

# **AERONAUTICAL USE LEASE POLICY**

## **GRAND JUNCTION REGIONAL AIRPORT**

**Revised: November 18, 2014**

### **BACKGROUND, SUMMARY, RESPONSE TO COMMENTS AND TEXT**

The Grand Junction Regional Airport Authority (the "Authority") owns and operates the Grand Junction Regional Airport (the "Airport"). The Authority was created by the City of Grand Junction and County of Mesa to own and operate the Airport pursuant to the Colorado Public Airport Authority Act, C.R.S. §41-3-101, *et seq.* Under that Act the Authority has the power to lease Airport property.

### **II. PURPOSE OF POLICY**

The Policy clarifies that Airport land and/or general aviation facilities will generally be leased on a first come-first served basis. The Authority may also use a competitive proposal process to grant a lease for a particular parcel or facility where multiple parties are interested. The Authority will develop a standard aeronautical use ground lease; the initial form of which will be developed within 30-days of adoption of this Policy. Unless circumstances involve the use of a non-standard form, the Authority will attempt to promptly respond to a complete leasing request within 30-days of receipt. The Director of Aviation will be authorized to enter into standard form leases at rates pre-approved by the Authority Board, but the Authority Board in open meeting will make decisions on any lease denial or non-standard lease request.

Under the Policy, the initial ground lease term will continue to be 20 years with a 10-year lessee option to renew. Longer initial or option terms may be available for extraordinarily large investments in facilities. Aeronautical use ground tenants will also be granted up to four (4) additional five (5) year options to extend the lease term, if (a) the improvements have been maintained and are expected to be serviceable for the additional option term, (b) the Authority does not require the ground for other Airport purposes, (c) the extension would not violate FAA grant assurances then in effect, and (d) the lessee is not in material default under the lease or in other financial obligations to the Authority (a "Disqualifying Factor"). This will extend the opportunity of all lessees to own and occupy their hangars, so long as the above conditions continue to be met, for a combined term of up to 50-years. If the Authority Board determines that a facility has not been maintained or is not serviceable, then the lessee will be given a "punch list" and an opportunity to bring the facility into compliance, and thereby be eligible for an additional 5-year option.

Rent will continue to be set at an initial reasonable level, and reset at market rates at the beginning of each additional 5-year option term. Instead of being adjusted annually by any increase in the CPI, under the final Policy, rent may be adjusted every two-years based on any increase or decrease in the CPI. The Authority will not make any other periodic market rate adjustments.

#### IV. FINAL AERONAUTICAL USE LEASE POLICY

The following is the text of the final Aeronautical Use Lease Policy proposed for adoption by the Board of the Grand Junction Regional Airport Authority on January 7, 2013:

**1. DEFINITIONS.** The following definitions shall apply to this Policy:

1.1 "Aeronautical Use" shall mean any aeronautical activity, including but not limited to parking, storing, repairing, sale, fueling and maintaining aircraft owned or leased by a Lessee or third parties, and other activities associated with aircraft ownership and/or operation. For purposes of this Policy, Aeronautical Use shall not include operations conducted by scheduled air carriers.

1.2 "Airport" shall mean the Grand Junction Regional Airport located in Grand Junction, Colorado.

1.3 "Authority" shall mean the Grand Junction Regional Airport Authority, a body corporate and politic, which was created by the City of Grand Junction and County of Mesa to operate the Airport.

1.4 "Commercial Lessee" shall mean a Lessee which (a) regularly engages in fixed base operations, ground handling and servicing of air carrier and commuter airline operations, aircraft charter operations, flight training, aircraft rental, aerial photography, crop dusting, aerial advertising, aerial surveying, aircraft sales and services, sale of aviation petroleum products, aircraft repair and maintenance, sale of aircraft parts, and/or other commercial aeronautical services to the public, (b) has entered into or will enter into a lease with the Authority, and (c) meets, and in the case of an existing Lessee has met for a period of not less than six continuous months, the Authority's Minimum Standards then in effect for the type of aeronautical business operated by the Lessee.

1.5 "CPI" shall mean the Consumer Price Index for all urban consumers, all items ("CPI-U") Selected Large Cities, for the All U.S. Cities, for the previous October to October report, published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 base = 100. In the event the base year is changed the CPI shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of labor Statistics ceases to use the CPI or this index, an equivalent or comparable economic index will be used.

1.6 "Policy" shall mean this Aeronautical Use Lease Policy.

1.7 "Improvements" means all structures and installations placed or constructed on the leased premises, including, but not limited to, hangars, fuel tanks and associated equipment, foundation and paving.

1.8 "Lessee" means any Commercial Lessee or Storage Lessee.

1.9 "Minimum Standards" shall mean the then current version of the Requirements and Minimum Standards for Commercial Aeronautical Services and Activities for Walker Field Airport, Grand Junction, Colorado. The version of the Minimum Standards in effect on the date of these Policy, were those adopted by the Airport Authority Board on December 19, 2000 and last revised on July 19, 2005.

1.10 "Person" shall mean any individual, partnership, corporation, trust, or other entity of whatever type or nature.

1.11 "Storage Lessee" shall mean any Aeronautical Use Lessee other than a Commercial Lessee as defined above.

## **2. OVERVIEW AND SCOPE.**

2.1 This Policy set forth the parameters for leasing Airport land and/or improvements for Aeronautical Uses at the Airport. They outline the process, which will be used by the Authority to enter into ground and facilities leases for non-air carrier aeronautical uses, and establish and adjust the rents, fees, or other charges associated with leasing, occupying, and/or using Airport land and/or Improvements for such uses.

2.2 No Person shall occupy Airport land and/or Improvements unless such Person has entered into a lease with the Authority or has a sublease approved by the Authority.

2.3 No Person shall be a Commercial Lessee at the Airport unless the Person has first entered into an agreement or lease with the Authority or a sublease with an Airport Lessee, and is in full compliance with applicable provisions of the Minimum Standards.

2.4 The Authority reserves the right to designate specific Airport land areas in which Commercial Lessees and Storage Lessees, respectively, may or may not conduct business or construct Improvements. The Authority also reserves the right to establish classes of aeronautical activity, to establish land areas within which such classes may operate, and to treat such different classes differently with respect to the offering of leases or agreements.

2.5 The right to use the Airport and any Airport land and/or Improvements other than those leased exclusively to any Person shall be non-exclusive.

2.6 This Policy shall not apply to circumstances in which the Authority chooses to construct a hangar or other aeronautical use Improvement, at the request of and to the specifications of a Lessee for lease to such Lessee. Such a transaction would be subject to variables such as, but not limited to, the cost of construction, the type and cost of financing, and the lease term necessary to recoup the Authority's investment. It shall therefore be handled on a case-by-case basis pursuant to applicable laws and Authority policies then existing.

### **3. PURPOSES.**

3.1 The Federal Aviation Administration (FAA), by way of its Grant Assurances, requires all airports developed with federal grant assistance to operate for the use and benefit of the public, and for such airports to be made available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. These Grant Assurances also require airport sponsors to maintain a fee and rental structure for the facilities and services at their airports, which will make the airports as self-sustaining as possible under the circumstances existing at the particular airport, and will not dispose of or transfer title to airport property without FAA approval. Airport sponsors must also avoid unjust economic discrimination within classes of users, taking into account such factors as the volume of traffic and economy of collection. The Airport and the Authority are subject to these grant assurances.

3.2 It is therefore the policy of the Authority to:

3.2.1 operate the Airport for the use and benefit of the public, and to make it available for all types, kinds and classes of aeronautical activity;

3.2.2 make the opportunity to engage in commercial Aeronautical Uses available to any Person who meets the Minimum Standards established by the Authority;

3.2.3 limit or prohibit any type, kind or class of Aeronautical Use of the Airport, if such action is necessary for the safe operation of the Airport or is necessary to serve the civil aviation needs of the public;

3.2.4 impose terms and conditions on those offering aeronautical services and commodities to the public to ensure they are offered on fair and reasonable basis and without unjust discrimination;

3.2.5 impose only the same rates, fees, rental and other charges as are uniformly applicable to all other Aeronautical Use Lessees in the same class of Lessees, making the same or similar uses of the Airport, utilizing the same or similar facilities, and entering into leases or agreements at approximately the same time;

3.2.6 make aeronautical facilities at the Airport available to the public on fair and reasonable terms and without unjust discrimination;

3.2.7 make the Airport as financially self-sustaining as possible under the circumstances; and

3.2.8 not enter into leases or lease amendments, which would constitute a transfer or disposal of Airport property, without prior FAA approval.

3.3 The leasing of Airport land is also regulated and influenced by local, State, and federal law including, but not limited to, the policies and rules of the Federal Aviation

Administration (the “FAA”) and Transportation Security Administration (“TSA”), and other policies, Policy, rules and standards adopted by the Authority.

4. **LAND USES.** The Airport Master Plan and Airport Layout Plan (ALP) have been developed by the Authority and are periodically updated. The FAA approves the ALP, and the Master Plan is developed in accordance with FAA standards. These documents provide guidance to the Authority regarding which land areas of the Airport may be made available for leasing to various classes of Lessee. No lease shall be entered into by the Authority, which, at its inception, is contrary to the Master Plan or the FAA-approved ALP. The Authority reserves the right to amend and revise the Master Plan and/or ALP from time-to-time, with FAA approval as may be necessary. Amendments and updates to the ALP and/or Master Plan may provide for changes in land use and/or reconfiguration of existing land use areas on the Airport, which shall be applicable to leases entered into or extended after the date of such ALP or Master Plan amendment or update.

5. **AUTHORITY TO LEASE.** The Authority filed Articles of Incorporation on March 24, 1971, and is a body corporate and politic, and a political subdivision of the State of Colorado. Power to enter into and administer leases of Airport property is granted to the Authority by Colorado Revised Statutes Section 41-3-106(f).

6. **LEASE FORMS AND REQUESTS.**

6.1 **Manner of Leasing.** Available Airport land and/or general aviation Improvements with runway access will generally be leased on a first come, first served basis, to Lessees wishing to use such land and/or Improvements for the aviation-related purposes described in the currently approved ALP. Under certain circumstances (i.e. multiple Persons interested in a single piece of property or Improvement or few/no remaining parcels or Improvements available for a specific aviation-related use), the Authority may use a public and competitive proposal process prior to grant a lease for a particular parcel or facility. Interested Persons should contact the Authority to discuss leasing opportunities, lease requirements, and information required for review by the Authority.

6.2 **Review Standards.** Requests to lease Airport land for Aeronautical Uses will be reviewed by the Authority based on parameters contained in these Policy including, but not limited to, whether:

6.2.1 The proposed use is appropriate and consistent with the ALP, Master Plan, and other relevant land use planning documents, including the Authority's design guidelines, if any;

6.2.2 Approval would not constitute a violation of Grant Assurances; and

6.2.3 If a commercial Aeronautical Use were proposed, Lessee’s proposed use of the property would comply with the requirements of the Minimum Standards for the commercial use proposed.

6.3 Leases More Restrictive. The Authority's Aeronautical Use leases shall be designed to protect the public interest and may contain more restrictive clauses than those typically found in private sector leases. They shall transfer to the Lessee the liabilities associated with possession and control of real property including, but not limited to, compliance with all federal, state and local laws and regulations pertaining to the use, storage and disposal of hazardous materials and storm water pollution prevention regulations.

6.4 Compliance with Law. Leases will require Lessees to comply with all applicable local, state, and federal laws, ordinances, rules, and regulations, including those of the TSA and FAA. Leases shall also require Lessees and sub-lessees on the Airport to comply with all applicable Airport regulations, policies, and Minimum Standards. Such Authority regulations, policies and Minimum Standards may be updated and/or amended from time to time as appropriate, and Lessees shall be subject to the same as updated and/or amended, if no such updated regulations, policies or Minimum Standards shall override any material provision of an existing lease.

6.5 Standard Lease Forms and Procedures. The Authority may require that requests to lease be submitted on a standard form, which it may develop and amend from time to time, but which shall conform to this Policy. Leasing requests may also be required to contain such additional information and documentation, as the Authority deems reasonably necessary to evaluate the proposal. The Authority will also develop standard forms of ground and facilities lease, which may be periodically updated to reflect changes in federal, state, and local regulations and real estate law as well as necessary to meet a changing economic environment and other risks associated with leasing. The Airport Manager will be authorized to execute the standard form lease at the rental rate fixed from time to time by the Authority Board in its rate resolution. Should the terms of a proposed lease differ from the standard form, or should a proposed rental rate differ from that established in the rate resolution, approval of the Authority Board in a public meeting will be required. Where a non-standard lease is requested or necessary under the circumstances, the Airport Manager may negotiate with the Lessee or prospective Lessee and shall submit his/her recommendation to the Authority Board.

6.6 Prompt Response. In all cases, the Authority shall attempt to respond to leasing requests in a prompt manner under the circumstances. The Authority shall attempt to respond to requests involving a standard form lease within thirty (30) days of receiving a complete written lease request. Requests, which will involve the use of a non-standard lease form, require engineering or other professional review, or otherwise require action by the Authority Board could take considerably longer. Any denial of a request for an Aeronautical Use lease shall be made by the Authority Board in public meeting and shall be accompanied by a statement as to the basis of the denial.

6.7 Current Lessees.

6.7.1 Any current Aeronautical Use Ground Lessee will be offered a one-time option to opt-in to the new, approved Standard Form Ground Lease, prior to the expiration of their current lease.

6.7.2 The new Standard Form Ground Lease will contain the initial term contained in the Lessee's prior Ground Lease.

- 6.7.3 The rental rate shall be the rate established in the Authority's then current Fee Resolution.
- 6.7.4 If the Lessee exercises this option, the Authority reserves the right to assure the Lessee's improvements are in good order and repair, and will remain serviceable for the remaining term of the new lease.
- 6.7.5 If it is determined that the current improvements are not in good order and repair (at the sole discretion of the Airport Authority), the Authority will give the Lessee direction on how to achieve good order and repair. Requests for an evaluation should be made at least 90 days prior to term expiration, to allow for evaluation and proper approvals.

## **7. DURATION OF LEASE TERM.**

7.1 Policy. All leases of Airport land shall have a fixed term of limited duration to ensure the Authority's ability to control future development of Airport land should it be needed for a different purpose, while at the same time being fair to Lessees.

7.2 Initial Standard Ground Lease Terms. Except as provided below, the maximum initial Aeronautical Use ground lease term shall be twenty (20) years with one (1) Lessee option to extend for an additional ten (10) years.

7.3 Extended Term for Extraordinary Capital Investment. If a Lessee or prospective Lessee proposes to make an extraordinarily large investment in light of the square footage of land to be leased or which is being leased, the Board may in its discretion consider whether to amend these Policy to provide additional provisions under which the length of the extended ground lease primary and/or option terms may be determined.

7.4 Exercising of Additional Terms Early. The Authority may grant a perspective Lessee the ability to exercise additional terms upon lease assignment, to allow for financing.

7.5 Standard Facility Lease Term. Except as provided below, when the Authority owns the ground and the aeronautical Improvements to be leased the maximum facilities lease term shall be five (5) years.

7.6 Additional Option Terms for Ground Leases. In addition to the option term provided in Section 7.2 above, Lessees may be offered up to four (4) additional options to extend the ground lease term for five (5) years each (an "Additional Option"). The total of primary and all option terms of any lease shall not exceed 50-years unless individual and extraordinary circumstances are found to exist under Section 7.3 above. The Authority shall offer an Additional Option to a Lessee if, and only if:

- 7.6.1 Such Lessee requests the same; and
- 7.6.2 Improvements are in good order and repair and meet the Minimum Standards, as currently approved by the Airport Authority, and meet all applicable City and County code requirements; and
- 7.6.3 Lessee is not in material default under its ground lease with the Authority; and

7.6.4 Lessee is not in default in any other financial obligation to the Authority.

**8. LEASE EXPIRATION/TERMINATION.** Under This Policy, and subject to the limitations of Section 7.6 above, ground leases, which are subject to Additional Options, will expire only when a Lessee chooses not to exercise its option to renew. Ground Leases may also terminate upon material default by the Lessee. Upon the expiration or sooner termination of the ground lease, each ground lease shall provide that:

8.1 If not transferred, sold, or otherwise assigned, the Lessee shall peaceably surrender possession of the leasehold to the Authority.

**9. RATES, FEES AND CHARGES.**

9.1 Market Rates. The Authority recognizes its obligation to charge reasonable and not unjustly discriminatory rent for Aeronautical Use of Airport land and/or Improvements. Under the Grant Assurances, the Authority is also required to maintain a rent and fee structure, which makes the Airport as self-sustaining as possible under the circumstances.

9.1.1 Reasonable rent for Aeronautical Use land and/or Improvements at the Airport will be determined, at the discretion of the Authority, by rent study, comparison of rents for similar properties at this and other public use airports, appraisal, negotiation, or a competitive process.

9.1.2 Current rates, fees, and charges will be outlined in the Authority's approved Fees and Charges. All new, renegotiated, and adjusted lease rates, fees, and charges will be set according to the rates found in the approved Fees and Charges, which are reviewed, updated, and approved annually by the Authority Board.

**10. PERMITTED USES.** Leases shall provide that Improvements constructed on the Airport Operations Area of the Airport are to be used for Aeronautical Uses only, including but not limited to parking, storing and maintaining aircraft owned or leased by tenant or third parties, other activities associated with aircraft ownership, commercial Aeronautical Uses covered by the Minimum Standards, and self-fueling in strict accordance with the Authority's Fuel Storage and Handling Procedures.

**11. CONSTRUCTION OF LEASEHOLD IMPROVEMENTS.**

11.1 Prior to the construction of any Improvements, alterations, or additions to the leasehold, proposed plans must be submitted to the Authority for review and approval. The Authority shall determine if the Improvements are consistent with the Airport's Master Plan and meet the Authority's Development and Architectural Covenants and, if applicable, the Minimum Standards. Improvements must also meet all federal, State and local codes, rules and regulations. Authority approval of plans shall not be an indication that any Improvement complies with such laws, codes, or rules.

11.2 A period may be specified in the ground lease for the commencement and completion of any approved Improvements on any leasehold.

**12. CONDOMINIUM ASSOCIATIONS.** The Authority recognizes the existence of leases held by condominium associations. Recognizing that circumstances may arise whereby a condominium tenant may wish to change its structure to multiple, individual tenants, the Authority may at its discretion elect to accommodate such requests. The lease term of newly created individual, leases shall be equal to the lease term of the previous lease, with the sole exception that newly created individual leaseholds may exercise the same rights to enter into new lease instruments as other tenants. New lease instruments shall be based upon the original date of tenancy of the original lease instrument, which existed prior to the dissolution of the condominium association. The Authority may charge reasonable and appropriate fees for the costs incurred in the conversion of condominium association leaseholds to individual tenancy.

**13. ASSIGNMENT, SUB-LEASING AND FINANCING.**

13.1 Written consent from the Authority must be obtained prior to any assignment or subleasing of all or any portion of a lease, which assignment shall not be unreasonably withheld. Leases will provide that assigned and sublet leases will be subject to all the terms and conditions of the original lease, including the lease term.

13.2 The Authority shall make prompt and reasonable efforts to cooperate with Lessees and their lenders regarding the financing or refinancing of Airport businesses and Improvements, provided, however, that in doing so the Authority shall have no obligation to materially change any lease term or take any action which would be materially detrimental to the Authority or the public interest.

**14. SUBORDINATE DOCUMENT.** This document (a) is intended to provide guidance to the Authority when issuing or renewing leases for Aeronautical Uses, (b) does not itself constitute a legally binding agreement or contract with any Person, and (c) does not contain all terms and conditions of leases. Except as expressly provided herein, if any conflict of terms or conditions exist with other legal documents, including but not limited to a ground lease or Facilities Lease, this document shall be subordinate.

**15. EFFECTIVE DATE.** This Policy shall become effective upon adoption by the Authority and shall remain in effect, unless and until repealed or amended by the Authority.