

RESOLUTION NO. 394 2020

A RESOLUTION AUTHORIZING THE DIVISION OF POLICE, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO ACCEPT AN AIRCRAFT STORAGE AGREEMENT WITH TAC AIR, A SOLE SOURCE PROVIDER, AT A COST NOT TO EXCEED \$22,243.80.

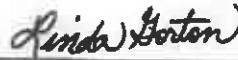
BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Division of Police, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to accept an aircraft storage agreement with Tac Air, a sole source provider.

Section 2 - That an amount, not to exceed the sum of \$22,243.80, be and hereby is approved for payment to TAC Air from account #1132-505501-71302.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: August 27, 2020



MAYOR

ATTEST:



CLERK OF URBAN COUNTY COUNCIL

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AIRCRAFT STORAGE AGREEMENT

THIS AGREEMENT, is made and entered into between Truman Arnold Companies d/b/a TAC Air, a Texas corporation, with offices at the Blue Grass Airport, Lexington, Kentucky, hereinafter referred to as "TAC Air" and Lexington-Fayette Urban County Government on Behalf of the Lexington Police Department, whose address is 150 E. Main St., Lexington KY 40507, hereinafter referred to as "Customer".

WITNESSETH THAT:

WHEREAS, TAC Air is a fixed base operator (FBO) at the Blue Grass Airport, Lexington, Kentucky, and thereon provides aviation related services, said Airport being hereinafter referred to as the "Airport", and has available for the use of certain of its customers a number of hangar spaces, and

WHEREAS, Customer owns, possesses and/or operates the aircraft hereinafter described and desires to lease space for that aircraft from TAC Air and TAC Air is willing to provide same, under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the rents, terms, conditions and agreements hereinafter set forth, the parties hereto agree as follows:

1. SUBJECT. The subject of this Agreement is storage of the following aircraft: N911LP and N912LP, hereinafter called the "Aircraft". Provided however, upon prior notice to TAC Air of the make, model and registration number thereof, and written consent from TAC Air, Customer may substitute another aircraft for the one above identified which will then become the Aircraft subject to the terms and conditions of this Agreement.

2. SERVICES PROVIDED. During the term hereof and while the Aircraft is present at the Airport, TAC Air shall:

- a. Store the Aircraft in a hangar in common with other aircraft.
- b. Provide aircraft towing services to remove and/or return the Aircraft to the hangar in which it is being stored.
- c. Make available office space on TAC Air premises to be used for support functions of the Aircraft. The location of the offices shall be located at hangar 2 office A and hangar 3 office D, and consists of approximately four hundred (400) square feet.
- d. It is understood and agreed that TAC Air shall not be a guarantor or insurer of the Aircraft, its components, or any other property of the Customer left on or about the Airport.

3. TERMS & FEES.

a. Subject to the other terms and conditions of this Agreement, this Agreement shall continue for twenty four (24) months from the effective date of this Agreement.

b. The monthly fees shall be due and payable in advance on or before the first day of each month and without demand during the term hereof. The monthly fee is \$1544.03.

c. At each anniversary of this Agreement, the monthly rental rate in effect immediately prior to said anniversary date, shall be increased by 5%.

d. The "effective date" of this Agreement shall be the first day of the calendar month next following the date upon which this Agreement is executed by the Customer and TAC Air. Provided however, should storage under this Agreement be implemented prior to the effective date of this Agreement, then Customer shall pay to TAC Air a pro-rata fee for such partial month. Upon the execution of this Agreement, Customer shall pay to TAC Air the fee for any partial month prior to the effective date of this Agreement.

e. Upon termination of this Agreement for any reason or upon the expiration of the term hereof, Customer shall, on or before the date of termination or expiration, remove the Aircraft and all of Customer's associated equipment and supplies from the space where they are stored.

f. If any installment of the rental fee is not received by TAC Air within five (5) days from its applicable due date, a late payment fee equal to five percent (5%) of the outstanding balance shall be added to the amount due and owing by Customer. In addition, interest shall be due and payable on all unpaid sums which are more than five (5) days past due at the rate of twelve percent (12%) per annum.

4. FUEL. All aviation fuel purchases at the Blue Grass Airport by Customer shall be from TAC Air.

5. UTILITIES AND CONCESSION RECOVERY. In addition to the above fees, Customer agrees to pay, each month, a utility fee of \$100.00, an environmental fee of \$100.00 and a concession recovery fee equal to 2% of the rental amount specified in Paragraph 3(b) herein.

6. CUSTOMER'S PERMITTED USE AND ACTIVITIES.

a. The assigned space in which the Aircraft is stored under this Agreement shall be used solely for the storage of said Aircraft, associated equipment and supplies, and for the Customer's performance of routine maintenance on the Aircraft, as provided for under relevant sections of the Federal Aviation Regulations.

b. Access to the hangar by any outside vendor performing maintenance of said Aircraft will be subject to approval by TAC Air management. Approval shall not be arbitrarily denied.

7. PROHIBITED ACTIVITIES. The following activities by the Customer at the Airport and within the space are prohibited:

- a. Storage of flammable materials or anything other than the Aircraft or associated equipment and supplies;
- b. Maintenance except as permitted under Paragraph 6 above;
- c. Parking of automobiles in other than designated parking areas;
- d. Subletting to any other individual, partnership, corporation or other association.

8. AIRPORT REGULATIONS. Customer agrees to comply with applicable regulations as are from time to time promulgated by TAC Air or the Blue Grass Airport (the "Airport Authority") in addition to the following:

- a. No aircraft engine shall be operated in any hangar space;
- b. Smoking is not permitted in any area where the Aircraft, service equipment, or supplies are located including, but not limited to hangar areas, flight line, ramps and tie downs;

- c. No electrically operated devices shall be left unattended at any time;
- d. Any damage to the Aircraft or Airport property of which the Customer has knowledge shall be immediately reported to TAC Air.

9. GOVERNMENT REGULATIONS. Customer agrees to operate its Aircraft and conduct itself at the Airport in accordance with all laws and regulations promulgated by Federal, State and Local governments and agrees to indemnify, defend and hold TAC Air harmless from any and all claims, fines, costs and expenses including reasonable attorney's fees which TAC Air may incur as a result of Customer's failure to so comply.

10. HOLD HARMLESS AND INDEMNIFICATION.

a. To the extent allowable by law, the Customer shall indemnify, defend and hold TAC Air harmless from any claims including costs and expenses and reasonable attorney's fees made against TAC Air as a consequence of Customer's activities at the Airport. Further, to the extent allowable by law, the Customer shall indemnify TAC Air and assume responsibility for any damage to the property of TAC Air, the Airport, the City of Lexington or others resulting from Customer's activities on the Airport. This shall not be deemed a waiver of sovereign immunity on any third party defense available to the customer.

b. Customer shall notify TAC Air in writing of any occurrence or accident or of any damage or loss sustained by it within two (2) days following Customer's knowledge of such occurrence or accident as a condition of any right of action or remedy which it may have against TAC Air under the terms of this Agreement or otherwise.

c. Customer hereby releases TAC Air from any liability for loss or damage to the Aircraft, its components or any other property of the Customer, unless such loss or damage is due to the negligence or willful act of TAC Air, its agents or employees. TAC Air in no event shall be liable to Customer for any indirect, incidental, or consequential damages.

11. INSURANCE.

a. Lexington-Fayette Urban County Government on behalf of the Lexington Police Department is self-insured.

12. DEFAULT. Default shall consist of:

- a. Customer's failure to pay fees within ten (10) days of the due date;
- b. Customer's failure to comply with any of the terms of this Agreement or any rule or regulations promulgated by TAC Air or the Airport Authority within ten (10) days after notice to Customer of such failure;
- c. Customer's failure to comply with any law or regulation of any governmental authority within ten (10) days after notice of such failure;

Any forbearance by TAC Air in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

13. REMEDIES ON DEFAULT.

a. On default, TAC Air, in addition to any other remedy at law or equity, shall have the right to remove the Aircraft and any equipment or supplies from the space and store it at TAC Air's sole option at any other place, either indoors or outdoors, and hold Customer responsible for storage charges. Customer shall also be responsible for payment of:

- (1) All sums accrued through the date of termination;
- (2) The balance of all rentals, fees, or charges required to be paid by Lessee through the end of the Term; and
- (3) The reasonable costs incurred by TAC Air in terminating this Agreement, recovering possession of, and re-renting the hangar space, or any portion thereof

b. On default, any sums of money then due and owing to TAC Air and any sums which shall accrue thereafter, shall constitute a lien on any property of Customer located at the Airport, and TAC Air shall take any action necessary and provided for by law, including public sale of said property, in order to enforce said lien.

14. ASSIGNABILITY. This Agreement may not be assigned in whole or in part by Customer.

15. MISCELLANEOUS PROVISIONS.

a. This Agreement shall be deemed to have been executed and performed in the State of Kentucky and shall be interpreted in accordance with the laws of the State.

b. Should any provision of the Agreement be determined void or unenforceable, all other terms unaffected shall remain intact unless the intent of the Agreement can no longer be achieved.

c. This Agreement constitutes the entire Agreement between the parties and may not be modified except by a fully executed writing.

d. This Agreement shall bind the parties hereto, their heirs, executors, administrators, successors, and assigns.

e. Customer warrants that it has authority to enter into this Agreement.

16. NOTICES. All notices required under the terms of this Agreement shall be sent Certified Mail, Return Receipt Requested, and if delivery is unobtainable, then to the last known address, if not the same as set forth below, by regular mail.

TO TAC AIR:

Truman Arnold Companies
d/b/a TAC Air
100 Crescent Court, Suite 1600
Dallas, TX 75201
Attn: Vice President & COO

TO CUSTOMER:

Lexington-Fayette Urban County
Government on Behalf of Lexington Police
Department
150 E. Main St.
Lexington KY 40507
Attn: Mark Brand

17. CONFIDENTIALITY: N/A

IN WITNESSETH WHEREOF, the parties have duly executed this Agreement, all as of the 28th of July, 2020.

TAC Air
Westley Williams
General Manager

SIGNATURE: _____



Lexington Chief of Police

SIGNATURE: _____



Mayor LFUCG

SIGNATURE: _____



Customer, by its execution, acknowledges receipt of a copy of this Agreement.