

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT BY AND BETWEEN THE CITY OF MORGANTOWN (LESSOR) AND HELICOPTER ANALYTICS, INC. (LESSEE) AS IT PERTAINS TO OFFICE SPACE AT THE MORGANTOWN MUNICIPAL AIRPORT.**

WHEREAS, Helicopter Analytics, Inc. wishes to lease space from the City within the Municipal Airport Terminal Building so as to operate an office; and

WHEREAS, City Administration has recommended to Morgantown City Council that it approve the lease, a copy of which is hereto attached; and

WHEREAS, Morgantown City Council is of the opinion that it would be in the best interest of the City and its Airport to approve said lease agreement.

NOW THEREFORE, the City of Morgantown hereby ordains that its City Manager is authorized to execute the lease agreement hereto attached and made a part of this ordinance, by and on behalf of the City of Morgantown.

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

## LEASE AGREEMENT

**THIS AGREEMENT**, made this 1<sup>st</sup> day of April, 2011, by and between **THE CITY OF MORGANTOWN**, a municipal corporation, hereinafter referred to as the **"CITY"**, and **HELICOPTER ANALYTICS, INC.**, (hereinafter referred to as **"LESSEE"**).

**WITNESSETH, THAT WHEREAS**, the **"CITY"** owns, controls and operates the Morgantown Municipal Airport; and

**WHEREAS**, **"LESSEE"** desires to lease office space from the City within the Airport Terminal Building.

**NOW THEREFORE**, for and in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows;

### ARTICLE I - PREMISES

- 1.1 The **"CITY"** hereby leases to **"LESSEE"** office space, more particularly identified as Suite 214 within the Morgantown Municipal Airport Terminal Building as shown on the Exhibit hereto attached.

### ARTICLE II - CONSTRUCTION/INSTALLATION OF IMPROVEMENTS

- 2.1 The **"LESSEE"** shall not, without prior written consent of the **"CITY"**, make any permanent improvements to the assigned area such as the demolition of existing walls, the construction of new permanent walls, the installation of electrical outlets or lighting, or any modifications to the heating/air conditioning systems.
- 2.2 The **"LESSEE"** may place furniture, property, and equipment into the assigned area as is necessary for the conduct of its business. Installed equipment which requires electrical or natural gas power shall be subject to the conditions outlined in ARTICLE VI, paragraph 6.1 of this Agreement. The **"LESSEE"** shall have the right to remove the same upon termination of this Agreement, providing the premises are repaired to the satisfaction of the **"CITY"** or restored to their original condition after such removal.

### ARTICLE III - TERM OF AGREEMENT

- 3.1 The **"LESSEE"** shall have and hold said premises, facilities, rights, licenses, and privileges set forth herein for a term commencing April 1, 2014, and terminating March 31, 2016, unless sooner terminated as herein provided. Upon expiration of this Agreement, it may be extended on a month to month basis by mutual written agreement of the Lessee and Morgantown Airport Director.

- 3.2 It is the mutual intent of the parties that this Agreement shall remain in effect for the full term, subject to each party's right on breach.

#### ARTICLE IV - RENTAL FEES

- 4.1 The "LESSEE" agrees to pay the "CITY" a monthly rental fee of \$450.00 total for office space composed of one office. Payment will be made in advance, on or before the first business day of each month during the terms hereto and any extension thereof.
- (a) Failure to remit payment as to the prescribed time will result in an additional charge of 1.5% per month of all unpaid rents and fees.
  - (b) All sums due hereunder shall be paid by check payable to The City of Morgantown and mailed to the "Morgantown Municipal Airport, 100 Hart Field Road, Morgantown, West Virginia 26505 unless otherwise directed in writing by the "CITY".

#### ARTICLE V - MAINTENANCE OF PREMISES

- 5.1 The "CITY" agrees to provide the "LESSEE" with basic custodial services for the corridor outside the assigned area. These services are limited to sweeping, mopping and dusting of the corridor as needed.
- 5.2 The "CITY" agrees to maintain, at its expense, the basic infrastructure of the terminal building to include the basic structure, heating/air conditioning systems, plumbing systems and electrical systems provided however, such maintenance necessitated by the negligence of the "LESSEE", his employees or agents, or by willful destruction, shall be at the expense of the "LESSEE".
- 5.3 The "CITY", Airport Director or its/his duly appointed representatives shall have the right to enter the "LESSEE'S" assigned area to,
- a) Inspect the assigned area at reasonable intervals during the "LESSEE'S" regular business hours, or at any time in case of an emergency, to determine if the "LESSEE" is in compliance with the terms and conditions of this Agreement. The "CITY" may, at its discretion, require the "LESSEE" to effect any required maintenance or repairs at the "LESSEE'S" own cost; and
  - b) Perform any and all things which the "LESSEE" is obligated to, and has failed to do, after providing the "LESSEE" with ten (10) days' written notice to act, including maintenance, repairs and replacements to "LESSEE'S" assigned area. The cost of all labor, materials and overhead charges required for the performance of such work will be paid by the "LESSEE" to the "CITY" within ten (10) days following receipt

of invoice for said charges by “LESSEE”.

#### ARTICLE VI - UTILITIES

- 6.1 The “CITY” shall pay all electric current, water, and natural gas that enters the assigned area via presently installed underground utility lines and pipes, to the Terminal Building, and operates by local utility companies. The “LESSEE” shall be expected to exercise all practical economy and failure to do so will constitute unsatisfactory operations. The “CITY” shall have the right to insist upon and institute practices, which it deems necessary, which the “LESSEE” shall be expected to implement, to ensure no misuse or abuse of this privilege.
- 6.2 Should the “LESSEE” require any additional utility service other than that provided for above (such as telephone or internet lines), the “LESSEE” agrees to bear all costs associated with installing such utility service.

#### ARTICLE VII - GENERAL PROVISIONS

- 7.1 The “LESSEE” hereby covenants and agrees:
- a) That the facilities and space hereby leased shall be maintained and left in a neat and clean condition and the “LESSEE” shall conduct his business in such a manner as not to interfere with the normal operations of the Airport.
  - b) That personnel performing services for the “LESSEE” shall be neat, clean, and courteous, and the “LESSEE” shall not permit it’s agents, servants or employees so engaged to conduct business in a loud, boisterous, offensive or objectionable manner.
  - c) That the “LESSEE” shall abide by and be subject to all reasonable Airport Rules and Regulations which are now, or may from time to time be, promulgated by the “CITY”, concerning management, operation or use of the Airport.
  - d) That the “LESSEE” will meet all expenses in connection with the use of the leased premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees, and assessments lawfully levied or assessed against it or assessed because of it’s operations hereunder, and that it will secure all required permits and licenses for it’s operations hereunder.
  - e) That the “LESSEE” will not on the grounds of race, color, national origin, sex, handicap, religion, or age discriminate, or permit discrimination, against any person or group of persons in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of

Transportation and Title XI of the Civil Rights Act of 1964.

## ARTICLE VII - INDEMNIFICATION AND INSURANCE

- 8.1 "LESSEE" shall protect, defend, indemnify and hold the "CITY" and its representatives and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines or judgements arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, court costs and expert fees), of any nature whatsoever arising out of, or incidental to this Lease Agreement or "LESSEE'S" use or occupancy of the leased premises or the acts or omissions of "LESSEE'S" officers, employees, agents, representatives, contractors, sub-contractors, licensee's or invitee's, regardless of where the injury, death, loss or damage may occur, unless such injury, death, loss or damage is caused by the negligence of the "CITY" or its employees, agents, officers, or representatives. The "CITY" shall give "LESSEE" reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.
- 8.2 Without limiting its liability as aforesaid, the "LESSEE" shall carry insurance in the following amounts during the term hereof, naming the "CITY" as co-insured:

### Public Liability

Bodily Injury	\$500,000 per occurrence
Property Damage	\$50,000 per occurrence

- 8.3 The "LESSEE" shall provide the "CITY" with certification of insurance throughout the term of this agreement, evidencing such coverage to be in force.
- 8.4 The "CITY" agrees to notify the "LESSEE" in writing, as soon as practicable of any claims, demands or action arising out of an occurrence covered hereunder of which the "CITY" has knowledge, and to cooperate with the "LESSEE" in the investigation and defense thereof.

## ARTICLE IX - CANCELLATION/TERMINATION

- 9.1 It is understood and agreed by the parties hereto this agreement may be terminated by either party, for any reason, by one party giving the other party sixty (60) days advanced written notice. It is further understood and agreed by and between the parties hereto the following provisions will result in cancellation of this agreement.
- (a) In the event the "LESSEE" shall make default in any of the provisions

of this agreement, and said default shall continue for a period of thirty (30) days, then and in that event, this agreement may be canceled and held for naught by the "CITY", and the "LESSEE" shall immediately surrender possession of the office space.

- (b) A national emergency results in the Airport being substantially occupied by the United States Government so as to materially interfere with the "LESSEE'S" operation.
- (c) In the event the Airport, or a material portion thereof, is destroyed by fire or other cause, resulting in material interference with the "LESSEE'S" operations.

9.2 Upon termination or cancellation of this Agreement, the "LESSEE" shall remain liable for any rental fee and/or custodial fee payments, if any, then due, and the "LESSEE" shall immediately surrender possession of the office space.

#### **ARTICLE X - MISCELLANEOUS PROVISIONS**

10.1 Any notice or other communication to the parties hereunder shall be deemed validly given, served or delivered upon deposit in the United States Mail, registered and with proper postage and registration fee paid, addressed as follows:

#### **THE "CITY"**

**OFFICE OF THE AIRPORT DIRECTOR  
Morgantown Municipal Airport  
100 Hart Field Road  
Morgantown, West Virginia 26505**

#### **"LESSEE"**

**HELICOPTER ANALYTICS, INC.  
1411 Pittsburgh Street  
Scottsdale, PA 15683  
ATTN: Bob Moser, President**

Or other address as may be designated by either party, in writing, from time to time.

10.2 To the extent not prohibited by law, the "CITY" shall attempt to protect the rights and privileges granted to the "LESSEE" under this and similar agreements.

- 10.3 The failure of the “CITY” to insist, in any one or more instance, upon the strict performance by the “LESSEE” of any of the provisions, terms, covenants, reservations, conditions or stipulations contained in this Lease Agreement shall not be considered as a waiver or relinquishment thereof for the future, but the same shall remain and continue in full force and effect, and no waiver of the conditions or stipulations hereof shall be deemed to have been made in any instance unless expressly in writing.
- 10.4 If any term, clause or provision of this Lease Agreement shall be adjudged by any court or government agency to be invalid or contrary to any applicable law or regulation or state government agency, such invalidation or determination shall not affect the validity and enforceability of the remaining portions of the Lease Agreement; and, to this end, the terms, clauses and provisions of this Lease Agreement are hereby agreed to be severable.
- 10.5 Both parties hereto acknowledge and agree that his document contains the entire agreement between the parties and that they have not relied upon any statements, representations, agreements or warranties, except such as are expressed herein, and that no amendment or modification of the Lease Agreement shall be valid or binding unless expressed in writing and executed by the parties hereto within the amended Lease Agreement in the same manner as the execution of this Lease Agreement.
- 10.6 This Lease Agreement shall be deemed to have been made in and construed in accordance with the laws of the State of West Virginia.
- 10.7 “LESSEE” shall not assign, transfer or sublease this Lease Agreement, by process or operation of law or in any other manner whatsoever, or sublet any portion of the leased premises or permit any portion of the leased premises to be occupied or used by anyone other than the “LESSEE” without the prior, written consent of the “CITY”, which said consent may be withheld in the sole discretion of the “CITY”.

**IN WITNESS WHEREOF**, the Parties have caused this agreement to be executed by their duly authorized officer and their respective seals to be hereunto affixed, the day and year first above written.

CITY OF MORGANTOWN

BY: \_\_\_\_\_  
Jeff Mikorski, City Manager

In the presence of:

City Clerk

ATTEST:  
(Seal)

HELICOPTER ANALYTICS, INC.

BY:  \_\_\_\_\_

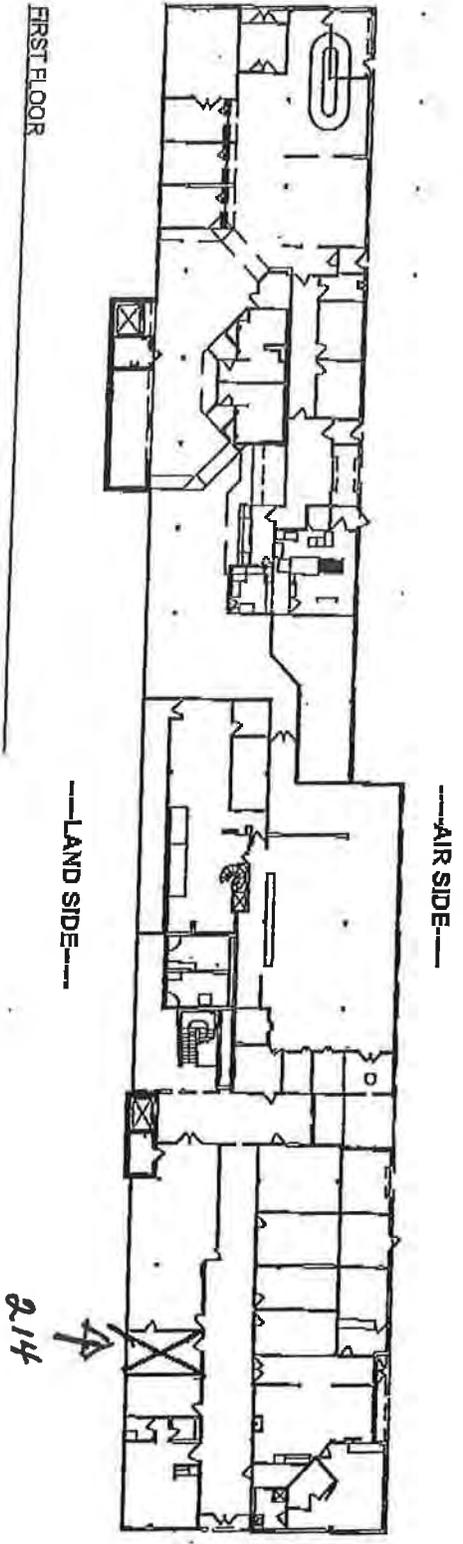
TITLE: PRESIDENT/CEO \_\_\_\_\_

In the presence of:

Witness

ATTEST:  
(Seal)

# EXHIBIT A



Terminal Bldg.