

# COMMERCIAL AERONAUTICAL ACTIVITIES PERMIT AGREEMENT

THIS COMMERCIAL AERONAUTICAL ACTIVITIES PERMIT AGREEMENT (hereinafter "Permit" or "Permit Agreement", effective \_\_\_\_\_, by and between Ogden City Corporation, a Utah municipal corporation, hereinafter called the "City", and \_\_\_\_\_, hereinafter called the "Permittee".

## WITNESSETH:

WHEREAS, the City owns and operates Ogden Airport, located in Weber County, State of Utah, hereinafter called "Airport", located adjacent to the "Airpark", a parcel of privately owned land more particularly described in Title 8 of the Ogden City Code (hereinafter "Title 8"); and,

WHEREAS, Permittee desires to carry on Commercial Aeronautical Activities upon the Airpark, or upon Airport premises subleased by Permittee from a third party other than the City, or upon Airport premises for which has a current lease which lacks authorization to conduct Commercial Aeronautical Activities and desires that the City issue a Commercial Aeronautical Activities Permit ("CAAP Permit" or "Permit") which is required by Title 8 to engage in such activities.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and Permittee agree as follows:

Permittee shall pay a fee of one hundred dollars (\$100.00) per year due on January 1 of each year and will remit at the end of the calendar year. Submit fees to Ogden Airport, at 3909 Airport Road, Ogden Utah 84405. Fee shall be deemed to be delinquent if not paid by the 15th of January of each year.

- 1. PREMISES.** Permittee intends to conduct commercial aeronautical activities on the following parcels of land or space within the Airport or Airpark (referred to collectively hereinafter as the "Premises"):

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The Premises are more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

- 2. TERM.** The term of this Permit Agreement shall commence the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and terminate on the sooner of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at 5:00 P.M. or upon termination of Permittee's lease on the Airport or Airpark, unless Permit is terminated earlier pursuant to the terms of this Agreement.

3. **CAAP PERMIT.** During the term of this Agreement, Permittee is hereby granted a Commercial Aeronautical Activities Permit to conduct the following permitted commercial aeronautical activities or operations upon the Airport or Airpark (hereinafter, "Permitted Commercial Uses"), as those activities or operations are defined in Title 8 and summarized below:

A. (check below for each Permitted Commercial Uses authorized by this Permit)

- **FIXED BASE OPERATOR (ALSO KNOWN AS FBO):** Any person who performs the basic essential aeronautical services including aviation fuel and oil sales, ramp parking, tie-down and storage, minor aircraft repair, passenger loading and towing.
- **AIRCRAFT SERVICES OPERATOR:** A person providing repairs or sale of aircraft radios, propellers, instruments, accessories, painting, or upholstery.
- **COMMERCIAL FLYING SERVICES OPERATOR:** A person providing any of the following activities: sightseeing flights; crop dusting; seeding and spraying; banner towing and aerial advertising; aerial photography or survey; firefighting; power line or pipeline patrol and wildlife spotting; or any other operations specifically excluded from FAR Part 135.
- **FLIGHT TRAINING OPERATOR:** A person engaged in training pilots in any aircraft and providing related ground school instruction if necessary.
- **AIRCRAFT SALES OPERATOR:** A person engaged in the sale of new and/or used aircraft or who acts as an aircraft broker.
- **AIRCRAFT AIRFRAME AND ENGINE REPAIR OPERATOR:** A person providing airframe and/or power plant maintenance and/or overhaul services. This category also includes the sale of aircraft parts and accessories.
- **AIRCRAFT RENTAL OPERATOR:** A person engaged in the rental of aircraft to the public. It shall not include an aircraft owner who loans his or her aircraft for reimbursement on a nonprofit basis.
- **AIRCRAFT CHARTER OPERATOR:** A person providing air transportation to the public for hire, either on a charter basis or as an air taxi operator, as defined in the Federal Aviation Act of 1958.
- **AIRCRAFT MANUFACTURING OPERATOR:** A person engaged in the manufacture, fabrication, or assembly of aircraft or aircraft/aerospace parts, systems, and components.
- **OTHER SERVICES:** \_\_\_\_\_  
\_\_\_\_\_

➤ Permittee may also use the Premises and all improvements located thereon for permitted noncommercial activities, including:

- i. Repair and maintenance of Permittee's aircraft within hangars.
- ii. Storage of Permittee's aircraft and aviation related equipment within hangars.
- iii. Non-aviation storage within hangars as an incidental use on the condition that hangar space is principally used for aviation.

B. Permittee's right to engage in the permitted uses described in this Permit is specifically conditioned upon the following:

- i. Airport Access Agreement: Permittee's right, if granted herein, to engage in commercial aeronautical activities upon the Airpark, including through-the-fence Airport/Airpark Access, is specifically conditioned upon: (1) the existence of a current and valid Airport Access Agreement between the City and the Airpark property owner of the Premises, as required by Title 8; (2) to the extent that the Premises described herein lie within the Airpark, that such Premises be designated as "Aeronautical Use" within the relevant Airport Access Agreement, as amended; (3) the continued timely payment by the Airport property owner of Access Fees due and owing pursuant to the Airport Access Agreement. Termination of the Airport Access Agreement with the Airport property owner of the Premises, for any reason, or failure of a valid Airport Access Agreement to designate the Premises within the Airpark as "Aeronautical Use", shall extinguish the rights set forth in this Permit related to activities carried on upon the Airpark.
- ii. Permittee shall comply with all Ogden City ordinances, regulations, and policies, as hereafter amended, and all State and Federal aviation statutes and regulations applicable to the permitted uses.
- iii. Permittee shall comply with all terms of this Permit agreement.
- iv. Permittee shall comply with the minimum standards set forth in Title 8 of the Ogden City Code, as hereafter amended, for each of the commercial aeronautical activities or operations described as a permitted use herein.
- v. Permittee shall pay all rates, fees, and charges associated with any permitted use as set forth in Title 8 of the Ogden City Code, as hereafter amended.
- vi. Permittee shall indemnify the City, as required by Title 8 of the Ogden City Code, as hereafter amended.
- vii. Permittee shall obtain and maintain a business license from Ogden City.
- viii. Permittee shall meet all the requirements for carrying on business related to each and every one of the commercial permitted uses designated herein within one (1) year of grant of this Permit.
- ix. The right to use non-exclusive airport facilities and improvements may be changed, altered or modified from time to time at the discretion of the City.

4. **INSURANCE.** Permittee shall comply with the insurance requirements of Title 8, as hereafter amended, which currently require the following:

A. A Permittee conducting a commercial activity involving aircraft operation, including but not limited to, aircraft instruction, rental, or charter, shall maintain aircraft liability insurance with limits of not less than one million dollars (\$1,000,000.00) per combined single limit per occurrence for bodily injury, personal injury, and property damage.

B. A Permittee conducting any commercial activity in which customers, vehicles or aircraft have access to or are operated on the ramps, apron, taxiways or runways shall maintain commercial general liability insurance with limits of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury, and property damage; business automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage; worker's compensation limits as required by the laws of the State; and employer's liability insurance with limits of not less than one hundred thousand/five hundred thousand/one hundred thousand dollars (\$100,000.00/\$500,000.00/\$100,000.00).

C. A Permittee selling or maintaining aircraft, aircraft parts or fuel shall maintain products and completed operations liability insurance with limits of not less than one million dollars (\$1,000,000.00) combined single limit.

D. During construction, a Permittee or the contractor of the Permittee, shall maintain all applicable liability insurance as stated in the above subsections of this section, commercial general liability insurance with limits of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage; business automobile liability insurance with limits of not less than one million dollars (\$1,000,000.00) combined single limit per accident for bodily injury and property damage; worker's compensation limits as required by the laws of the State; employer's liability insurance with limits of not less than one hundred thousand/five hundred thousand/one hundred thousand dollars (\$100,000.00/\$500,000.00/\$100,000.00); and all-risk builders liability insurance coverage in the amount of the project cost and any other construction obligations that may arise.

E. Any deductibles or self-insured retentions greater than one thousand dollars (\$1,000.00) must be declared to and approved by the City.

F. The insurance policies described herein are to contain, or be endorsed to contain the following provisions:

i. Ogden City, its officials, employees and volunteers are to be covered as additional named insured on all policies to include: liability arising out of aircraft operation and commercial activities; products and completed operations; premises owned, leased or used; and automobiles owned, leased, hired or borrowed by a commercial operator or contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.

ii. The Permittee's or contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Permittee's or contractor's insurance and shall not contribute with it.

iii. The Permittee's or contractor's insurer shall agree to waive all rights of subrogation against

the City, its officials, employees, and volunteers for losses arising under worker's compensation and employers' liability coverage.

iv. Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City by certified mail, return receipt requested.

G. Insurance required herein is to be placed with insurers carrying a "Bests" rating of not less than B+XII.

H. Permittee or Permittee's contractor shall furnish the City with certificates of insurance affecting coverage required by this section. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the City and are to be received and approved by the City before activity commences. City reserves the right to demand copies of all required insurance policies.

I. The Permittee or Permittee's contractor shall include all subcontractors and sub subcontractors as insured under its policies or shall furnish separate certificates for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

## **5. MANDATORY PROVISIONS.**

This Permit is subject to the following mandatory provisions set forth in Title 8:

A. The Permittee agrees to comply with and be subject to the provisions of Title 8 of Ogden City Code, and as it may hereafter be amended, and with implementing applicable administrative orders of the City as they may hereafter be adopted or amended. The Permittee further agrees that more than three (3) violations of Title 8 during any three (3) month period by Permittee, its agents, or employees; or any other pattern of violations that manifests reckless disregard for the health, safety, and general welfare of the public and/or airport users shall be a material breach which may terminate the Permit at the option of the City. The City shall not exercise this option until it has notified the Permittee and given the Permittee a reasonable opportunity to retrain employees or otherwise demonstrate that Permittee, its employees and agents can and will conform to this Title. In addition to the above penalties, this Permit may be cancelled by the City if the Permittee fails to pay, when due, the whole or any part of the amounts agreed upon for fees and charges and such default continues for thirty (30) days after the City has demanded payment in writing.

B. The Permittee shall maintain the premises in a reasonable condition of repair, cleanliness, and general maintenance in compliance with Title 8.

C. It is understood and agreed that the Permittee is an independent contractor and not an agent or employee of the City, and the City is an independent contractor and not an agent or employee of the Permittee with regard to its acts or omissions hereunder.

D. Permittee shall indemnify, protect, defend and hold City and its officials, employees, agents and volunteers completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs and expert fees), of any nature whatsoever arising out of or incident to this Permit agreement and/or the use or occupancy of the premises or the acts or omissions of Permittee's officers, agents, employees, contractors, subcontractors, licensees or invitees, regardless of where the injury, death or damage may occur, unless such injury, death or damage is caused by the sole negligence of the City. The City shall give the Permittee reasonable notice of any such claims or actions. The Permittee shall also use counsel reasonably acceptable to City in carrying out its obligations hereunder. The provisions of this subsection shall survive the expiration or early termination of this Permit agreement. In carrying out any of the provisions herein, or in exercising any power or authority granted to Permittee, there shall be no liability upon any official of the City, its authorized assistants, consultants, or employees, either personally or as officials of the City, it being understood that in such matters they act as agents and representatives of Ogden City Corporation. It is further understood and agreed that the City assumes no responsibility for any damages or losses that may occur to the Permittee's property or premises except the obligation that the City will not willfully, intentionally, or negligently damage the property or premises of the Permittee.

E. The Airport Manager or a designated representative may enter any facility or property on the Airport or Airpark at reasonable times and for reasonable purposes without prior notice.

F. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the surface of the premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, not known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on the Airport.

G. The Permittee by accepting a Permit expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the premises that would constitute a hazard to air navigation, as determined by FAR part 77. In the event the aforesaid covenant is breached, the City shall have the right to enter upon the premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Permittee.

H. The Permittee agrees to maintain records in compliance with Section 8-3-6 of Title 8 and to fully cooperate with any audit thereunder. Permittee further agrees to pay costs of the audit when required thereunder.

I. To the extent that Permittee operates any commercial aeronautical activities upon premises within the Airpark or Airport, the Permittee agrees to operate the premises for the use and benefit of the public and to furnish such activities and service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, however, that the Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

J. The Permittee, for himself, his heirs, personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on the premises for a purpose for which a Department of Transportation program or activity is extended or for any other purpose involving the provision of a similar service or benefit, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of title VI of the Civil Rights Act of 1964 and any provisions of said regulations as may in the future be amended.

K. The Permittee, for himself, his personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that no person on the grounds of sex, race, color, creed, or national origin or disability shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, that in the construction of any improvements on, over or under such land and the furnishings of services thereof, no person on the grounds of sex, race, color, creed, natural origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; that the Permittee shall use the premises in compliance with all other requirements imposed by, or pursuant to title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of title VI of the Civil Rights Act of 1964, and such provisions of said regulations as may in the future be amended.

L. That in the event of a breach of any of the nondiscrimination covenants pursuant to part 21 of the Regulations of the Office of the Secretary of Transportation, the City shall have the right to terminate this Permit.

M. It is clearly understood and agreed by the Permittee that no right or privilege has been granted which would operate to prevent any person, firm or corporation operating aircraft on the airport or airpark from performing services on its own aircraft with its own regular employees (including, but not limited to, maintenance and repair) that it may choose to perform.

N. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right.

O. City reserves the right to further develop or improve the airport as it sees fit, regardless of the desires or views of the Permittee and without interference or hindrance from Permittee.

P. City reserves the right, but without obligation to Permittee, to maintain and keep in repair the landing areas of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of Permittee in this regard.

Q. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States government for military or naval use and if such lease is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the lease to the government, shall be suspended.

R. City reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Permittee from erecting or permitting to be erected, any building or other structure on or adjacent to the airport which, in the opinion of the City, would limit the usefulness of the airport or constitute a hazard to aircraft.

S. This Permit shall be subordinate to the provisions of any existing or future agreement between City and the United States, relative to the operation or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditures of Federal funds for the development of the airport.

T. The City reserves the right to temporarily close the airport or any of the facilities thereon for maintenance, improvement or for the safety of the public.

**6. ASSIGNMENT.** Permittee shall not assign this Permit to any person or entity, and any attempted assignment of this Permit shall be null and void.

**7. RIGHT OF ENTRY AND INSPECTION.** The City reserves the right at any reasonable time to enter upon said premises through its designated agents or employees for the purpose of inspecting said premises, provided that, except in the case of bona fide emergency, notice and consent of Permittee shall be first obtained, which permission shall not be unreasonably withheld.

**8. AIRPORT RULES.** The City shall have the right to adopt and enforce reasonable rules and regulations with respect to the use of the airport, public terminal building and appurtenances, provided that such rules and regulations shall not be inconsistent with safety and with rules and regulations of the FAA with respect to aircraft operations at the Airport. Permittee agrees to abide by such rules and regulations once adopted.

**9. COMPLY WITH ALL LAWS.** Permittee and Permittee's Associates shall comply at all times, at Permittee's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Permittee's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law including, but not limited to, the Airport Rules and Regulations, the Minimum Standards for Commercial Aeronautical Activities, and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements (including, but not limited to, the Airport Security Plan); and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements. Upon request by City, Permittee will verify, within a reasonable time frame, compliance with any Laws and Regulations.

**10. TRANSPORTATION SECURITY ADMINISTRATION (TSA) FINES** - Permittee shall be responsible for each and every fine imposed against the City by the TSA or FAA, if such fine results from a security or other violation of federal law by the Permittee or Permittee's principles, employees, subcontractors, invitees, agents, clients or guests while upon or accessing the airport. Permittee shall make payment of the fine in full within 30 days of notice of imposition of fine by City. Permittee shall fully cooperate in every security breach investigation and shall mitigate and remedy all security deficiencies of its leased premises at its own cost.

**11. CITY'S RIGHT OF TERMINATION.** In addition to all other remedies available to the City, this Permit agreement shall be subject to termination by the City, should one or more of the following events occur:

- A. If the Permittee shall file a voluntary petition in bankruptcy or proceedings in bankruptcy shall be instituted against it and it is hereafter adjudicated to be bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of Permittee and its assets pursuant to proceedings, or if a court shall take jurisdiction of Permittee and its assets pursuant to proceedings brought under the provisions of the Federal Reorganization Act, or if a Receiver for Permittee's assets is appointed, or if Permittee shall be divested of its rights, powers and privileges under this contract by other operation of law.
- B. If airpark owner of the Premises fails to pay when due the whole or any part of the amounts agreed upon for Access Fees and charges pursuant to an applicable Airport Access Agreement and such default continues for thirty (30) days after the City has demanded payment in writing.
- C. If Permittee shall abandon or discontinue for thirty (30) consecutive days the conduct and operation of all Aeronautical Activity upon the Premises.
- D. If Permittee shall fail to perform, keep and observe any of the covenants and conditions contained in this Permit Agreement to be performed, kept and observed by it, provided that upon the happening of any, default, breach or failure to perform , Permittee shall be given written notice to correct or cure such default, failure to perform or breach and if within thirty (30) days from the date of such notice the default or breach or complaint shall not have been corrected in a manner satisfactory to the City, then and in such event the City shall have the right at once to declare this Permit Agreement terminated.

**12. NOTICES.** All notices required under the Permit Agreement shall be deemed to be properly served if sent by certified mail, first class postage prepaid, to the addresses previously furnished by the parties hereto. Until further change by the parties by notice in writing, notice shall be sent to the City at:

Airport Manager  
Ogden Airport  
3909 Airport Road  
Ogden, Utah 84405

and to Permittee at:

Date of service of such notice shall be the date such notice is deposited in a Post Office of the United States Postal Service.

**13. WAIVER.** No waiver of a breach of any of the agreements or provisions contained in this Permit shall be construed to be a waiver of any subsequent breach of the same of any of the provisions of this Permit and it shall not operate to bar or prevent City from declaring a forfeiture for any succeeding breach either of the same condition or covenant or otherwise.

**14. AUTHORITY TO CONTRACT.** The respective parties warrant that the individuals who execute this Permit Agreement on their behalf have full authority to do so and to bind them to the terms of this Permit Agreement

**15. MODIFICATIONS.** This Permit shall not be modified without agreement of the parties, in writing.

**16. TERMS AND DEFINITIONS.** The terms used herein shall have the same meaning as such terms are defined in Title 8 of the Ogden City Code.

**17. GOVERNING LAW.** This Permit shall be governed by the laws of the State of Utah.

IN WITNESS HERETO, the parties hereby affix their signatures.

PERMITTEE:

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By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: \_\_\_\_\_

OGDEN CITY CORPORATION:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Airport Manager

ATTEST:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Recorder

APPROVED TO FORM:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ogden City Attorney's Office