

AIR TAP Briefings

A publication of the Airport Technical Assistance Program of the Center for Transportation Studies at the University of Minnesota

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Navigating airport leases and agreements

Editor's note: Fixed-based operator and specialized aviation service operation agreements were the topic of an AirTAP Fly-Around session at this year's Minnesota Council of Airports annual symposium. Information from that session, led by Mike Wozniak of the League of Minnesota Cities and Shaun Germolus of AirportAdmin, forms the basis for this Briefings article.

Insurance liability is a concern for many airport managers and staff. Poorly written contracts for airport managers and fixed-based operators (FBOs) can bring cities and counties into litigation, but strong contracts can insulate them from liability when an FBO or specialized aviation service operation (SASO) lacks the appropriate insurance.

The contract between an airport and an FBO or SASO can be used to enforce performance standards, minimum standards, and other arrangements. A good contract also specifies the required insurance coverage and obligations of each party responsible for claims and losses that might arise. (The city or county must be sure, however, to enforce the terms of the contract when requiring an FBO or SASO to carry insurance.)

According to Mike Wozniak, underwriting manager for the League of Minnesota Cities, airport management services and FBO services should be provided under separate contracts. When the same firm supplies both, the management agreement should ensure separation of services provided by the manager and the FBO.

The role of leases and agreements

Because an FBO or SASO often uses space at an airport, the contract can be written as a property lease. Establishing a tenant-landlord relationship helps ensure that the FBO or SASO is not considered an employee of the city when conducting its regular business duties. This may protect the airport owner from future liability.

Key elements of the lease portion of the agreement include:

- Specific information about the property the tenant is allowed to use
- Responsibilities for utilities and other costs
- Language allowing property inspections for lease compliance
- Conditions under which the lease may be terminated
- Financial terms of the agreement
- Expiration dates for the agreement
- Escalation clause allowing rates to be revisited and adjusted over time or in the event of a significant change

A lease should specify the services the commercial operator (1) is required to

provide, as well as when it will provide them (e.g., hours of operation, days of the week); (2) may provide as optional; and (3) may *not* provide.

It should also include minimum standards that must be met by all airport users performing the same kinds of services.

To qualify for aid under the federal Airport Improvement Program (AIP), the lease cannot grant a commercial operator a monopoly to sell fuel, service aircraft, or conduct other aviation activities, and the airport cannot allow it to engage in economic discrimination against its customers. Additionally, all FBOs making the same or similar use of the airport must be subject to the same rates, fees, rentals, and other charges.

This does not mean each commercial operator must be charged the same rent per square foot, but rather that the airport must have a reasonable and defensible basis for charging different rates. The fact that one commercial operator has a prime location at the airport while another has a subprime location may be a valid reason for treating them differently. Or one operator may have made a substantial economic investment in building or improving its facilities while another operator rents office or hangar space constructed by the airport owner.

A lease should specify requirements for adequate and appropriate insurance coverage. The commercial operator's insurance policy can be written to protect that operator and the airport owner from liability. Mn/DOT specifies minimum insurance coverage for different types of commercial operations; the airport owner can increase these and may require additional types and amounts of insurance.

The lease should contain defense and indemnity provisions in favor of the airport owner. This makes commercial operators responsible for protecting the



city financially against any claims arising from their operations under the agreement. The insurance requirements, together with defense and indemnity provisions, provide the city with a layered approach to protecting itself.

Airport owners are in the safest position when they are named an additional insured in the commercial operator's insurance policies and when they require the commercial operator to have a policy that covers contractual liability (a policy to back up the operator's promise to defend and indemnify the airport owner).

The value of being named as an additional insured depends on the language of the insurance agreement, as does the value of a defense and indemnity agreement. The airport owner is best protected when there is an event-based trigger for the commercial operator's obligations to defend and indemnify the owner.

What are minimum standards?

Minimum standards are baseline requirements a commercial operator must meet in order to conduct activities at an airport. Each airport owner must establish and enforce evenly (with respect to all applicable operators) its own minimum standards.

Minimum standards promote safety and protect airport users from unlicensed and unauthorized products and services and unqualified personnel. Minimum standards can also maintain and improve the availability of services for airport users, promote the orderly development of airport land, and ensure efficient operations.

Although many airports are similar, it is impossible to prepare a single set of standards for every airport. An airport

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owner can include minimum standards in leases with aeronautical service providers or can prepare a minimum standard document that is referred to in the lease document.

Including minimum standards in the lease carries some disadvantages, however. It can expose the owner to challenges that the standards are not objective, since they change from agreement to agreement. Putting standards in lease agreements also makes them more difficult to change before the lease is up for renewal.

By having a published set of standards apart from the lease agreement, the owner maintains maximum flexibility to amend and update the standards as conditions and goals change.

Many airports are projecting minimal growth and lack competing operators waiting to do business at the airport. In those cases, putting the minimum standards in the lease document may be appropriate.

Minimum standards should be developed for the specific activity they will cover. FAA recommendations for developing standards are shown in Table 1.

Airport insurance coverage

Airport liability insurance coverage is available to cities and other municipal entities that are members of the League of Minnesota Cities Insurance Trust. This is available only to airports with-

out scheduled flight services. Coverage provides broad protection against bodily injury, personal injury, and property damage and includes (with some exclusions) hangar-keepers liability and liability for fueling operations and noise and vibration claims. The basic limit is \$1 million per occurrence, subject to a \$2 million annual aggregate.

Insurance coverages for FBOs and SASOs

An FBO or SASO should have insurance coverage adequate to provide airport customers and the public with a source of recovery in the event of a mishap. If the airport owner is named as an additional insured, the owner is also protected from liability.

As noted earlier, Mn/DOT requires minimum insurance amounts for various commercial or aeronautical activities, including flight schools; aircraft rental or leasing; aerial spraying or dusting; aircraft servicing, maintaining, and repairing; aircraft ownership; and all commercial operations. Minnesota Rules Chapter 8800 establishes that commercial operations license holders must have insurance contracts in force for the duration of the license. The insured must provide coverage for each aircraft, and all required insurance contracts must carry an endorsement stating that the insurer cannot cancel the contract without

five days' written notice to the commissioner of transportation.

The airport owner should adopt this last standard as well, prohibiting an insurance contract's cancellation without 10 days' notice in writing to the airport owner.

Finally, if insurance requirements are outlined in a lease or other agreement, the airport owner should require the FBO or SASO to provide proof of insurance.

References

A Municipal Airport Owner's Guide to Development Agreements with FBOs and SASOs, and Airport Managers, available from the League of Minnesota Cities.

FBO Order 5190.6A: Airport Compliance Requirements. Available at www.faa.gov/airports_airtraffic/airports/resources/publications/orders.

AC 150/5190-7: *Minimum Standards for Commercial Aeronautical Activities*. www.faa.gov/airports_airtraffic/airports/resources/advisory_circulars.

Airport Sponsors Guide to Preparing Minimum Standards for Airport Aeronautical Service Providers and Airport Operating Rules and Regulations, published by the American Association of Airport Executives and National Air Transportation Association.

Table 1. Considerations for developing standards

Item	Considerations
Fuel sales	<ul style="list-style-type: none"> Fuel tank location and access Use of fuel trucks Fuel capacity and types of fuel for various aircraft Fuel supply Liability insurance for fueling operator
Personnel requirements	<ul style="list-style-type: none"> Number of trained and qualified personnel Training and qualifications of personnel
Flight training activities	<ul style="list-style-type: none"> Type of flight training offered Office space the school is required to maintain under federal regulations Full- or part-time training Type of aircraft Aircraft storage and maintenance provisions Coordination and contact with local Flight Standards District Office
Aircraft engine accessory repair and maintenance	<ul style="list-style-type: none"> Types of services offered to the public Repair station ratings Qualification of repair station employees Space requirements Standard parts storage space Lighting and ventilation requirements Safe spray painting, cleaning, or machining space
Skydiving, ultralight, or sport aviation	<ul style="list-style-type: none"> These are aeronautical activities and as such must be accommodated at airports developed with federal airport development assistance. Airports may prohibit or limit aeronautical activities based on the operational safety of the airport, subject to FAA approval.

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