



TO: Galesburg Airport Advisory Commission

FROM: Michael Doi

DATE: June 12, 2024

SUBJECT: Legal Opinion – Creation of an Airport Authority

The creation of an Airport Authority is statutory. The short answer is there must be a petition filed with the Court. The petition would then be noticed up and a hearing would occur. If all requirements are met, the Court would Order the proposition to be put on the ballot as a referendum in accordance with general election law.

Neither the City, nor the Advisory Commission, have a role in creating an Airport Authority. The responsibility would fall to 500 or more electors residing within the proposed Airport Authority area. They would need to advance the petition and pay the costs.

I would note that creating an Airport Authority is the creation of a new unit of local government, with its own Board (which gets paid) and with its own power to levy and collect taxes. The Board would have its own appropriation power and would not be subject to Galesburg as the Airport Authority would be its own municipal corporation.

The statute is 70 ILCS 5/0.01 *et seq.*

Jason W. Jording, City Attorney
City of Galesburg



TO: Galesburg Airport Advisory Commission

FROM: Michael Doi

DATE: June 12, 2024

SUBJECT: FAA Correspondence – Classifying Galesburg as Regional Airport

From: Hussain, Azra (FAA) <azra.hussain@faa.gov>
Sent: Monday, May 6, 2024 2:43 PM
To: Michael Doi (mdoi@ci.galesburg.il.us) <mdoi@ci.galesburg.il.us>
Cc: Esquivel, Rob (FAA) <Rob.Esquivel@faa.gov>; Wilson, Gary D (FAA) <Gary.D.Wilson@faa.gov>; Aaron Repp <aaron.repp@gmail.com>; Oliver, Chad (FAA) <Chad.Oliver@faa.gov>; Phillip Wolford <phillipw@jetairinc.com>; Jeffrey Olson <JOlson@hanson-inc.com>; Scott, Martin A (FAA) <Martin.A.Scott@faa.gov>

Subject: FW: Classification of Galesburg (GBG) Airport as a Regional Airport

Hi Michael,

Please see the following responses to your questions:

//All data we use in the NPIAS is publicly available. Instrument Flight Rule (IFR) flights are captured in the FAA TFMSC (<https://aspm.faa.gov>) . IFR flights are counted as follows:

1. The system only counts flights that actually operate (i.e., excluding flight plans that are filed but never executed); and
2. Flight plans that are cancelled after take-off are still tallied as a departure in the IFR operations database;

The FAA does not count military operations, as the data cannot be used in for FAA planning or AIP eligibility determinations.

1. What defines an IFR Operation for the purposes of meeting the criteria of a Regional Airport?

Response:

A civil aircraft operation (arrival or departure) conducted under Instrument Flight Rules with a flight plan.



2. Are the number of IFR Operations based off of the number of aircraft departing GBG on a filed IFR flight plan OR arriving on a filed IFR flight plan OR both arrivals and departures filed on an IFR flight plan?

Response:

All of the above. See also #1 and #3.

3. Does an aircraft arriving at GBG on a filed IFR flight plan count as 1 operation and the subsequent departure of the same aircraft on a filed IFR flight plan count as a second operation?.

Response:

Yes, that is two IFR operations

4. If an aircraft files an IFR flight plan to GBG, departs under IFR, but cancels the IFR flight plan mid flight due to improving weather, does that operation count as an IFR operation to GBG?

Response:

It depends on how far out the cancellation occurs. However, the arrival to the airport would be as a VFR operation.

5. Are the number of IFR Operations based on the number of completed instrument approaches?

Response:

No, just the final arrival/landing to the airport by that aircraft.

6. If the number IFR Operations are based on the number of instrument approaches; would Visual Approaches count towards that total?

Response:

A visual approach on an IFR flight plan is counted, as its still conducted under an IFR clearance.

Would Practice Approaches completed under VFR conditions with the guidance of Air Traffic Control count towards that total?

Response:

No, as its not conducted under an IFR flight plan.

7. How are the number of IFR Operations counted? Are they being counted by computer software or by Air Traffic Control?

Response:

Computer software.

Regards,
Azra

Azra Hussain, PE



Program Manager CHI-605

From: **Jeffrey Olson** JOlson@hanson-inc.com

Date: Mon, May 6, 2024 at 3:16 PM

Subject: RE: Classification of Galesburg (GBG) Airport as a Regional Airport

To: Hussain, Azra (FAA) azra.hussain@faa.gov , Michael Doi (mdoi@ci.galesburg.il.us)
<mdoi@ci.galesburg.il.us>

Cc: Esquivel, Rob (FAA) Rob.Esquivel@faa.gov , Wilson, Gary D (FAA) Gary.D.Wilson@faa.gov , Aaron Repp aaron.repp@gmail.com , Oliver, Chad (FAA) Chad.Oliver@faa.gov , Phillip Wolford phillipw@jetairinc.com , Scott, Martin A (FAA) Martin.A.Scott@faa.gov

Azra, thank you so much for tracking these responses down. I'm sure it was a collective effort to assemble, but very important for Galesburg and airports like them.

In the case of Galesburg, they certainly have all of the activity to be a regional airport, but something seemed to not add up. They have much more corporate and instrument activity than some of their near neighbors who have been classified as regional in the NPIAS.

I suspect is item number 4. You have very clearly answered these questions, but I think we need to drill down on item 4 because I think that is the problem.

How far out does a cancelled flight plan not get counted? Or asked another way, what radius from the airport does the flight plan need to be active for it to count as an approach? GBG has one airport who is very close that cancellations could be getting sent somewhere else in another's airspace.

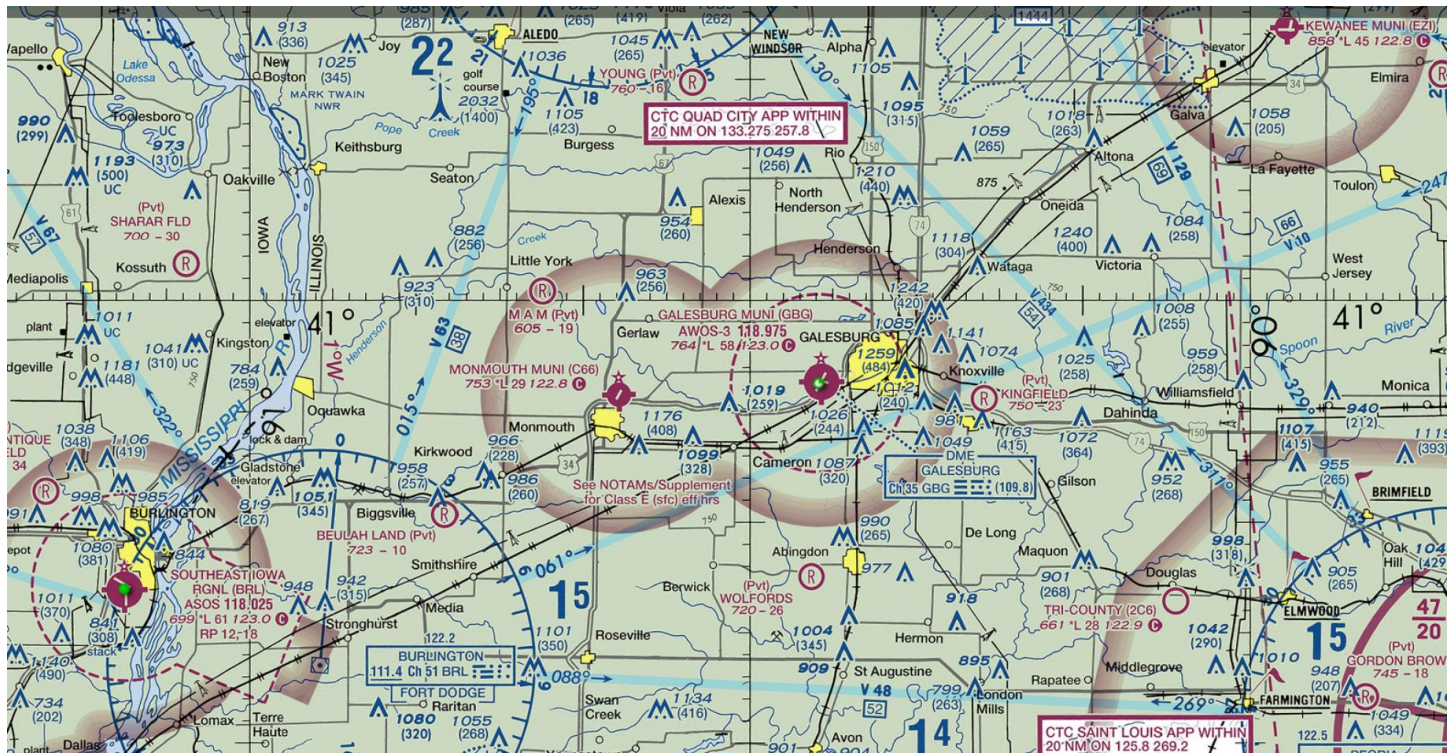
Can you please help us quantify this ask? With a little education we can talk to the corporate and instrument pilots who are based here at GBG and provide large number of ops and can capture this correctly.

Thank you!!
Jeff



PUBLIC WORKS DEPARTMENT

Operating Under Council – Manager Government Since 1957



From: Michael Doi <mdoi@ci.galesburg.il.us>

Sent: Wednesday, May 15, 2024 6:42:37 AM

To: Jeffrey Olson <JOlson@hanson-inc.com>

Cc: Hussain, Azra (FAA) <azra.hussain@faa.gov>; Esquivel, Rob (FAA) <Rob.Esquivel@faa.gov>; Wilson, Gary D (FAA) <Gary.D.Wilson@faa.gov>; Aaron Repp <aaron.repp@gmail.com>; Oliver, Chad (FAA) <Chad.Oliver@faa.gov>; Phillip Wolford <phillipw@jetairinc.com>; Scott, Martin A (FAA) <Martin.A.Scott@faa.gov>

Subject: Re: Classification of Galesburg (GBG) Airport as a Regional Airport

Hi All,

My apologies for not responding sooner. I wanted to personally thank everyone who helped in providing answers to my questions, your support is greatly appreciated! If I can provide any assistance which might be helpful in answering Jeff Olson's additional questions, please let me know.

Thanks again!



From: **Jeffrey Olson** JOlson@hanson-inc.com
Date: Wed, May 15, 2024 at 7:31 AM
Subject: Re: Classification of Galesburg (GBG) Airport as a Regional Airport

To: Michael Doi mdoi@ci.galesburg.il.us

The safest fool proof solution is to request jet air not cancel their flight plans in the air and do it on the ground after landing. Even if the radius in which it can be active I'm the air is quantified specifically by FAAs response, it's my opinion that pilots have to be focusing on enough setting up for their final approach. That's part of the reason why they cancel it early. So don't cancel it in the air tight to the airport, cancel it on the ground and be sure to clock it to the airports counts. You'd be a regional by the next npias report no doubt. I would like to see this done by the time the FAA Reauthorization occurs for better financial position if possible.

From: **Hussain, Azra (FAA)** <azra.hussain@faa.gov>
Date: Wed, May 22, 2024 at 1:50 PM
Subject: FW: Classification of Galesburg (GBG) Airport as a Regional Airport
To: Jeffrey Olson <JOlson@hanson-inc.com>, Michael Doi (mdoi@ci.galesburg.il.us) <mdoi@ci.galesburg.il.us>
Cc: Wilson, Gary D (FAA) <Gary.D.Wilson@faa.gov>, Scott, Martin A (FAA) Martin.A.Scott@faa.gov

Guidance from HQ:

The key point is if the flight cancels IFR, its then landing at the airport VFR. Which does not count toward the NPIAS IFR criteria. (Also, there is not per se a set range around the airport where its counted or not).

The airport may find more value in doing a comparative analysis with proximate Regional airports to understand the metrics at those airports vs what is occurring at GBG.

//

The VFR operations can still be counted as an operation if the pilot cancels the IFR flight plan. Does this answer your question?

1. If an aircraft files an IFR flight plan to GBG, departs under IFR, but cancels the IFR flight plan mid flight due to improving weather, does that operation count as an IFR operation to GBG?

Response:

The arrival at the airport would be counted as a VFR operation.

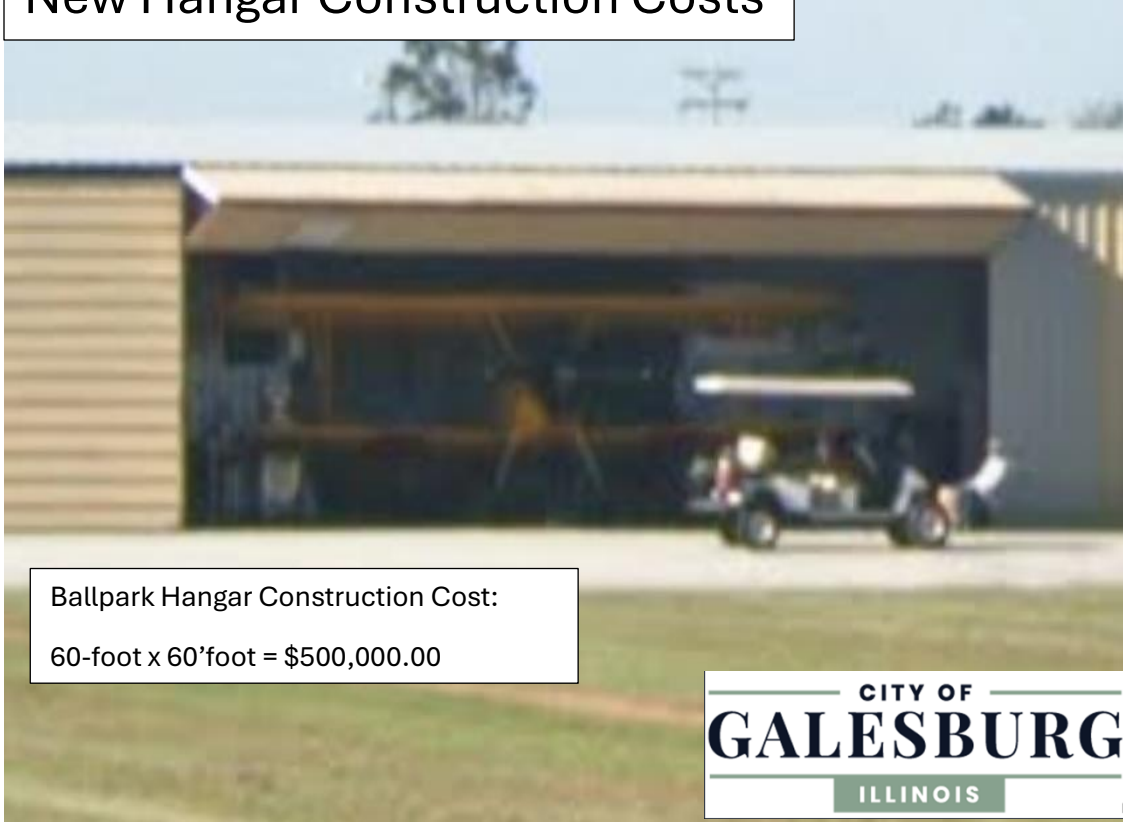


**Hangar Construction
& Rental Pamphlet**

Galesburg Airport History:
Proud past, unlimited potential



New Hangar Construction Costs



Ballpark Hangar Construction Cost:

60-foot x 60'foot = \$500,000.00

CITY OF
GALESBURG
ILLINOIS

Utility Costs



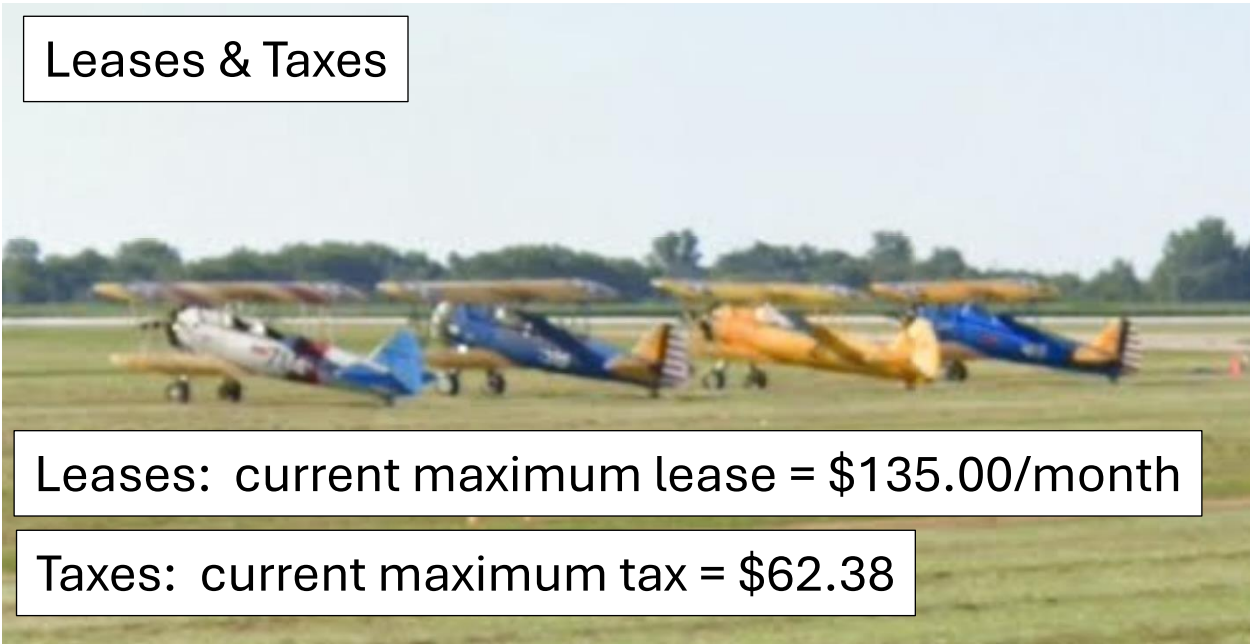
Most Recent Hangar Construction

Utilities	Details	Original Estimate	Cost in 2021	Add 20%
Sanitary Sewer		\$15,000.00	\$25,740.00	\$30,888.00
Water Service		\$10,000.00	\$8,500.00	\$10,200.00
Natural Gas		\$5,000.00	\$55,000.00	\$66,000.00
Storm Sewer				\$0.00
Electric	Ameren (set pedestal)	2500	\$27,123.00	\$32,547.60
	Contractor	24623		
TOTAL		\$57,123.00	\$116,363.00	\$139,635.60

Leases & Taxes

Leases: current maximum lease = \$135.00/month

Taxes: current maximum tax = \$62.38



Potential Private Hangar Locations – Galesburg Airport



**LAND LEASE AGREEMENT
Between**

CITY of GALESBURG

And

“John Doe”

THIS LAND LEASE AGREEMENT (“Lease”) is entered into as of this ____ day of _____, 2024 by and between City of Galesburg (“CITY”) and _____ (“LESSEE”).

Whereas, LESSEE desires to lease the land described on Exhibit “A” and Exhibit “B” attached hereto and made a part hereof, which is presently vacant and unimproved (the “Land”) and located at GALESBURG MUNICIPAL AIRPORT in Galesburg, Illinois (the “AIRPORT”);

Whereas, LESSEE desires to construct a hangar facility, as shown in Exhibit “C”; and

Whereas, CITY is willing to enter into such a Lease with LESSEE on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Demise**. CITY hereby leases to LESSEE, and LESSEE hereby accepts, the Land described in Exhibit “A” and shown in Exhibit “B” during the Term (as hereinafter defined) on the terms and conditions contained herein.

2. **Term**. The term of this Lease shall begin on _____, 2024 and shall continue for a period of forty (40) years expiring on _____, 2064. The LESSEE shall have the option to extend the lease for one (1) term of ten (10) years unless LESSEE advises the CITY it does not want to extend the Lease. Should LESSEE not want to extend the Lease, LESSEE must inform the CITY in writing no more than one (1) year, nor less than six (6) months prior to the expiration of the then current Lease term.

Should the LESSEE fail to begin construction of the building within twelve (12) months of the beginning of the Lease Term, this lease shall terminate with no penalty and the Land will revert to the CITY.

3. **Rent**. Commencing as the first day of the Lease Term, and throughout the remainder of the Term of this Lease, LESSEE shall pay upon commencement of the Lease Term and on or before January 1st of each successive year of the Lease Term to

CITY annual ground rent, defined as the building footprint, at the rate of \$1.00 per year for the length of the Lease Term. After the initial forty (40) year Term Lease, and any extensions, the building will become the property of the CITY.

4. **Improvements.** LESSEE shall, at its sole cost and expense, construct on the Land a hangar building used for storage of aircraft with related infrastructure improvements only in accordance with the plans and specifications prepared by an independent third party and otherwise only as approved in writing by CITY, which approval may be withheld in its reasonable discretion collectively (the Improvements"). If the CITY fails to approve the plans and specifications as submitted within twenty-one (21) days LESSEE shall have the option to immediately terminate this Lease.

LESSEE represents and warrants to CITY that the Improvements will be designed by a licensed architect or engineer in accordance with all applicable laws, codes, ordinances, rules and regulations. LESSEE shall cause the Improvements to be constructed in accordance with all applicable laws, codes, ordinances, rules and regulations.

LESSEE shall be solely responsible for obtaining, at its expense, any and all construction and building permits, and CITY shall cooperate with LESSEE with respect to such items. LESSEE shall be responsible for installation of utilities to the building and relocating any existing utilities that are in conflict with the proposed hangar. LESSEE shall also be responsible for construction of the required pavement in order to utilize the proposed hangar and connect to the existing T-Hangar pavement. The proposed pavement shall be concrete of the proper designed thickness with minimum thickness of 8 inches.

LESSEE shall comply with all federal, state, and local laws, rules and regulations in the construction of all Improvements. LESSEE shall indemnify and hold harmless the CITY, and all CITY elected or appointed officials, officers, employees, agents, representatives, engineers, consultants and attorneys (collectively, the "City Indemnified Parties", from any and all claims that may be asserted against the City Indemnified Parties or one or more of them, in direct connection with the non-compliance of any State, Local, or Federal law or administrative rule or regulation relating to the construction of Improvements. This obligation to indemnify and hold harmless obligates LESSEE to defend any such claim and/or actions, pay any liabilities and/or penalties imposed, and pay all defense costs of CITY, including but not limited to the reasonable attorney fees of CITY.

At the end of the Lease Term, when the CITY owns the building, all Improvements will be the responsibility of the CITY.

5. **Use.** LESSEE shall comply with all Rules and Regulations made and adopted by the CITY from time to time relating to its tenants at the airport, provided that any such future Rules and Regulations do not materially interfere with, or infringe upon, LESSEE's right's to use, possess and enjoy the Land and Improvements as otherwise provided

herein. LESSEE may use the premises for any legal properly zoned purposes described in Exhibit "C."

LESSEE shall procure and maintain all licenses and permits legally necessary for the operation of LESSEE's business and send a copy of each said licenses and permits to CITY upon written request by CITY.

LESSEE shall be entitled to the non-exclusive use in common with CITY and other parties of automobile parking spaces at the Airport. Vehicles shall be parked only in designated parking areas.

6. **Ownership.** During the Term of this Lease, and any Lease extensions, the Improvements shall be the property of LESSEE, subject, however, to ownership of the Land by CITY. LESSEE shall have the right to the nonexclusive use of land, subject to the provisions of this Lease. Any other improvements installed on the Land, which are funded by federal, state or CITY funds, shall also be the property of CITY.

At the end of this Lease Term, and any Lease extensions, the Improvements becomes the property of the CITY. LESSEE will co-operate with the CITY in transferring ownership of the Improvements through a bill of sale.

7. **Taxes.** LESSEE shall pay, when due, all Taxes (as hereinafter defined) during the Term of this Lease. The term "Taxes" as used herein shall mean all real estate taxes and assessments, whether they be general or special (but not including income or franchise taxes or any other taxes imposed upon or measured by CITY's income or profits, except as provided herein), and utility taxes levied or assessed upon or with respect to any part of the Land and Improvements.

Should the State of Illinois, or any political subdivision thereof, or any other governmental authority having jurisdiction over any part of the Land or the Improvements: (a) impose a tax, assessment, charge or fee in place or partly in place of any Taxes, or by way of substitution for any of the foregoing described Taxes, all such taxes, assessments, charges or fees shall be deemed to constitute Taxes hereunder.

Notwithstanding the foregoing, Taxes shall not include any inheritance, estate, succession, transfer, gift or capital stock tax or franchise or net income tax applicable to businesses generally. LESSEE shall have the right to contest or appeal the Taxes in good faith and with due diligence, at its sole expense, at no expense to CITY and without any prejudice to CITY's rights, title or interest in the Land or the Improvements. If applicable, at the end of the Term, Taxes shall be prorated as reasonable determined by CITY. LESSEE shall, at its expense, promptly pay all fees and licenses due in connection with the Land and Improvements.

8. **Sublease and Assignment.**

a) CITY Consent Requirements LESSEE shall not, without the prior written consent of City, which may be withheld at City's sole discretion, voluntarily or involuntarily assign, mortgage, encumber or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof.

b) Lease Assumption. Sublessee Attornment. If LESSEE shall assign this Lease, the assignee shall expressly assume all of the obligations of LESSEE hereunder in a written instrument provided by CITY and delivered to CITY not later than ten (10) days prior to the effective date of the assignment. If LESSEE shall Lease any part of the Improvements or sublease any part of the Land, LESSEE shall obtain and furnish to CITY, not later than ten (10) days prior to the effective date of such Lease or sublease, as the case may be, and in form reasonably satisfactory to CITY, the written agreement of such LESSEE or Sublessee, as the case may be, to the effect that the LESSEE or Sublessee, as the case may be, shall attorn to CITY, at CITY's option and written request.

9. Default. LESSEE shall be in default under this Lease (Default") under the following circumstances:

a) Failure by LESSEE to pay any rent when due, if such failure continues for thirty (30) days after written notice to LESSEE of such failure; or

b) LESSEE fails to fulfill any other obligation hereunder and such failure continues for thirty (30) days after written notice thereof by CITY to LESSEE; or

c) Any lender of LESSEE shall have the right to cure any default of LESSEE hereunder as provided herein.

10. Remedies. In the event of a Default, CITY shall have the right to pursue any and all legal and equitable remedies against LESSEE available under applicable law without any additional notice to LESSEE, except for termination of this Lease.

CITY shall have the right to terminate this Lease in the event of a Default if CITY gives LESSEE a second (2nd) written notice of such Default (the first written notice being the one given under Section 9 above) and LESSEE fails to cure such Default within an additional thirty (30) day period. LESSEE shall have no additional rights to cure its Default after the expiration of such additional thirty (30) day period.

In the event that LESSEE fails to cure such Default within such additional thirty (30) day period, CITY may exercise its right to terminate this Lease by giving a third (3rd) written notice to LESSEE at any time within ninety (90) days after the expiration of such additional thirty (30) day period and such termination of this Lease shall be deemed effective immediately upon such third (3rd) written notice.

Upon such termination of this Lease, the Term shall be deemed expired, with the building becoming property of the CITY. CITY shall have ownership of, and all right, title and interest in and to, the Improvements and the Land free and clear of all security

interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to, the Improvements or the Land. In the event of such termination of this Lease, CITY shall remain entitled to pursue any and all legal and equitable remedies against LESSEE available under applicable law.

11. **Interest and Late Charge.** Except as otherwise specifically provided in this Lease, all amounts owed by LESSEE to CITY pursuant to any provision of this Lease shall be paid by LESSEE within thirty (30) days after CITY's written demand, and all such amounts (including, without limitation, all rent) shall bear interest from the date due until paid at the annual rate equal to five (5) percentage points in excess of the rate of interest announced from time to time by F&M Bank, or its successor, as its "prime rate" or "corporate base rate," changing as and when such rates changes, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event such lesser rate shall be charged.

In the event of a failure to pay rent when due hereunder and the continuation of such failure for thirty (30) days after written notice thereof from the CITY, LESSEE shall pay a late charge to CITY together with such payment of rent in an amount equal to five percent (5.00%) of the amount of the rent payment. Such late charge shall be in addition to the interest charge provided above any remedies of the CITY provided hereunder or under applicable law and shall not constitute liquidated damages.

12. **Maintenance and Repairs.** For the length of this Lease Term, and any Lease extensions, LESSEE shall keep and maintain all Improvements of any kind, which may be erected, installed or made thereon by LESSEE in good and substantial repair and condition, including the exterior condition thereof, and shall make all necessary repairs and alterations thereto. LESSEE shall assume all responsibility for the installation and maintenance of any fuel or oil (or any other material deemed hazardous by the Environmental Protection Agency) storage facility on the airport that is for the sole use of the LESSEE. Maintenance includes, but is not limited to, any and all environmental clean-ups of the site and/or removal of the facility. LESSEE agrees to hold harmless from any responsibility or expense, the CITY for any maintenance of the facilities during the Lease (except as provided in Section 35). LESSEE shall provide proper containers for trash and garbage and shall keep the Land free and clear of rubbish, debris and litter at all times. LESSEE shall also maintain all aprons, ramps and taxiways that are constructed by LESSEE and are for the exclusive use of LESSEE, its sublessees, guest and invitees. LESSEE shall keep mowed and in a sightly condition all landscaping and grass areas within the leased Land. LESSEE shall be responsible for payment of all electric, telephone, water, natural gas and other public utility services used on the Land during the Lease.

13. **Surrender.** Upon the cancellation or termination of this Lease or any extension or renewal thereof for any reason, LESSEE shall transfer ownership of building to the CITY. LESSEE shall also remove all trash and debris from the Land.

14. **Holding Over.** If LESSEE retains possession of the Improvements or any part thereof after the termination of the Lease by lapse of time or otherwise or after the earlier termination of LESSEE's right of possession, LESSEE shall be deemed to be a tenant at sufferance, LESSEE shall pay CITY rent of \$.30 per square foot per month of the Improvements for each portion of any month during which LESSEE shall retain possession of the Improvements or any portion thereof after such termination.

In addition to and without limiting any other rights and remedies which CITY may have on account of such holding over by LESSEE, LESSEE shall pay to CITY all direct damages suffered by CITY on account of such holding over by LESSEE. The provisions of this Section 14 shall not be deemed to limit or constitute a waiver of the right of CITY to evict LESSEE as provided herein or at law.

15. **Insurance.**

a) LESSEE's Insurance. LESSEE shall carry insurance during the entire Lease Term (and prior thereto, to the extent hereinafter provided), and any Lease extensions, insuring LESSEE and CITY as additional named insured. LESSEE shall maintain the following coverages in the following amounts, provided that any changes required by CITY in the following coverages or amounts shall be consistent with the coverages and/or amounts of insurance required of LESSEES of other similar Improvements in Galesburg, Illinois. Said insurance shall be with a company or companies satisfactory to CITY and shall include CITY's officers, agents, employees, invitees, licensees, from loss on account of each and every claim or demand arising out of alleged wrongful or negligent acts or omissions on the part of LESSEE, its agents, employees, invitees, contractors, or licensees.

b) During the Lease Term, and any Lease extensions, and at any time prior to the Lease Term when LESSEE is causing any work to be done on the building, public liability insurance with the broad form comprehensive liability endorsement, and comprehensive automobile liability insurance covering all owned, non-owned and hired automobiles of LESSEE, including the loading and unloading of any automobile, each in an amount not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence;

LESSEE shall, prior to the commencement of the Lease Term and from time-to-time during the Lease Term (and in the case of the aforesaid public liability insurance and "all risk" physical damage insurance, prior to commencement of construction of the subject work), and any Lease extensions, furnish the CITY, copies of policies or certificates evidencing the foregoing insurance coverages.

c) CITY's Insurance. CITY shall not be required to maintain any insurance with respect to the Land or the Improvements hereunder.

16. **Waiver and Indemnity.**

a) LESSEE agrees for itself, its successors and assigns, to defend and indemnify and save the City and its officers and employees harmless against claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Improvements and against and from all claims arising from (i) any condition of the Improvements (ii) any breach or default on the part of the LESSEE or its successors and assigns in the performance of any of its obligations under this Agreement (iii) any act of negligence of any assignee or lessee of the LESSEE, or any agents, contractors, servants, employees or licensees (iv) any act of negligence of any assignee or lessee of the LESSEE, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the LESSEE, or (v) any performance by the CITY of any act required under this Agreement or requested by the LESSEE or its successors and assigns other than negligent or willful misconduct of the City. The LESSEE agrees to defend, indemnify and save the CITY harmless from and against all costs and expenses incurred in or in connection with any such claim arising as foresaid or in connection with any action or proceeding brought thereon. In case any such claim is made or action brought based upon any such claim in respect of which indemnity may be sought against the LESSEE, upon receipt of notice in writing from the CITY setting forth the particulars of such claim or action, the LESSEE shall assume the defense thereof including the employment of counsel and the payment of all costs and expenses. The CITY shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the CITY unless the employment of such counsel has been specifically authorized by the LESSEE.

LESSEE acknowledges and agrees that the terms and conditions of this Lease are fair and reasonable, that this Lease represents an arm's length transaction between CITY and LESSEE, that CITY has not favored LESSEE over other tenants of Galesburg Municipal Airport and that LESSEE has been represented by competent legal counsel in connection with this Lease. LESSEE hereby waives and forever releases and discharges CITY from and against any and all of its claims, actions, liabilities, damages, losses and expenses arising or accruing prior to the date hereof with respect to this Lease.

17. **Damage and Destruction.** In the event that the Land or the Improvements are damaged or destroyed by fire or other casualty, LESSEE shall, in its sole discretion, at its sole expense, either:

a) promptly repair, restore and rebuild the Land and the Improvements to their original condition, except for modifications required to comply with the applicable laws, codes and ordinances then in effect, as shall be reasonably determined by CITY or

b) Terminate this Lease. The Term shall be deemed expired and CITY shall have ownership of, and all right, title and interest in and to the Land free and clear of all security interests, mortgages, liens and encumbrances and LESSEE shall have no ownership of, or any other right, title or interest in or to the Land.

18 **Subordination.** This Lease is subject to all applicable State and Federal laws as well as all articles and conditions of grant agreements entered into between the CITY and the Federal Aviation Administration and the Division of Aeronautics, Department of Transportation of the State of Illinois and nothing contained herein shall be construed to prevent the CITY from making such further commitments as it desires to make to the Federal Government or to the State of Illinois so as to qualify for further expenditure of federal and/or state funds at the Galesburg Municipal Airport, provided that any such further commitments do not materially interfere with, or infringe upon, LESSEE's right's to use, possess and enjoy the Land and Improvements as otherwise provided herein. This Lease shall also be subject and subordinate to all ordinances of the CITY and the Rules and Regulations of the Galesburg Municipal Airport as the same may be in effect and amended from time to time, provided that any such future amendments do not materially interfere with, or infringe upon, LESSEE's right's to use, possess and enjoy the Land and Improvements as otherwise provided herein.

19. **Miscellaneous.**

a) Condemnation. In accordance with the statutes of the State of Illinois relative to eminent domain, the CITY shall have the power to condemn this leasehold, or any portion thereof, even though the CITY is, itself, a party hereto.

b) Nondiscrimination. The LESSEE for itself, its personal representatives, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that:

For all aeronautical leases involving service to the public; each lease must be in conformance with Section 47107 of Title 49, USC, Subtitle VII, as amended, as follows:

"It is hereby agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 47107 of Title 49, USC, Subtitle VII, as amended, and the lessor reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature."

All leases involving services to the public must contain the assurances required by Title VI of the Civil Rights Act of 1964, and by Part 21 of the regulations of the Office of the Secretary of Transportation, as follows:

"The LESSEE for themselves, their personal representatives, successors in interest and assigns, as part of the consideration hereof, 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 otherwise be subjected to discrimination in the use of said facilities; 2) in the construction of any improvements on, over or under such land 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; 3) the LESSEE shall use the premises in compliance with all the other requirements imposed by Title 49, Code of Federal Regulations, Department

of Transportation, Subtitle A, Office of the Secretary, Part 21, nondiscrimination in Federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, as amended."

c) **Disclaimer of Exclusive Airport Use.** This Lease shall in no way convey the exclusive use of any part of the Airport, except with respect to the Land and the Improvements as described herein and shall not be construed as providing any special privilege for any public portion of the Airport. CITY reserved the rights to Lease to other parties any portion of the Airport not described herein for any purpose deemed suitable for the Airport by CITY.

d) **Lights.** LESSEE shall not post, install, erect or operate any light on any part of the Land and the Improvements without the express written consent of CITY in CITY's absolute discretion. Such lighting shall not be confusing, blinding or inhibiting to aircraft landing at the Airport as determined by the FAA and CITY in their sole discretion. If after installing such lighting, either the FAA or CITY determines that such lights are confusing, blinding or inhibiting to aircraft landing at the Airport, then LESSEE shall take such actions as are necessary to correct such problem, including redesigning, replacing or removing of such lighting, at LESSEE's sole cost.

e) **Covenant Not to Erect.** LESSEE shall not hereafter cause or permit the erection or location of any structure or object upon the Land and the Improvements to a height, which would penetrate the imaginary surfaces, described in Part 77a of the Federal Aviation Regulations.

f) **Grant of Easement and Rights to Public.** LESSEE further grants unto CITY, its successors, and assigns, for the benefit of the general public at large, an easement and a continuing right of way for the free and unobstructed passage of aircraft, by whomsoever owned or operated, in and through the air space over and across the Land and the Improvements.

g) **Covenant to Prevent Electronic Interference.** LESSEE shall not hereafter use or permit or suffer use of the Land and the Improvements in such manner as to create electrical or electronic interference with radio transmission and reception between radio-communications and air-navigation installations on or in the Airport and aircraft, or as to make it difficult for flyers to distinguish between Airport lights and others, or as to result in the glare in the eyes of flyers using the Airport, or as to impair the visibility in the vicinity or the Airport (e.g., by discharge of particular matter), or as otherwise to endanger and landing, takeoff or maneuvering of aircraft.

h) **Aerial Approach.** CITY reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent the LESSEE from erecting or permitting to be erected any building or other structure on the Land which, in the opinion of the FAA, would limit the usefulness of the Airport or constitute a hazard to aircraft.

i) Airport Rules. Regulations and Standards. LESSEE agrees not to operate in any manner that would interfere with the operation of the Airport and to comply with and be subject to each of the following:

i) The Airport Rules and Regulations adopted by the Galesburg City Council, which are now in effect or adopted in the future and which may be reasonably amended from time to time regarding the management, use and operation of the Airport, provided that any such Rules and Regulations adopted in the future do not materially interfere with, or infringe upon, LESSEE's right's to use, possess and enjoy the Land and Improvements as otherwise provided herein.

ii) The minimum requirements for land, buildings, facilities and parking which are now in effect and which may be reasonably adopted by CITY from time to time for the types of operations conducted on the Land and the Improvements, provided that any such requirements adopted in the future do not materially interfere with, or infringe upon, LESSEE's right's to use, possess and enjoy the Land and Improvements as otherwise provided herein.

iii) All ordinances, rules, regulations and executive and administrative orders and directives, promulgated by CITY, or by any authorized federal, state or local government agency or official which relate to abatement, control or regulation of noise emissions by aircraft using the Airport, as such apply to aircraft owned by, operated by, under the control of and/or doing business with LESSEE.

iv) The airport minimum standards for commercial operations. Provided that any such standards do not violate the FAA policy on exclusive rights, and that any such standards adopted in the future do not materially interfere with, or infringe upon, LESSEE's right's to use, possess and enjoy the Land and Improvements as otherwise provided herein.

20. **Governmental Interference**. Notwithstanding anything to the contrary in this Lease, in the event that any future law, rule, regulation or other governmental requirement which is beyond the control of CITY materially interfere with LESSEE's right's to use, possess and enjoy the Land and Improvements as provided herein, then LESSEE shall have the right to terminate this Lease. If Lease is terminated, Land and Improvements become property of the CITY.

21. **Binding on Successors**. This Lease shall be binding on and inure to the benefit of the lawful assigns, the successors, heirs, legatees and personal representatives of the respective parties.

22. **Severability**. It is the intention of both of the parties hereto that the provisions of this Lease shall be severable in respect to a declaration of invalidity of any provision hereof. If any provision hereof is declared invalid, then this Lease shall be construed by the parties to provide for the intent of such provision in a form, which shall be valid.

23. **Waiver of Terms.** The waiver by the CITY of any breach of the terms, covenants or conditions herein shall not be deemed a waiver of any subsequent breach.

24. **Recording.** This Lease may be recorded with the Recorder of Deeds of Knox County by CITY or LESSEE.

25. **Survival.** Without limitation on any other obligations of LESSEE or CITY, which shall survive the expiration or termination of this Lease, the parties' respective obligations to indemnify, defend and hold harmless the other party and others pursuant to any provisions of this Lease shall survive the expiration or termination of this Lease.

26. **Cumulative Remedies: Illinois Law.** The rights and remedies of CITY under this Lease are cumulative and none shall exclude any other rights or remedies allowed by law or equity. This Lease is declared to be an Illinois contract, and all of its terms shall be construed according to the internal laws of the State of Illinois.

27. **Venue.** Any litigation related to the terms of this Agreement shall be conducted in the Ninth Judicial Circuit, Knox County, Illinois, which shall be the only appropriate forum for the resolution of disputes hereunder.

28. **Relationship.** CITY and LESSEE disclaim any intention to create a joint venture, partnership, agency or lender/borrower relationship.

29. **Estoppel Certificate.** LESSEE agrees that from time to time upon not less than ten (10) days' prior written request by CITY, and LESSEE agrees to use commercially reasonable efforts to cause any Sublessee, licensee, concessionaire or other occupant of the Land and the Improvements claiming by, through or under LESSEE, to compete, execute and deliver to CITY or CITY's designee a written Estoppel certificate certifying (a) that this Lease is unmodified and is in full force and effect (or if there have been modification, that this Lease, as modified, is in full force and effect and setting forth the modification); (b) the amounts of this monthly installments of Rent then required to be paid under this Lease; (c) the date to which Rent has been paid; (d) that to the best of LESSEE's knowledge, CITY is not in default under any of the provision of this Lease, or if in default, the nature thereof in detail and what is required to cure same; and € such other information concerning the status of this Lease or the parties' performance hereunder reasonably requested by CITY or the party to whom such Estoppel certificate is to be addressed.

30. **LESSEE Authorization.** LESSEE represents and warrants that this Lease has been duly authorized, executed and delivered by and on behalf of LESSEE and constitutes the valid and binding agreement of LESSEE in accordance with the terms hereof.

31. **Covenant of Quiet Enjoyment.** LESSEE's quiet and peaceful enjoyment of the Land and the Improvements shall not be disturbed or interfered with by CITY during the

Term as long as LESSEE is not in default hereunder, subject to the use of the Airport as permitted by applicable law and CITY's other rights hereunder and under applicable law.

32. **Storage of Damaged Aircraft.** No damaged aircraft shall be stored in view of the general public.

33. **Lessee's Personnel.** All personnel employed by LESSEE on the Land shall be schooled, trained and competent for their assigned duties and shall be of good moral character.

34. **Utility Lines, Roads.** CITY shall, at no cost to the LESSEE, maintain the utility lines to the described Land, including water, sanitary sewer lines, electric and natural gas.

CITY shall also maintain at no cost to LESSEE the roads to the described Land. The maintenance an/or installation of all utilities and roadway upon the described Land is the responsibility of the LESSEE.

35. **Notices.** All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the fifth (5th) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (c) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivered to such courier, or (d) hand delivered, in every case addressed to the party to be notified as follows:

If to CITY:

City of Galesburg Mayor
City of Galesburg
P.O. Box 1387
Galesburg, IL 61402

If to LESSEE

XXXX
XXXX
XXXX
XXXX

With a copy to LESSEE's lender, if the name and address of such lender have been previously furnished to CITY in writing in the manner require hereunder; or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection, refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

IN WITNESS WHEREOF, the parties hereto have executed this *Lease* and caused their respective seals to be affixed and attested thereto as of the date first written above in this *Lease*.

CITY OF GALESBURG, ILLINOIS
A Municipal Corporation

LESSEE: XXXXX

By: _____
Peter Schwartzman, Mayor

By: _____
President

Attest:

Kelli R. Bennewitz, City Clerk

Attest:

Secretary

DRAFT

EXHIBIT "A"
LAND DESCRIPTION

The land identified in this lease is located at the Galesburg Municipal Airport located at _____, Galesburg, IL 61401.

The center of the land is at _____. The land is _____ of the main large hangars and _____ of the boxed row of hangars identified as Hangars _____.

The dimension of land in this lease is no more than _____.

The hangar in this lease will be built over some existing concrete apron and grass.

EXHIBIT "B"
DIAGRAM OF THE LAND

<<<SITE MAP>>>

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EXHIBIT "C"
DESCRIPTION OF IMPROVEMENTS

<<DESCRIPTION OF IMPROVEMENTS>>

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