

LEASE AMENDMENT NO. 3

to the

FRESNO CHANDLER EXECUTIVE AIRPORT
AIRPORT LEASE AGREEMENT

Issued By

CITY OF FRESNO, CALIFORNIA

To

DON WILLIAMS, AN INDIVIDUAL, AND
JIM WOOD, AN INDIVIDUAL,
D.B.A. BCH AVIATION CENTER

THIS LEASE AMENDMENT NO. 3 (Amendment) is made and entered the ____ Day of _____ 2021, by and between the City of Fresno, California, a municipal corporation (Lessor), and Don Williams, an individual, and Jim Wood, an individual, d.b.a. BCH Aviation Center (Lessee), located at 920 West Chandler Avenue, Fresno, California 93706.

RECITALS

WHEREAS, Lessor and Lessee (Parties) executed a Lease Agreement effective May 1, 2007, and subsequent Lease Amendment No. 1, dated May 1, 2012, and Lease Amendment No. 2, dated May 1, 2015 (collectively referred to as "Agreement"), for a parcel consisting of approximately a 6,400 square foot hangar and office building, including three tie-down positions on the main ramp (Premises), at Fresno Chandler Executive Airport (FCH); and

WHEREAS, the current term of the Agreement expired on April 30, 2020, and the Lessor consented to allowing Lessee to remain on the Premises, as a holdover, on a month-to-month lease until the parties are able to enter into Lease Amendment No. 3; and

WHEREAS, Lessee desires to remain on the Premises and extend this Agreement with the Lessor for an additional three years, for a potential full lease term of seventeen (17) years, which includes Lessee's holdover period; and

WHEREAS, Lessor has determined it is in its best interest to extend this Agreement with Lessee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises herein contained, the Parties hereby agree as follows:

1. Section 2, "Term", of the Agreement is replaced and re-written to read as follows:

2. Term: The term of this Agreement shall be for a period of seventeen (17) years, commencing May 1, 2007, hereinafter sometimes referred to as the "Commencement Date", and ending April 30, 2024 (Expiration Date).

a. Early Termination: Either party may terminate this Agreement at any time and without cause by serving written notice upon the other party no less than sixty (60) days before such termination is to be effective.

b. Holding Over:

i. In the event Lessee shall remain in possession of the Premises or any part thereof following the end of the life of this Agreement, and thus holdover the term hereof with the express written consent of Lessor, such holding-over occupancy shall be a tenancy from month to

month only, terminable by either party hereto upon service of a minimum of a 30-day advance written notice upon the other party.

ii. Rental During Holding Over Period: During the holding-over MONTH-TO-MONTH TENANCY period, Lessee shall pay to Lessor all rent required by this Agreement at the rates in effect as of the date immediately preceding the date on which such month-to-month tenancy commences.

iii. Applicability of Agreement Provisions: EXCEPT as otherwise specifically set forth within this provision, such holding over shall be subject to all of the terms, covenants, conditions, and provisions of this Agreement applicable to a month-to-month tenancy.

2. Section 3, "Rent", of the Agreement is replaced and re-written to read as follows, and provision a(i) replaces Section 14, "Utilities", of the Agreement:

a. Rent and Due Date: Rent for the Premises shall be paid in advance on the first day of each and every month at the rate of \$1,532.09 per month.

i. In addition to paying Rent for the Premises, during the term of this Agreement, Lessee shall pay all charges for water, and sewage supplied to and used by the Premises in the amount of \$47 per month (\$564 annually). Lessee shall pay for gas, electric, and for all telephone/communication expenses supplied to and used by the Premises, which charges shall be paid before delinquency, and Lessor, and such Premises shall be protected and held harmless by Lessee therefrom.

b. Rent Adjustment: Annually, commencing May 1, 2022, then on May 1 each and every year thereafter, throughout the remaining term of this Agreement, the amount of the monthly Rent to be paid to Lessor by Lessee shall be subject to increase. The increased amount will become the new Rent each year respectively and will be calculated as follows:

i. The Rent will increase by the same percentage as the percentage increase in the U.S. Department of Labor, Bureau of Labor Statistics (USDLS) Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers (all items, U.S. city average) from January 1 to December 31 during the last full calendar year prior to the scheduled rent adjustment date for each remaining year. The amount of all such annual adjustments shall be determined in the manner illustrated within **Revised Exhibit C** "Illustration Of Annual Rental Adjustment Computation", attached hereto and made a part hereof. At no

time shall the Base Rent decrease below the initial rate listed in Section 3.a. above. The base year for the first year adjustment shall be the CPI calendar year 2019. Lessor shall complete the "Annual Rental Adjustment Computation" worksheet and provide a copy of such worksheet to Lessee, prior to the commencement of each Lease Year during the life of this Agreement.

- c. Place of Payment: All fees/charges due to be paid to Lessor by Lessee hereunder shall be paid to Lessor at the address shown below or at such other address to which Lessor, by service of written notice upon Lessee, may direct the payment thereof from time to time during the term hereof.

City of Fresno Airports Department
Attn: Airports Accounting
4995 E. Clinton Way
Fresno, CA 93727

- d. Late Payment Charge: Should any installment of rents accruing to City under the provisions of this Lease not be received by Lessor within 10 calendar days after such shall be due, a late payment charge equal to 1.5% of the overdue amount added thereto and constituting a part thereof shall be imposed by City each and every month until the entire delinquent amount is received by Lessor.
- e. Security Deposit: Lessee shall provide to Lessor a Security Deposit in an amount equal to three months current rent, securing performance hereunder. Such deposit shall be in the form of cash, a Surety Bond issued by an insurance company authorized to do business in the State of California and authorized to write such bonds in said State, or a non-revocable Letter of Credit established in favor of Lessor for the account of Lessee by a federally chartered bank acceptable to Lessor, guaranteeing the faithful performance of all the covenants and conditions herein to be performed by Lessee. Upon the expiration or termination of this Agreement, and the payment of all fees and charges due to Lessor for the privileges granted in this Agreement, the Security Deposit shall be refunded to Lessee, provided there are no other outstanding claims or charges against Lessee. Lessor shall not be required to pay, and Lessor shall not pay, any interest on this Security Deposit.

- 3. **Revised Exhibit C** of the Agreement is added by the attached "Illustration of Annual Rental Adjustment Computation" which is marked as **Revised Exhibit C** and dated 7/1/2020 (see Section 2.b.i. above).

4. Sections 17, 17.1, 17.2, 17.3 (Insurance), 18 (Indemnification), and 19 (Exemption of City), of the Agreement is replaced and re-written to read as follows:

17. Indemnification and Release

- A. Except to any extent expressly provided for in this Agreement, and to the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend City and its officers, officials, employees, agents, and volunteers (collectively referred to as Lessor) from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Lessor, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of this Agreement. Lessee's obligations under the preceding sentence shall apply to any negligence of Lessor, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of Lessor.
2. Lessee acknowledges that any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Lessee's activities or the activities of any of Lessee's representatives (including, without limitation, any of Lessee's officers, officials, employees, agents, volunteers, invitees, subtenants, consultants, subconsultants, contractors or subcontractors), and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.
3. If Lessee should contract any work on the Premises or subcontract any of its obligations under this Agreement, Lessee shall require each consultant, subconsultant, contractor and subcontractor to indemnify, hold harmless and defend Lessor and its officers, officials, employees, agents, and volunteers in accordance with the terms of this Section and meet all the insurance requirements in this Agreement or as determined by the City of Fresno Risk Manager or designee.

4. The provisions of this Section shall survive the termination or expiration of this Agreement.
18. Exemption: Lessee hereby specifically warrants, covenants and agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, patrons, invitees, or any other person whomsoever, in or about the Premises, nor shall Lessor be liable for injury to the person of Lessee, Lessee's servants, agents, employees, contractors, sub-contractors, tenants, sub-lessees, customers, or invitees, whether or not said damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the leakage, breakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether or not the said damage or injury results from conditions arising in or on any part or all of the Premises or in or on any of the improvement(s) and facilities appurtenant thereto located therein or from other sources or places, and regardless of whether or not the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee, except where such injury, damage, and/or loss shall have been caused solely by the gross negligence or willful misconduct of Lessor. Lessee also covenants and agrees that Lessor shall not be liable for any damages arising from any act or neglect on the part of any third parties.
 19. Insurance
 - A. Throughout the life of this Agreement, Lessee shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion. The City, its officers, officials, employees, agents, and volunteers (referred to collectively as "Lessor") requires policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to Lessor, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.
 - B. If at any time during the life of the Agreement or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately until notice is received by Lessor that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Lessor. Any failure to maintain the

required insurance shall be sufficient cause for Lessor to terminate this Agreement. No action taken by Lessor pursuant to this section shall in any way relieve Lessee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Lessor that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

- C. The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify Lessor shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, vendors, suppliers, invitees, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

- D. Coverage shall be at least as broad as:

The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the Lessor, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.

Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Throughout the life of this Agreement, Lessee shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or designee. The following policies of insurance are required:

(i) AVIATION/AIRPORT OR GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include coverage for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, hangarkeepers legal liability, products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Lease), with limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage, \$2,000,000 per occurrence for personal and advertising injury, \$4,000,000 aggregate for products and completed operations and \$4,000,000 general aggregate. **Lessee may substitute Airport Liability insurance for this insurance provided the coverage is as broad as required and the limits of liability are not less than required.**

(ii) AIRCRAFT HULL AND LIABILITY insurance shall include coverage for bodily injury to passengers and non-passengers, property damage and cargo legal liability with combined single limits of liability of not less than \$1,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for fixed wing aircraft and \$1,000,000 per occurrence and aggregate for bodily injury, property damage and cargo legal liability for rotorcraft.

(iii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iv) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) PROPERTY INSURANCE against all risk of loss to any tenant improvement or betterments, at full replacement cost with no coinsurance penalty provision.

(vi) POLLUTION LEGAL LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Coverage is required to include underground storage tanks, including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.

In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by Lessee pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event Lessee purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

- C. Lessee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Lessee shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Lessee shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.
- D. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Lessee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during this Agreement, Lessee shall provide a new

certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

- E. The Airport Liability (or General Liability, if applicable), Aircraft Liability, Pollution and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Lessee's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.
- F. Upon request of City, Lessee shall immediately furnish City with a complete copy of any insurance policy required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.
- G. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City hereunder shall in any way relieve Lessee of its responsibilities under this Lease.
- H. Lessee and its insurers hereby waive all rights of recovery against City and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Lessee or its officers, officials, employees, agents, volunteers, invitees, consultants, subconsultants, contractors and subcontractors, or its property or the property of others under its care, custody and control. Lessee shall give notice to its insurers that this waiver of subrogation is contained in this Agreement. This requirement shall survive termination or expiration of this Agreement.

SUBCONTRACTORS If Lessee subcontracts any or all of the services to be performed under this Agreement, Lessee shall require, at the discretion of the City's Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City's Risk Manager or designee. If no Side Agreement is required, Lessee will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

- I. **Providing of Documents:** Lessee shall furnish Lessor with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to

be received and approved by the City's Risk Manager or designee prior to Lessor's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of Lessor, Lessee shall immediately furnish Lessor with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Lessee shall also be required to provide all documents noted herein.

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

Via email at FYIProperties@fresno.gov

5. Section 45, shall be added to the Agreement as follows:

Required Accessibility Disclosure: A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

6. Except as expressly provided in this Amendment No. 3, all other terms and provisions of the Agreement shall continue in full force and effect.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 3 as of the day and year first above written.

CITY OF FRESNO, CALIFORNIA
A Municipal Corporation

BCH AVIATION CENTER

By: _____
Kevin Meikle
Director of Aviation

APPROVED AS TO FORM:

Douglas T. Sloan

City Attorney

By: _____
8/26/2021
Brandon Collet, Senior Deputy

ATTEST:

Briana Parra, CMC
Interim City Clerk

By: _____
Deputy

Address for Notice:

City of Fresno
Airports Department
4995 E. Clinton Way
Fresno, CA 93727

DocuSigned by:
Don Williams 8/20/2021
722ABD32641E4B6...
Don Williams, an Individual,
dba BCH Aviation Center

DocuSigned by:
Jim Wood 8/26/2021
C4C7D3D8877D446...
Jim Wood, an Individual,
dba BCH Aviation Center

Address for Notice:

BCH Aviation Center
920 West Chandler Avenue
Fresno, CA 93706

Phone: 559-441-0991



FRESNO YOSEMITE
INTERNATIONAL AIRPORT



FRESNO CHANDLER
EXECUTIVE AIRPORT

NOTICE OF ANNUAL RENTAL ADJUSTMENT
(Based on USDLBLS Consumer Price Index
for Urban Wage Earners and Clerical Workers -
ALL ITEMS, U.S. CITY AVERAGE)

FRESNO CHANDLER EXECUTIVE AIRPORT
LEASE AGREEMENT

DATE: May 1, 2021

RE: BCH Aviation
LEASE AND AGREEMENT

ANNUAL RENTAL ADJUSTMENT COMPUTATION
FOR LEASE YEAR COMMENCING:

May 1, 2021

The rental adjustment calculation shown to the right
was completed in keeping with the intent of the
agreement for BCH Aviation at 920 W. Chandler,
Fresno, CA
Lease Agreement

**THE CITY OF FRESNO - AIRPORTS DEPARTMENT
AND
BCH Aviation Services**

USDLBLS CPI - JAN-DEC.,	2019	249.222 *
USDLBLS CPI - JAN-DEC.,	2020	252.248 *
AMOUNT OF CPI CHANGE		3.026
PERCENTAGE CPI CHANGE		1.2142%
CURRENT ANNUAL RENTAL		\$18,690.77
AMOUNT OF ADJUSTMENT		\$226.94
NEW ANNUAL RENTAL		\$18,917.71

NEW MONTHLY RENTAL		
EFFECTIVE	May 1, 2021	\$1,576.48

EFFECTIVE May 1, 2021

ANNUAL RENTAL WILL BE:	\$18,917.71
Month Rental Will Be:	\$1,576.48

Prepared by:

CITY OF FRESNO - AIRPORTS
PROPERTIES DIVISION
4995 E. CLINTON WAY
FRESNO, CA 93727-1504

TELEPHONE: (559) 621-4500

If you have any questions concerning this matter,
please contact the undersigned at (559) 621-4549.

Marcos Ayala

Marcos Ayala
Airports Property Specialist I
City of Fresno - Airports Administration

NOTES:

* PER USDL/BLS