

SAMPLE AGREEMENT FOR AIRPORT ACCESS

This Airport Access Agreement (“Agreement”) is made and entered into this ___th day of _____, 20XX, by and between the COUNTY/CITY/AIRPORT AUTHORITY OF XXXXXXXX, a MUNICIPAL CORPORATION/POLITICAL SUBDIVISION of the State of XXXXXXXX (referred to as “XXXXX” or as “Owner”), and _____, a(n) individual/association/limited liability company/corporation organized and existing under the laws of the State of XXXXXXXX (referred to as “_____” or as “User”), located at insert address;

This Agreement incorporates and is based upon the following representations and understandings:

WHEREAS, COUNTY/CITY/AIRPORT AUTHORITY is the owner (Owner) and operator of XXXXXXXX Airport, located in the County of XXXXXXXX, State of XXXXXXXX (the “Airport”), with the power to grant rights and privileges with respect to the Airport, pursuant to the provisions of the (State Code or Law), among other federal, state, and local laws, rules and regulations; and

WHEREAS, the User (User) owns real property (Adjacent to or in the XXXX Airpark) (referred to as Lot XX), immediately adjacent to the physical property of the Airport; and

WHEREAS, the User seeks the right to taxi aircraft from (Lot XX or XXXX Airpark) “through-the-fence” to the Airport property and to its runway and taxiway system; and

WHEREAS, the parties desire to enter into this Agreement to comply with, the

FAA Modernization and Reform Act of 2012 (P.L. 112-95) section 136 that permits general aviation airport sponsors to enter into residential through-the-fence agreements with property owners or associations representing property owners provided these agreements comply with certain conditions set forth in this Agreement;

Now, therefore and in consideration of the mutual terms and conditions hereinafter set forth, the Owner and User hereby agree to the following:

ARTICLE I – PROPERTY WITH RIGHT OF ACCESS

Legal description of property with right of access:

LOT XX, XXXXXXXX COUNTY, SECTION X, T42N, R 17, T.9N., R.13W., CITY OF XXXX, XXXXXXXX COUNTY, XX, BEGINNING AT THE NORTHWEST CORNER OF SAID LOT XX, THENCE N25°24'35"E 500.5 FEET ALONG THE NORTHERLY LINE OF SAID LOT XX; THENCE S25°10'42"E 500.5 FEET ALONG THE EASTERLY LINE OF SAID LOT XX; THENCE S25°10'42"W 500.5 FEET FROM SAID NORTHERLY LINE OF LOT XX; THENCE N25°42'42"W 500.5 FEET ALONG THE WESTERLY LINE OF SAID LOT XX TO POINT OF BEGINNING.

ARTICLE II – TERM OF AGREEMENT

The term of this Access Agreement shall commence on Month XX, 20XX, and shall continue for a 5-year period, through and including Month XX, 20XX. Upon the consent of the Owner, this Access Agreement may be renewed, subject to any changes deemed necessary by the Owner, for three (3) additional terms.

ARTICLE III – PROHIBITIONS

1. **No Commercial Aeronautical Uses:** User shall not permit any person or entity to engage in any temporary or permanent commercial aeronautical activity on the land owned by the User described herein above. This prohibition includes the following but is not limited to any activity or service for compensation, exchange, trading, buying, selling, or hire or any other revenue producing activity whether or not a profit is derived, which makes possible, or is required for the operation of an aircraft, or contributes to or is required for, the safety of such operations.
2. **Sale of Aviation Fuels Prohibited:** User shall not permit any person or entity to sell aviation fuels on land owned by User described herein above.
3. **Prohibitions and Restrictions on Access:** The User is specifically prohibited from granting or selling any access/egress to the Airport through the aforementioned property to any other parties. This restriction also includes the User taking reasonable precautions acceptable to the Owner to prevent the accidental access to the Airport by vehicles, pedestrians, pets, etc.

ARTICLE IV – ACCESS FEE TO OWNER

User agrees to pay the access fees to the Owner:

1. **Owner's Basis for Access Fee:** The access fee is based on the rates and charges of other on-airport tenants and operators making similar use of the airport. For the purposes of this agreement the access fee is based upon the tie-down rental fee which is \$XXX.XX per (month/year). This rental fee is subject to

annual adjustments.

2. User's Access Fee: Based upon the forgoing rate outlined above the access fee to be paid is \$XXX.XX (monthly/annually) on (___th of the month, or the first day of Month ___ of the year). This fee will be increased in accordance with the on-airport fees outlined above throughout the term of this agreement.
3. Payment: All payments required to be made by User under this Agreement shall be made payable to the "Owner," and shall be delivered or mailed to the address below:

XXXX Airport
100 Airport Road
City, State, 12345

4. Penalty for Late Payment: Owner will assess a late penalty of \$XX for every day User fails to remit payment after the payment date described above.

ARTICLE V - CONSTRUCTION AND MAINTENANCE OF PRIVATE-USE INFRASTRUCTURE

It is understood and agreed that the User shall construct all private-use infrastructure, required and acceptable to the Owner, at User's sole cost and expense. All required private-use infrastructure such as, taxiway, fence, sign(s), taxiway lights, gates, security controls, etc., shall be listed and depicted in Exhibit 1 to this agreement. Accordingly, User covenants and agrees as follows:

1. Construction and Maintenance: To construct the private-use infrastructure on the

User's or Owner's property as may be required. All construction on Owner's property must be approved by Owner 90 days prior to the commencement of construction. During the term of this Agreement, User shall also be solely responsible for all maintenance (snow removal, utility costs, turf or pavement maintenance, pavement markings, etc.) of said private-use infrastructure and shall at all times maintain it in good repair.

2. Construction Costs: Notwithstanding anything herein contained to the contrary, User expressly agrees to pay any and all costs associated with private-use infrastructure (taxiway, fence, signs, taxiway lights, electrical power, gates, security controls, etc.) required by the Owner. These costs are in addition to the access fees described above.

ARTICLE VI - AGREEMENT SUBORDINATE TO GRANT ASSURANCES, AGREEMENTS WITH UNITED STATES, AND FEDERAL OBLIGATIONS.

This Agreement shall be nonexclusive and shall at all times be subordinate to the provisions of any existing or future agreements between the Owner and the United States Government, or to any order issued by the United States Government, or to any grant assurances of the Airport, or to any of the Airport's or the Owner's Federal obligations.

The User agrees to abide by the Airport Rules and Regulations in effect as of the date of this agreement and as may be amended from time to time.

ARTICLE VII - TERMINATION OF AGREEMENT

1. Events of Default by User: Owner, at its option, may declare this Agreement terminated in its entirety upon the happening of any one or more of the following events and may exercise all rights related to the termination of this Agreement:
 - a. The User access fees outlined in Article IV, or any part thereof, are unpaid for 30 days, or
 - b. If User shall file a voluntary petition in bankruptcy, or make a general assignment for the benefit of creditors, or if the User is adjudicated as bankrupt, or User otherwise assigns or attempts to assign its interest herein without the required prior written consent of Owner; or
 - c. If User shall use or permit the use of the User's premises at any time for any purpose which is not authorized by this Agreement, or if User shall use or permit the use thereof in violation of any law, rule or regulation, (including the airport rules and regulations), to which the User has agreed to conform.
 - d. User fails to meet any term or condition of this agreement.
2. Notice of Default: If the User shall default in the performance of any other term of this Agreement (except the payment of fees), then the Owner shall send to the User a written notice of default, specifying the nature of the default, and User shall, within thirty (30) days after the date of the notice, cure and remedy the default, and this Agreement shall then continue as before.
 - a. If the User shall fail to timely cure and remedy such default, the Owner shall

have the right to declare, by written notice to the User, that the User is in default, and to use all remedies available to the Owner under this Agreement. However, if by its nature, such default cannot be cured within such thirty (30) day period, such termination shall not be effective if the defaulting party commences to correct such default within said thirty (30) days and corrects the same as promptly as reasonably practicable.

- b. Termination of this Agreement for non-payment of fees to Owner by User shall not become effective until after the expiration of fifteen (15) days written notice thereof by Owner to User and User fails to pay all moneys owed, fully within said period.

ARTICLE VIII – NOTICES

1. Notice/Addresses: All notices, requests, or other communications, required or permitted to be given hereunder shall be in writing and delivered by via certified or registered mail, addressed to the appropriate party at its address as follows:

XXXX Airport
100 Airport Road
City, State, 12345
222-555-5555

RTTF User/Association
300 Airpark Rd.
City, State, 12345
222-555-5550

IN WITNESS WHEREOF, the parties have executed these presents by their duly authorized officers.

EXECUTED IN THE PRESENCE OF:

OWNER: *insert name*

Commissioners

USER: *insert name*

SAMPLE

APPENDIX C

Access Agreement Review Sheet

Documentation:

Provide copies of the written access agreement(s) between the sponsor and residential through-the-fence user(s) or association(s) representing residential through-the-fence users. Sponsors who have entered into a residential through-the-fence agreement with an association may need to provide additional documentation such as covenants, conditions, and restrictions (CC&Rs). If the same agreement is used with multiple residents, the sponsor is only required to submit one copy of the agreement with an explanation noting the number of residences to which it pertains. Identify the document (if more than one type of document is submitted), page number, or paragraph which verifies the following:

1. The residential through-the-fence user pays airport access charges that are comparable to tenants and operators on-airport making similar use of the airport.

Document: _____

Page number or paragraph: _____

If this page or paragraph does not define tenants and operators on-airport making similar use of the airport, explain how the airport sponsor defines this term and the fee/rate structure charged to these tenants.

If this page or paragraph does not include an escalation clause, explain if the fees/rates charged to the residential through-the-fence user increase on the same schedule as the fees/rates for tenants and operators on-airport making similar use of the airport.

If the two fee schedules do not transparently appear to be equivalent, explain the rationale used by the airport sponsor to make such determination.

2. Residential through-the-fence users bear the cost of building and maintaining the infrastructure the airport sponsor determines is necessary to provide aircraft located on the adjacent property to or near the airport access to the airfield of the airport.

Document: _____

Page number or paragraph: _____

3. The residential through-the-fence user is prohibited from using their property, or permitting any third party from using their property, for any commercial aeronautical purpose for the duration of the access agreement.

Document: _____

Page number or paragraph: _____

4. Access to the airport from unauthorized users, through the property of the residential through-the-fence access agreement holder, is prohibited.

Document: _____

Page number or paragraph: _____

5. The residential through-the-fence user is prohibited from selling aviation fuel on their property.

Document: _____

Page number or paragraph: _____

This agreement has been executed with _____ residential through-the-fence _____.

SAMPLE