

When recorded, mail to:  
City of Prescott  
City Clerk  
201 S Cortez St  
Prescott, Az. 86303

**City Facilities Commercial Premises Lease – 1993-067A2**  
Second Amendment

AMENDMENT NUMBER TWO TO AIRPORT LEASE WITH GUIDANCE HELICOPTERS, INC.

THIS AMENDMENT NUMBER TWO TO CITY FACILITIES COMMERCIAL PREMISES LEASE, is by and between the CITY OF PRESCOTT, an Arizona municipality (hereinafter referred to as "City" and/or "Lessor") and GUIDANCE HELICOPTERS, INC. (hereinafter referred to as "Guidance" and/or "Lessee"). Lessor and Lessee may be jointly called the "Parties", or individually, the "Party".

**WHEREAS**, City and Bonanza Enterprises entered into a City Facilities Commercial Premises Lease (1993-067) ("Lease") on June 30, 1993, whereby the City leased to Bonanza Enterprises certain property at the Prescott Municipal Airport; and,

**WHEREAS**, the original Bonanza Enterprises Lease was assigned to Guidance Helicopters, Inc., on May 31, 2000; and

**WHEREAS**, the current lease had a twenty-five (25) year term, with two five-year options to extend the term; and

**WHEREAS**, the current Lease expired on November 30, 2018; and,

**WHEREAS**, the current Lease, required the Lessee to notify the Lessor in writing of the Lessee's intention to exercise the renewal option not less than sixty (60) days nor more than ninety (90) days prior to the expiration of the initial term of this Agreement or any extension thereof; and,

**WHEREAS**, the Lessee notified the Lessor in writing on October 24, 2018, 38 days prior to the Lease expiration of their intention to exercise the renewal option; and,

**WHEREAS**, the Lessee's failure to timely request their option created a month-to-month holdover tenancy; and

**WHEREAS**, the Lessee has raised defenses to the City's position on the expiration/default; and

**WHEREAS**, the parties wish to resolve any disputes regarding the status of this Lease Agreement through this Amendment Number Two; and

**WHEREAS**, the parties mutually agree to allow Lessor a five (5) year extension of the original Lease, effective December 1, 2018 through November 30, 2023, with an additional five (5) year option to extend until November 30, 2028, under the terms stipulated below contained in Paragraphs 2(a), 2(c), and 3(a) of this Amendment Number Two; and

**WHEREAS**, upon the expiration of this Lease Amendment Number Two (November 30, 2023), the Lessee, must submit in writing their desire to exercise the option to renew per the terms as set forth in section 3 (a) below; and

**WHEREAS**, the parties mutually agree to all obligations under Paragraph 8(b) (“Capital Improvements”) of the original Lease have been met; and

**WHEREAS**, the value of any additional improvements beyond those required in Paragraph 8(b) of the original Lease have been recouped by the benefit of the City providing a below-market rental rate in the original lease and in this proposed Amendment Number Two; and

**WHEREAS**, amending the Lease is in the best interest of the public health, safety and welfare.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Guidance agree to mutually amend Lease Agreement 1993-067, via this Amendment Number Two as follows:

**SECTION ONE.** THAT Paragraph 2(a) of the First Amendment to Lease 1993-067 (1993-067A) and Paragraph 2(c) of the original Lease 1993-067 are hereby amended to read as follows:

2.(a). Lease Payment. The initial annual lease payment shall be Four Thousand Nine Hundred Seventeen Dollars and 12/100 Cents (\$4,917.12) per year plus all applicable taxes. Lessee shall pay to Lessor the sum of Four Hundred Nine Dollars and 76/100 Cents (\$409.76) per month, plus all applicable taxes, and a like amount each and every month thereafter, until adjusted as set forth in Paragraph 2(c). Payments shall be due and payable in advance of the first day of each month prior to the month in which it applies. Failure to pay the amount of the monthly payment by the twentieth (20) day of the month in which it is due shall be grounds for termination of this agreement.

2.(c). Lease Payment Adjustments. Monthly lease payments for the first year of this Amendment shall be in the amount set forth in Paragraph 2(a). Adjustments to lease payments shall be made on July 1st of each and every year thereafter based upon increases in the Consumer Price Index (as determined by the U.S. All Cities Index) during the preceding twelve month period ending April 30 of that year, provided, however, that notwithstanding the C.P.I. increase (or absence thereof), the annual rent increase shall be not less than two percent (2%).

Should the Lessee exercise their option to renew for an additional five (5) year term, the Lease payments shall be as follows:

- (i) December 01, 2025-November 30, 2026 – Rent shall be One-Third (1/3) of the Fair Market Value Assessment.
- (ii) December 01, 2026-November 30, 2027 – Rent shall be Two-Thirds (2/3) of the Fair Market Value Assessment.
- (iii) December 01, 2027-November 30, 2028 – Rent shall be full Fair Market Value.

**SECTION TWO.** THAT Paragraph 3(a) of the original Lease (1993-067) is hereby amended to read as follows:

3.(a). Duration. Subject to earlier termination as provided in this Agreement (1993-067 and amendments thereto), the initial term of this Amendment No. 2 is for a five (5) year period, commencing on December 1, 2018 and expiring on November 30, 2023. Lessee shall have the option to renew this Agreement for an additional term of five (5) years. Rental adjustments, should the Lessee exercise their option to renew for five (5) years, shall be subject to the terms contained in Paragraph 2 (c) of this Amendment No. 2. Lessee shall notify Lessor in writing of Lessee's intention to exercise the renewal option not less than sixty (60) days, nor more than ninety (90) days, prior to the expiration of the initial term of this Amendment No. 2 (November 30, 2023). Should the Lessor need the Leasehold property for Airport expansion, Lessor reserves the right to early termination of the renewal option. Should the City/Lessor determine, at its sole discretion, that airport expansion will occur, Lessor will provide Lessee with a six month written notification that it intends to terminate this Lease in its entirety. No penalty or liability will accrue to City/Lessor for terminating the Lease under this Paragraph of this Amendment No. 2. Lessee will be entitled to salvage any mechanical/HVAC equipment from the building in the event the Lessor exercises the six month early termination notice for Airport expansion. However, Lessee will have no claim for monetary or equitable damages against the City for invoking its right to early termination under this Paragraph 3.(a).

**SECTION THREE.** THAT the parties mutually agree that all obligations under Paragraph 8(b) ("Capital Improvements") of the original Lease have been met and Lessee shall be provided no compensation or monetary consideration for the improvements required in Paragraph 8(b) of the original Lease, nor any improvements beyond those required in Paragraph 8(b). The parties agree that the value of all improvements has been recouped by the benefit of the City providing a below-market rental rate in the original Lease and in this proposed Amendment Number Two.

**SECTION FOUR.** THAT all other terms and conditions of City Facilities Commercial Premises Lease 1993-067 remain in full force and effect throughout the term of this Lease. In the event of any inconsistencies between the Lease and this Amendment Number Two, the terms of this Amendment Number Two shall control. Except as expressly set forth in this Amendment Number Two, City Facilities Commercial Premises Lease 1993-067 and the First Amendment thereto, is otherwise unmodified and remains in full force and effect.

DATED THIS \_\_\_\_\_ Day of \_\_\_\_\_, 2019.

**Lessee:**

GUIDANCE HELICOPTERS, INC.

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

State of Arizona    )  
                                  ) ss.  
                                  )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executes it.

[Seal]  
Signature \_\_\_\_\_

My commission expires:

**Lessor:**

CITY OF PRESCOTT, an Arizona municipality

By: \_\_\_\_\_  
      GREG L. MENGARELLI, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
MAUREEN SCOTT  
City Clerk

\_\_\_\_\_  
MATT PODRACKY  
Interim City Attorney