

# **THROUGH THE FENCE AIRPORT ACCESS AGREEMENT**

This Through The Fence Airport Access Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the City of Lago Vista Rusty Allen Airport, a municipal subdivision of the State of Texas (referred to as “Lago Vista” or “Owner”), and \_\_\_\_\_ (referred to as “User”).

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

**WHEREAS**, the City of Lago Vista is the owner and operator of the Rusty Allen Airport, located in the County of Travis, State of Texas, with the power to grant rights and privileges with respect to the Airport, pursuant to the provisions of the Texas Code, among other federal, state, and local laws, rules and regulations; and

**WHEREAS**, the Rusty Allen Airport Property Owners Association owns represents owners who own real property immediately adjacent to the physical property of the Airport; and

**WHEREAS**, the RAAPOA has been granted the right to taxi aircraft from their property “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 13 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; and

**WHEREAS**, the members of the RAAPOA request the right to allow tenant aircraft to taxi from their RAAPOA member property “through the fence” to the Airport property and to its runway and taxiway system;

**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: All properties included in the RAAPOA which are adjacent to the Rusty Allen Airport Property. User’s property address is:

\_\_\_\_\_.

## **ARTICLE II – TERM OF AGREEMENT**

The term of this Access Agreement shall commence on \_\_\_\_\_ and shall continue for a 1-year period, ending \_\_\_\_\_. Upon the consent of the Owner, this Access Agreement may be renewed, subject to any changes deemed necessary by the Owner and updated by the City's adopted Fee Schedule, for five (5) 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 without appropriate permits issued by the Owner. 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. Owner may allow commercial leases of User property if the commercial tenants enter into individual TTF Access Agreements with the Owner.
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 which the Owner is already providing.
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 – THROUGH THE FENCE 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 on the tie-down rental fee which is \$50/month. This rental fee is subject to annual adjustments that should not be greater than the Consumer Price Index percentage increase as designated for the period of which the current term is set to expire.
2. **User's Access Fee:** Based upon the forgoing rate outlined above, the access fee to be paid is \$30/month. This fee will be increased in accordance with the on airport fees outlined above through 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:

City of Lago Vista  
Rusty Allen Airport  
5803 Thunderbird  
Lago Vista, TX 78645

- A. Penalty for Late Payment: In the event Lessee fails to remit any payments when the same are due, a late fee of \$10.00 shall be charged by Lessor. In the event Lessee shall become delinquent for more than 31 days, this lease may be terminated by Lessor as further defined in Article VIII. – Termination.

**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 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 – INDEMNITY

**USER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS OWNER AND ITS PAST, PRESENT AND FUTURE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LIABILITY FOR ANY AND ALL CLAIMS, SUITS, DEMANDS, AND/OR ACTIONS ARISING FROM OR BASED UPON INTENTIONAL OR NEGLIGENT ACTS OR OMISSION ON THE PART OF USER, ITS OWNERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, MEMBERS, VISITORS, INVITEES, CONTRACTORS OR SUBCONTRACTORS WHICH MAY ARISE OUT OF OR RESULT FROM THE USER’S OCCUPANCY OR USE OF THE FACILITIES AND CITY-OWNED PROPERTY AND/OR ACTIVITIES CONDUCTED IN CONNECTION WITH OR INCIDENTAL TO THIS AGREEMENT. THE USER SHALL ALSO INDEMNIFY THE OWNER AND ITS PAST, PRESENT AND FUTURE OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES AGAINST ANY AND ALL MECHANIC’S AND MATERIALMEN’S LIENS OR ANY OTHER TYPES OF LIENS IMPOSED UPON OWNER-OWNED PROPERTY ARISING AS A RESULT OF THE USER’S CONDUCT OR ACTIVITY. THIS INDEMNITY PROVISION SHALL APPLY REGARDLESS OF THE NATURE OF THE INJURY OR HARM ALLEGED, WHETHER FOR INJURY OR DEATH TO PERSONS OR DAMAGE TO PROPERTY, OR WHETHER SUCH CLAIMS ARE ALLEGED AS COMMON LAW, STATUTORY OR CONSTITUTIONAL CLAIMS, OR OTHERWISE. THIS INDEMNITY PROVISION SHALL APPLY WHETHER THE BASIS FOR CLAIMS, SUIT, DEMAND AND/OR ACTION MAY BE ATTRIBUTABLE IN WHOLE OR IN PART TO THE USER OR ANY OF ITS OWNERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, EMPLOYEES, MEMBERS, VISITORS, INVITEES, CONTRACTORS OR SUBCONTRACTORS, OR TO ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM.**

## ARTICLE VIII - 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; or
  - 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 monies 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 certified or registered mail, addressed to the appropriate party at its address as follows:

City of Lago Vista Rusty Allen Airport 5803 Thunderbird Lago Vista, TX 78645 512.267.1155	User _____ _____ _____ _____ _____  Aircraft Make and Model _____ N-Number _____
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**IN WITNESS WHEREOF**, the parties have executed these presents by their duly authorized officers.

OWNER:

City of Lago Vista

\_\_\_\_\_  
Joshua W. Ray, City Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Sandra Barton, City Secretary

\_\_\_\_\_  
USER

\_\_\_\_\_  
Date

**STATE OF TEXAS** §

§

**COUNTY OF TRAVIS** §

**SWORN AND SUBSCRIBED TO BEFORE ME**, by \_\_\_\_\_,  
the person whose name is subscribed to the foregoing instrument and who acknowledged to me  
that he/she executed the same for the purposes and considerations therein expressed and in that  
capacity therein stated on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_