

**CITY OF MCKINNEY, TEXAS
AND
TEXAS GLOBAL AEROPLEX, LLC
CHAPTER 380 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This Chapter 380 Economic Development Program and Agreement (“Loan Agreement”) is made and entered into on this 21st day of March, 2012, by and between the City of McKinney, Texas (the “City”), Texas Global Aeroplex, LLC (hereinafter “TGA”), Joe Borgesen (“Borgesen”) and Al Wise (“Wise”), who together with Borgesen are collectively referred to as the “Guarantors”).

WHEREAS, TGA is entering into this Chapter 380 Economic Development Program and this Loan Agreement pursuant to a program initiated by the City pursuant to Chapter 380 of the Texas Local Government Code, for the primary purpose of relocating its operations at the Collin County Regional Airport (“CCRA”) in McKinney, Texas; and

WHEREAS, the City has agreed to an economic development loan to TGA to assist TGA in its due diligence and its pursuit of financing for the project; and

WHEREAS, the City has the authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City; and

WHEREAS, the City determines that a loan to TGA, with provisions for forgiveness, of its general funds will serve the public purpose of promoting local economic development and enhancing business and commercial activity in the City; and

WHEREAS, the City has concluded and hereby finds that this Loan Agreement clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the City and TGA.

NOW, THEREFORE, for and in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and TGA agree as follows:

SECTION 1. TERM

This Loan Agreement shall be effective from the Effective Date until April 1, 2013, unless terminated sooner under the provisions herein.

SECTION 2. DEFINITIONS

The following words shall have the following meanings when used in this Loan Agreement.

- a. City. The word “City” means the City of McKinney, Texas. For purposes of this Agreement, City’s address is 222 N. Tennessee, McKinney, Texas 75069.
- b. Guarantors. The word “Guarantors” means Joe Borgesen and Al Wise, jointly and severally.
- c. Loan. The word “Loan” means an advance to TGA under the terms of this Loan Agreement, plus monies previously paid by the City, aggregating \$39,000.00.
- d. Loan Advance Submittal Package. The words “Loan Advance Submittal Package” mean the copies of paid invoices for direct costs incurred in its pursuit to due diligence and/or finance the project.
- e. Loan Agreement. The word “Loan Agreement” means this Chapter 380 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Loan Agreement from time to time, if any.
- f. TGA. The initials “TGA” mean Texas Global Aeroplex, LLC, a Texas limited liability company, whose principal business address is 300 Park St. Suite 385, Birmingham, Michigan, 48009.

SECTION 3. LOAN FUNDING OBLIGATION OF CITY

Concurrent with the execution of the Promissory Note executed concurrent herewith and this Loan Agreement, the City shall fund Seventeen Thousand and No/100 (\$17,500.00) Dollars of the Loan, and thereafter, during the term of this Loan Agreement, City shall fund the balance of the Loan, an amount not exceeding Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00), to an aggregate funded amount of up to Twenty-Five Thousand and No/100 Dollars (\$25,000.00), upon the satisfaction of the express terms and conditions described in Section 4 below. Subject to TGA’s continuous satisfaction of Section 4 below, the City agrees to process Loan advances within thirty (30) business days after receipt of TGA’s Loan Advance Submittal Package. As an additional portion of the loan to TGA, TGA agrees to pay the City its actual cost, up to Fourteen Thousand and No/100 Dollars (\$14,000.00), of an Economic Impact Study commissioned by City for the project.

SECTION 4. OBLIGATIONS OF TEXAS GLOBAL AEROPLEX, LLC

While this Loan Agreement is in effect, TGA shall comply with the following terms and conditions to be eligible for any Loan advance; as such conditions are described or may apply:

- a. TGA shall diligently pursue funding for its project at CCRA from the Texas Enterprise Fund.
- b. Upon execution of this Loan Agreement TGA shall submit paid invoices totaling Seventeen Thousand Five Hundred and No/100 Dollars (\$17,500.00) Dollars for direct costs incurred incident to the due diligence and financing of the project.
- c. TGA shall submit paid invoices for direct costs incurred incident to the due diligence and financing of the project.
- d. TGA shall be obligated to repay the Loan at its maturity upon the occurrence of any of the following (i) TGA executes a letter of intent with the City or announces its project at CCRA on or before March 31, 2013, (ii) TGA executes a letter of intent with another airport or announces its project at such other airport on or before March 31, 2013. If TGA elects to publicly abandon the project after March 31, 2013, the Loan shall be forgiven and the Guarantors shall be released; however until such public announcement of abandonment, the Loan shall be recourse against the Maker and the Guarantors.

SECTION 5. EVENTS OF DEFAULT.

Each of the following shall constitute an event of default under this Loan Agreement:

- a. City's failure to process any Loan advance to TGA accordance with Section 3 of this Loan Agreement.
- b. TGA's violation or failure to perform any of the covenants contained in Sections 4 hereinabove.

SECTION 6. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions are a part of this Loan Agreement:

- a. **Amendments.** This Loan Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Loan Agreement. No alteration of or amendment to this Loan Agreement shall be effective unless given in writing and signed by all of the parties hereto.
- b. **Applicable Law and Venue.** This Loan Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Venue for any action arising under this Loan Agreement shall lie in the state district courts of Collin County, Texas.
- c. **Binding Obligation.** This Loan Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Loan Agreement on behalf of City has full authority to execute this Loan Agreement and bind City to the same. TGA warrants and represents that the individual executing this Loan Agreement on its behalf has full authority to execute this Loan Agreement and bind it to the same.
- d. **No Waiver of Sovereign Immunity.** No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- e. **Severability.** In the event any provision of this Loan Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Loan Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- f. **Notices.** All notices required to be given under this Loan Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Loan Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- g. **Effective Date.** The effective date (the "Effective Date") of this Loan Agreement shall be the date of the later to execute this Loan Agreement by TGA and City.
- h. **Counterparts.** This Loan Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

[Remainder of Page Intentionally Left Blank]

TEXAS GLOBAL AEROPLEX, LLC

a Texas limited liability company

By: _____

Name: _____

Title: _____

Date Signed: _____

CITY OF MCKINNEY, TEXAS

By: _____

Name: JASON GRAY

Title: City Manager

Date Signed: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA GARCIA
Deputy City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

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