



City of Phoenix Aviation Department Rules & Regulations

Number: R&R 02-08

Authority: This Rule and Regulation is promulgated pursuant to Phoenix City Code Chapter 4; Article I, Section 4-2 and Article VII, Section 4-149.

Rule and Regulation: **General Terms and Conditions for Commercial Aeronautical Activities**

Purpose: This Rule and Regulation shall be applicable to Contracts issued by the Aviation Department under the Airports Rules and Regulations and/or Minimum Standards. All persons shall comply with these Rules and Regulations, restrictions and conditions at all times.

Application of Rule and Regulation:

Except as may be prohibited by other provisions of these Rules and Regulations and any other applicable law these Rules and Regulations shall be deemed to be a part of each Contract issued under the Airports' Rules and Regulations and/or Minimum Standards unless such provisions are amended or modified by the City of Phoenix Aviation Department. The mere omission of any particular standard from a written Contract shall not constitute a waiver or modification of such standard in the absence of clear and convincing evidence that the Aviation Department intended to waive or modify such standard.

Non-Exclusive Rights

Contracts are non-exclusive and nothing herein shall prevent the City from accessing or using the Airport or shall prohibit the City from permitting other persons to access or use the Airport. Nothing herein shall be construed to bar the City from further alteration, development, expansion or improvement of the Airport and the City expressly reserves the right to do so.

Indemnification

Contracting Party shall indemnify, defend, save and hold harmless the City of Phoenix and its officers, officials, agents, and employees (hereinafter referred to as "City") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or



City of Phoenix Aviation Department Rules & Regulations

willful acts or omissions of Contracting Party or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Contracting Party's use of Airport Premises. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Contracting Party from and against any and all claims. It is agreed that Contracting Party will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration for the use of Airport Premises, the Contracting Party agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the use of Airport Premises.

Accidents, Damages, and/or Injuries

Persons, Contracting Parties, or other operators shall immediately report any on-Airport Accident, damages, or injuries. Persons, Contracting Parties, or operators shall be fully responsible for all damages to airport property including environmental damages, whether caused by negligence, abuse, or carelessness on the part of their employees, agents, visitors, contractors or persons with whom they may do business, in addition to any terms that might be contained in any Contract.

Any person, Contracting Party, or operator causing or liable for, any damage to airport property shall be required to pay to the City on demand the full cost of the damage plus appropriate administrative fees. Any person failing to comply with this section shall be in violation of these Rules and Regulations and shall be refused access to the Airport until the City has been fully reimbursed.

The City assumes no responsibility or liability for loss, injury or damage to persons, property or business on the Airport or airport facilities, by reason of fire, vandalism, wind, flood, earthquake or other acts of God, civil disorder, armed conflict or collision damage, nor does it assume any liability by reason of injury to persons or property while using said facilities.

Compliance with Law

All persons, Contracting Parties, and other operators shall observe and comply with all laws, ordinances, rules, regulations and orders of the United States Government, the State of Arizona, the County of Maricopa, and the City and all agencies thereof, including guidance issued by the Federal Aviation Administration, which may be applicable to its operations



City of Phoenix Aviation Department Rules & Regulations

or to the operation, management, maintenance or administration of the Airport now in effect or hereafter promulgated.

Failure to comply with such laws shall be grounds for denial of, or immediate termination of, the Contract.

Contracting Parties shall abide by all Airport Rules and Regulations of the City of Phoenix Aviation Department including environmental laws regarding the handling, discharge, release and dumping of hazardous substances.

In the event of spillage, discharge or dripping of gasoline, oil, grease, pollutant or any material which may be unsightly, detrimental or regulated under any environmental law, onto the surface in any area of the Airport, the same shall be removed immediately and reported to Airport Operations and the Airport Environmental Coordinator in accordance with the Aviation Department Storm Water Enforcement and Civil Penalty Policy. The responsibility for the immediate removal of such gasoline, oil, grease, or other material shall be assumed by the operator or owner of the Aircraft or equipment causing the same or by the Contracting Party responsible for the deposit on the surface. Upon default of the responsible party to clean such area, the City may provide the necessary cleaning and bill the responsible party or parties for the expense thereof including Administrative fees.

Contracting Parties shall have the responsibility to pay any fine or penalty levied against Contracting Party or the City, individually or collectively, and their representatives, officers, officials, employees, agents, and volunteers as a result of Contracting Party's failure to comply with any applicable Regulatory Measure. If the fine or penalty is contestable (and contested by the Contracting Party), Contracting Party shall pay the fine or penalty when upheld by the agency having jurisdiction.

Conflicting Regulations

Where a conflict exists between any of the regulations, limitations, or restrictions prescribed or adopted hereunder, or in conflict with a provision of the safety, fire, health codes or other ordinances of the City, or any other matter, the provision which establishes the higher standard and more stringent limitation or requirement for the promotion and protection of the health and safety of the people, shall govern and prevail. The definition of conflicting regulations shall include laws, ordinances, regulations, contracts, agreements, leases and permits.



City of Phoenix Aviation Department Rules & Regulations

Notices of Violation, Suspension or Revocation

In accordance with the City of Phoenix Aviation Department Minimum Standards and Notice of Violation (NOV) Program, a Contract is subject to suspension or revocation for any violation of any term of the City of Phoenix Aviation Department Rules and Regulations including, without limitation, failure to make payments in the amounts and at the times specified in these Rules and Regulations, operation of any unauthorized commercial aviation activity, or failure to comply with any of the federal, state, local laws or ordinances, or Rules and Regulations of the City. Any violation of the Rules and Regulations will be deemed a violation of the Contract, and any suspension, revocation or other penalty will be assessed against the Contract holder.

Amendment or Modification of Requirements

The Aviation Department may waive or modify any portion of these Rules and Regulations, for any person, when it is determined that such waiver or modification is in the best interest of the City and will not result in any unjust discrimination among Contracting Parties on or accessing the Airport.

Assignment

Contracting Party shall not assign its authorization under the Contract. Any attempt to assign, sell, transfer or encumber the Contract shall be void. The Contract, or any interest therein, shall not be subject to assignment by operation of law. It is specifically stipulated and agreed that the Contracting Party will not enter into any other arrangement(s) or agreement(s) with any other operator(s) or assign any of the rights herein whereby other operators share in the privileges or services authorized in the Contract or allow other operators to access the airport under the Contract. Such assignment or transfer shall be grounds for immediate termination of the Contract without recourse.

Severability

If any terms, rules, regulations or restrictions herein contained are ruled invalid or unenforceable by any court or agency of competent jurisdiction, then the remaining terms, rules, regulations or restrictions shall remain in full force and effect.

Subordination

Any rights herein granted to the Contracting Party are subordinate and/or junior to any rights of the Federal Government touching or concerning the



City of Phoenix Aviation Department Rules & Regulations

City's ownership, management and operation of the Airport including, but not limited to, any rights accruing to the Federal Government as a result of federally assisted grant programs accepted by the City.

A. Supplemental Conditions

Experience/Capability

Contracting Party shall, in the judgment of the Aviation Department, demonstrate before and during the term of the Contract, the following:

The capability of providing the proposed products, services, and facilities and/or engaging in the proposed Activities in a safe efficient, courteous, prompt, and workmanlike manner in service to and to the benefit of the public, and

The financial and technical responsibility, capability, and integrity to develop and maintain Improvements; procure and maintain required Vehicles, Equipment, and/or Aircraft; employ proper level of personnel; and/or engage in the activity.

Grounds for Denial

The grounds for denial of any proposal or any application include:

The proposed Contracting Party, for any reason, does not fully meet the qualifications, standards, and requirements established by the City. The burden of proof shall be on the proposed Contracting Party and the standard of proof shall be by clear and convincing evidence.

The proposed Contracting Party's proposed Activities and/or Improvements will create a safety hazard at or on the Airport.

The City would be required to expend funds and/or supply labor and/or materials in connection with the proposed Activities and/or Improvements that the City is unwilling and/or unable to spend and/or will result in a financial loss or hardship to the City or the Airport.

No appropriate, adequate, or available land and/or Improvement exists at the Airport to accommodate the proposed Activity of the proposed Contracting Party (at the time the proposal or application are submitted), nor is such availability contemplated within a reasonable time frame.



City of Phoenix Aviation Department Rules & Regulations

The proposed Activities and/or Improvements do not comply with the Master Plan of the Airport or the ALP then in effect or anticipated to be in effect within the time frame proposed by the proposed Contracting Party.

The development or use of the land requested by the proposed Contracting Party will result in a congestion of Aircraft and/or the Improvements will, in the sole discretion of the City, unduly interfere with Activities of any existing Operator on the Airport and/or prevent adequate access to the Leased Premises of any existing Operator.

The proposed Contracting Party has intentionally or unintentionally misrepresented or omitted a material fact in the proposal, on the application, and/or in supporting documentation.

The proposed Contracting Party has failed to make full disclosure in the proposal, on the application, and/or in supporting documentation.

The proposed Contracting Party or an officer, director, or major shareholder has a record of violating the Regulatory Measures of the City (or any other airport sponsor), the FAA, or any other Regulatory Measure applicable to the Airport and/or the proposed Contracting Party's proposed Activity.

The proposed Contracting Party or an officer, director, or major shareholder of the entity has defaulted in the performance of any Agreement or Sublease at the Airport or at any other airport.

The proposed Contracting Party does not exhibit adequate financial responsibility or capability to undertake the proposed Activity.

The proposed Contracting Party cannot provide a performance bond or applicable insurance in the type and amounts required by the City for the proposed Activity.

The proposed Contracting Party or an officer, director, or major shareholder of proposed Contracting Party has been convicted of a felony.

Any appeal of the denial of any proposal or application must be in accordance with the appeal process in the City of Phoenix Aviation Department Minimum Standards and Notice of Violation (NOV) Program.



City of Phoenix Aviation Department Rules & Regulations

Taxes, Fees, and Charges

Contracting Party shall, at its sole cost and expense, pay all taxes, fees, and other charges that may be levied, assessed, or charged by any duly authorized agency associated with Contracting Party's Leased Premises (land and/or Improvements), Contracting Party's Improvements on Leased Premises, and/or Contracting Party's Activities.

B. Assurances

The City reserves the right to further develop, improve, repair and alter the Airport and all roadways, parking areas, terminal facilities, landing areas and taxiways as it may reasonably see fit, free from any and all liability to Contracting Party for losses or damages of any nature whatsoever to Contracting Party occasioned during the making of such improvements, repairs, alterations and additions.

The City reserves the right, but is in no way obligated to Contracting Party, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Contracting Party in this regard.

The Contract is subordinate to the reserved right of the City, its successors and assigns, to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of Aircraft. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any Aircraft through said airspace or in landing at or taking off from, or operation on an Airport.

Contracting Party, by accepting this Contract, covenants for itself and its successors that no use will be made of the Premises that might in any manner interfere with the landing and taking off of Aircraft from the Airport, or otherwise constitute a hazard to air navigation. As a remedy for the breach of said covenant the City reserves the right to enter upon the Premises and cause the abatement of such interference, all at the expense of Contracting Party.

Contracting Party acknowledges that nothing contained in the Contract shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. §40103(e) and nothing in the Contract shall be construed to ban the City from permitting other persons to access or use the Airport.



City of Phoenix Aviation Department Rules & Regulations

The Contract and all the provisions hereof are subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation and taking-over of the Airport, or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

Contracting Party shall furnish its services on a fair, equal and not unjustly discriminatory basis to all users of the Airport.

Contracting Party shall charge fair, reasonable and not unjustly discriminatory prices for each unit or services; provided that, Contracting Party may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City shall have the right to terminate this Contract and any estate created herewith, without liability therefor; or, at the election of the City or the United States, either or both of said Governments shall have the right to judicially enforce said requirement.

Contracting Party warrants that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap, be excluded from participating in any activity conducted on or from the Premises, or otherwise be excluded from the benefits offered by Contracting Party to the general public. Contracting Party further warrants that it will comply with all pertinent statutes, Executive Orders, and rules promulgated thereunder, to assure that no person is excluded on the grounds of race, creed, color, national origin, sex, age, or handicap.

As a part of the consideration for this Contract, Contracting Party does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended for another purpose involving the provision of similar services or benefits, Contracting Party shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Code of Federal Regulations, Title 49, DOT, Subtitle A, Office of the Secretary of Transportation, Part 21-Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations exist and may be amended from time-to-time.



City of Phoenix Aviation Department Rules & Regulations

If this Contract is a lease, then the prior Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

As a part of the consideration of the Contract, Contracting Party does hereby covenant and agree that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) in the construction of any Improvements on, over or under such Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and that the Contracting Party shall use the Premises in accordance with all other requirements imposed pursuant to 49 C.F.R. Part 21, as it may be amended.

If this Contract is a lease, then the prior Covenant is hereby made a covenant running with the land for the term of the lease, and is judicially enforceable by the United States.

The foregoing discrimination covenants are a material part of this Contract and for breach thereof the City shall have the right to terminate this Contract and to reenter and repossess the Premises and facilities thereon, and hold the same as if said Contract had never been made. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed, including expiration of appeal rights.

Contracting Party agrees to insert the foregoing six provisions in any contract by which Contracting Party grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on or from the Premises.

Contracting Party agrees that it will undertake an affirmative action plan in conformance with 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed color, national origin or sex be excluded from participating in any employment, contracting or leasing activities covered in 14 CFR Part 152, Subpart E. Contracting Party assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contracting Party further agrees that it will require its covered suborganizations to provide assurances to Contracting Party that they similarly will undertake affirmative action programs and that



City of Phoenix Aviation Department Rules & Regulations

they will require like assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E.

Contracting Party acknowledges that the Contract is subordinate to any existing or future agreement between the City and the United States concerning the development, operation or maintenance of the Airport. In the event that FAA or its successors require modifications or changes in the Contract as a condition to the obtaining of funds for Improvements at the Airport or as a requirement of any prior grants, Contracting Party hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications or changes as part of this Contract.

Contracting Party agrees to comply with the notification and review requirements as required by Title 14 of the Code of Federal Regulations, 14 CFR Part 77- Objects Affecting Navigable Airspace, in the event future construction of a structure is planned for the Premises, or in the event of a planned modification of a structure on the Premises. Contracting Party shall submit the required FAA Form 7460-1— Notice of Proposed Construction or Alteration—and provide documentation showing compliance with the federal requirements. Once the FAA has completed the aeronautical study, Contracting Party shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contracting Party covenants for itself, its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree, on the Premises above the mean sea level elevation for: (1) Phoenix Sky Harbor International Airport, 1,133 feet; (2) Phoenix Goodyear Airport, 968 feet; (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of said covenant the City of Phoenix reserves the right to enter upon the Premises and remove the offending structure or cut the offending tree, all at the expense of Contracting Party.

If the Contract involves construction, the Contracting Party shall carry out the project in accordance with FAA airport design, construction and equipment standards and specifications current on the date of the project approval.

Contracting Party is encouraged to use fuel and energy conservation practices.



City of Phoenix Aviation Department Rules & Regulations

C. City of Phoenix Affirmative Action Requirements

If Contracting Party is by this Contract a supplier to, or lessee of, the City, then the following requirement of the Phoenix City Code, Chapter 18, Article V, Section 18-22(G) applies:

"Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability; Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee."

D. Immigration Reform and Control Act of 1986 (IRCA)

Contracting Party understands and acknowledges the applicability of the IRCA to it. Contracting Party agrees to comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify such compliance.

E. Conflict of Interest

Contracting Party acknowledges that the terms and conditions of Arizona Revised Statute §38-511 are incorporated into this Contract.

F. Disadvantaged Business Enterprise Requirements

1. To the extent that this Contract is covered by 49 CFR Part 26, Contracting Party agrees that this Contract is subject to the requirements of the U.S. Department of Transportation Regulations at 49 CFR Part 26.



City of Phoenix Aviation Department Rules & Regulations

The Contracting Party or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contracting Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contracting Party to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

Contracting Party agrees to include the foregoing statement in any subsequent Contract that it enters and cause those businesses to similarly include said statement in further agreements.

2. To the extent that the Contract is a concession agreement covered by 49 CFR Part 23, the concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

The foregoing Rule and Regulation is hereby adopted and promulgated this 1st day of August, 2005.

The foregoing Rule and Regulation is hereby adopted and promulgated this 1st day of August, 2005.


David Kristof
Aviation Director


Nancy Kesteroot
Assistant Chief Counsel