

**City of Palmer
Action Memorandum No. 17-042**

Subject: Authorizing the City Manager to Negotiate and Execute a New Temporary Lease Agreement with Alaska Air Fuel, Inc., for Lease Lot 2, Block 3, of Apron D, Palmer Municipal Airport for the Purpose of Operating an Air/Ground Fuel and Cargo Business


Agenda of: June 13, 2017

Council Action: **Approved**
 Amended: Summary Statement's Last paragraph to include AAF has 14 days days to execute the lease and move their operations.
 Denied


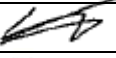

Originator Information:

Originator: City Manager Nathan Wallace

Department Review:

Route to:	Department Director:	Signature:	Date:
	Community Development		
X	Finance		5/30/17
	Fire		
	Police		
	Public Works		

Approved for Presentation By:

	Signature:	Remarks:
City Manager		
City Attorney		
City Clerk		

Certification of Funds:


Total amount of funds listed in this legislation: \$ 4,504.50

This legislation (√):

<input checked="" type="checkbox"/>	Creates revenue in the amount of:	\$ <u>\$4,504.50</u>
<input type="checkbox"/>	Creates expenditure in the amount of:	\$ _____
<input type="checkbox"/>	Creates a saving in the amount of:	\$ _____
<input type="checkbox"/>	Has no fiscal impact	

Funds are (√):

<input type="checkbox"/>	Budgeted	Line item(s): _____
<input checked="" type="checkbox"/>	Not budgeted	<u>03-00-00-3431 Airport Land Leases</u>

Director of Finance Signature: 

Attachment(s):

- Draft Lease Agreement No. 17-003
- Lot diagram
- Related documents

Summary Statement:

The current operations on the airport large aircraft tie down spaces is not in compliance with Federal Aviation Administration grant assurances in terms of non-exclusive use of an apron designated for a public purpose. Aircraft tie down spaces utilized for other than aircraft tie downs.

This draft lease is a result of negotiations following a notice to quit large aircraft tie down spaces 1 and 2 at the airport.

Alaska Air Fuel (AAF) has been operating at the airport for several years from several different locations, but primarily on and around the large aircraft tie down spaces at the south end of the airfield. There have been discussions over time to facilitate a lease. There have also been concerns on the city's part with environmental effects from older aircraft which AAF operates and from the nature of fueling operations in general. AAF has provided some protective measures in the terms of sealing the asphalt where fueling operations are conducted and drip pans for aircraft in the past. We would expect AAF to operate in the future to ensure environmental protection and remediation measures are met and maintained under any lease for the protection of airport property and improvements (pavement).

Alaska Air Fuel has applied to temporarily lease Lot 2 at the Palmer Municipal Airport for the operation of their fuel and cargo business and personal aircraft. The lot, located on S Airport Road, is south of the intersection of S Airport Road and Old Glenn Hwy. It is situated next to the Department of Forestry leased area. The site has been professionally surveyed and shown to be 69,299 square feet, or 1.56 acres.

The administration is recommending at the request of AAF that the lease be for a period of one year with an option for an additional 4 annual renewals.

The administration recommended the lease rate be set at \$.08 per square foot (\$5,544.00 annually). This is based on like properties and the developed state of the current apron, however AAF has asked for a rate of \$.065 per square foot (\$4,504.50 annually) to allow for their business to operate at multiple sites on the airport. This includes two sublets with other tenants and continuing with 1 large aircraft tie-down for fueling on sealed pavement until that area must be vacated for construction and the future helipad. The price difference is \$1039.50 less per year between .08 and .065 per square foot. A large aircraft tie down is \$515.00 quarterly.

The lot will require 10 days to be cleared to allow full access by AAF. Once the lot is cleared AAF will have 14 days to execute the lease and move their operations/equipment from the tie-down spaces to the newly leased temporary lot.

Administration's Recommendation:

To approve Action Memorandum No. 17-042 for a New Temporary Lease Agreement with Alaska Air Fuel, Inc. to operate an air/ground fuel and cargo business.



City of Palmer
231 West Evergreen Avenue
Palmer, AK 99645
907-745-3271

**PALMER MUNICIPAL AIRPORT
LEASE AGREEMENT No. 17-003**

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Office Use Only:

Lease entered into on: _____
Lease ending date: _____
First rate adjustment date: _____
Second rate adjustment date: _____
Third rate adjustment date: _____
Fourth rate adjustment date: _____
Fifth rate adjustment date: _____
Sixth rate adjustment date: _____
Date lease was renewed: _____



City of Palmer

231 West Evergreen Avenue
Palmer, AK 99645
907-745-3271

**PALMER MUNICIPAL AIRPORT
LEASE AGREEMENT No. 17-003**

This LEASE AGREEMENT is made and entered into this _____ (date), by and between the City of Palmer, a municipal corporation organized and existing under its charter and the laws of the State of Alaska, hereinafter referred to as the "Lessor", and Alaska Air Fuel, Inc., hereinafter referred to as the "Lessee".

This lease agreement is not effective unless it is accompanied by signed and attached Exhibit A providing specific information for the following sections: 1., 1A, 1.1B, 1.2A, 1.2B, 1.3A, 2.1, 2.2, 2.7 and 2.8.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

ARTICLE I - PREMISES, TERM AND RENTALS

Section 1.1 Premises and Purpose

A. Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby lease from Lessor, real property more particularly described as a parcel of land located within Tract B, Palmer Municipal Airport recorded as Plat No. 2006-15 in the Palmer Recording District, Third Judicial District, State of Alaska and further described as follows: "Exhibit A"

Commencing at the Southwestern corner of Lot 1, coincident with a Northwesterly corner of Tract B and the eastern most boundary of the S. Palmer Airport Road Right-of-Way, as depicted on the aforementioned Plat No. 2006-15, being also the TRUE POINT OF BEGINNING;

Thence N 89°48'54" E, adjoining the boundary common to said Lot 1 and the aforementioned Tract B, a distance of 550.00 feet;

Thence S 0°07'46" W, a distance of 126.00 feet;

thence S 89°48'54" W, a distance of 550.00 feet to the western boundary of Tract B and the eastern boundary of the S. Palmer Airport Road Right-of-Way;

thence N 0°07'46" E, adjoining the western boundary of Tract B and the eastern boundary of the S. Palmer Airport Road Right-of-Way, a distance of 126.00 feet to the TRUE POINT OF BEGINNING;

Containing 69,300 Square Feet, more or less, as shown on the drawing exhibit attached hereto;

Parcel may be subject to additional easements and/or encumbrances not shown or depicted hereon.

- B. Lessee shall use the Premises for the following Aeronautical uses only, and for no other: **Operation of Air and Ground Fuel / Cargo Delivery Business.**
- C. Any use of the Premises for Non-Aeronautical activity is strictly prohibited, unless an approved amendment to this lease is adopted and fair market value rates for Non-aeronautical areas are applied.

Section 1.2 Term and Renewal

- A. The term of the lease shall be for a period of **1 year**, commencing on the 15th day of June 2017 (the "Commencement Date") and ending on the 14th day of June 2018, subject to the terms of provisions hereof.
- B. Provided Lessee fully and faithfully performs all of the covenants and conditions contained herein for the term of the Lease, Lessor may approve an additional period of **4 years** at the expiration of this Lease so that the total number of years available to Lessee is **5 years**. As with the initial term at the start of and continuing through the renewal period,
 - 1. The rental rate will continue to be subject to changes as provided in Section 1.4 "Rent Adjustment,";
 - 2. The renewal insurance provision as provided in Section 4.3 will apply along with any other changes made in accordance with Section 4.3;
 - 3. The Lease will be subject to such other and further changes as are deemed necessary by Lessor for the reasonable protection of Lessor;
 - 4. In addition, if this Lease is renewed, it shall be subject to all provisions of the Palmer Municipal Code and to the City's Regulations that pertain to the Airport in effect at the time of the renewal or amended thereafter. Including but not limited to the current airport regulations.
- C. To renew this Lease, Lessee must comply strictly with the following:
 - 1. Not more than 12 months nor less than 6 months before the end of the term of this Lease, the Lessee must indicate in a signed writing delivered to the Palmer City Manager, the Lessee's request to exercise the option to renew this Lease.
 - 2. If Lessee fails to notify Lessor within said time period, this Lease shall be deemed terminated at the scheduled expiration date.

Section 1.3 Rent

- A. Lessee shall pay to the Lessor as rent during the term hereof the sum **\$4,504.50** per year, payable annually in advance without demand, beginning July 1, 2017 and continuing on the same day of each and every year thereafter during the term of the lease at the office of the Lessor set forth in Section 7.8 or at such other place as the Lessor may designate in writing. (69,300 square feet X **\$0.065** cents per square foot)
 - 1. Failure to pay rent by the thirtieth day after the due date shall obligate the Lessee to pay a late charge of \$100.00, which sum is agreed to a reasonable estimate of the Lessor's damages for late rental payments and shall not be construed as a penalty or a limitation on Lessor's remedies.
 - 2. This late charge is in addition to a 12 percent daily interest rate.
- B. All rent shall be payable in current legal tender of the United States. Payment may be tendered by check, but payment shall not be made in fact until such check has been honored by the drawee bank. The tender of payment by check within the time provided shall be deemed sufficient to meet any due date only if the check is subsequently honored by the drawee bank and the Lessor subsequently receives the legal tender required by

this Lease. Any subsequent dishonor and non-receipt of rent payment shall constitute a default of this Lease.

- C. The extension of time for the payment of any installment of rent, or the acceptance by the Lessor of any money other than of the kind herein specified, shall not be a waiver of the right Lessor to insist on all other payments of rent to be made in the manner and at the time herein specified. The acceptance by the Lessor of a past due installment payment shall not waive the Lessor's right as to any other default or breach of the Lease.
- D. The rent herein specified shall be net to the Lessor and such payment shall not be subject to any abatement, deduction or off set (except as otherwise provided in this Lease).
- E. All taxes, charges, costs, expenses, utilities and assessments which the Lessee is required to pay hereunder, and all damages, costs and expenses which the Lessor may incur by reason of any default of the Lessee or failure on the Lessee's part to comply with the terms of the Lease, shall be deemed to be additional rent and in the event of nonpayment by the Lessee, the Lessor shall have all the rights and remedies with respect thereto that the Lessor has for the nonpayment of the basic rent.

Section 1.4 Rent Adjustment

- A. It is the intent of the parties that the Palmer Municipal Airport be a self-sustaining facility and operate without any support from the general fund of the Lessor.
- B. The rent shall be subject to adjustment at the three (3) year interval to achieve fair market rent, The rent shall be adjusted as follows:
 - 1. Rental rate will increase to \$0.08 cent per square foot or \$5,544.00 annually for the remaining two (2) years.

ARTICLE II - IMPROVEMENTS

Section 2.1 Improvements

- A. Promptly after the execution and delivery of this Lease, and as hereinafter more particularly provided, the Lessee at its own cost and expense shall cause plans and specifications to be prepared for the construction of the following building, structures and improvements to be placed on the leased Premises, hereinafter referred to as "Improvements".
 - 1. Improvements consist of: None, only non-permanent structures capable of easy removal and transport are permitted.
 - 2. New access gate off S. Airport Road (Approved by City of Palmer)
- B. The improvements shall fully comply with all applicable federal, state, and municipal laws and regulations, including but not limited to federal, state, and municipal building, fire, construction and safety codes and zoning regulations and requirements.

Section 2.2 Plans and Specifications

- A. If the Lessee chooses to provide non-permanent improvements, the Lessee at its own cost and expense shall have prepared conceptual plans for non-permanent improvements and shall prepare and submit them to the Department of Community Development and the Airport Superintendent on or before 90 days from the execution the improvement. The conceptual plans shall have a site plan, building floor plan, all four building elevations of the non-permanent improvements to be constructed or imported.

Section 2.3 Conceptual Plans

- A. The Department of Community Development shall examine the conceptual plans and within thirty (30) days after submission, the Airport Superintendent shall inform the Lessee in writing of any objections to the conceptual plans.
 - 1. In event of objections, the Lessee shall have thirty (30) days to propose any corrective amendments which the Airport Superintendent shall accept or reject within the next twenty (20) days.
 - 2. Failure of the Airport Superintendent to inform the Lessee in writing of his or her objections within twenty (20) days shall constitute the Airport Superintendent's and the Department of Community Development's approval.
- B. The Airport Superintendent's and Department of Community Development's approval of the conceptual plans submitted by Lessee shall not constitute the assumption of any liability of Lessor for their compliance or conformity with applicable building codes, zoning regulations, and/or city, borough, state and federal laws, ordinances and/or regulations, or for their accuracy.
 - 1. Lessee shall be solely responsible for such plans.
 - 2. The Airport Superintendent's and Department of Community Development approval of such plans shall not constitute a waiver of Lessor's right to thereafter require Lessee to amend the same to provide for any corrections or omissions needed to comply with applicable building codes, zoning regulations, city, borough, state or federal laws, ordinances or regulations.
 - 3. The review and approval required by this section is in addition to any other review and approval needed for any required building permits or similar authorization.

Section 2.4 Final Plans

After the Airport Superintendent has notified the Lessee of his or her approval of the conceptual plans and specifications, the Lessee shall promptly apply to the appropriate municipal department for a building permit for any construction or building required to be erected by Lessee pursuant to this Article.

- A. The Lessee shall submit to the Airport Superintendent any plans and detailed drawings including copies which may be required for the permit before submitting the plans and drawings for a permit.
- B. Thereafter the Lessee at the Lessee's own expense shall proceed promptly with preparation of complete and final plans and complete detailed specifications (such plans and specification hereafter termed "final plans") for the Improvements and shall submit to the Airport Superintendent for the Airport Superintendent's approval the final plans as soon as practicable.
- C. The failure of the Lessee to proceed promptly with the preparation of final plans or to submit final plans as required by this section shall constitute a default and breach of this Lease and shall enable the Lessor to terminate this Lease on ten days written notice.

Section 2.5 Airport Superintendent's Approval

The Airport Superintendent shall not unreasonably withhold his or her approval to any conceptual plans, specifications, any plans and detailed drawings, or any final plans or complete detailed specifications.

Section 2.6 Compliance with part 77 FAR

Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations and any similar requirement prior to the construction of the

Improvements and prior to the construction of any further structure or building upon the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises.

Section 2.7 Commencement of Construction

If the Lessee has not commenced construction of the Improvements within the building permit requirements, a new application for Improvements must be submitted.

Section 2.8 Completion of Construction

- A. The Lessee shall have completed construction of the Non-Permanent Improvements within 120 days from the approval of the Airport Superintendent and the Department of Community Development or a time determined in writing by the Lessee and Lessor.
- B. The construction shall be completed when the Non-Permanent Improvements have been substantially completed and are capable of the use for which they were intended.
- C. If the Lessee has not completed the construction by the scheduled completion date the Lessor shall have the right, at Lessor's option, to terminate the Lease on 30 days written notice.

Section 2.9 Liens

- A. Lessee hereby warrants to Lessor that the Premises and all such other Improvements, shall be free and clear of all liens, claims and encumbrances and agrees to indemnify, defend and hold Lessor harmless from and against any and all losses, damages and costs, including reasonable attorney's fees and appellate attorneys' fees, with respect thereto.
- B. If any lien or notice of lien on account of the alleged debt of Lessee or lien or notice of lien by any party engaged by Lessee or Lessee's contractor to work on the Premises shall be filed against the Premises or Improvements, Lessee shall cause the same to be discharged of record by payment, deposit, bond, order of court or competent jurisdiction or otherwise.

Section 2.11 Performance Guarantee

- A. The work, in excess of \$100,000, as described in this lease document shall not begin until the Lessee or Lessee's contractor has provided to the Lessor a performance guarantee in the form of a performance bond, escrow, an irrevocable letter of credit, or deed of trust in an amount equal to 110% of the estimated cost of the Improvements greater than \$100,000 to be accomplished, which guarantees the completion of the work by Lessee or Lessee's contractor in accordance with the plans and specifications approved by Lessor and guarantees the payment by Lessee or Lessee's contractor of all subcontractors' charges and all other persons and firms supplying services, labor, materials or supplies in connection with the work.
- B. Bonds shall be a performance bond from a company qualified by law to act as a surety in the State of Alaska. The bond shall be in a form approved by the City. The bond shall name the City as the sole obligee and the Lessee as the principal. The surety must be rated by A.M. Best as an A or B surety.
- C. The Lessee may deposit cash in an escrow with a bank qualified by law to do business in the State of Alaska. The disbursement of the escrowed funds shall be governed by an escrow agreement in a form approved by the City.
- D. The Lessee may provide to the City, an irrevocable letter of credit or loan commitment by a bank qualified by law to do business in the State of Alaska naming the City as beneficiary.

The letter of credit or loan commitment agreement shall be in a form approved by the City.

- E. The Lessee may grant the City a first deed of trust on real property located in the Matanuska-Susitna Borough to secure the estimated cost of all improvements. The City will accept the first deed of trust if:
1. The Matanuska- Susitna Borough's assessed value for the tax purposes equals or exceeds the amount to be secured by the deed of trust; and
 2. The City obtains at the Lessee's expense, a policy of title insurance from a recognized Title Company doing business in the Matanuska Susitna Borough naming the City as the insured beneficiary of the first deed of trust in the amount of the estimated cost of all improvements.

Section 2.12 Inspection

During construction, the Lessor shall have the right, from time to time, to inspect the Improvements and in the event that during the construction or at any time prior to the issuance of a final certificate of occupancy, the Lessor determines that the Improvements are not being constructed in accordance with the plans and specifications specified in this lease, Lessor may give notice in writing to the Lessee specifying in detail the particular deficiency, omission or other respect in which the Lessor claims construction does not meet the plans and specifications. Upon receipt of any such notice the Lessee shall take steps necessary to correct any deficiencies, omissions or otherwise.

Section 2.13 Non-Responsibility

The Lessor may at the time enter upon the Premises for the purpose of posting notices of non-responsibility for any work, labor or materials supplied or furnished to these Premises and the Lessee shall notify, in writing, and in advance of any construction, the Lessor of any construction in order that the Lessor may post such notices of non-responsibility. It is the understanding of the parties hereto that any such work, labor, or materials are supplied only to further the purposes of the Lessee and that work, labor and materials have been contracted for solely by the Lessee for Lessee's own benefit and not as agent of Lessor.

Section 2.14 As Built Plans

Within sixty (60) days after the project's completion date, the Lessee shall deliver to the Lessor a surveyed plan of the leased Premises showing the completed Improvements as built in relation to the property lines of the leased Premises.

Section 2.15 Improvements Subject to Reversion or Removal

All alterations, buildings, structures or other Improvements placed on the Premises by Lessee shall be subject to Section 7.6 of this Lease.

Section 2.16 Alterations and Other Improvements

The Lessee shall have the right, from time to time, to make such alterations and improvements and decoration to the Premises. Any alterations, improvements and decorations shall be reasonably necessary or appropriate in the Lessor's judgment for the conduct Lessee's business. Lessee shall obtain Lessor's written approval before any such alterations are made. Approval shall not be reasonably withheld as long as Lessee complies with provisions of this article.

Section 2.17 Pavement/Utility Services

Any pavement or utility services to be constructed by the Lessee shall be constructed in accordance with design and specifications approved by the Lessor and the construction shall be

subject to inspection by the Lessor. Such improvements shall not be constructed without the prior consent of the Lessor in writing.

ARTICLE III - USE OF THE LEASED PREMISES

Section 3.1 Airport Purposes

- A. Lessee shall have the right to conduct on the premises those activities stated in Section 1.1 B only, and Lessee shall not use the Premises for any other purpose or activity without first obtaining the written consent of the Airport Superintendent to do so.
- B. In addition, Lessees' activities are to be aeronautical related activities as defined in the Federal Aviation Administration's (FAA's) Airport Compliance Handbook, FAA order 5190.6B and the FAA Revenue Diversion Policy and all planned development shall be consistent with the Palmer Municipal Airport Layout Plan and Master Plan.
- C. It is the purpose of this Lease to foster and abet air commerce at Palmer Municipal Airport and it is not the intent of this Lease to provide premises for uses which do not promote the development and use of Palmer Municipal Airport.
- D. All uses normally incidental to an airport such as car rental agencies, limousine service, restaurants, insurance sales, and other such incidental services not directly related to the maintenance and operation of aircraft are prohibited except when the Airport and the FAA have established that a specific facility is not currently needed for aeronautical purposes.
- E. Any non-aeronautical use must be limited and incidental.
- F. Any non-aeronautical use must be approved by the Airport Superintendent and the FAA in writing prior to its commencement.
- G. Any approved non-aeronautical use will be allowed only on an interim basis and will be phased out if aeronautical demand increases.
- H. If a non-aeronautical use is approved, the rent provided in section 1.3 shall be increased to reflect the fair market value of the portion of the Premises used for non-aeronautical uses.
- I. Requests for non-aeronautical uses will be made first to the Airport Superintendent and if approved by the Airport Superintendent and FAA, the non-aeronautical use and the conditions associated therewith will be detailed in an addendum to this Lease.
- J. Lessee shall not use or permit any part of the Premises to be used for any unlawful purpose of or for any purpose or use that may constitute a nuisance or hazard to health, safety, or property.
- K. Lessee shall not use or allow the Premises or any part thereof to be used or occupied for any purpose in violation of any law, lawful order, or rule or regulation concerning the operation or use of Palmer Municipal Airport.

Section 3.2 Compliance with Laws

Lessee shall comply with all laws now or hereinafter in effect affecting the Premises or Lessee's use or occupancy thereof, including but not limited to Palmer Municipal Airport Regulations; PMC 12.08; and PMC 17 all as may be amended from time to time.

Section 3.3 Hazardous Materials

- A. Neither Lessee nor Lessee's agents shall cause or permit any Hazardous Materials or Substances to be brought upon, generated, stored, disposed of, or used in or about the Premises by Lessee, its agents, employees, contractors, or invitees without the prior written consent of Lessor.

- B. Lessee shall demonstrate to Lessor's reasonable satisfaction that such Hazardous Materials or Substances are necessary to Lessee's business and will be used, generated, disposed of, and stored in a manner that complies with all laws regulating any such Hazardous Materials or Substance so brought upon, generated, stored, disposed of or used in or about the Premises.
- C. Lessor may, at its option require Lessee to provide annual reports, submitted with the annual rent payment.
- D. The Lessee will report the kinds and quantities of Hazardous Materials or Substance on the Premises and how the Lessee complies with applicable laws regarding disposal.
- E. If Hazardous Material or Substances have been used, generated, disposed of or stored in or about the Premises during the term of this Lease, Lessor may, at its election, have any environmental assessment performed of the Premises, at the Lessee's expense, at the termination of this Lease or termination of Lessee's right to possession under this Lease.
- F. If any of the following occur;
 - 1. Lessee breaches the obligations in this section;
 - 2. The presence of Hazardous Material or Substance on the Premises caused or permitted by Lessee results in contamination of the Premises or contamination of any other property at the Palmer Municipal Airport; or
 - 3. Contamination of the Premises or any other property at Palmer Municipal Airport by Hazardous Material or Substance otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom;
 - a. Then Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of space, sums paid in settlement of claims, attorneys' fees, appellate attorney's fees, consultant fees, expert fees, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material or substance present in the soil or groundwater on or under the Premises which arise during or after the Lease term as a result of such contamination.
- G. Without Limiting the foregoing, if the presence of any Hazardous Material or Substance on the Premises caused or permitted by Lessee results in any contamination of the Premises or any other property at the Palmer Municipal Airport, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises and/or other property to the condition existing prior to the introduction of any such Hazardous Material or Substance; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or other property.
- H. As used herein, the term "Hazardous Material or Substance" shall be interpreted broadly to include, but not limited to, substances designated as hazardous under the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq., the Federal Water Pollution Control Act, 33 USC Section 1257 et seq. the Clean Air Act, 42 USC Section 2001 et seq the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC Section 9601 et seq., Title 46 of the Alaska Statutes, or by any applicable federal,

state, or local statute, regulation or ordinance now or hereafter in effect and as they may be amended or interpreted from time to time.

- I. The provisions of this Section 3.3 shall survive any termination of Lessee's right to possession of the Premises and/or termination of this Lease.

Section 3.4 Americans with Disabilities Act

Lessor and Lessee agree that as allowed by 28 C. F. R. S. 36.201(b), Lessee shall be responsible for all compliance responsibility under the Americans with Disabilities Act (42 U.S.C. S 12101 et. Seq.) related to Lessee's use and occupancy of the Premises. Lessee agrees to defend, indemnify and hold Lessee harmless from any claim, demand, or action, either by a private person or a governmental entity, under said Act due to failure to comply with the terms of said Act. The provisions of this Section 3.4 shall survive termination of Lessee's right to possession of the Premises and/or termination of this Lease.

Section 3.5 Reservations and Exceptions

This Lease is made by the Lessor and accepted by the Lessee conditioned upon and subject to any conditions, reservations, limitations, provisions or terms imposed upon the Premises of Palmer Municipal Airport, as contained in any grant (including any monetary grant or loan), lease, permit, patent, deed, or any other conveyance to the Lessor of the Premises, or of Palmer Municipal Airport, from the United States, or the State of Alaska, including their agencies. In the event that any such condition, reservation, limitation, provision or term shall prevent, without fault of the Lessor, this Lease from continuing in full force and effect, the Lessor shall have the option to terminate this Lease immediately (and at any time) without liability to the Lessee therefor.

Section 3.6 Subordination of Lease to Requirements of the Federal Aviation Administration

- A. This Lease shall be subordinated to the provisions of any existing or future agreements between the Lessor and the United States, relative to the operation or maintenance of Palmer Municipal Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development or operation of Palmer Municipal Airport.
- B. In connection therewith, the Lessor has undertaken and may in the future undertake certain obligations respecting its operation of Palmer Municipal Airport and activities of its contractors, Lessees and permitted thereon. The performance by Lessee of the covenants, promises and obligations contained in this Lease is therefore a special consideration and inducement to this Lease. Lessee further covenants and agrees that if the administrator of the Federal Aviation Administration, or any other governmental official or body having jurisdiction over the enforcement and the obligations of the City in connection with the Federal or State aid, shall make any orders, recommendations or suggestions respecting the performances by Lessee of its obligations under this Lease, Lessee shall promptly comply therewith, at the time or times when and to the extent that the Lessor may direct.

Section 3.7 Aircraft on Premises

The Lessee shall provide the Airport Superintendent a list showing all aircraft on the Premises for any purpose, together with the aircraft type, model and number, the name and address of the owner, the purpose of the aircraft being on the Premises, and such other information concerning its identification thereof as the Airport Superintendent shall deem necessary.

Section 3.8 Discriminatory Acts Prohibited

- A. The Lessee shall furnish any service to be rendered by the Lessee in connection with or upon the Premises on a fair, equal and not unjustly discriminatory basis to all users thereof. In performing such services Lessee shall charge fair, reasonable and not unjustly discriminatory prices or rates for each unit of service furnished, provided the Lessee may take reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume users or purchasers.
- B. The Lessee, in its use and occupancy of the Premises, shall not discriminate against any person or class of persons by reason of race, color, creed or national origin, or by reason of any other basis that is illegal or becomes illegal during the term of this Lease, any extension, or any holdover period.
- C. The Lessor upon ten (10) days' notice to the Lessee of any violation of this section shall request that the Lessee either correct or justify any practice or charge alleged as a violation.
- D. In any proceeding whatsoever the burden of justification shall be on the Lessee to show that the practice or charge does comply with the requirements of this section. The Lessee, within ten (10) days after receipt of the notice, shall comply with the request or submit to the Lessor its justification in writing. The Lessor shall submit its findings and decision as to any alleged violation within fifteen (15) days after the receipt of the Lessee's justification, and such findings and decision of the Lessor shall be final. Unless the Lessee shall notify in writing the Lessor within ten (10) days of its objections to any request for compliance or to any adverse findings and decision, the Lessee shall waive any defense that the alleged violation is justified.
- E. The Lessor, at its option, may forthwith terminate this Lease without any liability to Lessee thereunder for failure by Lessee without justification to comply with Lessor's request for compliance within the time set forth in the request or the findings and decision to correct the alleged violation.

Section 3.9 Affirmative Action

- A. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, 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 services or benefits of any program or activity covered in this subpart. The Lessee assures that it will require that its covered sub-organizations provide assurances to the Lessor that any similarity will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.
- B. The Lessor upon ten (10) days' notice to the Lessee of any violation of subsection A shall request that the Lessee either correct or justify any practice or charge alleged as a violation. In any proceeding whatsoever, the burden of justification requirement of subsection A. The Lessee within ten (10) days after receipt of the notice, shall comply with the request or submit to the Lessor its justification in writing. The Lessor shall submit its findings and decision as to any alleged violation within fifteen (15) days after receipt of the Lessee's justification, and such findings and decision of the days of its objections to any request for compliance or to any adverse findings and decision, the Lessee shall waive any defense that the alleged violation is justified.
- C. The Lessor, at its option, may forthwith terminate this Lease without any liability to Lessee thereunder for any failure by Lessee without justification to comply with Lessor's request

for compliance within the time set forth in the request of the findings and decision to correct the alleged violation.

Section 3.10 Maintenance of Premises

- A. Lessee shall repair and maintain the Improvements in good order and repair and keep the Premises in a neat, safe, clean and orderly condition. Such obligation shall include, but not be limited to, the prevention of the accumulation of any refuse or waste materials which might be or constitute a fire hazard or a public or private nuisance.
- B. In the event that Lessee does not properly repair and/or maintain the Improvements or Premises, the Airport Superintendent shall notify the Lessee in writing of those areas that are not being properly repaired and/or maintained.
- C. If, however, after 60 days, Lessee fails to make such repair and/or maintenance, Lessor may cause to have such repair and maintenance made and invoice the Lessee for the repair and maintenance completed.
- D. If said costs are not paid promptly by Lessee, the lease shall be deemed to be in default, and Lessor shall be entitled to all legal remedies provided hereunder.
- E. Lessee shall neither cause nor allow any waste of the Premises or Improvements. In addition, Lessee shall be strictly liable for any waste of the Premises or Improvements and for any damage to reversion.

Section 3.11 Signs

- A. Lessee shall not, without Lessor's written consent, place or erect any sign of any nature on any part of the Premises, but such consent shall not be unreasonably withheld to one flat sign of reasonable size bearing the Lessee's trade name, providing such sign meets all city zoning and sign requirements.
- B. At the termination of this Lease, any such sign shall be removed by Lessee at Lessee's own expense.
- C. Lessee shall apply for a sign permit from the Department of Community Development and shall comply with Palmer Municipal Code.

Section 3.12 Improvements and Alterations

After the initial improvements set forth in Article II have been completed, and if the Lessee desires to construct further improvements:

- A. Prior to commencing construction, renovation, enlargement, demolition, or modification of leasehold improvements now or hereafter existing on the Premises, Lessee shall submit to the Airport Superintendent plans and specifications for such work (including plans for landscaping and irrigation, if any) and Timeline for various phases of work.
- B. The Airport Superintendent shall approve or disapprove such plans and specifications and accompanying Timeline at his or her sole discretion.
- C. Upon Lessee's receipt of the Airport Superintendent's written approval of such plans and specifications, Lessee agrees to construct the proposed leasehold improvements in strict accordance with such plans and specifications and Timeline.
- D. The Airport Superintendent's approval of submitted plans and specifications shall not constitute the assumption of any liability by Lessor for their compliance or conformity with applicable building codes, zoning regulations, and city borough, state and federal laws, ordinances and regulations, or for their accuracy, and Lessee shall be solely responsible for such plans and specifications.
- E. The Airport Superintendent's approval of plans and specifications shall not constitute a waiver of Lessor's right to therefore require Lessee to amend the same to provide for any

- corrections or omissions needed to comply with applicable building codes, zoning regulations, city, borough, state or federal laws, ordinances or regulations.
- F. The review and approval required by Section 3.12 is in addition to any other review and approval needed for any required building permits or similar authorizations.
 - G. Lessee shall obtain all necessary licenses and permits to accomplish any of the work described in Section 3.12. Nothing in this Lease is intended to limit or restrict the City of Palmer in the exercise of its police power, authority to enforce building, fire and other safety codes, laws, ordinances, or regulations.
 - H. Lessee agrees to comply with the notification and review requirements covered in part 77 of the Federal Aviation Regulations prior to the construction of the Improvements and prior to the construction of any future building or structure situated on the Premises.
 - I. Any contract or agreement for labor, services, materials or supplies furnished in connection with construction or alteration of any improvement to the Premises shall provide that no lien, claim or other encumbrance shall thereby be created, or arise, or be filed by anyone thereunder upon or against the Premises or the improvements.
 - J. Before the commencement of any such work, Lessee shall deliver to Lessor either an executed duplicate original of such contract or a written waiver by the architect, engineer, contractor, material man, mechanic, person or corporation named in such contract of all right of lien which he or it might otherwise have upon or against the Premises, or the improvements to be constructed or altered, or the interest of Lessor therein.
 - K. Lessee hereby warrants to Lessor that the Premises and all such other improvements thereto, shall be free and clear of all liens, claims and encumbrances and agrees to indemnify, defend and hold Lessor harmless from and against any and all losses, damages and costs, including reasonable attorneys' fees and appellate attorneys' fees, with respect thereto.
 - L. If any lien or notice of lien on account of the alleged debt of Lessee or lien or notice of lien by any party engaged by Lessee or Lessee's contractor to work on the Premises shall be filed against the Premises or improvements, Lessee shall cause the same to be discharged of record by payment, deposit, bond, order of court or competent jurisdiction or otherwise.
 - M. The work, in excess of \$100,000, as described in this lease document shall not begin until the Lessee or Lessee's contractor has provided to the Lessor a performance guarantee in the form of a performance bond, escrow, an irrevocable letter of credit, or deed of trust in an amount equal to 110% of the estimated cost of the Improvements greater than \$100,000 to be accomplished, which guarantees the completion of the work by Lessee or Lessee's contractor in accordance with the plans and specifications approved by Lessor and guarantees the payment by Lessee or Lessee's contractor of all subcontractors' charges and all other persons and firms supplying services, labor, materials or supplies in connection with the work.
 - N. All alterations, buildings, structures or other improvements placed on the Premises by Lessee shall be subject to section 7.6 of this Lease.

Section 3.13 Quiet Possession

The Lessee, upon paying rent and observing the conditions and terms of this Lease, shall and may have at all times during the term of this Lease peaceful and quiet enjoyment and possession of the Premises, except as otherwise set forth in this Lease.

Section 3.14 Lessee's option to Terminate

- A. Should any government body, agency, or official, other than Lessor, prohibit or otherwise prevent the use of Palmer Municipal Airport in its present condition as a public airport for one year or more, or should the continued use of Palmer Municipal Airport as an airport become impossible or unlawful without the fault of the Lessee, the Lessee shall have the option to terminate this Lease on thirty (30) days written notice to the Lessor.
- B. Upon such termination, this Lease shall be at an end, and neither party shall have any liability for such termination.
- C. The Lessor shall notify the Lessee in writing, of the prohibition, or intended prohibition, and the failure of the Lessee to exercise the option to terminate within thirty (30) days shall extinguish the Lessee's option to terminate.

Section 3.15 Lessor's Option to Terminate

- A. Lessee hereby grants to Lessor should it require the Premises in connection with the future expansion and/or operation of the Airport prior to the expiration or termination of the Lease, Lessor may, upon ninety (90) days written notice, cancel this Lease.
- B. In the event that this Lease is canceled under the provisions of this Section, Lessor shall pay to Lessee the fair market value of Lessee's remaining leasehold interest and the fair market value of Lessee owned buildings, structures, alterations and/or improvements placed by Lessee upon the Premises during the term of this Lease.
- C. The fair market value shall be determined by following the appraisal procedure set forth determination of the fair market rental of the Premises in Section 1.4 of this Lease.
- D. After payment therefore as provided herein, all buildings, structures, alterations and/or improvements shall be subject to the provisions of section 7.6 of this Lease.

Section 3.16 Right of Entry and Access

- A. Lessee hereby grants to Lessor, its contractors, employees, agents and assigns, the irrevocable right, permission and authority to enter into and upon all or part of the Premises for the purpose of:
 - 1. Inspecting the Premises;
 - 2. Cleaning, repairing, maintaining, altering or improving the Premises as Lessor may deem necessary;
 - 3. Abating any nuisance or hazardous condition on the Premises, and/or
 - 4. Preserving and/or protecting the Premises.
- B. It is understood and agreed that the entry and access may affect the use of the Premises from time to time. Lessor shall use reasonable efforts to coordinate any anticipated access or utility or other interruptions with Lessee in an attempt to reasonably reduce the effect of any disruption of Lessee's enjoyment and use of the Premises.
- C. The right of access and entry reserved herein does not impose, nor does Lessor assume by reason thereof, any responsibility for the care, maintenance or supervision of the Premises. Lessee shall not be entitled to any abatement or reduction in rent by reason of Lessors access and/or entry nor shall such access or entry be deemed an actual or constructive eviction.

Section 3.17 Lessor's Improvements

- A. Lessor shall have a permanent right of access over, under, around and across the Premises for the purposes of maintaining, servicing, upgrading, replacing or removing any Lessor-installed improvements including, but not limited to, light poles, utilities, and fencing.
- B. This section does not require Lessor to provide any improvements.

- C. Lessor's maintenance shall not include paving, aircraft tie downs, snow removal or sanding.
- D. All improvements constructed by the Lessor shall at all times remain the property of Lessor and may be maintained, upgraded, serviced or removed at Lessor's convenience and discretion.
- E. Lessor agrees to use reasonable efforts to notify of any upgrading, replacing or repair work with Lessee and to reasonably reduce disrupting Lessee's use of the Premises when practicable.
- F. In the event of abandonment or default, any Lessee improvement will become the property of the Lessor.

Section 3.18 Aviation Easement

Lessee's right to use the Premises for the purposes as set forth in this Lease shall be secondary to and subordinate to the operation of the airport. Lessor specifically reserves for itself, other Palmer Municipal Airport leaseholders, and for the public, an easement for the passage of aircraft in the air space above the surface of the described property together with the right to cause in said air space or on adjacent property such noise as may be inherent in the present or future operation of aircraft. Without in any way limiting Lessor's rights under Section 3.12, Lessee shall not construct any building or facility to a height which in Lessor's discretion will interfere with the operations of the airport.

Section 3.19 Right-of-Way and Easement

Lessor shall have the right to designate or grant rights-of-way or utility easements across the Premises without compensation to Lessee, provided that Lessee shall be entitled to compensation for the taking or destruction of any of Lessee's improvements and provided further that Lessee may terminate the Lease or demand a rental adjustment to reflect any reduction in value of the Premises.

ARTICLE IV - TAXES, INDEMNIFICATION, AND INSURANCE

Section 4.1 Taxes, Assessments, and Utilities

- A. Lessee, in addition to the rentals provided for herein, shall pay when due (and before delinquency) all taxes, utility fees, assessments, and charges upon the Premises, the leasehold interest, and upon buildings, improvements and property thereon, which are assessed or charged at any time during the term.
- B. The Lessee shall furnish to the Lessor for Lessor's inspection within thirty (30) days after the date any amount payable by the Lessee as required by this section, official receipts from the appropriate taxing authorities or other proof satisfactory to the Lessor evidencing payment.
- C. The Lessee shall have the right at all times to protest any assessment of taxes or other assessments or charges, but the Lessor may require the Lessee to deposit with the Lessor any sums in dispute to insure payment in the event that any contest is unsuccessful.
- D. Lessee shall pay and be responsible for all charges for gas, electricity, water, light, heat, power, garbage, solid waste, and other utility service used in or about or supplied to the Premises.
- E. Lessee shall timely pay all sales tax on the rent on the lease, utilities, sales, service, rents, etc., and shall comply with City and Borough sales tax laws.

Section 4.2 Indemnification

Lessee shall indemnify, defend and hold Lessor harmless from all liability or loss (including, but not limited to reasonable attorneys' fees and appellate attorneys' fees) arising from any injury to any person or persons (including without limitation Lessee, its agents or employees) or property of any kind whatsoever while in, upon, or in any way connected with the Premises during the term of this Lease, or any use or occupancy hereunder, however occurring, including any acts, negligent or otherwise, and any omissions (negligent or otherwise), by Lessee, its agents, independent contractors, or employees, unless caused by or resulting from the sole negligence of the Lessor or any of Lessor's agents or employees.

Section 4.3 Insurance

- A. Lessee, at its own expense, shall secure and maintain in full force at all times during the term of this Lease:
1. Commercial general liability. Commercial general liability insurance with a single occurrence liability limit of \$1,000,000 and an aggregate of \$2,000,000 insuring against liability of Lessee, its officers, contractors, licensees, agents, employees, guests, invites and authorized representatives, arising out of and/or in connection with Lessee's use or occupancy of the Premises; or
 2. Airport premises liability. Airport premises liability insurance on an occurrence basis with a single combined liability limit of not less than \$1,000,000 occurrence and \$2,000,000 aggregate limit for bodily injury and property damage.
 3. If applicable, third-party aircraft liability insurance with a single combined liability limit of not less than \$1,000,000 per occurrence;
 4. Commercial property insurance in the amount of replacement costs.
 5. Pollution Insurance covering all fueling operations with a single combined liability limit of not less than \$1,000,000 occurrence and \$2,000,000 aggregate limit covering all airport operations.
- B. This insurance required under this Section shall:
1. Name the Lessor as an "additional insured"
 2. Contain a clause that the insurer will not cancel or change the insurance without first giving the Lessor thirty (30) days prior written notice;
 3. Be with an insurance company qualified to do business in the State of Alaska with a financial rating of at least "A" as rated in current Best's Insurance Reports;
 4. Include a waiver of subrogation clause by which the insurer waives all rights of subrogation against the Lessor for payments made under the policy; and
 5. Not contain a damage deductible for each and every loss that exceeds \$10,000.
- C. Lessee shall provide Lessor with proof of insurance coverage in the form of a certificate of insurance, and if requested by the Lessor, Lessee shall provide Lessor with a copy of the policy(ies). Failure to maintain such insurance in effect shall constitute grounds for immediate termination of this lease. Lessor may at its option purchase said insurance and charge the expense thereof to Lessee, which expense Lessee shall assume and pay.
- D. To reasonably protect itself, Lessor may adjust these minimum insurance requirements and add types of insurance or both by giving Lessee written notice of such adjustment ninety (90) days prior to the expiration of each five (5) year interval of the term of this Lease. Lessor may also adjust these minimum insurance requirements at any time if Lessee's use of the Premises changes, and in such event, Lessor shall give Lessee thirty (30) days written notice of such adjustment.
- E. The requirements of insurance coverage do not relieve Lessee from any other obligation under this Lease.

ARTICLE V - ASSIGNMENT AND SECURITY INTERESTS

Section 5.1 Assignment and Subletting

- A. Lessee shall not voluntarily assign or encumber its interest in this Lease or in the Premises or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises without first obtaining Lessor's prior written consent. Lessor will not unreasonably withhold its consent; provided, however, if Lessor does unreasonably withhold its consent, Lessor shall not be liable for any damages, costs or attorney's fees arising therefrom.
1. Lessor may condition its consent upon such terms as are in its best interest, including but not limited to matters regarding laws, insurance, risks, Lessee's defaults or past practices, risks attributable to assignee, etc., but Lessor may not condition its consent upon raising the rent other than as already allowed under this Lease.
 2. Any assignment, encumbrance or sublease without Lessor's consent shall be voidable and, at Lessor's election, shall constitute a default.
 3. No consent to any assignment, encumbrance or sublease shall constitute a further waiver of the provisions of this section.
- B. If Lessee is a partnership or limited liability company, a withdrawal or change, voluntary, involuntary or by operation of law, of any partner or partners, member or members owning twenty-five percent (25%) or more of the partnership or LLC in one or more transactions, or the dissolution of the partnership or LLC, shall be deemed a voluntary assignment.
- C. If Lessee is a corporation any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of a controlling percentage of the capital stock of Lessee in one or more transactions, or the sale of twenty-five percent (25%) of the value of the assets of Lessee in one or more transactions without immediate replacement with assets of equal or greater worth, shall be deemed a voluntary assignment.
- D. Lessee hereby irrevocably assigns to Lessor, as security for Lessee's obligations under this Lease, all rent from any subletting of all or a part of the Premises, and Lessor, as assignee and attorney-in-fact for Lease, may collect such rent and apply it toward Lessee's obligations under this Lease, except that, until the occurrence of an act of default by Lessee, Lessee shall have the right to collect such rent as it becomes due, one payment period at a time, which payment period may never exceed one year.
- E. Lessee may not charge a sub-lessee a rent rate that changes from year to year, other than changes that result directly from changes made by Lessor, and Lessee shall never have the right to collect or receive rent in advance of when it is due. If the sub-lessee pays Lessee in advance and Lessor collects rent hereunder, then the sub-lessee must pay the advanced rent to Lessor and sub lessee may retrieve the advanced rent from Lessee. Neither this section nor collection of any such rent by Lessor shall be deemed to be Lessor's approval of any such sublease.
- F. If, as a result of an assignment or sublease, the Premises will be used for purposes other than as set forth in section 3.1 herein. The consent of the Palmer City Council and the FAA, if applicable, must be obtained. It is the policy of the city council to discourage non-aviation related uses. Additionally, if incremental revenues over and above the Lessee's Lease payments will be realized from the sublease or assignment pertaining to non-aeronautical uses, Lessor may raise Lessee's existing rent to fair market value at the time of the approval of the sublease.

- G. All assignment instruments shall include language whereby Assignee expressly assumes and agrees to pay the obligations of Lessee under this Lease.
 - 1. No assignment shall release or diminish the obligations of any Lessee or any Guarantor for performance of Lessee's obligations hereunder and Lessee shall remain liable as if no assignment were made.
 - 2. Lessee and Assignee will be jointly and severally liable for such obligations.
 - 3. Neither this section nor any payment of rent by such Assignee shall be deemed to be Lessor's approval of any such assignment.
- H. All sublease instruments shall provide that the sublease is subject to all of the terms, covenants and conditions of this Lease.
- I. Lessee agrees to pay to Lessor \$500 for any request by Lessee for Lessor to consent to any assignment or subletting by Lessee.

Section 5.2 Mortgage and Encumbrances

- A. Lessee shall not mortgage or otherwise encumber this Lease (including Lessee's leasehold estate in the improvements thereon) without the prior written consent of Lessor.
- B. The Lessor's consent to the mortgage or encumbrance shall not be unreasonably withheld, provided the mortgage or beneficiary shall agree to the attached form of Assignment of Lease for Security Purposes and Consent to Assignment of Lease attached hereto as Exhibit C.
- C. Lessee shall furnish the Lessor with a copy of any security transaction mortgaging or encumbering the Premises for the Lessor's approval prior to any mortgaging or encumbering of the Premises, and shall further furnish a copy to the Lessor of any such executed security transactions.

ARTICLE VI - DEFAULT AND ENFORCEMENT

Section 6.1 Default Defined

The occurrence of one or more of the following shall be deemed a default by the Lessee and a breach of this Lease:

- A. Failure to pay the rent provided herein, or any part thereof, or other charge due hereunder, for a period of ten (10) days after written notice of such failure is given by Lessor to Lessee;
- B. Failure to perform the obligations set forth in Sections 3.8, 3.9, and 3.10 hereof, after any notice required by those sections;
- C. Failure to provide and maintain in effect insurance in compliance with Section 4.3 hereof (for which failure, there is no notice time requirement);
- D. Failure to do, observe, keep and perform any other terms, covenants, conditions, agreements and provisions contained in this Lease for a period of thirty (30) days after written notice of such failure is given by Lessor to Lessee, or, in the case of a default not reasonably susceptible of being cured within thirty (30) days (which does not include any default which may be cured by the payment of money), failure to commence promptly and proceed diligently and in good faith to cure such default within the initial thirty (30) days and complete such cure within a total of sixty (60) days after the sending of the notice;
- E. The abandonment of the premises by the Lessee, the making by the Lessee of a general assignment for the benefit of creditors, or the appointment of a permanent or temporary receiver for the Lessee's property, which is not vacated or set aside within thirty (30) days of sending of written notice of such event by Lessor; or

- F. The issuance of three (3) written notices for defaults or breaches within any consecutive twelve-month period, regardless of whether or not the default or breach was cured within the applicable time period.

Section 6.2 Lessor Remedies on Default

Upon the occurrence of any default of Lessee as described in Section 6.1 or elsewhere in this Lease, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

- A. Lessor may, at its election, terminate this Lease or terminate Lessee's right to possession only, without terminating this Lease.
- B. Upon termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Lessee's right to possession without termination of this Lease, Lessee shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Lessor, and Lessee hereby grants to Lessor full and free license to enter into and upon the Premises in such event with or without process of law and to repossess Lessor of the Premises and to expel or remove Lessee and any others who may occupy or be within the Premises and to remove and all property therefrom, without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Lessee hereby waiving any right to claim damage for such re-entry and expulsion and without relinquishing Lessors right to rent or any other right given to Lessor hereunder or by operation of law.
- C. Upon any termination of this Lease, whether by lapse of time or otherwise, Lessor shall be entitled to recover:
 - 1. The worth at the time of the award of the unpaid rent (including any amounts treated as additional rent) that had been earned at the time of termination;
 - 2. The worth at the time of the award of the amount by which the unpaid rent (including any amounts treated as additional rent) that would have been earned after the date of termination until the time of award exceeds the amount of the loss of rent for the same period that Lessee proves could have been reasonably avoided;
 - 3. The worth at the time of the award of the amount by which the unpaid rent (including a reasonable estimate of additional rent) for the balance of the term exceeds the amount of the loss of rent for the same period that Lessee proves could have been reasonably avoided; and
 - 4. Any other amount, full reasonable attorney's fees and court costs, necessary to compensate Lessor for all detriment proximately caused by Lessee's default.
- D. "The worth at the time of the award," used in this section, is to be computed by allowing interest as determined by the current bond rating from State of Alaska Municipal Bond Bank plus 5%. The "time of the award" is the date the Lessee is notified of the termination of the lease by the Lessor. Such notification shall be done by certified mail.
- E. Upon any termination of Lessee's right to possession only without termination of this Lease, Lessor may, at the Lessor's option enter into the Premises, remove Lessee's signs and other evidences of tenancy, and take and hold possession thereof as provided in this section, without such entry and possession terminating this Lease or releasing Lessee, in whole or in part, from any obligation, including Lessee's obligation to pay the rent, including any amounts treated as additional rent hereunder, for the full term.
- F. Upon termination of Lessee's right to possession, Lessor may, but need not, relet the Premises or any part thereof for such rent and upon such terms as Lessor in its sole discretion shall determine (including, but not limited to, the right to relet the Premises for

- a greater or lesser term than that remaining under this Lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises) and Lessor shall not be required to accept any tenant offered by Lessee or to observe any instructions given by Lessee about such reletting.
- a. In any such case, Lessor may make repairs, alterations and additions in or to the, Premises, and Lessee shall, upon demand, pay the cost thereof, together with Lessor's expenses of reletting.
 - b. If the consideration collected by Lessor upon any such reletting plus any sums previously collected from Lessee are not sufficient to pay the full amount of all rent, including any amounts treated as additional rent here under and other sums reserved in this Lease for the remaining term hereof, together with the costs of repairs, alterations, additions, and Lessor's expenses of reletting and the collection of the rent accruing therefrom (including attorneys' fees), Lessee shall pay to Lessor the amount of such deficiency upon demand and Lessee agrees that Lessor may file suit to recover any sums falling due under this subpart from time to time.
- E. Lessor may, at Lessor's option, enter into and upon the Premises, with or without process of law, if Lessor determines in its sole discretion that Lessee is not acting within a commercially reasonable time to maintain repair or replace anything for which Lessee is responsible hereunder and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage resulting therefrom and Lessee agrees to reimburse Lessor, on demand, as additional rent, for any expenses which Lessor may incur in thus effecting compliance with Lessee's obligations under this Lease.
- F. Any and all property which may be removed from the Premises by Lessor pursuant to the authority of this Lease or of law or in equity, to which Lessee is or may be entitled, may be handled, removed and stored, as the case may be, by or in the direction of Lessor at the risk, cost and expense of Lessee, and Lessor shall in no event be responsible for the value, preservation or safekeeping thereof.
1. Lessee shall pay to Lessor, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Lessor's possession or under Lessors control.
 2. Any such property of Lessee not retaken by Lessee from storage within thirty (30) days after removal from the Premises shall conclusively be presumed to have been conveyed by Lessee to Lessor under this Lease as a bill of sale without further payment or credit by Lessor to Lessee; provided, however, Lessor may disclaim as to any item or items and the effect of such disclaimer will be that the item or items never became the property of Lessor.
- G. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or equity (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent, additional rent or other sum due to Lessor, hereunder or of any damages accruing to Lessor by reason of the terms, provisions and covenants herein contained.
- H. No act or thing done by Lessor or its agents during the term hereby granted shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or an acceptance of the surrender of the Premises shall be valid unless in writing signed by Lessor.
- I. No judicial action shall be necessary to terminate this Lease.

- J. No waiver by Lessor of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants herein contained.
- K. Lessors acceptance of the payment of rental, including any amount treated as additional rental, or other sums hereunder after the occurrence of an event of default shall not be construed as a waiver of such default, unless Lessor so notifies Lessee in writing.
- L. Forbearance by Lessor to be deemed or construed to constitute a waiver of such default or of Lessor's right to enforce any such remedies with respect to such default or any subsequent default.
- M. If, on account of any breach or default by Lessee in Lessee's obligations under the terms and conditions of this lease, it shall become necessary or appropriate for Lessor to employ or consult with an attorney concerning this Lease or enforce or defend any of Lessor's rights or remedies hereunder, Lessee agrees to pay any attorneys' fees and appellate attorneys' fees so incurred.
- N. Lessor shall not be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon such reletting.

Section 6.3 Lessor's Failure to Enforce and Nonwaiver

- A. Failure by the Lessor to insist the strict performance of any term, condition or covenant of this Lease or to exercise any right or remedy available on a breach thereof, and acceptance of full or partial rentals during the continuance of any such breach shall not constitute a waiver of any such breach or any such term, condition or covenant.
- B. Terms, conditions or covenants of this Lease required to be performed by the Lessee, and breach thereof, shall not be waived, altered or modified, except by written instrument executed by the Lessor.
- C. Waiver of any breach shall not affect or alter any term, condition or covenant of this Lease, and each such term, condition or covenant shall continue in full force and effect with respect to any other then existing or subsequent default or breach thereof, and any other or subsequent default or breach may be enforced by the Lessor as provided in this Lease.

ARTICLE VII - GENERAL COVENANTS

Section 7.1 Condition and Status of Premises

- A. Lessee acknowledges that Lessee has examined the Premises and accepts same in its present condition without any representation or warranty, express or implied in fact or by law, by the Lessor as to the title, nature, condition or usability of the Premises for the purposes set forth in this Lease, all of said warranties being hereby expressly property **as-is** in its present condition, together with all faults.
- B. Lessee agrees to provide written notice to Lessor immediately upon Lessee becoming aware or having a reasonable belief:
 - 1. That the Premises or any adjacent property is being, may be, or has been contaminated with any Hazardous Materials, or
 - 2. Of the existence of any Hazardous Materials in, within, on or near the Premises or adjacent property.

Section 7.2 Risk of Loss

Destruction or damage to any building or improvement on the Premises by fire, rain, ice, snow, windstorm, earthquake, aircraft accident, or any other casualty or action of the elements shall not entitle the Lessee to surrender possession of the Premises, to terminate this Lease, to violate

any of its provisions, or to cause any rebate or abatement in rent when due or thereafter becoming due under the terms hereof.

Section 7.3 Repair or Rebuilding

- A. Upon the destruction or damage to any building or structure by fire or other casualty covered by insurance or that is supposed to be covered by Lessee's insurance, Lessee may, with Lessor's consent rebuild the building or structure.
- B. Upon the destruction or damage to any building or structure by casualty that is not covered by insurance and is not supposed to be covered by insurance, Lessee shall have the right to repair, restore or rebuild the building or structure within one (1) year after the date of such occurrence or as per written agreement with the Airport Superintendent.

Section 7.4 Condemnation

- A. If all the Premises, or any part thereof required for the reasonable use of the Premises, is taken by eminent domain, this Lease shall expire on the date when the Lessee is required to vacate the Premises, and the rent shall be apportioned as of that date.
- B. If there is a taking of a part of the Premises not required for the reasonable use of the Premises, then this Lease shall continue in full force and effect and the rent shall be equitably reduced, based on the proportion by which the Premises is reduce, such rent reduction to be effective as of the date possession of such portion is delivered to the condemning authority.
- C. Except for improvements constructed and paid for by Lessee, Lessor reserves all rights to damages to the Premises for any taking by eminent domain and Lessee hereby assigns to Lessor any right Lessee may have to such damages or award.
- D. Lessee shall make no claim against Lessor for damages for termination of the leasehold interest or interference with Lessee's business. Lessee shall have the right, however, to claim and recover from the condemning authority compensation for any loss to which Lessee may be put for Lessee's moving expenses and for the interruption of or damages to Lessee's business, provided that such damages may be claimed only if they are awarded separately in the eminent domain proceeding and not as part of the damages recoverable by Lessor.

Section 7.5 Surrender of Premises

At the expiration of any Lease term, upon termination of this Lease, upon reentry by Lessor or otherwise, the Lessee shall peacefully and quietly surrender the Premises in as good a condition as it was at the beginning of the initial term, reasonable use and wear and damages by the elements excepted.

Section 7.6 Reversion or Removal of Buildings and Improvements

- A. Any and all buildings, structures, alterations or improvements placed by the Lessee upon the Premises shall, at the option of the Lessor, revert to and become the property of the Lessor at and upon the expiration or termination of this Lease and/or the termination of Lessee's right to possession of the Premises.
- B. Lessor, in its sole discretion, may require Lessee to remove part or all of said buildings, structures, alterations and/or improvements including, but not limited to, fuel tanks and lines, and partially or completely restore the Premises to the condition of the Premises at the inception of this Lease by sending written notice requesting such removal and restoration within sixty (60) days after such expiration or termination.

- C. Lessee shall then at its own expense complete such removal and restoration within ninety (90) days of the sending of such notice.
- D. At the conclusion of the current lease and extension period(s) the existing Lessee shall be given preference in executing a new lease on the same premises, provided that the proposed land use is compatible with the current Airport Layout Plan and the Lessee is otherwise in good standing with the City of Palmer and in substantial compliance with the existing lease.
- E. Section(s) 7.5 and 7.6 do not necessarily preclude a lessee from recovering value from Lessee's leasehold improvements by selling to a third party at any time during the lease term, provided that all other conditions of the active lease have been met. At such time, the buying third party would request a new lease or an assignment of the existing lease, and such request would not be reasonably withheld.

Section 7.7 Holdover

- A. In the event the Lessee shall hold over after the expiration or termination of this Lease for any cause whatsoever, Lessee shall pay Lessor monthly rent at double the annual rental rate divided by twelve for the entire time Lessee remains in possession, and in addition thereto, Lessee shall hold Lessor harmless from all damages resulting from Lessee's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from Lessee's failure to surrender the Premises.
- B. If Lessee remains in possession of the Premises after expiration of the term of the Lease, or after the date in any notice given by Lessor to Lease termination this Lease, such possession by Lessee shall be deemed to be a month-to-moth tenancy terminable on thirty (30) days' notice given at any time by either party.
- C. The provisions of this section do not exclude Lessor's rights of re-entry or any other right under this Lease.

Section 7.8 Notices

Any notices required to be sent in accordance with the terms of this Lease, including legal process, shall be sent in writing by registered or certified mail, to the parties at the following addresses unless otherwise notified in writing and deemed to be received when so sent:

Lessor's address: City Manager
 City of Palmer
 231W. Evergreen Ave.
 Palmer, AK 99645

Lessee's address: Alaska Air Fuel, Inc.
 P.O. Box 360
 Palmer, AK. 99645

Section 7.9 Rights or Remedies

No right or remedy herein conferred upon or reserved to Lessor is intended to be exclusive or any other right or remedy, but is intended to be in addition to any right or remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

Section 7.10 Successors in Interest

This Lease shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

Section 7.11 Applicable Law and Forum

This Lease and the respective rights and obligations of the parties shall be construed and interpreted in accordance with the laws of the State of Alaska. Any civil action concerning this Lease shall be brought in the United States District Court for the District of Alaska or Superior Court Third Judicial District Palmer, Alaska, only.

Section 7.12 Recordation of Lease

The parties prefer to record a memorandum of this Lease rather than the Lease itself and contemporaneously with the execution hereof they have executed a memorandum of Lease in the form of Attachment A which is attached hereto and may be recorded by either party. In the event it should be so require by any title company insuring title for Lessee, or by any lending institution from which Lessee proposed to make a loan, then Lessee may cause this Lease to be placed of record.

Section 7.13 Severability

The invalidity or unenforceability of any particular provision of this Lease shall not affect any remaining provisions hereof, and, in any such event this Lease shall be construed and interpreted in all respects as if such invalid or unenforceable provision were omitted.

Section 7.14 Construction

Lessee and Guarantor have been advised to have this Lease and the Guaranty reviewed by their own attorney. The parties agree that this Lease and Guaranty shall not be construed more strictly against one party than the other nor shall this lease be construed against the lessor.

7.15 Gender and Plurality

Unless the context of this Lease clearly requires a different interpretation of construction, all references to masculine, feminine or neuter genders shall be construed to refer to all such genders; and all references to the singular shall also include the plural, and vice versa.

Section 7.16 Joint and Several Liability

The obligations of each Lessee are joint and several.

Section 7.17 Entire Agreement

This written Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior or contemporaneous agreements, oral or written, between the parties not included herein. No modifications, amendments, deletions, additions or alterations of this Lease shall be effective unless in writing and signed by all of the parties hereto or such representatives of the parties as have been duly authorized to make such change.

EXHIBIT A

Alaska Air Fuel, Inc.

Lease Lot 2, Block 3, of Apron D

Palmer Municipal Airport

Legal Description

Commencing at the Southwestern corner of Lot 1, coincident with a Northwesterly corner of Tract B and the eastern most boundary of the S. Palmer Airport Road Right-of-Way, as depicted on the aforementioned Plat No. 2006-15, being also the TRUE POINT OF BEGINNING;

Thence N 89°48'54" E, adjoining the boundary common to said Lot 1 and the aforementioned Tract B, a distance of 550.00 feet;

Thence S 0°07'46" W, a distance of 126.00 feet;

thence S 89°48'54" W, a distance of 550.00 feet to the western boundary of Tract B and the eastern boundary of the S. Palmer Airport Road Right-of-Way;

thence N 0°07'46" E, adjoining the western boundary of Tract B and the eastern boundary of the S. Palmer Airport Road Right-of-Way, a distance of 126.00 feet to the TRUE POINT OF BEGINNING;

Containing 69,299 Square Feet, more or less, as shown on the drawing exhibit attached hereto;

Parcel may be subject to additional easements and/or encumbrances not shown or depicted hereon.

LESSEE: Alaska Air Fuel, Inc.

By: _____
Chris F. Houchen, President & Treasurer

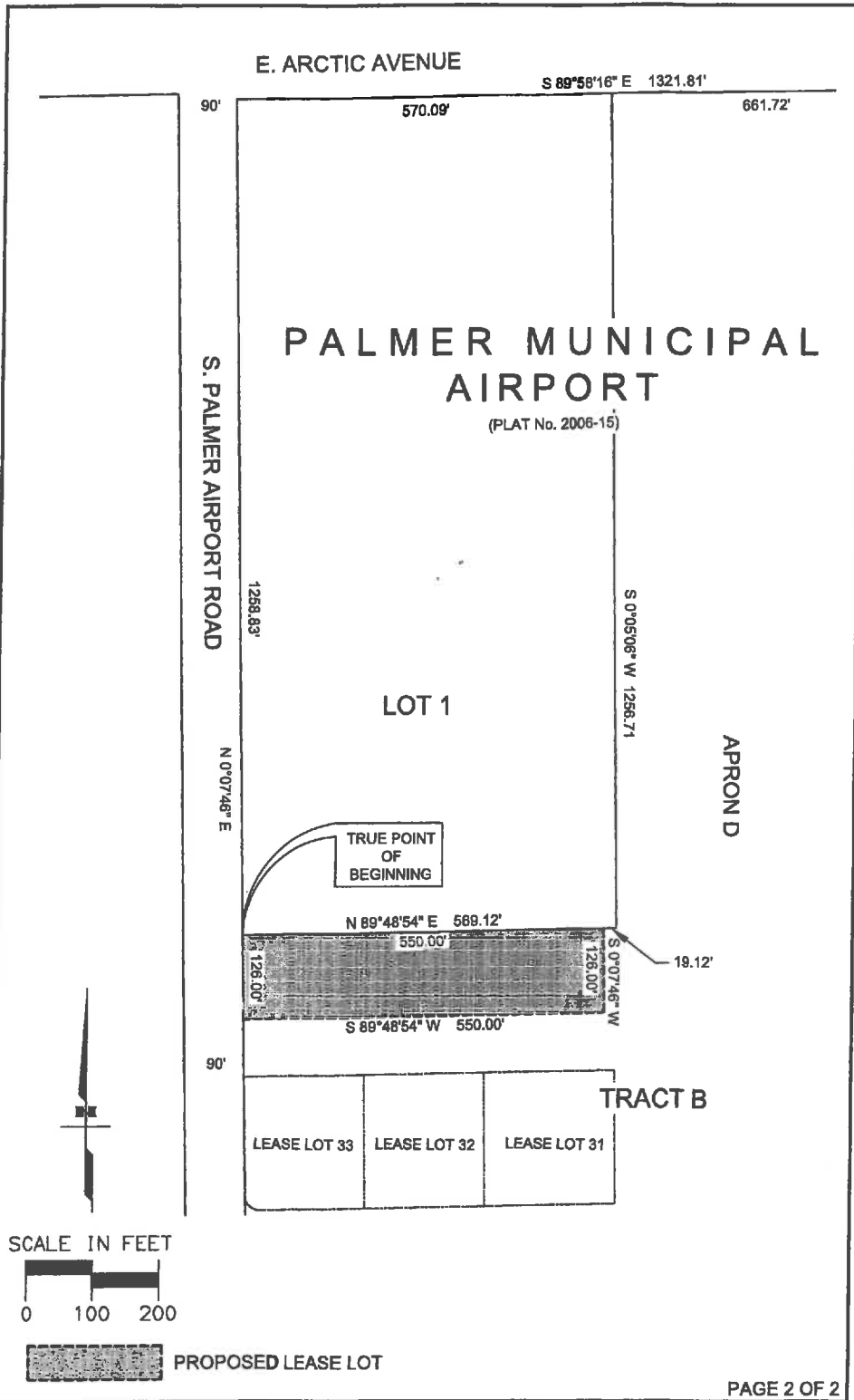
By: _____
John K. Sliwinski, Vice President & Secretary

Date: _____

Date: _____

EXHIBIT A

(Lease Lot 2, Block 3, of Apron D, Palmer Municipal Airport)



PAGE 2 OF 2

CITY OF PALMER AIRPORT LEASE LOT DIAGRAM			
OWNER'S INITIALS: _____	EXISTING PARCEL AREA:	± 346.82 ACRES	
EXHIBIT: _____	PROP. LEASE LOT AREA:	± 69,299 S.F.	
PAGE __ OF __ DATED _____	REMAINING PARCEL AREA:	± 345.23 ACRES	
	SCALE: 1"=200'	DATE: 12-15-15	



Warren (Bud) Woods Palmer Municipal Airport

Frank J. Kelly
Airport Superintendent

Phone: (907) 761-1334
Fax: (907) 745-0930
Email: fkelly@palmerak.org

Mail: 231 W. Evergreen Ave.
Palmer, Alaska 99645-6952
Location: 901 East Airport Road
www.cityofpalmer.org

October 12, 2016

Alaska Air Fuel, Inc.
PO Box 360
Palmer, AK 99645

Subject: Large Aircraft Tie Down Space Proposal received
September 6, 2016, protective sealing gesture, plus other matters

Dear Mr. Houchen and Mr. Sliwinski,

The City of Palmer has been in receipt of your proposal to facilitate a cooperative agreement between Alaska Air Fuel, Inc. and the Palmer Municipal Airport from September 6th and also your recent Protective Sealing gesture received on October 5th. In an effort to be responsive and respectful of your request, as well as mindful of our Airport Sponsor responsibilities in relationship to FAA grant assurances, the City contact the FAA Airports Division, Alaska Region. On September 15th, FAA personnel from the Airports Division conducted an on-site visit of the airport and specifically the operations of Alaska Air Fuel, Inc. at all three locations (South Ramp area, Old Woods Hangar, and North Ramp fuel truck parking).

The South Ramp area is designed to be a Large Aircraft Parking Apron which has been funded, primarily by the FAA through its "Airport Improvements Program". The FAA's Compliance Program Manager, has informed the City that an exclusive use agreement on a public use apron, as outlined in your proposal could constitute a violation by the City of our grant assurances. Furthermore, it was noted that the significant staining on the apron and indication of petroleum spills and/ or discharges off of the apron creates a liability for the City and a potential grant violation for failing to comply with self-certifications that the City is in compliance with all applicable federal laws and regulations, including environmental protection requirements.

As you are aware, the City and Alaska Air Fuel, Inc. have already been working together for well over three years on an interim basis to find a suitable location for the consolidation of your operations. Due to possible violations of FAA grant assurances (operationally and environmentally), the City can no longer afford to allow the depth and breadth of your operation on the South Ramp on a continued interim basis. Based upon your original Lease Application's hangar design and area of operational space requirements, the City put forth a generous and advantageous draft lease agreement for the only suitable lot that is available to accommodate your operational business needs. In addition to the draft lease agreement offered, Mr. Houchen made a request for access by Alaska Air Fuel, Inc. to the Old Woods Hangar through the South Gulkana gate. An operational agreement in compliance with FAA desires was put forth September 9th.

CITY OF PALMER



Unfortunately, neither the Draft Lease Agreement offered over 90 days ago nor the Operational Agreement for the South Gulkana Street gate access offered more than 4 weeks ago has received any meaningful response. In addition to these matters, the request for a proper "Certificate of Insurance" for commercial pollution liability covering a fuel spill, oil leak, fire, explosion or pollution from your operation has not been tendered since the follow up request of August 29th. It would also appear that the requirement to capture the majority of oil discharge from the DC 4 engines at the source, has repeatedly been ignored as well. On many occasions, it has been observed that engine oil leaks have been permitted to occur directly onto the asphalt surface, while a stack of oil catch basins remain piled up within a very short distance of the aircraft. The recent offer to provide the labor to apply another coat of asphalt sealant is all well and good, but does nothing to abate the problem at its source. The recently applied absorbent POL booms have also been poorly positioned to have the desired effect of protecting the surrounding gravel and vegetation.

Therefore, as previously stated in correspondence dated August 15th which has been received and acknowledge by Alaska Air Fuel; to continue with operations at the Palmer Municipal Airport and maintain two large aircraft tie down spaces, you are hereby required to:

- *Remove the Remaining Ancillary Equipment from Large Aircraft Tie Down area:* Remove the fueling truck(s), and any other vehicles; any storage tanks used for petroleum products; all storage containers located on this (or the adjacent) tie-down; the portable maintenance shed; and any other items located on the tie-down(s) other than the aircraft. Only the DC-4 aircraft themselves and the Spill prevention kits and equipment may remain on these tie-down areas. The deadline for these remaining removals is October 21, 2016 at 5 pm.
- *Provide Hanging Drip Pans:* Begin the use of hanging drip pans, industrial dippers or other similar technology to capture the majority of oil discharge from the DC 4 engines. Begin a thorough environmental clean-up of the South Ramp apron area where Alaska Air Fuel operations have taken place. The deadline for meeting this requirement is immediate.
- *Environmental remediation:* Begin to work with the City's Public Works Department to devise an approved game plan for soil remediation off the South Ramp areas in which Alaska Air Fuel's spilled, leaked or dripped petroleum products have contaminated the surrounding gravel and grassy areas. At the Old Woods hangar location, store the new or waist oil, antifreeze or other hazardous materials in a proper containment area. The deadline to meet this requirement is October 28, 2016.
- *Provide a Certificate of Liability Insurance:* Alaska Air Fuel, Inc. must provide a Certificate of liability insurance for pollution to the City of Palmer with a minimum general liability coverage of \$1,000,000 and aggregate limits of \$2,000,000 with the City of Palmer listed as "Certificate Holder" and "Additionally Insured". The deadline for this certificate of insurance is October 21, 2016 at 5 pm.



- *Execute Operational Agreement:* Alaska Air Fuel, Inc. must execute "Operational Agreement No. 16-001" with the City of Palmer. The deadline to execute this agreement is November 1, 2016.

The City of Palmer does not object to Alaska Air Fuel's operations at the Palmer Municipal Airport, just the manner in which they are currently being conducted. If proper environmental safeguards are utilized consistently and continuously, if a proper "Certificate of Insurance" for pollution as outline above is provided and the remaining ancillary equipment is removed, then the City will allow Alaska Air Fuel to rent two large Aircraft Parking spaces on the South Ramp. If an additional space is needed for another large aircraft and all the above conditions are met, then the City would be will to rent the additional space as well. The ancillary support equipment can be used on the South Ramp to fuel aircraft, load air cargo, pre-heat engines, or perform some basic maintenance of the aircraft. But it must be removed regularly once the specific task has been accomplished and cannot be staged there continuously.

An "Operational Agreement" with the City of Palmer has been created in support of your request outlined in your proposal from September 6, 2016. This agreement confirms the requirements as outlined above as well as provides certain assurances for Alaska Air Fuel, Inc., the City of Palmer and the FAA needed to move forward in confidence.

PMAR 100.03, "Decisions of the airport manager" provides you the opportunity to appeal this decision to the city manager.

Sincerely,

Frank J. Kelly,
Airport Superintendent

C.C. Nate Wallace, City Manager
John McNutt, Fire Chief
Lance Ketterling, Chief of Police
Chris Nall, Director of Public Works

Enc. Recent pictures of environmental hazards, neglect and contamination
Operational Agreement No. 16-001
Operational Agreement for South Gulkana Street Access

CITY OF PALMER

April 11, 2017

VIA HAND-DELIVERY

Alaska Air Fuel, Inc.
Attn: Chris Houchen, President
John Sliwinski, Vice President
975 Cope Industrial Way
Palmer, Alaska 99645

Re: Alaska Air Fuel's Operations at the Warren Bud Woods Palmer Municipal Airport

Dear Mr. Sliwinski and Mr. Houchen:

Jermain, Dunnagan & Owens, P.C., represents the City of Palmer ("City") who has referred this matter to our Firm due to concerns about Alaska Air Fuel (AAF) operations at the Warren Bud Woods Palmer Municipal Airport ("PAQ"). The City's concerns relate to several issues including the absence of an AAF lease or operational agreement for appropriate space for its operations. Instead, AAF continues to operate from large aircraft apron spaces with operations migrating into additional airport spaces.

AAF has been operating at the PAQ since 2013, however, its operations concern the City due to its obligations as an airport sponsor pursuant to Federal Aviation Administration (FAA) requirements including statutes, regulations, advisory circulars, grant assurances and City airport regulations. As advised by the Airport Superintendent and the FAA, AAF operations may place the City in jeopardy of violating its airport sponsor obligations. The Airport Superintendent has advised of the City's concerns to include as follows:

- Environmental concerns and issues continue on the South Ramp possibly threatening the City's water well and contaminating the surrounding soils.
- AAF certificate of liability insurance for scheduled autos does not include two newer fueling trucks and two pump tankers primarily used to fuel Division of Forestry aircraft and other planes as needed on the aprons.

April 11, 2017

Page 2 of 3

- AAF has never provided and not responded to several requests and demands for hazard insurance policy covering pollution from fuel spills and leaks.
- Fuel containment operations appear to be insufficient and oil from the engines of AAF aircraft, fuel trucks or both are contaminating the pavement in your area of operations with the hazardous materials migrating to the gravel area and adjacent vegetation.

The City has attempted to work with AAF to on compliance issues in accordance with airport and FAA requirements. However, due to the absence of a lease and the concerns of the City it is left with no alternative but to demand that AAF comply with the following corrective actions:

- Engage in a transitional commercial business agreement for three months.
- Provide proper insurance coverage for its operations within 15 days of the date of this letter.
- Correct environmental concerns.
- Transition to Apron D, Lease Lot 2 on a short term basis (no more than 3 years) until a permanent and appropriate lease lot can be facilitated.
- Comply with the Airport Superintendent's directive contained in his October 12, 2016 correspondence (attached).
- Pay and return invoice with signed operational agreement.

In conjunction with the demand for compliance with the foregoing corrective actions, the City is also including the Operational Agreement and an Apron D, Lot 2 Lease Agreement it expects AAF to execute. The transitional timeframe discussed with the FAA for AAF began in October 2016 with the first Operational Agreement offered and ignored. The revised Operational Agreement included in this package reflects the limited time remaining to complete the transition to an appropriate area of operation. For your convenience we have also attached a compendium of correspondence between the City and AAF.

The City of Palmer operates as an FAA airport sponsor subject to all FAA rules and requirements including its FAA grant assurances. The grant assurances include issues associated with exclusive rights, unjust discrimination, environmental concerns and more. The FAA requirements and the City's current and former Airport regulations include requirements for safe and compliant operations at the PAQ. The City expects all airport users to follow all airport legal requirements. For your further convenience we have also included a copy of the City's grant assurances, advisory circulars and the current and

former City Airport regulations.¹ The City looks forward to Alaska Air Fuel's transition to an appropriate lease lot along with assurances that it will comply with the concerns expressed above as well as any future concerns that may arise. We expect AAF to agree to the foregoing within 10 days of receipt of this letter; otherwise, the City will be forced to seek all legal and equitable rights and remedies to remove AAF's operations from the PAQ. The City looks forward to your response to the Airport Superintendent.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, P.C.



Michael Gatti, Of Counsel

Enclosures

cc: Nathan Wallace, City Manager
Frank Kelly, Airport Superintendent

¹ FAA Airport Assurances; City of Palmer Ordinance No. 428 dated May 28, 1991; Ordinances No. 17-003 adopting the new Airport Regulations; FAA 5190.6B Chapter 10; See FAA Airport Compliance Manual-Order; https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/; FAA 5190.6B Chapter 7; and, FAA Advisory Circular 5190.6B Appendix C.

Table of Contents

1. August 24, 2016 email from Kelly to Houchen re AAF Certificate of Insurance
2. August 29, 2016 email from Kelly to Houchen re Commercial Liability Insurance for fueling operation
3. September 9, 2016 letter from Kelly to Alaska Air Fuel, Inc.
4. October 10, 2016 letter from Kelly to Alaska Air Fuel
5. March 8 correspondence from Alaska Air Fuel to Kelly
6. March 9 Dept. of Public Safety letter
7. March 9 response from Alaska Air Fuel
8. March photos
9. Large Aircraft parking invoices dated March 15, 2017
10. New Operational Agreement
11. Apron D Lot 2 Draft Lease Agreement 2017 17-003
12. FAA regulations and City of Palmer Ordinances referenced in Footnote 1