



City of Battle Creek  
Battle Creek Executive Airport  
10 North Division  
Battle Creek, MI 49014  
(269) 966-3315

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# General Aviation Leasing/Rents and Fees Policy

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City of Battle Creek

*Battle Creek Executive Airport (BTL)*

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February 20, 2018



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### 1. INTRODUCTION

#### 1.1. *Purpose*

This General Aviation Leasing/Rents and Fees Policy (Policy) sets forth the parameters that shall be used by the City of Battle Creek (City) for leasing land and/or Improvements for Commercial and/or Non-Commercial General Aviation purposes at the Battle Creek Executive Airport at Kellogg Field (Airport). In addition, this Policy outlines the process that shall be used by the City to establish and adjust General Aviation rents, fees, and/or other charges associated with leasing, occupying, and/or using Airport land and/or Improvements for Commercial and/or Non-Commercial General Aviation purposes.

Entities shall not occupy Airport land and/or Improvements for any purpose unless the entity has an Agreement or Sublease. In addition, entities shall not conduct Commercial General Aviation Aeronautical Activities (Activities) at the Airport unless the entity has an Agreement authorizing such Activities.

The City reserves the right to designate specific Airport land and/or Improvements in which Commercial and/or Non-Commercial General Aviation Aeronautical Activities may or may not be conducted. The right to use the Airport and any Airport land and/or Improvements is non-exclusive with exception of the land and/or Improvements that are leased exclusively to an entity by the City.

#### 1.2. *General Provisions*

This Policy incorporates, by reference, Section 1 (General Provisions) of the Rules and Regulations. The terms identified by use of a capital letter in this Policy are addressed in Section 1.2 and provided in Section 7.1 of the Rules and Regulations.

#### 1.3. *Applicability*

This Policy shall apply to any new Agreement or any new amendment to any existing Agreement relating to the leasing of land and/or Improvements, including the establishment or adjusting of rents, fees, and other charges, for Commercial and/or Non-Commercial General Aviation Aeronautical Activities.

This Policy shall not affect any Agreement or amendment thereto that is properly executed prior to the date of adoption of this Policy except as provided for in such Agreement, in which case, this Policy shall apply to the extent permitted by such Agreement.



## 2. LEASING AIRPORT LAND AND/OR IMPROVEMENTS

### 2.1. *Application to Agreement Process*

#### **Application**

Any entity desirous of leasing Airport land and/or Improvements on a long-term basis (e.g., greater than one year) at the Airport shall complete all relevant and applicable sections of the General Aviation Operator and Lessee Application (Application) and submit the Application to the Aviation Director.

If an existing Lessee desires to enter into a new Agreement, the Lessee shall notify the City in writing 12 months in advance of the expiration date of the Lessee's existing Agreement including a new Application.

A non-refundable application fee shall be submitted with the Application, as stipulated in the Airport's Rents and Fees Schedule.

Once Applicant has submitted a completed Application, thereafter, Applicant shall submit any additional information, data, and/or documentation that may be required or requested by the City in order to properly and fully evaluate the Application. Incomplete Applications may be rejected. Applications that do not comply with this Policy and/or the PMCDs shall be rejected. Additionally, Applications may be rejected by the City in accordance with Section 1.22 of the Rules and Regulations.

#### **Key Terms and Conditions**

Within 30 calendar days of receiving a completed Application, the City shall convey the key terms and conditions (including rents, fees, and other charges) that have been established by the City for leasing the Airport land and/or Improvements identified by the Applicant or convey the reason(s) for rejecting the Application in writing to the Applicant.

Within 30 calendar days of receiving the key terms and conditions from the City, the Applicant shall notify the City in writing one of the following decisions:

- key terms and conditions established by the City are acceptable to the Applicant  
or
- key terms and conditions established by the City are not acceptable to the Applicant and Applicant shall present to the City the key terms and conditions that are acceptable to the Applicant.

If key terms and conditions are not acceptable to the Applicant, the City may negotiate the key terms and conditions with the Applicant or initiate the Competitive Proposal Process described in Section 2.2 of this Policy.

If the City elects to negotiate the key terms and conditions with the Applicant and the City and Applicant are unable to reach agreement within 30 calendar days of written decision from Applicant, the City is not obligated to lease the proposed Airport land and/or Improvements to the Applicant.



### **Memorandum of Understanding**

Within 15 calendar days of reaching agreement on the key terms and conditions, the City shall provide a Memorandum of Understanding (MOU) outlining the key terms and conditions to the Applicant for execution.

Within 15 calendar days of receiving the MOU from the City, the Applicant shall: (a) execute the MOU and (b) pay an earnest money deposit in cash or letter of credit to the City in the amount equivalent to the rents, fees, and other charges (total compensation) for the first month of the Agreement or \$500 for a Non-Commercial MOU (whichever is greater) and \$1,000 for a Commercial MOU (whichever is greater) – as evidence of the Applicant’s good faith to enter into an Agreement with the City.

If MOU is not executed by the Applicant, the City is not obligated to lease the proposed Airport land and/or Improvements to the Applicant.

### **Agreement**

Within 15 calendar days of receiving an executed MOU from the Applicant, the City shall provide an Agreement to the Applicant for execution.

Within 15 calendar days of receiving the Agreement from the City, the Applicant shall: (a) execute the Agreement and (b) pay a security deposit in the form of cash or a letter of credit to the City in the amount equal to one month for a Non-Commercial Agreement or three months for a Commercial Agreement of the rents for the first year of the Agreement. The City retains the right to waive the security deposit requirement for existing Lessees in good standing and/or entities that maintain a superior credit rating.

If the Applicant does not execute the Agreement, the earnest money deposit shall be forfeited by the Applicant to the City and the City is not obligated to lease the proposed Airport land and/or Improvements to the Applicant.

If the City does not execute the Agreement within 30 calendar days of receiving an executed Agreement from the Applicant, the earnest money and the security deposit shall be returned to the Applicant, without interest.



### **2.2. Competitive Proposal Process**

#### **City Initiative**

If Airport land and/or Improvements exist or become available, in the City's sole discretion, the City may issue a Request for Interest (RFI), Request for Qualifications (RFQ), and/or a Request for Proposal (RFP) from entities that may be interested in leasing Airport land and/or Improvements.

- Guidelines for the development of the RFI/RFQ/RFP document are provided in Appendix 5.1 of this Policy.
- The City shall advertise the RFI/RFQ/RFP opportunity. Advertising Guidelines are provided in Appendix 5.2 of this Policy.

The City may, in its sole discretion, hold a pre-proposal meeting to: (a) discuss the RFI/RFQ/RFP opportunity, document, and/or related processes, (b) give a tour of the Airport and/or the subject land and Improvements, and (c) provide prospective respondents with the opportunity to ask questions.

After the stated deadline, the City shall review the submittals for compliance with the RFI/RFQ/RFP specifications and criteria and shall rank the submittals.

- Submittals received after the stated deadline shall not be considered and shall be returned unopened.
- The City may, in its sole discretion, interview respondents.
- The City has the right to reject any or all submittals, to advertise for new submittals, and/or to modify any or all RFI/RFQ/RFP processes.
- The City shall be under no obligation to make an award or to make an award to the respondent specifying the highest level of compensation to the City.

Upon completion of an RFI process (if utilized), the City may, in its sole discretion, invite respondents to respond to an RFQ or RFP. Upon completion of an RFQ process (if utilized), the City may, in its sole discretion, invite the most qualified respondents to respond to an RFP.

- If only one respondent is considered qualified by the City, the City may, in its sole discretion, negotiate an Agreement with the qualified respondent without issuing an RFP.

Upon completion of an RFP process (if utilized), the City may select the best respondent in the City's sole discretion. Once selected respondent and City shall utilize the MOU and Agreement process outlined in Section 2.2 of this Policy. If the City and the best respondent are unable to reach agreement on an MOU or Agreement, at the sole discretion of the City, the City may negotiate with the next best respondent and so on.



### **Initiative of Others**

If, during the Application process, another qualified entity expresses interest in leasing (and demonstrates an immediate need, as described in Section 2.4 of this Policy, for) the subject land and Improvements, the City may, in its sole discretion, negotiate with the entity(ies) and/or issue an RFQ/RFP in which case, the Competitive Proposal Process described in Section 2.3 of this Policy shall be followed.

However, once the MOU (as discussed in Section 2.2 of this Policy) is: (a) executed by the Applicant and City, and (b) the earnest money deposit has been provided, the City is under no obligation to negotiate with any entity other than the Applicant or issue an RFQ/RFP.

### **2.3. *Demonstrating Immediate Need***

Any entity seeking to lease Airport land and/or Improvements must demonstrate that the entire land area(s) and/or the entire Improvement(s) seeking to be leased will be Immediately utilized.

This would not preclude the City leasing land and/or improvements for planned future use. However, the Agreement would need to stipulate that if any entity expresses interest in making immediate use of the land and/or improvements that the Lessee would be required to either release the land and/or improvements or make immediate use of the land and/or improvements.

### **2.4. *Public Disclosure***

Applicants and RFI/RFQ/RFP respondents should be aware that the City, as a Michigan municipal corporation, is subject to the Michigan Freedom of Information Act, which gives the public the right to examine documents in possession of a Michigan municipal corporation.

If an Applicant or respondent identifies any proprietary and/or confidential information submitted to the City and the City receives a request from the public for release of such information, the City shall notify the Applicant or respondent prior to releasing such information.

### **2.5. *City Improvement Leasing***

The Aviation Director, with the authorization of the City, may execute on behalf of the City a short term (e.g., month to month) Non-Commercial Aircraft Hangar Agreement which grants an entity the right to use and/or occupy a City Hangar at the Airport in accordance with Appendix 5.3. A Non-Commercial Aircraft Hangar Agreement shall, at a minimum, include the provisions set forth in Appendix 5.4.



### **3. AGREEMENTS**

#### **3.1. Introduction**

The Agreement will outline the terms and conditions under which the entity is authorized to occupy and/or use Airport land and/or Improvements. This Policy outlines the key terms and conditions which shall be included, at a minimum, in the Agreement as well as other terms and conditions which may be included in the Agreement.

Agreements shall be subject to all applicable Legal Requirements including the Airport Sponsor Assurances (Assurances); the Federal Aviation Administration's (FAA) regulations, obligations, and guidance; the Airport's policies, standards, rules, regulations, and directives including the Primary Management and Compliance Documents (PMCDs); and the City's zoning, building, fire, and safety codes; and all other Legal Requirements of any Agency having jurisdiction.

This Policy does not represent a complete recitation of the provisions to be included in the Agreement and the provisions contained in any Agreement shall not be deemed or construed to modify this Policy.

#### **3.2. Key Terms and Conditions**

##### **Recitals**

All recitals shall include, at a minimum, the desires of the City and the Lessee. All recitals shall be incorporated into the Agreement by reference.

##### **Definitions**

Consistent with the PMCDs, all defined words are identified in the Rules and Regulations and shall be incorporated into the Agreement by reference.

All words or phrases defined in the PMCDs, whenever used in the Agreement, shall be identified by use of a capital letter and the meaning shall be construed accordingly (as defined in the PMCDs) unless the context dictates a different meaning.

##### **Leased Premises**

The Leased Premises shall be clearly defined and described including the square footage of each land and Improvement component and the address(es) of the Leased Premises. If a Lessee desires to construct additional Improvements on the Leased Premises, a statement shall be made to that effect and the process shall be outlined. All Leased Premises shall be inspected by the Lessee and Lessee's acceptance of (and responsibilities relating to) the Leased Premises shall be clearly stipulated.

##### **Use**

**Aeronautical Use (Commercial)** – The Agreement shall identify the required Commercial General Aviation products, services, and/or facilities to be provided by the Operator. The Agreement may identify optional products, services, and/or facilities that may be provided without the approval of the City. The Agreement may also identify additional products, services, and/or facilities that may be provided, subject to obtaining the prior written consent of the City.





**Aeronautical Use (Non-Commercial)** – For Non-Commercial occupancy and/or use of Airport land and/or Improvements, the Agreement shall stipulate that the entity shall not offer or provide Commercial General Aviation products, services, or facilities or conduct Commercial activities at the Airport and/or from the Leased Premises, unless provided for in a separate Agreement with the City.

**Non-Aeronautical Use** – Leasing Airport land and/or Improvements for non-aeronautical activities is not generally favored by the City or the FAA. The City may, in its sole discretion, consider such use in the event the non-aeronautical use of Airport land and/or Improvements does not interfere with the primary aeronautical use of Airport land and/or Improvements and is not in violation of any Legal Requirements, including the Assurances.

If such use is contemplated, the Applicant must prove that the subject Airport land and/or Improvements will not be needed for Activities (or aeronautical uses including Airport development) during the entire term (including the base term of the Agreement and option periods, if applicable) of a proposed Agreement. The leasing of Airport land and/or Improvements for non-aeronautical activities will not be allowed without the prior written consent of the FAA.

**Prohibited Uses** – All prohibited uses of the Leased Premises shall be identified including any uses contrary to the Airport Layout Plan, Airport Land Use Plan, and/or Legal Requirements.

**Compliance** – The Agreement shall require compliance with the PMCDs and all applicable Legal Requirements.

### **Term**

The original term, commencement date, and ending date shall be conveyed in the Agreement. The term of the Agreement shall be commensurate with the amount of Capital Investment made by the Lessee in the Leased Premises and/or on the Airport in accordance with the Capital Investment schedule included in the Airport's Rents and Fees Schedule.

The required Capital Investment shall be based on the type of Activities and the category of Aircraft being serviced or operated. If a Hangar is constructed, the required Capital Investment shall be based on the highest category of Aircraft the Hangar is capable of accommodating. Notwithstanding circumstances beyond the control of the Lessee and if the City agrees in writing that such circumstances were beyond the control of the Lessee, all Improvements to the Leased Premises shall be completed and occupied and/or used by the Lessee within 18 calendar months of the commencement date of the Agreement.

The required Capital Investment identified in this Policy shall be adjusted every five years (e.g., January 1, 2020, 2025, 2030, etc.) based on the change in the Airport Economic Index (described in Section 4.3 of this Policy). At the discretion of the City, the required Capital Investment may be adjusted to reflect the change in the cost of construction in the market using a similar mechanism.



When substantial Capital Investment is made, the term of the Agreement shall not be greater than 50 years. When no Capital Investment is made, the term of the Agreement shall be at the discretion of the City, but shall not be greater than 20% of the term of the previous Agreement (if an existing Lessee) or 5 years for non-commercial land and improvements or 10 years for commercial land and improvements, whichever is less. When a Lessee makes additional Capital Investment in the Leased Premises and/or on the Airport during the term of the existing Agreement, the term of the Agreement may be extended by the City based on the level of Capital Investment made by the Lessee:

- If the term of the Agreement is extended by the City: (a) the Agreement shall be amended in accordance with this Policy, the PMCDs, and all applicable Legal Requirements in effect at the time and (b) the remaining term of an existing Agreement plus the term of any extension thereto shall not be greater than 50 years.

If Capital Investment is made (at the beginning of the Agreement or during the term of an existing Agreement) that does not result in a minimum of 30 years term (based on the type of Activities and the category of Aircraft being serviced or operated), the City may, in its sole discretion, consider allowing Lessee to amortize the Capital Investment over a 30-year period. At the end of the Agreement term, one of the following options may occur:

- the City can compensate the Lessee for the unamortized portion of the Capital Investment;
- the City can enter into a new Agreement with Lessee providing for continued amortization of the Capital Investment commensurate with remaining amortization period; or
- the City can enter into a new Agreement with a new Lessee and require new Lessee to compensate Lessee for the unamortized portion of the Capital Investment.

The renewal process, rights, and timeframe for exercising any renewal options shall be outlined in the Agreement. If Improvements are part of the Leased Premises, certain maintenance, repairs, and/or restoration may be required prior to renewal.

For Activities, in the event the use and/or occupancy of the Leased Premises is going to be transitioned from the Lessee to another entity, the cooperation of the Lessee shall be required and a statement (to this effect) shall be included in the Agreement.

### **Rents, Fees, Payments, Late Charges, and Security Deposit**

**Rent** – The rent to be paid by the Lessee to the City shall be identified in the Agreement on a square foot basis for each land and Improvement component of the Leased Premises. All Airport rents shall be established and adjusted in accordance with Section 4 of this Policy.

**Fees** – The applicable fees to be paid by the Lessee to the City shall be identified in the Agreement. All Airport fees shall be established and adjusted in accordance with Section 4 of this Policy.



**Payments and Late Charges** – The Agreement shall identify the frequency, the due date, and the acceptable manner for making payments of the rents and fees, including the delivery address. Additionally, the time at which a payment is considered late shall be stipulated and the process for applying late charges (and any related interest) shall be outlined.

**Security Deposit** – The Agreement shall identify how the Security Deposit shall be applied or returned upon termination of the Agreement.

### **Improvements**

All Improvements shall comply with this Policy, the PMCDs, and all applicable Legal Requirements. Lessee shall procure all building, fire, safety, and other required permits.

Upon expiration of the term of the Agreement, at the option of the City, ownership of the permanent Improvements that have been made to the Leased Premises by the Lessee shall revert to the City or the permanent Improvements identified by the City shall be demolished and/or removed by the Lessee and the Lessee shall return the Leased Premises to its original condition and character, normal wear and tear excepted.

### **Lessee's Rights and Privileges**

The right of use, location, and hours of ingress and egress shall be identified in the Agreement. The Lessee shall be permitted to use the Airport and its appurtenances together with all public areas and facilities in common with all Airport users. Additionally, the Lessee shall be solely liable for and shall reimburse the City for any expenses incurred by the City for repair of any damage cause by the Lessee and Lessee's employees, visitors, customers, and vendors at the Airport.

Subject to compliance with the Agreement, the Lessee shall be permitted to peacefully and quietly have, hold, and enjoy the Leased Premises for the term of the Agreement. Lessee shall be permitted to install fixtures on the Leased Premises and use equipment, tools, machinery, or other personal Property in support of the authorized uses of the Leased Premises at the sole risk of the Lessee. The Agreement shall clearly state that all fixtures, equipment, tools, machinery, and personal Property shall be removed from the Leased Premises upon termination of the Agreement.

### **Lessor's Rights and Privileges**

In addition to the rights and privileges outlined in the PMCDs, the Agreement shall convey any additional rights and privileges of the City pertaining to the Leased Premises including, but not limited to, access to the Leased Premises and performance of official acts by the City (or a designated representative of the City).

## **Lessee's Obligations**

For Commercial Aeronautical Activities, the Lessee shall be responsible for maintaining an on-going business at the Airport and complying with the PMCDs throughout the term of the Agreement. Additionally, any material modifications to the business or corporate structure of the Lessee shall be communicated to the City.

Lessee shall be responsible for the conduct, demeanor, and appearance of the Lessee's representatives, officers, officials, employees, agents, and volunteers at the Airport and on the Leased Premises. Lessee shall be responsible for conducting Lessee's authorized activities in a manner that does not interfere with or disturb others while also complying with applicable Legal Requirements.

Lessee shall be responsible for promptly paying when due and owing all:

- taxes, assessments, and other fees, without offset or abatement, charged by any Agency relating to the Leased Premises, Improvements, and Lessee's activities;
- utilities (which shall be arranged for by Lessee and must be separately metered); and
- all costs, expenses, and other charges relating to the Leased Premises, Improvements, and/or Lessee's activities.

Lessee shall be responsible for maintaining, repairing, restoring, and cleaning the Leased Premises including all structural components, all exterior and interior maintenance and repair, landscaping, janitorial, trash removal, snow removal, and sweeping. The Agreement shall outline the process in the event the Lessee fails to diligently, properly, and promptly maintain, repair, restore, or clean the Leased Premises.

If Based Aircraft are located on the Leased Premises, the Lessee shall provide a Based Aircraft Report to the City in compliance with the PMCDs.

The Agreement shall include the provisions required by the FAA which shall, at a minimum, include non-exclusive use of the Airport and non-discrimination clauses.

The Agreement shall stipulate that any default or breach of the Agreement shall constitute a default or breach of all Agreements between the City and Lessee. The City shall consider any of the following a default or breach under the Agreement:

- failure to comply with Legal Requirements;
- failure to comply with the Assurances;
- failure to comply with the PMCDs;
- failure to comply with the Airport's policies, standards, rules, regulations, and directives;
- failure to perform any condition, obligation, or privilege contained in the Agreement;
- failure of a Lessee engaged in Activities to obtain prior written consent from the City before conducting additional Activities;



- failure to obtain prior written consent from the City before making any material Improvements to the Leased Premises, which are not incidental to and consistent with the Lessee's approved Activities, and/or Improvements at the Airport;
- failure of a Non-Commercial Lessee to refrain from engaging in Commercial activities at the Airport and/or from the Leased Premises, unless provided for in a separate Agreement with the City;
- subleasing (or attempting to Sublease) any portion of the Leased Premises without the prior written consent of the City;
- any sale or assignment of the Leased Premises or Agreement made (or attempted to be made) without the prior written consent of the City;
- any change in controlling ownership of Lessee made (or attempted to be made) without the prior written consent of the City;
- any encumbrance of the Leased Premises or Improvements on the Leased Premised made (or attempted to be made) without the prior written consent of the City;
- the failure to properly maintain the Leased Premises or promptly pay all utilities, insurance, and taxes when due and owing;
- the filing of bankruptcy and/or assignment of substantially all Lessee's assets for the benefit of Lessee's creditors;
- the filing of a lien against the Leased Premises;
- the voluntary abandonment of the Leased Premises;
- falsification of any record so as to deprive the City of any rights, privileges, rents, fees, or other charges under the Agreement; or
- failure to remain Current or in Good Standing.

The Lessee may, at the Lessee's option and provided the Lessee is Current and in Good Standing, terminate the Agreement due to permanent abandonment or closure of the Airport, the lawful assumption by the United States Government or any authorized Agency, or a default or breach of the Agreement (that is not cured or remedied) by the City.

### **Condemnation or Eminent Domain**

In the event of acquisition by Condemnation or the exercise of the power of eminent domain (by any Agency permitted to take property for public use) of any land or Improvements associated with Lessee's Leased Premises, Lessee shall not institute any action or proceeding or assert any claim against the City for Compensation or consideration of any nature. All Compensation or consideration awarded or paid to City upon a total or partial acquisition of the Leased Premises (which for these purposes shall not include any Compensation or consideration from the City) shall belong to the City without any participation of the Lessee.

Lessee may recover directly from the condemning Agency the value of any claim, provided that no such claim shall diminish or otherwise adversely affect the City's award.



**Total** – In the event of an acquisition by Condemnation or eminent domain of all interest in the Leased Premises, Lessee’s obligation to pay rent shall cease and all leasehold interest created shall cease.

**Substantial and Partial** – In the event of an acquisition by Condemnation or eminent domain of a portion of interest in the Leased Premises, Lessee’s obligation to pay rent shall cease as it pertains to the specific portion of the Leased Premises acquired. If the Condemnation or eminent domain substantially impairs the conduct of the Lessee’s activities and equates to more than 50% of the total Leased Premises, Lessee may terminate the Agreement by notifying the City. If the Agreement is not terminated by the Lessee, the rent shall be adjusted accordingly.

### **Force Majeure**

The City or Lessee shall be excused if delayed, hindered, or prevented from performance of the Agreement by reason of war, national emergency, or acts of nature. However, the Lessee shall not be relieved of paying rents, fees, and/or other charges when due and owing.

### **Relocation**

In the event that relocation is deemed necessary (e.g., to correct deviations from 14 CFR Part 77 Safe, Efficient Use, and Preservation of the Navigable Airspace, to ensure that the leasing, occupancy, use and/or development of Airport land and/or Improvements is consistent with the Airport Layout Plan, etc.), the City shall provide Airport land and/or Improvements that are similar to the Airport land and/or Improvements currently being occupied and/or used by the Lessee. Such Airport land and/or Improvements shall be leased to the Lessee at Market Rent, as set forth in Section 4.2 of this Policy and under the same terms and conditions as stipulated in the existing Agreement.

If similar Airport land and/or Improvements are not available, the City may, in its sole discretion, buyout the leasehold interest held by the Lessee at the market value determined by an Appraiser engaged by the City using the approach outlined in Appendix 5.5. If the Lessee disagrees with the market value conclusion reached by the Appraiser, the Lessee shall have the right to initiate the dispute resolution process set forth in Appendix 5.8. If the relocation is solely for the benefit of the City, the City agrees to pay all reasonable (and verifiable) relocation costs and expenses associated with relocating the Lessee. Relocation shall follow all applicable federal, FAA, and Michigan Legal Requirements for relocation proceedings and any appraisal report shall meet the requirements of such. If there is any discrepancy between this Policy and such Legal Requirements, the Legal Requirements shall prevail.

### **Insurance**

The Lessee shall be responsible for procuring and maintaining the liability and property insurance required by the Agreement, PMCDs, and Legal Requirements.





### **Subleasing**

Subleasing is considered a Commercial Activity. Any entity engaging in subleasing must comply with the PMCDs.

**Subleasing Privileges Permitted in the Agreement** – If the City permits subleasing in the Agreement, a standard sublease agreement (consistent with the requirements set forth in Appendix 5.4) prepared by the Lessee and approved in writing by the City may be used by the Lessee to facilitate subleasing. The standard sublease agreement and any required documentation for each sublease shall be available to the City upon request.

If a standard sublease agreement is not used by the Lessee, the proposed sublease agreement and any required or requested information, data, and/or documentation shall be submitted to the Aviation Director for review. If the proposed sublease agreement is acceptable to the Aviation Director, the proposed sublease agreement and any additional information, data, and/or documentation deemed relevant by the Aviation Director shall be submitted to the City for review and approval. Lessee shall reimburse the City for attorney's fees and expenses incurred by the City relating to the review and approval of the proposed sublease agreement. A Sublessee may not occupy the subject land and/or Improvements at the Airport prior to receiving the written consent of the City.

If an entity desires to sublease land and/or Improvements at the Airport and desires to conduct Activities at the Airport, the Sublessee shall comply with all applicable sections of the Minimum Standards.

The Lessee shall not be required to pay the City any portion of the revenues generated or profits earned relating to permitted and/or approved hangar, office, and shop subleasing activities. However, the Lessee shall pay the City a percentage of the gross revenue generated for subleasing land.

**Subleasing Privileges Not Permitted in the Agreement** – If the City does not permit subleasing in the Agreement, the Lessee must obtain the prior written consent of the City prior to subleasing. Subleasing privileges shall be granted in the City's sole discretion.

The proposed sublease agreement, a completed Application, and any other required or requested information and/or documentation shall be submitted to the Aviation Director for review. If the proposed sublease agreement, completed Application, and other required or requested information and/or documentation are acceptable to the Aviation Director, the proposed sublease agreement, completed Application, and any additional information and/or documentation deemed relevant by the Aviation Director shall be submitted to the City for review and approval. A Sublessee may not occupy the subject land and/or Improvements at the Airport prior to receiving written consent of the City.

The Operator shall pay the City a percentage of the gross revenue generated by the subleasing activity, as stipulated in the Airport's Rents and Fees Schedule.



**Sublessee Obligations** – Sublessee shall comply with the PMCDs and all applicable Legal Requirements.

**Subleasing Restrictions** – Unless otherwise stated in the prior written consent, Sublessee shall be subject to all applicable terms and conditions of the Lessee's Agreement governing the land and/or Improvements being subleased.

Any Sublease made contrary to the requirements of this section shall be null and void.

### **Sale, Assignment, or Transfer**

A Lessee shall not sell, assign, or transfer the Agreement, in whole or in part, or any interest in the Agreement, or any rights or obligations the Lessee has under the Agreement, without the prior written consent by the City.

- If a Lessee is desirous of such a sale, assignment, or transfer, the Lessee shall submit a written request to the Aviation Director and the request shall be accompanied by a completed Application by the entity requesting assignment (Assignee).
- If the Application is acceptable, the Aviation Director shall submit the Application and a recommendation to the City for review and approval.
- At the time a sale, assignment, or transfer is approved in writing by the City, the Lessee shall reimburse the City for attorney's fees and expenses incurred by the City relating to the sale, assignment, or transfer.
- The Assignee shall satisfy all criteria set forth in this Policy, the PMCDs, and all applicable Legal Requirements.

Written consent of the City is not required in connection with: (a) the merger, consolidation, or reorganization of the Lessee with any Affiliate of the Lessee, (b) the sale of all or substantially all of the assets of the Lessee to any Affiliate of the Lessee, or (c) assignment to any Affiliate of the Lessee.

Any sale, assignment, or transfer, with exception of the situations and/or circumstances noted in this section, made without the prior written consent of the City shall be considered null and void.

### **Change in Controlling Ownership**

Any change in the controlling ownership of a Lessee is subject to the prior written consent of the City.

If a Lessee is desirous of changing its controlling ownership, the Lessee shall submit a completed Application to the Aviation Director for review. If the Application is acceptable to the Aviation Director, the Aviation Director shall submit the Application and a recommendation to the City for review and approval.





At the time the change in controlling ownership is approved in writing by the City, the Lessee shall reimburse the City for attorney's fees and expenses incurred by the City relating to the change in controlling ownership.

Any change in controlling ownership made without the prior written consent of the City shall be considered null and void.

### **Encumbrances and Mortgage**

A Lessee shall not mortgage, pledge, assign as collateral, encumber or in any manner transfer, convey, or dispose of the Leased Premises or any interest therein without the prior written consent of the City.

If a Lessee is desirous of mortgaging, pledging, assigning as collateral, encumbering or in any manner transferring, conveying, or disposing of the Leased Premises or any interest therein, the Lessee shall submit a written request to the Aviation Director for review. If the request is acceptable, the Aviation Director shall submit the request and a recommendation to the City for review and approval.

At the time the request is approved in writing by the City, the Lessee shall reimburse the City for attorney's fees and expenses (incurred by the City) relating to the encumbrance request.

Any encumbrance made without the prior written consent of the City shall be considered null and void.

### **3.3. *Other (General) Terms and Conditions***

In addition to the key terms and conditions (outlined in Section 3.2), the Agreement shall include the following:

**No Waiver** – the City shall not waive the right to enforce the Agreement, in whole or in part.

**Licenses, Certifications, and Permits** – the Lessee shall have (and provide copies to the City – upon request) all licenses, certifications, and permits required to conduct Lessee's activities.

**Indemnification** – the Lessee shall defend, indemnify, save, protect, and hold harmless the City and its representatives, officers, officials, employees, agents, and volunteers from any and all claims, demands, damages, fines, obligations, suits, judgments, penalties, causes of action, losses, liabilities, administrative proceedings, arbitration, or costs (or expenses) at any time received, incurred, or accrued by the City as a result of, or arising out of the Lessee's activities, actions, or inactions.

**Books and Records** – the Lessee shall keep complete books and records of the amounts due and owing to the City for rents, fees, or other charges applicable to the Agreement. The City shall have access to such records upon reasonable notice. The City reserves the right to audit such records. The entity shall have the burden of proof if the amount determined by the City is disputed.



**Holdover Possession** – in the event the Lessee should hold over and remain in possession of the Leased Premises after the expiration of term of the Agreement, the rents, fees, and other charges paid during the holding over period shall be equal to a minimum of 150% of the monthly rents, fees, and other charges that were charged by the City at the time the Agreement expired.

**Independent Entities** – the Agreement shall not be construed to establish a partnership between the City and the Lessee.

**Binding Effect** – the Agreement shall be binding on and inure to the benefits of the heirs, successors, and assigns of the City and the Lessee.

**Subordination** – the Agreement is subordinate to any agreement between the City and the United States Government, the State of Michigan, or any other Agency having jurisdiction.

**Governing Law and Venue** – the Agreement shall be made in accordance with the laws of Michigan and the court having jurisdiction shall be identified in the Agreement.

**Paragraph Headings** – the paragraph headings in the Agreement shall only be used as a matter of convenience and/or reference.

**Severability** – if a provision of the Agreement is held to be unlawful, invalid, or unenforceable by final judgment of any Agency or court of competent jurisdiction, the invalidity, voiding, or unenforceability of such provision shall not in any way affect the validity of any other provisions of the Agreement.

**Counterparts** – if the Agreement is executed in counterparts, each shall be deemed an original and which together shall constitute one and the same Agreement.

**Modification** – any change or modification to the Agreement shall not be valid unless made in writing, agreed to, and signed by the City and Lessee.

**Time of the Essence** – the City and Lessee shall agree that time is of the essence in performance of the Agreement.

**Entire Agreement** – the Agreement shall be construed to embody the entire understanding and agreement between the City and the Lessee.

**Notices** – the Agreement shall identify the location and contact person (if applicable) for the City and the Lessee as well as the method for providing any notices required in the Agreement.

**Representations and Warranties of the Lessee** – the Agreement shall outline the representations and warranties of the Lessee.

**Exhibits** – the Agreement shall include drawings of the Leased Premises (at a minimum) and any additional exhibits which are required to perfect the Agreement.

## **4. RENTS AND FEES**

### **4.1. Introduction**

The City is required, by the Assurances, to maintain a rent and fee structure that makes the Airport as self-sustaining as possible given the circumstances that exist. As such, the City will charge Market Rent for Airport land and/or Improvements.

The City, by entering into Agreements and by other means that may be available to the City shall endeavor to recover the costs being incurred by the City relating to the planning, development, operation (including maintenance and repair), management, and marketing of the Airport (that are not being covered by federal or state Airport Improvement Programs) through the establishment of rents, fees, and other charges.

The City shall be properly compensated for the privileges granted to an Operator, Lessee, or Permittee. It is the policy of the City to seek terms and conditions that, while being reasonable and not unjustly discriminatory, provide the best return to the City.

While each Lessee at the Airport shall be subject to the same rents, fees, and other charges as are uniformly applicable to other Lessees utilizing the same or similar Airport land and/or Improvements for the same or similar use or purpose, it is recognized that the use and attributes of Airport land and/or Improvements and/or the terms and conditions of Agreements (and the approach utilized to reach agreement and related timing) varies. As a result, the rents, fees, or other charges at the Airport may vary as well. However, the City shall not charge unjustly discriminatory rents, fees, or other charges.

### **4.2. Establishment of Market Rent**

Market Rent for aeronautical land and/or Improvements (referred to as the “property” or “properties” in this Section) at the Airport shall be determined by: (a) Rent Study, (b) comparative analysis of the rents being charged for similar properties at the Airport, (c) negotiation, or (d) competitive process, as follows.

- By definition, aeronautical properties include, but are not necessarily limited to, unimproved land (land not having landside and/or airside access and/or utilities to the property), improved land (land having airside and/or landside access and utilities to the property), Ramp, Vehicle parking areas, Fuel storage facilities, terminal buildings, office and shop facilities, Hangars, storage areas, and other support buildings or related facilities.

#### **Rent Study**

The objective of the Rent Study is to establish Market Rent for aeronautical land and Improvements at the Airport based on a comparative analysis of the rents being charged for similar properties at comparable airports. The process that shall be used to establish Market Rent for properties at the Airport is set forth herein.

The City shall engage an aviation consultant (or Appraiser who meets the qualifications set forth in Appendix 5.6) with the following background and experience to conduct a Rent Study:

- working knowledge of the aviation industry and airports including Commercial entities (i.e., FBOs and SASOs) and Non-Commercial entities (i.e., Aircraft Owners and Operators) and related activities;
- familiarity with federal and state Legal Requirements and FAA regulations, obligations, and guidance pertaining to setting rents for aeronautical land and Improvements being used for General Aviation purposes;
- experience providing Rent Studies at comparable airports; and
- has performed a minimum of five Rent Studies involving aeronautical land and Improvements within the past five years.

Rents and related information shall then be obtained (from airports determined to be comparable) and analyzed to derive the Market Rent for the subject property. In identifying comparable airports, the aviation consultant shall, at a minimum, consider the following: Infrastructure, approaches and Air Traffic Control capabilities, number and type of aviation businesses, land use considerations, type of market and market attributes, and activity levels (Based Aircraft and Aircraft operations).

- The City and Lessee (if applicable) may suggest airports to the aviation consultant considered to be comparable based on the factors set forth in this section.

In identifying similar properties at comparable airports, the aviation consultant shall, at a minimum, consider the following: use (e.g., Commercial versus Non-Commercial, aeronautical versus non-aeronautical, etc.), size, location, Landside and Airside access, and type (e.g., hangar, office, shop, apron, vehicle parking, land, etc.), quality, and condition of the land and/or Improvements.

To ensure consistency in the determination of Market Rent for the subject property, the City may categorize and group similarly situated properties by use and attributes. In determining the Market Rent for the subject property, the aviation consultant shall use such categorizations and groupings with consideration given to the functional utility or limitations of the subject property. This shall include, but not necessarily be limited to, any limitations or restrictions on the development, the availability of utilities, and/or the ability of the subject property to support the Aircraft that normally frequent the Airport.

The aviation consultant shall consider properties at the Airport that are similar to the subject property and, if appropriate, the aviation consultant may also consider properties located at competitive airports and general real estate market conditions and trends in the local market.

Rents charged for similar properties at the Airport, comparable airports, and competitive airports shall, to the extent possible, be considered by component such as unimproved land, improved land, Ramp areas, Vehicle parking areas, Fuel storage facilities, terminal buildings, office and shop facilities, Hangars, storage areas, special use facilities (e.g., aircraft maintenance and paint), and other support buildings or related facilities.



If the rents charged for similar properties at the Airport, comparable airports, and/or competitive airports are impacted by the fees being charged or if fees are charged in lieu of rent, the relationship between the rents and fees shall be considered and addressed by the aviation consultant.

### **Similar Properties On-Airport**

The City may, in its sole discretion, set Market Rent for the subject property if rents for similar properties at the Airport have been established through an Agreement with the City within six months. In this case, each of the elements under this Section shall be considered by the City in determining the Market Rent.

### **Negotiation/Competitive Process**

Market Rents can also be established by negotiation or through competitive process.

### **Rate of Return**

In the event that the City develops all or part of the Improvements, to establish rents, the City may, in its sole discretion, establish a rate of return of 10% on the investment.

### **Airport Sponsor Financing**

In the event that the City provides funds for the development (construction) of all or part of the capital Improvements, such funds shall be provided on terms and conditions commensurate with the prevailing terms and conditions in the market (e.g., loan term, down payment, interest rate, etc.) for the type of Improvement being developed. The rent for the Improvement can be established based on the loan payments by Lessee to the City.

## **4.3. Adjustment of Rents**

### **Methodology**

All rents shall be established and shall be effective upon the first day of the fiscal year following promulgation of this Policy (July 1, 2018) and all rents shall be adjusted every five years thereafter (e.g., January 1, 2023, 2028, 2033, etc.) based on the findings of the Rent Study (described in Section 4.2).

On an annual basis between each Rent Study (e.g., January 1, 2019, 2020, 2021, and 2022), all rents shall be adjusted based on the change in the CPI (described in this section). In no event shall the rents be adjusted less than the base rents or the most recent rents established through a Rent Study. In addition, in no event shall the rents be adjusted greater than 3% on an annual basis or 15% over the years between each Rent Study.

All rent adjustments shall be determined prior to the adoption of the budget for the following fiscal year.

**Consumer Price Index (CPI)** – CPI shall mean the Consumer Price Index for All Urban Consumers for the Midwest Region published by the United States Department of Labor, Bureau of Labor Statistics.

- If a substantial change is made in the method by which the CPI is determined, the CPI shall be adjusted to the figure that would have resulted had no change occurred in the manner of determining the CPI. In the event that the CPI (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information previously used in determining the CPI shall be used instead of the CPI.

#### **4.4. Establishment and Adjustment of Fees**

The City shall establish fees utilizing a cost recovery approach associated with the costs being incurred by the City associated with the planning, development, operation (including maintenance and repair), management, and marketing of the Airport (that are not being covered by federal or state Airport Improvement Programs).

- Costs shall include, but not necessarily be limited to: (a) all Airport planning, engineering, design, and development costs (City's portion only), (b) all Airport operating, management, and maintenance and repair costs (City's portion only), and (c) all Airport debt service, capital outlays, reserves, and amortization.
- All General Aviation related revenues (including rents) shall be deducted from all General Aviation related costs and all or a portion of the difference shall be charged to Lessees, Sublessees, Permittees, and users of the Airport on a proportionate basis in the form of fees.
- Established fees may be set at a level whereby only a portion of costs are recovered in order to maintain fees at a reasonable level, as required by the FAA.

Fees may include, but are not necessarily limited to, Fuel flowage fees, Aircraft parking fees, Aircraft landing fees, Based Aircraft fees, General Aviation Operator permit fees, percentage of gross receipts fee, and/or temporary or special use permit fees. All fees shall be identified in the Airport's Rents and Fees Schedule.

**Fuel Flowage Fees** – Fuel flowage fees would be based on the number of gallons dispensed in Based and Transient Aircraft at the Airport.

- Commercial Operators who provide Fueling (and/or Fuel handling) services at the Airport shall be responsible for the collection of the Fuel flowage fee from the sale of Fuel to (and/or handling of Fuel on behalf of) consumers served and for payment to the City.
- Non-Commercial Self-Fueling entities shall report Fuel volumes and pay the Fuel flowage fee directly to the City.

**Aircraft Parking Fees** – Aircraft parking fees would be based on Transient Aircraft parking on City public use aprons.

**Aircraft Landing Fees** – Aircraft landing fees would be based on Transient Aircraft Owners/Operators use of Airport runways.



**Based Aircraft Fees** – Based Aircraft fees would be based on Based Aircraft Owners/Operators shall pay an annual fee.

**General Aviation Operator and Lessee Application Fees** – Application fees would be based on an Application submitted to the City to conduct Activities or lease land and improvements.

Fees shall be adjusted each year based on the fiscal budget for the Airport.

- All adjustments shall be effective on the first day of the fiscal year.
- Any deficits shall be carried forward and considered when establishing fees for the following year. Any surplus or any portion of any surplus may be used, at the sole discretion of the City, to service Airport debt, make Airport capital Improvements, increase Airport reserves, or may be carried forward for consideration in establishing Airport fees for the following year.

#### **4.5. Payment of Rents, Fees, or Other Charges**

No entity shall be permitted to lease or occupy Airport land and/or Improvements unless the entity is Current and in Good Standing. The City may, in its sole discretion, enforce the payment of any rent, fee, or other charge due and owing to the City by any legal means available to the City under any Agreement and/or as provided by Legal Requirements. All rents, fees, or other charges assessed by the City not paid within 5 business days of being due and owing to the City shall be assessed a late fee in accordance with the General Aviation Rents and Fees Schedule.



**5. APPENDIX**

**5.1. RFI, RFQ, and/or RFP Document Guidelines**

The content that may be included in each type of document is identified in the table that follows:

Item	RFI	RFQ	RFP
Objectives with respect to the opportunity	•	•	•
Responsibility for compliance with Legal Requirements		•	•
Overview of the community, the Airport, and the marketplace	•	•	•
Complete and thorough description of the subject property		•	•
Location (and approximate size) of the subject property	•	•	•
Anticipated use of the subject property	•	•	•
If Commercial, outline the desires with regard to the: (a) entity's qualifications and experience and (b) the range, level, and quality of General Aviation products, services, and facilities (and/or Improvements) to be provided		•	•
Anticipated lease term (duration)			•
Minimum rent for the subject property			•
If Commercial, identify the minimum fees and/or other charges for engaging in Activities at the Airport			•
Schedule that identifies key dates for the process	•	•	•
If necessary, the location, date, time, and requirement for attendance at a pre-proposal conference	•	•	•
Specific instructions regarding the content and format of the submission	•	•	•
Require a proposal bond or personal guarantee (that shall remain in effect for 180 calendar days), in the amount equal to the total rents, fees, and other charges proposed to be paid in the first month of the Agreement or \$1,000 (whichever is greater)			•
Place, date, time, and any additional instructions for submission	•	•	•
Grounds for denial or disqualification and withdrawal			•
Evaluation and/or selection criteria to be utilized		•	•
Required forms, statements, and affidavits to be completed for submission			•
Draft of proposed Agreement and/or Permit			•
Primary Management and Compliance Documents			•

**5.2. Advertising Guidelines**

The RFI/RFQ/RFP advertisement should:

- provide a description of the RFI/RFQ/RFP opportunity including identification of the Airport land and/or Improvements that are and/or may be available for lease (subject property) and the General Aviation products, services, and/or facilities that are and/or may be desired by the City;
- provide instructions to proposers for obtaining the RFI/RFQ/RFP document; and,
- identify the date, time, and method for submittals.



### 5.3. *City Improvement Leasing Policy*

#### **Application**

Entities desirous of obtaining an Agreement to use a City Hangar shall complete and submit a Hangar Lessee Application (Application) to the Aviation Director.

- In addition to the completed Application, entity shall pay all applicable fees and/or other charges and provide a non-interest bearing deposit equal to two month's rent (as stipulated in the Airport's Rents and Fees Schedule).
  - If entity executes a Non-Commercial Aircraft Hangar Agreement, 50% of the deposit shall be applied to the first month's rent. The remaining portion of the deposit shall be held by the City as a non-interest bearing security deposit.
- Upon receipt of the: (a) completed Application, (b) applicable fees and/or other charges, and (c) deposit, the entity shall be placed in the last position on the Hangar Waiting List.

To be removed from the Hangar Waiting List, the entity shall notify the Aviation Director in writing. At the time the entity is removed from the Hangar Waiting List, the non-interest bearing deposit shall be refunded to the entity.

- If an entity is desirous of reapplying, the entity shall apply in accordance with this section and be placed in the last position on the Hangar Waiting List.

**Notification of Hangar Availability** – If a City Hangar becomes available, the City shall contact the entity in the first position on the Hangar Waiting List.

- It is the entity's sole responsibility to keep a current address and telephone number on file with the City.

If the City is unable to reach the entity by telephone in the first position on the Hangar Waiting List, a certified letter will be sent to the address the entity has on file with the City.

- If the entity does not respond to the City within 14 calendar days, the entity shall not be eligible to lease the available Hangar.
- In the event an entity fails to respond on three consecutive occasions, the entity shall be removed from the Hangar Waiting List and the deposit shall be forfeited to the City.

If the entity in the first position does not respond within 14 calendar days of the City sending a certified letter, the City shall contact the entity in the next position on the Hangar Waiting List and so on.

**Receipt of Notification of Hangar Offering** – Upon receipt of notification of Hangar availability, the entity shall respond to the City within 14 calendar days in one of the following ways:

- accept the available Hangar, execute a Non-Commercial Aircraft Hangar Agreement, and begin using and/or occupying the Hangar.
  - Before acceptance of an available Hangar, it is the entity's sole responsibility to ensure that the Hangar will accommodate entity's Aircraft.
- decline the available Hangar and maintain the entity's current position on the Hangar Waiting List.
- decline the available Hangar and request that the entity be removed from the Hangar Waiting List, at which time, the deposit will be refunded to the entity.

**Assignment of Hangar Without Aircraft Ownership** – A Hangar shall not be used and/or occupied unless the Aircraft is owned, leased, and/or operated by (under the full and exclusive control of) the entity and evidence (to this effect) is provided to the City within 14 calendar days from the date of accepting the available Hangar.

- In the event the entity intends to purchase, lease, or acquire full and exclusive control of the Aircraft, evidence (that the entity has purchased, is leasing, or has acquired full exclusive control of the Aircraft) shall be provided to the City within 60 calendar days from the date of accepting the available Hangar.
- If the entity fails to provide the required evidence, the Non-Commercial Aircraft Hangar Agreement shall be immediately terminated, the entity shall be removed from the Hangar Waiting List, and the entity's deposit shall be forfeited to the City.

Certificates of Insurance shall be delivered to the City as outlined in Appendix 5.4.

If the Lessee sells or otherwise disposes of the Aircraft, the Lessee may continue to use and/or occupy the Hangar provided the entity is in compliance with this section.

Subleasing is not permitted and will result in immediate termination of the Non-Commercial Aircraft Hangar Agreement and the entity's deposit shall be forfeited to the City.

**Aircraft Partnership** – Each Aircraft partner shall provide proof of ownership or lease and proof of liability insurance coverage to the City.

**Hangar Interest Transfer** – Lessee may not transfer interest in the Hangar to an Aircraft partner within two years of the date of the Aircraft partnership agreement on file with the City.

**Hangar Occupation as Contingency for Aircraft Sale** – The sale of any Aircraft, contingent upon the continued use of any Hangar, is not permitted. At the time of purchase, the new owner of the Aircraft must vacate the Hangar.

**Vacating a Hangar** – Lessee shall provide written notice to the City no less than 30 calendar days prior to vacating a Hangar.

**Hangar Trades** – Lessees may elect to trade Hangars, if mutually agreed and subject to obtaining the prior written consent of the Aviation Director, in accordance with the following requirements:

- Each Lessee is in full compliance with the Non-Commercial Aircraft Hangar Agreement.
- Each Lessee must have used and/or occupied the Hangar for a period of not less than 30 calendar days.
- Prior written notification shall be provided to the Aviation Director at least 30 calendar days prior to the proposed trade date.

Hangar trades will commence on the first day of the month.

#### **5.4. Standard Sublease Form Requirements**

The standard sublease form shall include, at a minimum, the following:

- Legal name, address, and contact information of the subleasing entity.
- Land and/or Improvement identification, location, and description.
- Term of sublease.
- Rights, obligations, permitted uses, and limitations of Operator and the subleasing entity.
- Defaults, remedies, and termination of Operator and the subleasing entity.
- Compliance with the PMCDs and all applicable Legal Requirements.
- If subleasing for the purpose of Aircraft storage (Hangar or tiedown):
  - Aircraft registration number, make, model, and maximum gross landing weight.
  - Requirement to provide a Certificate of Insurance identifying industry standard liability coverage for the non-commercial Aircraft in compliance with the PMCDs.

#### **5.5. Establishment of Market Value**

The City shall engage an Appraiser who meets the qualifications set forth in Appendix 5.6 to conduct an appraisal in compliance with the requirements set forth in Appendix 5.7 to determine market value.

The Appraiser shall use current appraisal methods that are appropriate for appraising airport land and/or Improvements used for General Aviation purposes.

- To determine market value, the Appraiser shall consider all three recognized appraisal methods: cost approach, market data or sales comparison approach, and income approach.
- Although application of all three approaches shall not be required, the Appraiser must adequately explain the omission of any method.

- At a minimum, the Appraiser shall utilize the income approach (and the direct capitalization technique) to derive the market value of the subject property. Integral to this process, the Appraiser shall conduct an analysis of rents, fees, or other charges for similar properties at comparable airports.
- The Appraiser shall consider each of the factors delineated in Section 4.2 of this Policy including, but not limited to, identification of comparable airports, identification of similar properties at comparable airports, property groupings (if applicable), similar on-Airport properties, market conditions and trends, component rents, and impacts of fees on rents.
- All rents, fees, or other charges used in the appraisal process shall be obtained from and confirmed by either (at a minimum by) the lessor or the lessee.
- If using the cost approach to derive the replacement cost of the subject Improvements, the depreciation deduction shall be based on the economic life and the effective age of the subject Improvements. Widely recognized and highly regarded national publications (such as Marshall Valuation Service) shall be used as the basis for determining the economic life of the subject Improvements.

The Appraiser shall use an appropriate and justifiable rate of return for airport properties.

- The capitalization rates utilized by the Appraiser shall be obtained through relevant, reasonable, and appropriate methods and must be adequately discussed in the appraisal report.

The subject property shall be appraised assuming that highest and best use is aviation related.

The appraiser shall also assume that the subject property will be located on the Airport and that access to the Infrastructure and amenities of the Airport shall be available.

Additionally, the appraisal shall meet the Uniform Standards of Professional Appraisal Practice (USPAP).

### **5.6. Appraiser Qualifications**

Appraisals shall be performed by an Appraiser who shall be a Member, Appraisal Institute (MAI) or similarly designated and equally qualified Appraiser who shall be certified by a recognized appraisal organization.

Appraiser must be certified by the Michigan Department of Licensing and Regulatory Affairs (LARA), Bureau of Professional Licensing as a licensed or certified appraiser.

- An out-of-state Appraiser may perform an appraisal provided that the Appraiser (prior to being engaged to conduct the appraisal) satisfies LARA's requirements by way of reciprocity or otherwise.

Appraiser shall have working knowledge of the aviation industry (in general) and airports (in particular) including commercial entities (i.e., aviation businesses – FBOs and SASOs), Non-Commercial entities (i.e., aircraft owners and operators), and related activities.

Appraiser shall be familiar with federal and state Legal Requirements and FAA regulations, obligations, and guidance pertaining to valuing airport Improvements being used for General Aviation purposes.

Appraiser shall have experience providing the same services at comparable airports.

- Appraiser shall have performed a minimum of five appraisals involving airport land and/or Improvements within the past five years.
  - Prior to initiating work, Appraiser shall provide a list to the City identifying the location, the type of appraisal conducted, and the extent of analysis performed.
  - Appraisals of non-aeronautical properties performed in connection with the acquisition of such properties by an airport owner/operator shall not be applied towards these requirements.

Appraisers who only conduct appraisals of off-airport (e.g., non-aeronautical) property (for acquisition or other purposes) shall not qualify.

### **5.7. Appraisal Requirements**

In addition to complying with all applicable appraisal standards, in preparing the appraisal for the City, the Appraiser must comply with the following:

**Reporting Requirements – General** – The depth of the discussion and analysis regarding the potential value impact of the following topics must be consistent with:

- the potential value impact itself; and
- the reporting option utilized (Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Appraisal Report)

**Letter of Transmittal – Narrative Appraisal Reports** – In addition to the value conclusion(s), effective date of value, and property rights appraised, the letter of transmittal must clearly set forth:

- The extent of the appraisal process (Complete Appraisal or Limited Appraisal) as well as the reporting option utilized (Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Appraisal Report).
- Reference to, or inclusion of, any contingencies and/or special appraisal assumptions which affect the validity of the appraisal and/or the reliability of the value estimate(s).
- All estimates of value must be expressed as of the current date of the appraisal; future dates of value are not acceptable unless otherwise directed by the City.

**Market Value** – All appraisal reports must include the Definition of Market Value contained in the most current Dictionary of Real Estate Appraisal.

**Regional, County, City or Town, and Market Area (Neighborhood) Data** – The analysis of regional, county, city or town, and market area (neighborhood) data must be consistent with the complexity of the appraisal assignment and the specific relevance of regional, county, city or town, and market area factors to the subject property. The extent of the reporting of regional, county, city or town, and market area data must be consistent with the reporting option utilized.

**Market Analysis/Market Conditions** – The market analysis/market conditions section of the appraisal report must contain data and analysis consistent with the complexity of the appraisal assignment, with the focus on current market trends which affect the value and exposure time of the subject property. This section should conclude with a statement regarding the subject property’s competitive position within the market. The extent of the reporting of data must be consistent with the reporting option utilized.

**Exposure Time** – An estimate of exposure time must be included for each market valuation scenario addressed in the appraisal and should be a logical extension of the analysis of market conditions.

**Site Description** – Describe the physical characteristics of the site (size, shape, topography, soil, and drainage conditions, frontage, access and exposure, street Improvements, and utility availability). Additionally, the site description must include an analysis of any special or unusual features or conditions and the effect on the utility or value of the site. The extent of the reporting of the site description must be consistent with the reporting option utilized.

When a site inspection reveals obvious potential environmental hazards, it is incumbent upon the Appraiser to adhere to the requirements of USPAP in disclosure requirements. Observations of obvious and significant evidence of potential Hazardous Materials waste (supplemented by photographs) must be included in the appraisal report.

**Zoning Descriptions** – The zoning description must address the subject property’s conformity or nonconformity with current zoning and must include an analysis of land use issues that affect (positively or negatively) the subject property’s legally permissible uses. Examples include pending zoning change, pending amendments to the General Plan, open space overlay, pending changes in local Agency sphere of influence boundaries, scenic/view corridor restrictions, and 14 CFR Part 77 Objects Affecting Navigable Airspace restrictions (e.g., height limitations, setbacks, clear zones, etc.).

**Taxes and Assessment Data** – Taxes and assessment data must also include the amount of any outstanding special assessments.

**Description of Improvements** – Describe the exterior and interior physical characteristics of the structural Improvements (type, size, design or layout, structural components, construction materials, equipment, and mechanical systems) and the quality and condition of same (noting deferred maintenance, if any). Depending upon the type of Improvements and market standards for the subject property, size should be expressed in a gross,



rentable, and usable area basis. Comment is required regarding the functional utility and any significant lack of utility relative to market standards requires expanded analysis. The description of site Improvements (e.g., parking area, landscaping, etc.) must include physical characteristics. The extent of reporting of the description of Improvements must be consistent with the reporting option utilized.

**Remaining Economic Life** – If using the cost approach in the valuation analysis, the description of the existing Improvements must include a statement as to remaining economic life of the subject Improvements.

- Widely recognized and highly regarded national publications (e.g., Marshall Valuation Service) shall be used as the basis for determining the economic life of the subject Improvements.

**Current Occupancy** – Current occupancy must be reported together with current lease terms and conditions (as applicable).

**Operating History – Income Properties** – When applicable, a three year operating history must be reported and analyzed and prior rental income, expenses, and occupancy rates must be presented in reasonable detail.

**Highest and Best Use** – All appraisals of proposed development must include an analysis of the highest and best use of the land as if vacant and the highest and best use as proposed. For existing Improvements which are clearly representative of highest and best use, the analysis of the land (as if vacant) and the property (as improved) can be abbreviated. In cases of excess land or where existing Improvements are not representative of highest and best use, an expanded analysis is required. The extent of the reporting of the highest and best use analysis must be consistent with the reporting option utilized.

With additional regard to proposed developments, the cost approach should be utilized to test the financial feasibility of the proposed development. When cost exceeds value or when the indication of project profitability is below typical expectations for similar developments, an expanded highest and best use analysis is required.

**Comparable Data Documentation** – Comparable sales and rental data are to be detailed and documented as follows:

Self-Contained Appraisal Reports and Summary Appraisal Reports must contain the summary details of each item of market data utilized in the valuation analysis. This may be accomplished by the use of summary tables in the body of the appraisal report. Documentation as to verification and recording data must be retained in the appraisal file.

Restricted Appraisal Reports need not contain the details of each item of market data utilized in the valuation analysis. However, specific details, including documentation as to verification and recording data, must be retained in the Appraiser's files.

Rental data (for Airport land and/or Improvements) is to be derived from an analysis of comparable airports having similar properties.

**Adjustment Grids (optional)** – Adjustments to the comparable sales or rental data may be presented in a grid format and adjustments may be expressed on a qualitative and/or quantitative basis.

All adjustments contained in an adjustment grid must be adequately explained in the appraisal report.

When an adjustment grid is not utilized, the appraisal report must contain sufficient narrative to enable the reader to understand the comparative analysis.

Overall capitalization rates and discount rates must be supported by data and analysis.

- For Self-Contained and Summary Appraisal Reports, the data and analysis must be summarized within the report. For Restricted Appraisal Reports, the data and analysis must be contained in the Appraiser's files.

**Exhibits/Photographs** – Required photographs and exhibits, as applicable, shall include:

- Photographs of the subject property
- Location map(s)
- Airport Layout Plan
- Site Plan/Plot Plan
- Complete Legal Description (if not included in the body of the report).

### **5.8. Dispute Resolution**

If a Lessee disagrees with the Market Rent (or the market value) conclusion reached by the aviation consultant (or Appraiser), the Lessee may, at Lessee's risk, cost, and expense, engage a second aviation consultant (or Appraiser) who shall meet the qualifications set forth in Section 4.2 of this Policy to conduct an independent Rent Study as set forth in Section 4.2 of this Policy (or appraisal as set forth in Appendix 5.7). If the conclusions of the two Rent Studies (or appraisals) reflect a variance of 10% or less, the results of both Rent Studies (or appraisals) shall be averaged to determine the Market Rent (or the market value).

If the variance exceeds 10% and an agreement cannot be reached between the City and the Lessee regarding the Market Rent (or the market value) based on the conclusions of the first and second Rent Studies (or appraisals), the first and second aviation consultants (or Appraisers) shall mutually select a third aviation consultant (or Appraiser) who shall meet the qualifications set forth in Section 4.2 of this Policy.

- The third aviation consultant (or Appraiser) shall make a determination regarding the Market Rent (or the market value) based on a review of the first and second Rent Studies (or appraisals).



- If the first and second aviation consultants (or Appraisers) are unable to agree upon the third aviation consultant (or Appraiser), the City shall appoint a third aviation consultant (or Appraiser) who shall meet the qualification stipulated in Section 4.2 of this Policy to make a determination regarding the Market Rent (or the market value).

The third aviation consultant (or Appraiser) may request a hearing at which the first and second aviation consultants (or Appraisers) shall provide such additional information, data, documentation, and/or clarification regarding the Rent Study (or appraisal) as the third aviation consultant (or Appraiser) may require. The third aviation consultant (or Appraiser) shall have the right to gather, analyze, and consider additional information, data, and documentation as the third aviation consultant (or Appraiser) deems relevant, reasonable, and appropriate.

The third aviation consultant (or Appraiser) shall make a final determination based on a review of the two Rent Studies (or appraisals) and any additional information, data, documentation, and/or clarification provided by the first and second aviation consultants (or Appraisers) and/or gathered or analyzed by the third aviation consultant (or Appraiser). The decision of the third aviation consultant (or Appraiser) regarding the Market Rent (or market value) shall be accepted by the City and Lessee and shall be legally binding.

All costs and expenses associated with the work of the third aviation consultant (or Appraiser) shall be paid equally by the City and the Lessee.

- During any period when there is disagreement between the City and the Lessee regarding a rent adjustment, the Lessee shall be responsible for the payment of the adjusted rent as recommended by the aviation consultant first engaged by the City. Once the disagreement is resolved, any difference between the rent paid and the final determined rent shall be paid to the City or credited to the Lessee's account (as appropriate).