

# Airport Leasing and Development Policy

## Article I. Introduction

As a recipient of Federal Aviation Administration (“FAA”) Airport Improvement Program funding, in addition to other federal funding, the City of Denton (“City”) is obligated to operate Denton Enterprise Airport (“Airport”) in accordance with FAA Grant Assurances. Among these federal obligations is the requirement to operate the Airport for the use and benefit of the public and for the Airport to be made available to all types, kinds, and classes of aeronautical activity on reasonable terms and without unjust discrimination.

These Grant Assurances further obligate the City to maintain a fee and rental structure for the facilities and services at the airport, making the Airport as self-sustaining as possible under existing circumstances and avoiding unjust economic discrimination within classes of users.

### Section 1.01 Purpose

The Airport Lease and Development Policy (“Policy”) sets forth the parameters that shall be used by the City for leasing land and/or improvements for commercial or non-commercial general aviation purposes at the Airport.

The Policy seeks to:

1. **Promote Aviation Growth** by encouraging the provision of essential aeronautical activities and aviation services for the benefit of the public while preserving the City’s financial investment in the Airport. Non-aeronautical uses of Airport land will be permitted only on portions of the Airport not needed for aviation purposes and in accordance with FAA policy.
2. **Apply Standards Uniformly** through equitable, reasonable, and not unjustly discriminatory treatment of all lessees and permittees while promoting the highest and best use of Airport property. The Policy facilitates orderly management of and ensures consistent quality of facilities at the Airport.
3. **Promote Long-Term Financial Self-Sufficiency** through a rental, rates, and fees structure that maximizes Airport revenue for its current and future development, management, maintenance, and operating expenses.
4. **Ensure Compliance** with applicable laws, regulations, ordinances, policies, guidelines, and requirements as they relate to the application for and acceptance of federal funds. This includes FAA regulations and current airport Minimum Operating Standards, Rules and Regulations, and other regulatory requirements as may be adopted or amended by the City.

All new and renewed lease agreements will require adherence to City Policy. City policy will promote and require fairness and consistency, uniform application of this policy, and prohibit economic discrimination relative to aviation leases.

The City will establish rents and fees associated with this consistent with FAA policy and in support of grant assurances, balancing competitiveness with financial sustainability, with provisions for periodic review and adjustment based on market conditions and operational needs.

## Section 1.02 Authority of the City

The Airport is owned, operated, and governed by the City which expressly reserves the authority to lease Airport land and/or improvements, allow the occupancy and/or development of Airport land or improvements, grant the right to engage in any activity at the Airport, and implement, supplement, amend, modify, approve, or adopt any agreement, policy, standard, rule, regulation, or directives.

Any person wishing to lease for the exclusive use of any parcel of land on the Airport, or of any city-owned or operated facility must enter into a written lease agreement with the City specifying the terms and conditions of such use. The City Council may establish by ordinance those rates and fees, and those terms and conditions it deems appropriate and applicable to Airport use.

The Airport Director, acting under the authority of the City Manager, shall take those necessary decisions and/or actions to ensure compliance with:

- Existing leases, licenses, permits, and other written agreements between the City and persons within the Airport;
- This Policy, and those other policies, rules, or regulations established by the authority of the City Council, which apply within the Airport;
- Those responsibilities levied on the City by the federal or state governments concerning Airport operations and management.

The Airport Director may authorize an interim or emergency agreement to occupy or use City-owned improvements and infrastructure by appropriate public agencies. Examples of situations that may be suitable for such authorizations are military or law enforcement activities and the temporary occupation of airport areas by government agencies during natural disasters, or aircraft accident investigations.

## Section 1.03 Applicability

This Policy shall apply to any new agreement or any new amendment to an existing agreement relating to the leasing of land and/or improvements, including the establishment or adjusting of rents, rates, fees, and other charges for commercial or non-commercial general aviation aeronautical activities.

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

The City reserves the right from time to time to amend, supplement, revise, alter, rescind, or add to the policies and procedures listed herein either in part or in their entirety. The Airport further reserves the right to use this Leasing Policy for the selection of non-aeronautical service providers and concessionaires as it deems appropriate.

## Section 1.04 Compliance with Federal, State, and Local Law

This Policy is subject to federal law, FAA regulations, state statute, and local ordinance. In the event of provisions of this policy conflicting with the aforementioned law, the aforementioned laws shall prevail.

If any section, subsection, sentence, clause, or phrase of these policies and procedures is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall neither affect nor impair any of the remaining provisions.

## Article II. Leasing Airport Land or Improvements

Entities shall not occupy Airport land or improvements for any purpose unless the entity has an agreement or sublease, or occupies a hangar under a rental agreement with a duly permitted hangar rental business. In addition, entities shall not conduct aeronautical or non-aeronautical commercial activities at the airport unless the entity has an Airport Business Permit authorizing such activities. Entities shall also comply with the Denton Code of Ordinances, Airport Rules and Regulations, Minimum Operating Standards, and any other applicable federal, state, and local laws and regulations.

### Section 2.01 Principal Development Criteria

The Airport has limited land resources, so it is important to adequately evaluate proposed Airport leases and development to ensure that the highest and best use of each property is realized and that such use is compatible with future Airport development and land use plans. Proposed leasing or development requests will be evaluated in accordance with this policy. Such evaluation will look to whether the proposed use conforms to the following (collectively, the “Principal Development Criteria”):

1. The use is shown to be appropriate and consistent with the Airport Layout Plan (“ALP”), Airport Master Plan, Airport Appraisal, and other relevant Airport planning documents or Airport expansion or development plans or goals.
2. The use will not interfere with the normal and efficient operation of the Airport or with the ability of other Airport users to enjoy reasonable access to their leaseholds or the public areas of the Airport, including its runway and public taxiways and aprons.
3. The use will advance the goal of achieving financial self-sustainability for the Airport by providing a consistent, reliable, and appropriately substantial source of revenue to the Airport, whether in the form of rent or other rates, fees, or charges.
4. The use will provide long-term benefits to the Airport through the tenant’s construction, expansion, maintenance, or other development of useful and valuable improvements or facilities (or through the tenant’s efficient use of improvements to existing Airport property or facilities).
5. The use will support the City’s efforts to make the Airport an attractive, aesthetically pleasing gateway to, and source of economic development for, the City.
6. The use will not involve non-aeronautical use of Airport property or facilities more appropriate or necessary for aeronautical use, as determined at the sole discretion of the City.
7. The use does not pose exceptional or unreasonable financial, legal, or operational risk to the Airport or the City.
8. The use does not violate any applicable laws or regulations or any Grant Assurances or similar state or local obligations and does not pose a substantial risk of causing the City to violate any such laws, regulations, Grant Assurances, or obligations.

### Section 2.02 Designated Areas

The City reserves the right to designate specific Airport land and/or improvements in which commercial and/or non-commercial aeronautical activities may or may not be conducted. The right to use the Airport and any airport land or improvements is non-exclusive except for the land and or improvements leased exclusively to an entity by the City.

The City may establish, through the Airport Master Plan or other Council-approved plan, certain areas approved for particular types of commercial and non-commercial activities within the Airport. These designated areas will indicate proposed future uses and activities for segments of the Airport property. If designated areas are established, all proposed activities and developments must be located in a designated area that corresponds to and does not conflict with such use.

To the extent allowed under FAA regulations, the City reserves the right to refuse proposals to use or develop airport land for aeronautical or non-aeronautical purposes.

### Section 2.03 Lease Application

Prior to entering into formal lease discussions or negotiations, a prospective lessee shall complete a written application for a lease in a form prescribed by the City and pay any associated fees as established by the City Council. The application shall include, at minimum:

1. A description of the activity or activities that the applicant proposes to conduct under its requested development, with sufficient narrative to adequately explain the benefits of the activity or activities to the Airport and the City and to demonstrate that it meets the Principal Development Criteria.
2. The names and contact information of the prospective lessee(s) or, if an incorporated entity, of all parties owning an interest in the entity.
3. A description of the premises intending to be leased.
4. The type of facilities which the applicant proposes to construct on or for the proposed leasehold, if applicable.
5. An estimate of value of the proposed capital investment on the premises, if applicable.
6. For any commercial activity, the services to be provided, proposed hours of operation, number of aircraft to be based, and projected number of employees, and other relevant information.

The City reserves the right to request additional information from the lease applicant. Upon receipt, Airport staff will review the application and determine if the proposed use and leasehold location comply with this policy. Noncompliance may result in the rejection of the lease application.

Submission of an application and payment of applicable fees secures for the prospective Lessee the exclusive right to pursue a lease with the City for 120 days. During this time, the Airport will not consider nor discuss the leasing or development of the subject property with other interested parties. If no lease is executed by the end of the 120 days, the application will expire, and the City may accept applications for the property from other parties. This 120-day timeframe may be extended in writing by the Airport Director.

The City Council shall have the right to adopt an application fee and publish it in the Airport Rates and Fees schedule.

### Section 2.04 Lease Approval

Within 60 days of receiving a completed application, the Airport shall convey the key terms and conditions (including rents, fees, and other charges) of a proposed lease agreement to the applicant. The applicant shall, within a reasonable amount of time, indicate if the key terms and conditions proposed by the Airport are acceptable or provide revised key terms and conditions. The Airport

Director may negotiate the revised key terms and conditions and/or initiate the competitive proposal process described in Section 2.05.

All new lease agreements, lease assignments or transfers, and subleases shall be reviewed by Airport staff and considered by the Airport Advisory Board. Approval by the City Council shall be required for any lease.

### Section 2.05 Requests for Proposals

If Airport land and/or improvements exist or become available for leasing, the City may at its sole discretion and at any time, including upon receipt of an application for a lease or development, issue a request for proposals to assess the level of market demand and competitiveness for a proposed activity or use of Airport property. Any competitive proposal or bidding process shall comply with the City of Denton's purchasing policies and directives.

To determine whether it is appropriate to utilize competitive proposal or bidding, the City shall consider factors including, but not limited to:

1. The size and proposed use of the property.
2. The availability of similar property at the Airport.
3. Whether the property is going to be used for Aeronautical or Non-Aeronautical Activities.
4. Whether the property is developed or vacant.
  - a. If the property is vacant, the proposed use; type of Improvements will be developed; number of employees to work on the property.
  - b. Whether infrastructure (such as utility lines) needs to be installed or and if so, who will be responsible for such installation?
5. The financial strength and experience of the Applicant.
6. Economic impact the proposed use of the Airport property will have on the Airport.
7. Whether the proposed use of the Airport property will generate new revenue for the Airport or generate new activity at the Airport.

The request for proposals shall also list the criteria the City will use to make its selection, including but not limited to, compliance with this Policy and the Principal Development Guidelines, the benefits generated by the proposed activity, and the long-term revenue generated by the proposal. The City may consider additional factors that it deems relevant to make its final decision regarding the use or disposition of the Airport premises and privileges in question. The City shall examine all applications and select a proposal for further lease negotiations, if, in the City's opinion, it is in the best interest of the Airport and the community.

## Article III. The Lease Agreement

Lease Agreements are designed to protect the public interest and contain more restrictive clauses than private-sector leases. Liabilities associated with possession and control of real property will be transferred to the Lessee to the greatest extent possible, including compliance with and subordination to all applicable federal, state, and local laws and regulations. Leases will additionally be subordinate to the City's Grant Assurances, other applicable federal and state laws and regulations, and City ordinances and regulations.

The following are not inclusive of all lease terms, conditions, and obligations. Authority is granted to City staff to negotiate leases that promote the Principal Development Criteria and the objectives of this Policy.

### Section 3.01 Key Terms and Conditions

(a) Recitals:

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

(b) Premises:

Each agreement shall meticulously describe the specific area of Airport property to be occupied, including precise boundaries and any shared or common areas. Leases will clearly outline the permitted activities and any restrictions on usage, ensuring compatibility with airport operations and safety regulations.

(c) Use:

Each agreement shall make clear the intended use of the premises.

1. **Commercial aeronautical activities** – The agreement shall identify the products, services, and/or facilities to be provided by the operator. The agreement may identify optional products, services, and/or facilities that may be provided by the operator with or without the approval of the Airport Director.
2. **Non-commercial aeronautical activities** – For non-commercial occupancy and/or use of the Airport land and/or improvements, the Agreement shall stipulate that the Lessee shall not offer or provide commercial products, services, or facilities or conduct commercial activities at the Airport or from the leased premises without an amendment of the lease agreement.
3. **Non-aeronautical activities** – Leasing Airport land and/or improvements for non-aeronautical activities is not generally favored by the City of the FAA. The City may, in its sole discretion, consider such use in the event the non-aeronautical use of Airport land and/or improvements does not interfere with the primary aeronautical use of Airport land and/or improvements and is not in violation of any legal requirements, including the Grant Assurances. If such use is contemplated, the applicant must prove that the subject Airport land and/or Improvements will not conflict with the existing or foreseeable aeronautical use of the property during the entire term of a proposed agreement. The leasing of Airport land and/or Improvements for non-aeronautical activities will not be allowed without the prior written consent of the FAA.
4. **Prohibited Activities:** All prohibited uses and activities of the premises shall be identified; however, no lease agreement will allow any activities prohibited by applicable federal, state, or local laws and regulations even if such use is not specifically set out by the lease agreement.

(d) Term

The original term, commencement date, and ending date shall be conveyed in the Agreement. The term of the agreement shall be commensurate with the value of capital investment made by the Lessee into the leased premises and/or on the Airport, consistent with Article IV of this policy.

(e) Rents and Fees

The applicable rents and fees to be paid by the Lessee to the City shall be identified in the agreement. Rents and fees shall be established and adjusted in accordance with Article IV of this policy.

(f) Improvements

A description of the improvements, including minimum square footage of occupied space, shall be included in the agreement. The Lessee shall procure all necessary permits and certificates including, but not limited to, all City building, fire, safety, final certificate of occupancy, and meet other applicable requirements for improvements located on Airport property and within the legal boundaries of the Airport as identified on the Airport Layout Plan.

Upon expiration of the term of the agreement, ownership of permanent improvements that have been made to the leased premises by the Lessee shall revert to the City. The City shall retain the right to require the demolition and removal of the improvements and the return of the premises to its original condition and character by the Lessee, normal wear and tear excepted.

### Section 3.02 Other Standard Terms and Conditions

Additional terms and conditions within the Lease Agreement shall include, but are not limited to:

1. Procedures for entering into a sublease agreement for all or part of the leased premises, including approval processes and sublessee obligations, to prevent unauthorized use and maintain accountability. All sublease agreements shall be approved by the City Council.
2. Procedures for transferring lease interests, including city approval requirements and any associated fees or conditions, shall be clearly defined to ensure orderly transitions. All sales, assignments, or transfers shall be approved by the City Council.
3. Conditions for granting rights of first refusal. Rights of first refusal may only be granted where the property that is subject to the right of first refusal is contiguous to the leased premises. No right of first refusal may be granted without the payment of a fee or other financial consideration being provided to the City. Other conditions of the right of first refusal will be negotiated by Airport staff. The City retains the right to refuse requests for rights of first refusal.
4. Conditions, procedures, and penalties for defaulting on lease obligations, including notification requirements and remedies available to the city.
5. Requirements that the Lessee shall be responsible, at its own expense, for connection to and service of public utilities.
6. Requirements for Lessee insurance coverage, including liability, property, and workers' compensation insurance, shall be clearly outlined to mitigate risk and protect airport assets.
7. The right of the City to, with notice to the Lessee, inspect the leasehold and improvements for compliance with lease terms, federal, state, or local law, and/or Airport rules and regulations.

8. Requirements that ensure construction adheres to local development standards, building codes, environmental laws, Airport Minimum Operating Standards, and other applicable statutes and regulations in order to maintain the safety and integrity of airport property
9. Requirements for the Lessee to demonstrate possession of all necessary licenses, certifications, and permits required for activities permitted under the lease, with provisions for City verification and periodic updates.
10. Requirements for the Lessee to bear responsibility for the provision of utility service during their occupancy, including electricity, water, gas, sewage, and telecommunications services, with provisions for city oversight
11. Requirements for the Lessee to fulfill all tax obligations related to its activities, including property taxes, sales taxes, and income taxes, under applicable laws and regulations.
12. Requirements for Lessee to maintain accurate records of their operations, including financial statements, maintenance logs, and regulatory compliance documentation, subject to city audit and inspection.
13. Guidelines for holdover possession beyond the lease term, including rental adjustments and termination provisions, shall be established to address transitional periods and prevent unauthorized occupancy.
14. Any other conditions or requirements deemed appropriate by the City

### Section 3.03 Maintenance of the Leasehold

The Lessee shall bear responsibility for ongoing maintenance of the leased premises and all improvements including, but not limited to, preventing the accumulation of debris and trash, abating fire and chemical hazards, abatement of nuisances, and the irrigation and maintenance of landscaping. The Lessee shall perform all work in accordance with applicable laws and regulations.

To prevent the premature aging and deterioration of the improvements, the Lessee, at its own expense, shall conduct a condition assessment on all improvements no later than the tenth (10th) anniversary of the Commencement Date, and every five (5) year anniversary thereafter. The Condition Assessment shall be conducted by a person qualified to perform such an assessment in the State of Texas who, after being selected by the Lessee, shall be approved in writing by the City. The Condition Assessment shall examine, at minimum, the building's structural components, electrical, plumbing, heating and cooling systems, and roof. Additionally, any pavement (asphalt or concrete) within the leasehold area shall also be examined. The Condition Assessment shall be provided to the City within thirty (30) days of the condition assessment deadline. Any deficiencies that are due to the Lessee's failure to meet their obligations under the Lease shall be corrected by the Lessee at its expense. The Lessee shall within ninety (90) days provide to the Lessor a plan to correct such deficiencies identified in the Condition Assessment within one (1) year, unless extended in writing by the Airport Director, or designee. Failure to correct deficiencies identified in the Condition Assessment will constitute a breach of the lease agreement.

### Section 3.04 Additional Lease Requirements

The Lease shall contain, or adopt by reference, all provisions required by the applicable law, including, without limitation, regulations promulgated by the FAA and Transportation Safety Administration, and assurances or agreements entered into by the City as a condition of any Federal Grant to the City for the Airport. The Lease or Permit shall be subordinate to any existing or future Federal grant assurances.



## Article IV. Rents, Fees, and Agreement Term

Airport lease rates and associated fees shall be consistent with FAA policy and Grant Assurance obligations, specifically the requirement that the Airport be as financially self-sustaining as possible and that leases are provided on a consistent and equitable basis. To the extent feasible, aeronautical use fees must be established on a cost-recovery basis while the use of Airport property for non-aeronautical facilities and/or services must be based on fair market value.

### Section 4.01 Rent

During the lease term, the Lessee shall pay the Airport market rent for applicable land and facility(ies). Where a Lessee has constructed a Facility, the Lessee shall pay Market Rent for land only during the Term of its Lease.

#### (a) Establishment of Market Rent

Market rent shall be established through a property appraisal by a qualified appraiser, or a market analysis performed by a similarly qualified individual or firm. Appraisals for properties shall have been performed within the two years before the execution of a lease agreement.

#### (b) Deviations from Market Rent

Below market rent may only be offered where the Lessee constructs public infrastructure that benefits other properties (i.e., taxilanes, taxiways, roads, or utilities) or makes improvements to an existing facility that extends the useful life of the facility, as approved by the City. In such cases, the value of the reduced rental rate may not exceed the value of the Lessee's investment in public infrastructure.

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

Rental rates for certain property uses, particularly non-aeronautical uses, may be based on a percentage of Lessee's gross income from its use of the property.

### Section 4.02 Adjustment of Rent

To account for regular cost inflation, Lease rents shall be adjusted no later than every two years after the commencement date of the lease. This adjustment proportion that the then-current United States Consumer Price Index for all urban consumers ("CPI-U") for the Dallas-Fort Worth Bureau of Labor Statistics (1982-84 = 100) bears to that of the Commencement Date month.

### Section 4.03 "Through the Fence" Agreements

FAA Grant Assurances require access to the Airport to be provided on an equitable basis. If an adjacent property requests access to the airport to conduct aeronautical activities, the property owner may be granted a "Through the Fence Agreement" granting them such access. As a condition of this access, the property shall pay market rent, including adjustments, under the terms outlined by this policy.

The City may impose additional requirements as a condition of any "through the fence agreement" access and any request for such agreement is subject to review and approval by City Council.

#### Section 4.04 Fees

The City shall reserve the right to establish and assess fees to recover the costs being incurred by the Airport associated with the planning, development, operation (including maintenance and repair), management, and marketing of the Airport.

Fees may include, but are not limited to, fuel flowage fees, aircraft parking fees, based aircraft fees, operator permit fees, percentage of gross receipts fees, aircraft landing fees, and/or temporary or special use permit fees. All fees shall be identified in the City's rates and fee schedule.

#### Section 4.05 Lease Term

Lease agreements shall specify the duration of occupancy. The length of a ground lease shall comply with federal and state regulations and be sufficient for the Lessee to amortize its capital investment into the leased premises. The lease term will depend on the value of capital invested in the leasehold. Airport staff shall, based on financial and market conditions, determine the appropriate investment to warrant a given lease term, considering additional factors such as site conditions, indirect benefits to the airport, and federal requirements, as applicable.

On a case-by-case basis, the City may consider a significantly longer lease term; still subject to federal and state regulations; to support Airport property development and allow a Lessee to amortize its investment, based on the following criteria:

1. Significant initial capital investment beyond the minimum requirements
2. Significant additional capital investment in the current leased property
3. Services provided to other Airport tenants and uses
4. Exceptional job creation and/or impact to the local economy
5. Public infrastructure extension which will benefit other properties (i.e., taxilanes, taxiways, roads, or utilities)
6. Potential to attract other new aviation business or to significantly increase airport revenues

Leases where no capital is invested into the property shall be limited to no more than 3 years.

#### Section 4.06 Lease Extensions

Extensions to leases shall only be permitted where the following criteria are met:

1. The extensions are at the Lessor's discretion;
2. The extensions are the result of an investment of capital on the premises for new improvements; or
3. The extensions are the result of a investment of capital in the leased premises that extends the life of existing improvements.

In cases where an extension is the result of an investment of capital, the extension term shall be commensurate with the value of the capital investment.

The City shall require that the rent paid for the term of any lease extension shall reflect the higher of the then-current rent or the fair market rent at the time of the extension. Rent shall be adjusted through the term of the extension as permitted within his policy. No extension or extensions may result in the total lease term extending beyond the statutory limit.

## Article V. Reversion of Improvements to the City

Each lease agreement shall require that, at the end of the lease term, Lessees shall surrender all leased premises to the Airport, including any improvements made during the lease period, unless otherwise specified in the lease agreement. Lessees may be required to remove any improvements not deemed necessary for the ongoing operation of the airport, restoring the leased premises to their original condition at the Lessee's expense.

At the time of the reversion of the leased premises and improvements, the City may at its discretion:

1. Extend the current ground lease or enter into a new lease with the Lessee under the provisions of this policy;
2. Enter into a building lease at fair market value with a qualified Lessee;
3. Pursue redevelopment of the leasehold; or
4. Take any other action that is in the best interests of the Airport and in compliance with applicable laws and regulations.

The provision of a lease extension or new lease agreement shall be based on the best long-term financial interest of the airport. A long-term financial analysis shall be provided to the City Council during any consideration of a lease extension or new lease agreement under this provision.