in-depth study of the prospect's financial capacity through careful analysis of current financial statements, identification, and confirmation of available and committed funding sources is also critical.

Although deposits, bonds, and guarantees can be utilized to ensure that future lease obligations can be met, these items alone should not be the only basis for an airport sponsor's positive decision. The evaluation should be based on the ability of the new company to generate sufficient revenue to cover costs and expenses, sustain on-going operations, and realize a reasonable return on investment. Besides financial considerations and obligations, the airport sponsor must evaluate the prospective tenant's capabilities as they relate to operational safety and levels of service.

(Additional topics may well include not in any particular order ...

- an explanation of the relevant ACs
- relevant portions of airport compliance handbook and airport assurance docs
- an explanation of "opportunity to be successful,"
- a review of what it means to have only a single FBO on the airport

- **opinions of FBO managers giving us the “why” behind their views on multiple FBOs**
- **a look at the positive aspects, as well as the potential drawbacks to multiple FBOs**
- **an opinion on what agreeing to or turning down a new airport operator could mean to AIP funding**
- **a guideline/checklist/decision tree for airport managers and sponsors**
- **does anything here contradict NATA goals?**
- **outline competitive FBO issues in terms to which airport manager/ sponsors can easily relate**
- **explain the areas that can be misleading in this discussion, for example, “basing decisions only on fuel volumes**

February 2, 2015

Mr. Steve Ross,
Chair, Airport Advisory Board
The City of Santa Fe
PO Box 909
Santa Fe, NM 87501

Hello, Steve,

It's been like pulling my own teeth, but I finally got a copy of the most recent draft of the proposed "Fixed Based Operator" (FBO) lease and adopting ordinance for the Santa Fe airport. Sponsored by Councilor Ives, who I am copying on this letter, it seems to be fast-tracked for City approval. From the city's Web site:

Public Works Committee: 2-9-15
Finance Committee: 2-16-15
City Council (public hearing): 2-25-15

While I have only spent a short time with the proposed lease so far, **my first impression is that it contains numerous possible violations of FAA grant assurances, airport leasing best practices, and even our own Minimum Standards** for Commercial Aeronautical Activities. I realize that the City's consultant, Frasca & Associates, is working on lease issues and provided a small amount of feedback to Jon Bulthuis on the FBO lease.

However, I'm not sure they have done as thorough analysis as I have. The issues I describe below are only the opinions of this single airport user, and, unlike you, I am not an attorney. However, neither am I a novice: I have 35 years of experience as a pilot, flight instructor, multiple aviation business buyer and seller, airline pilot, aviation journalist, FAA FAASTeam representative, AOPA Airport Support Network volunteer, subscriber to all three airport management magazines, and, perhaps most importantly, commercial real estate broker (in which capacity I wrote numerous leases).

Furthermore, during the past month, I worked full-time on airport issues: I read dozens of airport ground and FBO leases, multiple archived articles in the airport management press, all of the FAA and various state guidance documents on airport leases, and the FAA Airport Compliance Manual...as well as consulting four current airport management textbooks for additional guidance. So, while the opinions are my own, they are based on a very detailed and methodical review of all of the issues involved with airport leases, particularly ground leases.

Here are some issues I've identified with a first read of the proposed lease:

1. The lease calls for charging what appears to be significantly below-market rent for optimal land at a commercial service airport like ours. The Jet Center is proposing to lease 120,666 sq. feet (Parcels B, C, D) for \$15,763 annually, or \$0.13 per square foot. Yet, I fully expect the 2015 Rates and Charges Study currently being completed

Buy ■ Sell ■ Trade ■ Train

Santa Fe Municipal Airport (KSAF)
121 Aviation Dr. #10, Santa Fe, NM 87507
Tel/Text: 575-741-1205 Email: Marc@SkyMachines.com

- property; a case could be made that this particular lessee does not, in fact, have the necessary finances to proceed in a manner that most favors the City. Alternatively, the lease could require the lessee to post a surety bond to insure construction is completed and the other terms of the lease are met.)
9. Airport leases often require surety performance and payment bonds of the contractors who construct the lessee's improvements; this lease has no such requirement.
 10. This lease does not require the lessee to comply with the Americans with Disabilities Act at its own expense.
 11. The lessee bankruptcy provisions of this lease are a fraction of those found in other airport leases.
 12. The lease permits the lessee to offer pretty much every aviation business activity that an airport might ever offer, Most FBO leases only allow the lessee to engage in a short list of specific services, with other uses permitted only upon written permission later. Alternatively, a large number of services can be allowed under the lease, but they must be provided /offered to the public within a certain time frame or the authorization to offer the service is automatically revoked. (It can always be granted later.)
 13. Leases at commercial airports usually specify what the lessee may NOT engage in. These usually include food sales (except outside catering), car rentals, car parking, ground transportation, retail sales, or anything which competes with what lessees in the terminal offer. This lease contains no such provisions, and specifically allows the FBO to directly offer car rental services (as opposed to being required to work with one of the rental car lessees in the terminal.). Why should this airport allow an FBO to offer services other airports do not?
 14. The lease does not make clear that the operator is prohibited from using its new "aeronautical" leased premises for non-aeronautical uses; it should make clear that either non-aeronautical services and uses are banned outright, or that the rent for non-aeronautical uses will be set far higher than for aeronautical uses (and according to the latest Rates and Charges study, appraisal, or market assessment).
 15. It does not set any parking requirements on the lessee, when the lessee should be required to provide sufficient paved parking for its employees and customers without encroaching on the City's parking lot. (Or, if the lessee's parking area is to encroach on the city's lot, it should pay additional rent in an amount sufficient to reimburse the city for the amount of lost parking revenue.)
 16. It sets several requirements on the city which are not seen in other airport leases. For example, it requires the airport to enforce the Minimum Standards for Commercial Aeronautical Activities it adopted in 1986. Unfortunately, no airport manager has enforced compliance with those in years. Why should a single lease be allowed to now require this action on the City's part? It is not for the FBO to tell the City what it will enforce...it is simply up to the FBO to comply.
 17. The lease states, "Any other operator providing FBO services will not be permitted to operate on the Airport under rates, terms or conditions more favorable than those set out in this Lease." So, the City couldn't entice a new FBO by offering discounted rent or deferred payments...the very things it is offering this lessee! This seems like another obvious case of economic discrimination/favoritism shown one operator but not any future operators, and is thus not likely to pass FAA review.
 18. It allows the lessee to construct temporary structures, but does not limit how long they may be used.
 19. The lessee is allowed to remove any of the improvements it constructs without compensating the City. So, if the lessee decides that, after 29 years, it wants to move its hangars to another airport and not replace these valuable airport assets, which were set to revert to the City the following year, it may do so. How on earth is this in the City's best interests to permit?

Buy ■ Sell ■ Trade ■ Train

BULTHUIS, JON R.

Subject: FW: Lease Critique
Attachments: Letter to AAB Chair Steve Ross RE-Airport Lease Issues 2-2-15.pdf; Wilkes-Barre-Scranton-PA-FBO Lease.docx; Fort Worth Meacham Ground Lease.docx; Vacaville-Nut Tree Airport FBO Lease and Concession Agreement.docx; NYCityBarAssn.-Ground Lease form-legal.doc; AIR Commercial RE Assn - Land_Lease_-_Gross_(2014).pdf; Bankruptcy Addendum.doc

From: SkyMachines [<mailto:marc@skymachines.com>]

Sent: Tuesday, February 03, 2015 9:55 AM

To: BRENNAN, KELLEY A.

Subject: Lease Critique

Ms. Brennan,

Please see attached sent to Councilor Ives and Steve Ross. I have also sent it to Councilor Trujillo, "the taxpayer's friend," and asked him to pull it from the consent agenda.

Sorry, from a taxpayer protection standpoint, this lease is a piece of crap that excessively favors the tenant, and I am going to fight its adoption until it is corrected....if that means contacting every councilor and the press, the state Aviation Division, the Aircraft Owners and Pilots Association, Landmark Aviation's legal team, and the FAA Airports Division, then so be it. (I already started, with the AOPA.)

I LIKE the Jet Center people and their proposal, but they are taking advantage of the City's naivete, and you are giving them the farm in this lease. So far, I've kept things private, but I'm getting closer to letting the world know, because I get no responses from the City. As a former journalist, I can see a great story developing:

- How the Airport Advisory Board set up a documents committee with the former airport manager, but yet the committee wasn't consulted on the most important document of all...the one that lasts 40 years.
- How I asked the AAB chair to reactivate the documents committee to review this lease, but was rebuffed.
- How everything was negotiated in secret, without the city having any aviation background.
- How the City refused to wait for the new airport manager to be hired before proceeding.
- How the City refused to wait for the new Master Plan to say where the new FBO should be located.
- How the City refused to wait for its own \$48,000 rates and fees study to be completed, and refused to allow that study to control rents in the lease.

Then it pretty much will look at the City Attorney's role in it:

- Continual under-staffing and under-funding of the airport.
- Inaccurate airport enterprise reporting accounting from the city's finance division
- Comparisons of our airport's finances with our peer airports
- The upcoming FAA Part 13 complaint which either I will initiate, or the Part 16 complaint that Landmark will.

I'm tired of pushing so hard to get you and Jon Bulthuis to do the right thing, in public. You have now proved the old adage: Bad policy is always made in secret.

Ms. Brennan, it is late in the game. Things must start changing, TODAY, or the gloves come off. Please make sure your boss and the Mayor are comfortable with the approaching "shitstorm," the stink of which they will be sure to deflect on YOU first (or I will).

It's time you put your ego away, stop the process now, and correct the lease so that it equals those used at peer airports. (Samples attached; either the Wilkes-Barre or Vacaville would be perfect models.).

Sincerely,

Marc C. Coan,
President/CEO

SkyMachines USA
Santa Fe Municipal Airport, NM
Mobile/TXT: 575-741-1205
Fax: 888-385-5397
Email: marc@skymachines.com
Web: www.SkyMachines.com

	<p>Generally, Rent for the three parcels differs, based on location and other factors. For example, Parcel B is cited for its proximity to the terminal and access to ramps on two sides. Rent for Parcel B is \$0.18/SF; for Parcel C, \$0.16/SF and for Parcel D, \$0.08.</p> <p>FAA Airport Compliance Manual, Order 5190.6B, Chapter 9, 9.2.c.: "...The sponsor must impose the same rates, fees, rentals, and other charges on similarly-situated fixed-based operators (FBOs) that use the airport and its facilities in the same or similar manner. However, FBOs under different types of sponsor agreements may have different fees and rentals. For example, an FBO leasing a sponsor-owned aeronautical facility may pay more in rent to the sponsor than an FBO that builds and finances its own facility. In the first case, the FBO is not servicing debt while in the second case, the FBO is servicing debt.</p> <p>"Each FBO at the airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other FBOs operating at the airport..." ACRP 47, 3.2.5 (Grant Assurance 22)</p>	
2	<p>The lease does not provide for rent adjustments based on the rates and charges</p>	<p>Mr. Coan would like the Lease to provide for a different method to adjust rent; others might prefer still other methods. The City negotiated reasonable terms consistent with other similar</p>

	<p>airport leases.</p>
<p>study now underway. This is a problem where starting rents are below market rent. A "proper lease" allows a new market assessment, appraisal, or rates and charges study to be performed every 3 to 5 years.</p>	<p>ACRP 47, 2.2.7</p> <p>The lease provides for rent adjustments every 3 years based on CPA (Par. 6.C) and every 10 years based on an appraisal (Par. 6.D).</p> <p>Based upon FAA guidance (see No. 1 above), the rent is not below market. The rent adjustment based on CPI is consistent with other similar airport leases. The 10-year appraisal provision is an addition to standard rent adjustment provisions in other similar airport leases.</p> <p>Other charges under the Lease are subject to adjustment based on changes in costs and other airport conditions (Par. 6.G.1, H and I).</p>
<p>3</p> <p>The ramp areas adjacent to the Premises are exclusive-use, not defined, and not subject to rent.</p>	<p>The Lease provides that " ...the Lessor may, but need not, lease to the Lessee any or all of Parcel A and/or any rights appurtenant thereto, including, without limitation, the exclusive right to use the ramp area located west of Building 3002, all upon such terms and conditions as the Parties may then agree..." If Lessor does not need to use Building 3002 for at least a year, it will lease it to the Lessee for that period under a separate lease, upon similar terms and conditions to [the] Lease[, including] the right to use [the adjacent ramp]..." or, in the event the Lessor retains Building 3002 for its own use, the right to use the adjacent ramp "under a separate</p> <p>The use of ramps appurtenant to the lease of Parcel C is exclusive to Parcel C, consistent with other similar airport leases. The use of ramps adjacent to Parcel A (as subsequently configured) is speculative, based on future conditions now unknown, and subject to a separate agreement.</p>

	agreement.”	
4	<p>The City could have negotiated other terms to its advantage, including a requirement that the Lessee provide a self-serve fueling station for 91 octane fuel, the provision of office space for independent flight instructors to meet with students, and repair to the north ramp area.</p>	<p>Mr. Coan would like to have seen the terms he suggests imposed under the Lease; others might have preferred other terms. The City negotiated reasonable terms under applicable rules.</p>
5	<p>The Lease “does not appear to require the Lessee to actually build anything; commercial ground leases should always require compliance with a strict timetable as far as construction of the improvements.”</p>	<p>The Lessee is required to develop the Premises in accordance with the Proposal and Development Plan.</p> <p>Construction plans and a construction schedule must be submitted and approved by the Lessor prior to construction.</p> <p>Failure to develop constitutes a default under the Lease</p>
	<p>The initial Proposal submitted by SFJC to the City included a development plan for four parcels. Discussions between SFJC and the City resulted in revisions to that development plan. The revised Proposal and Development Plan establish the Lessee’s construction requirements under the Lease.</p> <p>“... (g) Lessee’s prepaid rent for the Premises, which is intended, without limitation, to secure the commencement and completion of the Development Plan in order to assure timely provision of the Authorized Services...” (Par. 2)</p> <p>“The Lessee shall use the Premises in accordance</p>	

	<p>with the Proposal and the Development Plan solely to provide FBO services (collectively, the Authorized Services) at the Airport..." (Par. 3.A)</p> <p>"...Lessee may not commence any construction, erection, installation, alteration or maintenance (except routine maintenance) work on the Premises without first obtaining the written approval of Lessor and the [FAA]. Lessee shall provide a schedule for commencement through completion of all such work at the time it submits plans for such work to the Lessor for review and approval." (Par. 3.E)</p> <p>"...If the Lessee shall default in the performance of any terms, covenants, agreements or conditions of this Lease other than in the performance of payment obligations...including, without limitation, Lessee's failure to complete the Development Plan, as the same may be modified from time to time by the agreement of the Parties..." (Par. 10.B.1)</p> <p>The Development Plan contemplates the completion of all construction within 3 years, with construction commencing first on Parcel D and B, then on Parcel C.</p>	
		<p>6</p> <p>The Lease "allows the Lessee to withhold improving the best, most visible parcel, Parcel C, for up to 5 years. ... The [L]essee should be required to complete all improvements in a far shorter time [or] the</p>
		<p>The Development Plan is consistent with the Lessee's business development plans for the parcels and as such, is a factor in its success. The City does not restructure a private enterprise's business model.</p> <p>The parcels have remained underutilized and undeveloped for years. As a result, there does not appear to be a basis for assuming that a better</p>

	<p>[L]ease should allow the City to terminate the [L]ease on Parcel C should it receive a qualified offer to develop the property sooner."</p>		<p>proposal may be forthcoming. In addition, providing for termination at any time if a "qualified offer" to develop the Premises is made significantly compromises the Lessee's ability to develop in accordance with the Development Plan.</p> <p>Failure to complete the Development Plan within 5 years constitutes a default. (See No. 5 above.) Given the uncertainties of development, providing a 2-year "cushion" is reasonable.</p>
7	<p>The Lease references the Development Plan, but does not incorporate it as an exhibit and it is not currently posted on the City's website.</p>	<p>See Nos. 5 and 6 above.</p>	<p>The Proposal and Development Plan have been revised in accordance with the discussions between the City and SFJC and will be included in the packet for consideration by Council Committees and the Governing Body. They will constitute exhibits to the Lease.</p>
8	<p>The Lease does not provide for proof of Lessee's creditworthiness or financial ability to carry out its obligations under the Lease. As an alternative, the Lease could require a bond to secure performance of Lessee's obligations under the Lease.</p>		<p>Among the first questions the City asked SFJC regarding its Proposal was a request for information about funding and capitalization levels and financial guarantees to secure construction. In response, SFJC stated that it would capitalize upon execution of the Lease; provided a reference at the Scottsdale AZ airport, where the SFJC team obtained the right in 2001 to develop an FBO on approximately 20 acres of raw land at a \$20M project cost; and offered to provide reference letters from various financial institutions addressing the ability to fund its obligations under the Lease. The City expects to include the available information in the packet for consideration by</p>

			<p>Council Committees and the Governing Body.</p> <p>The City anticipates that the Lessee will provide evidence of adequate financing at the time plans and a schedule are submitted by the Lessee for the City's approval. Typically, construction contractors are required by the parties contracting for the work to provide performance and payment bonds on construction contracts at the time of contracting.</p>
9	<p>"Airport leases often require surety performance and payment bonds..." to secure performance on construction contracts.</p>	<p>See No. 8 above.</p>	
10	<p>The Lease does not require compliance with the Americans with Disabilities Act (ADA) at its own expense.</p>	<p>"...The airport sponsor should require regulatory compliance with known applicable local, state and federal regulations [and]...the regulatory compliance section should pass along responsibility for complying with the inevitable additions and/or modifications to existing regulations that will certainly occur over the course of decades." ACRP 47, 2.2.21</p> <p>"...Lessee shall not make or suffer or permit to be made any alterations, additions or improvements whatsoever in or about the Premises without first obtaining the written consent of the Airport Manager. If Lessor gives such consent, all</p>	<p>Compliance with all applicable law, including the ADA, at Lessee's expense, is a condition of the lease.</p>

		<p>alterations or improvements shall be done solely at Lessee's expense and in compliance with all applicable municipal, state and federal ordinances, laws, rules and regulations." (Par. 18)</p> <p>The Lessee is required under the Lease to comply with "...all laws, ordinances, minimum standards, rules and regulations promulgated by the Lessor, and by any other proper authority having jurisdiction over the conduct of operations at the Airport, including the federal government, the state, the county and the City now or hereafter in effect." (Par. 16)</p>	
11	<p>The bankruptcy provisions are a fraction of those found in other airport leases.</p> <p>The Lease permits the Lessee the right to offer most aviation business services offered by airports, where most FBO leases allow the lessee to engage only in a short list of services, with other uses permitted only with written approval.</p> <p>Alternatively, a large number of services can</p>	<p>Bankruptcy/receivership constitute events of default under the Lease for which the Lessor can terminate the Lease. (Par. 10.C.2-4)</p>	
12	<p>The Lease permits the Lessee the right to offer most aviation business services offered by airports, where most FBO leases allow the lessee to engage only in a short list of services, with other uses permitted only with written approval.</p> <p>Alternatively, a large number of services can</p>	<p>The Lessee is authorized to use the Premises for a short list of specific purposes (Par. 3.A.1-3).</p> <p>"In addition to the foregoing uses and services required to be provided by the Lessee on the Premises, the Lessee is authorized, but not required, with the prior written consent of Lessor...to provide..." a wide variety of other services. (Par. 3.A.4.a-k)</p> <p>"The Premises shall not be used for any other purposes without the prior written consent of the</p>	

	be allowed, but must be offered within a fixed time.	Lessor... (Par. 3.A)	
13	Leases at commercial airports typically specify the activities lessees may not engage in, such as food sales, car rentals, or other services that compete with services offered in the terminal.	See No. 12 above. All services that are not specifically permitted cannot be provided without the prior written consent of the Lessor.	
14	The Lease does not make clear that the Lessee cannot use the Premises for non-aeronautical uses.	FAA Airport Compliance Manual, Order 5190.6B, Chapter 12, 12.3(B)(2) (addressing FAA review standards for leases): "...Does the lease require any use to be approved by the [City]? This will prevent improper nonaeronautical uses of airport property."	The Lease authorizes the provision of specific aeronautical uses on the Premises. All other uses require the prior written approval of the Lessee.
15	The Lease does not set any parking requirements on the Lessee.	See No. 12 above.	Parking is addressed in the Development Plan.
16	The Lease contains several provisions not found in other airport leases, such as requiring the City to enforce the Minimum Standards and Requirements.	"The airport sponsor must maintain a level playing field for like-users of its facilities." ACRP 47, 3.6.4	The Lease provides for the City's enforcement of the Minimum Standards and Requirements in conjunction with its obligation to grant rights to users in a nondiscriminatory manner and because its grant of rights is non-exclusive, i.e., the Lessee has the right to expect – by law – that its obligation under the Lease to comply with the Minimum Standards and Requirements will be equally

17	<p>The Lease includes a provision that prevents the City from leasing to other FBOs on more favorable terms than those provided in the Lease. This prevents the City from "enticing" a new FBO with things like discounted or deferred payments.</p>	<p>FAA Airport Compliance Manual, Order 5190.6B, Chapter 9, 9.2.c.: "...The sponsor must impose the same rates, fees, rentals, and other charges on similarly-situated fixed-based operators (FBOs) that use the airport and its facilities in the same or similar manner." See Nos. 1 and 16 above.</p>	enforced against other similar lessees.
18	<p>The Lease allows the Lessee to construct temporary structures, but does not limit how long they may be used.</p>	<p>"...Lessee has Lessor's consent to place temporary buildings on the Premises prior to and during, construction." (Par. 18) See No. 5 above for Lessor approval of construction plans and schedule, which would define the time temporary structures may be used on the Premises.</p>	
19	<p>"The Lessee is allowed to remove any of the improvements it constructs without compensating the City."</p>	<p>Lease Par. 3.C gives the Lessee the right to "construct, erect, install, maintain and alter buildings or other structures on the Premises" and provides that title to those improvements "shall remain in Lessee during the term..., but shall pass to the Lessor upon expiration or earlier termination..." Par. 4.C permits the Lessee to remove its personal property from the Premises upon termination, but</p>	

		<p>provides that "[a]ll permanent leasehold improvements shall, upon termination, be and become the property of the Lessor."</p> <p>Par. 18.C provides that "any and all alterations, additions and improvements, except shelving, trade fixtures and movable furniture..., whether attached to the walls, floors, Premises or not, shall belong to Lessee but shall merge and become a permanent part of the Lessor's realty and vest in Lessor upon termination...and shall remain on the Premises... The shelving, trade fixtures and movable furniture..." may be removed by the Lessee upon termination.</p>	
<p>20</p> <p>The Lease is missing "numerous protective clauses", including a provision governing conflicts between the Lease terms and conditions and the Minimum Standards and Requirements.</p>	<p>"...In the event of contest or legal dispute regarding this Lease, this Lease shall be construed according to the laws of the State of New Mexico and any applicable City Ordinances." (Par. 29)</p> <p>"..This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States or the State of New Mexico relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport." (Par. 26)</p>	<p>The Minimum Standards and Requirements are an ordinance of the City.</p> <p>A conflict provision of the type recommended by Mr. Coan has a potential to create issues where, for example, a provision under the Minimum Standards and Requirements conflicted with an applicable requirement of federal law.</p> <p>In all conflict issues, there are established legal rules of construction that apply. Generally, federal and state law will take precedence over City ordinances where there is a direct conflict, and City ordinances will take precedence in the event of a conflict with a lease provision.</p>	

Response to February 2, 2015 Letter
to Steve Ross, Chair, Airport Advisory Board
from Marc C. Coan, President, SkyMachines
Page 12 of 12

provide an exception to the Inspection of Public Records Act. She said on page 2 of the Resolution it continues with requirements, noting it is a very detailed bill.

MOTION: Councilor Lindell moved, seconded by Councilor Dimas, to adopt Resolution No. 2015-13.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Pro-Tem Ives, Councilor Dimas, Councilor Dominguez, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Absent for the vote: Mayor Gonzales.

Councilor Ives thanked the members of the audience who have been so faithful in attending all of the gun related, gun safety issues which have come before the Council, noting, "Miranda, we recognized you recently for all of your good work and it is great to always have the support of you and the gun safety advocacy folks around our City, trying to help us find ways to ensure that we have strong gun safety measures in place. Thank you again for your continued leadership."

14. **REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING FOR FEBRUARY 25, 2015: BILL NO. 2015-4: AN ORDINANCE APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND JET CENTER AT SANTA FE REAL ESTATE, LLC, FOR THREE PARCELS OF CITY-OWNED LAND TOTALING 2.77 ACRES, MORE OR LESS, LOCATED AT THE SANTA FE MUNICIPAL AIRPORT FOR DEVELOPMENT OF SUCH PROPERTY FOR THE PURPOSE OF PROVIDING FIXED BASE OPERATION SERVICES AND OTHER RELATED PURPOSES (COUNCILOR IVES). (JON BULTHUIS)**
- a) **REQUEST FOR APPROVAL OF LEASE AGREEMENT – DEVELOPMENT OF FIXED BASE OPERATION SERVICES AT SANTA FE MUNICIPAL AIRPORT; JET CENTER AT SANTA FE REAL ESTATE, LLC. (JON BULTHUIS)**

Jon Bulthuis noted this is a request to publish this Ordinance, noting the Airport Advisory Board voted to give conceptual approval of this request at its last meeting. He said if it is approved this evening, it will go before the Airport Advisory Board at its meeting on February 5, 2015. It will then go through the City Council Committees beginning with Public Works, Finance and then ultimately back to the City Council for a public hearing on February 25, 2015.

Councilor Dominguez said this is a Request to Publish, noting there was a request to publish earlier on the Consent Agenda, and he asked the reason these aren't being presented in the same manner.

Ms. Brennan said, "This is on discussion because it did not go through the Committee process. It is only a request to advertise, but nevertheless, typically, we would put it on Discussion under the circumstances. And I would note that Item 14(a) travels with the Request to Publish, but you're not approving anything tonight except the advertisement of the item. You're not approving the lease. That will go through the process as Jon describes, and come before you for a vote on the twenty-fifth.

Councilor Dominguez said, "That clarifies it. We'll continue to go through the public process, but it's been noticed to the public."

MOTION: Councilor Dominguez moved, seconded by Councilor Lindell, to approve this request.

VOTE: The motion was approved on the following Roll Call vote:

For: Mayor Pro-Tem Ives, Councilor Dimas, Councilor Dominguez, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

Against: None.

Absent for the vote: Mayor Gonzales.

Mayor Pro-Tem Ives asked Ms. Vigil if further action will be needed on this Resolution, and Ms. Vigil said no.

15. MATTERS FROM THE CITY MANAGER

There were no matters from the City Manager.

16. MATTERS FROM THE CITY ATTORNEY

EXECUTIVE SESSION

IN ACCORDANCE WITH THE NEW MEXICO OPEN MEETINGS ACT, §10-15-1(H)(7) NMSA 1978, DISCUSSION REGARDING PENDING LITIGATION IN WHICH THE CITY OF SANTA FE IS A PARTICIPANT. WEST CORPORATION V. CITY OF SANTA FE, CASE NO. 14-2008, IN THE U.S. COURT OF APPEALS FOR THE TENTH DISTRICT. (KELLEY BRENNAN)

Disclosure: Mayor Pro-Tem Ives said, "I would note that this is a matter I've recused myself from. And so, let me turn the reigns over to Councilor Dominguez, if I could, and I will step out for purposes of this discussion."