

CITY OF BOISE
Department of Aviation

REQUEST FOR PROPOSALS



**General Aviation Aeronautical Development
Ground Lease Opportunity**

AT



June 3, 2025

Addenda

1. _____
2. _____
3. _____
4. _____

REQUEST FOR PROPOSALS

General Aviation Aeronautical Development Ground Lease Opportunity
Boise Airport, Boise Idaho

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Section 2 Definitions

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Section 1
PUBLIC INVITATION

General Aviation Aeronautical Development Ground Lease Opportunity

June 3, 2025

The City of Boise, through its Department of Aviation ("City") is seeking proposals from potential tenants for the lease of up to two (2) parcels of land for General Aviation aeronautical development.

Proposals will be received at the Boise Airport Administrative Offices, 3201 Airport Way, Suite 1000, Boise, ID 83705, until **Tuesday, July 22, 2025, 4:30 p.m. local time**. The City reserves the right to reject any or all Proposals, to waive minor irregularities in a Proposal, and to award a lease or leases to the Proposers it deems best meets the intent of this solicitation and the needs of the Boise Airport.

To download a copy of the solicitation documents detailing the scope of this opportunity, instructions for submission of a responsive Proposal, selection criteria, scoring methodology, and a sample ground lease, please click the following link: [Aeronautical Development Ground Lease RFP | City of Boise](#) or send a written request via e-mail (including name, phone number and e-mail address) to:

Brady DeYoung, Property & Contracts Coordinator for the Boise Airport
3201 Airport Way, Suite 1000, Boise, Idaho 83705

E-mail: bdeyoung@cityboise.org / Telephone: (208) 972-8647

A Pre-proposal conference, including tour of the development parcels, will be held Monday, June 16, 2025, at the Boise Airport, 3201 Airport Way, Boise, Idaho. The conferences will take place at 1:30 PM local time in the Boise River Room located on the 3rd floor of the airport terminal building. Pre-Registration is required by Tuesday June 10th 4:00 PM by e-mailing Brady DeYoung at contact information above.

Please note, during this solicitation process, any contact initiated by or on behalf of a Proposer with any City official or employee (including any member of the Airport Commission or City Council) which could influence the selection or award process, or which has the appearance of an unfair advantage for a Proposer, will result in the rejection or disqualification of their Proposal. Contact with Brady DeYoung and other City officials or employees as a normal course of business or as expressly contemplated by the solicitation documents (such as may occur for the pre-proposal conference, Proposer interviews, or an award protest) are exempt from this prohibition.

The City hereby notifies all Proposers that Disadvantaged Business Enterprises will be afforded full opportunity to propose on this solicitation and will not be discriminated against on the grounds of race, religion, color, sex, age, national origin, or disability in the consideration of awarding these privilege(s).

CITY OF BOISE, IDAHO

Section 2 DEFINITIONS

As used herein, the following words and phrases shall have the meanings set forth below:

“Addenda” or **“Addendum”** means the written or graphic instrument(s) that may be issued by the City in addition to this Request for Proposals document for the purpose of clarifying, correcting, or modifying the content of this document for potential Proposers.

“Agreement” means the written Lease Agreement between the City and Selected Proposer covering the leasing of premises and permitted operations at the Airport that results from this RFP process. See RFP **Attachment A** Agreement.

“Airport” refers to the Boise Airport or BOI, owned and operated by the City through its Department of Aviation, and located at 3201 Airport Way, Boise, Idaho 83705.

“City” means the city of Boise City, an Idaho municipal corporation operating under a mayor-council form of government pursuant to Title 50, Idaho Code.

“Capital Investment” means the monetary expenditure by a Proposer for total build-out of the development parcel. To qualify as a capital investment, the expenditure must qualify for capitalization according to generally accepted accounting principles (costs such as design, construction administration, and construction of the space). In-house fees and costs incurred before the award of a contract are excluded.

“Evaluation Committee” is a four-to-seven-person panel comprised of City employees or other City official selected by the City’s Department of Aviation for the purpose of evaluating, scoring, and ranking responsive Proposals pursuant to the criteria and methodology stated in the RFP.

“Lessee” means an Airport tenant or lessee, or its authorized representative(s), whose business is non-airline related, who sells goods and/or services for a profit, and who is awarded an Agreement as a result of this RFP.

“Minimum Initial Land Rent” The minimum initial land rent that the City shall consider for the Property shall be \$0.56 per square foot per annum. Rents shall be adjusted in accordance with the Agreement.

“Notice of Intent to Award” is a written notice issued by the Department of Aviation to participating Proposers after Proposals have been scored that identifies the particular Proposer selected for recommendation to Boise City Council for award of a Food & Beverage or Retail Agreement.

“Proposal” means the documentation requested by this RFP and submitted to Airport administration by a Proposer for consideration by the Evaluation Committee.

“Proposer” means the individual, company, corporation, partnership, or any other entity, submitting documentation to the City in response to this RFP for the purpose of participating in the evaluation and selection process.

“RFP” means this Request for Proposals document together with any Addenda.

“Selected Proposer” means the individual, company, corporation, partnership or any other entity that is awarded an Agreement as a result of this RFP.

“State” means the State of Idaho.

Section 3 GENERAL INFORMATION

1. SOLICITATION OVERVIEW

The City of Boise has issued this Request for Proposals (RFP) with the sole purpose and intent of obtaining proposals from interested parties desiring to lease the land upon which to design, construct, finance, own, operate and maintain general aviation (GA) facilities at the Boise Airport. The City may award one or two ground leases to successful Proposer(s) as further described in this RFP.

2. ISSUER

This Request for Proposals (RFP) is issued by the:

City of Boise, Department of Aviation
Boise Airport
3201 Airport Way, Suite 1000
Boise, ID 83705

3. RFP COMMUNICATIONS

Requests for clarification or questions about this RFP, the City's Proposal procedures, the Airport, and future facilities shall be directed, in writing, to Brady DeYoung, Property & Contracts Coordinator for the Boise Airport, at the physical address above or via e-mail to bdeyoung@cityofboise.org. Such requests must be submitted prior to the deadline for Proposer Questions identified in Item 4 (Important Dates) below. The City will address timely requests in written responses distributed as Addenda. To ensure receipt of any and all Addenda, as well as the Notice of Intent to Award, registration as a participating Proposer at [Aeronautical Development Ground Lease RFP | City of Boise](#) should be done as soon as possible.

No oral changes or modifications shall be made to this RFP or any Proposal.

During this solicitation process, any contact initiated by or on behalf of a Proposer with any City official or employee (including any member of the Airport Commission or City Council) which could influence the selection or award process, or which has the appearance of an unfair advantage for a Proposer, will result in the rejection or disqualification of their Proposal. Contact with Brady DeYoung and other City officials or employees as a normal course of business or as expressly contemplated by the solicitation documents (such as may occur for the pre-proposal conference, Proposer interviews, or an award protest) are exempt from this prohibition.

4. IMPORTANT DATES

The proposed project schedule is as follows:

Note: Grey-shaded rows denote tentative dates, to be determined at the discretion of City.

Event	Date
RFP Release Date	Tuesday, June 3, 2025
Deadline to Register for Preproposal Conference and Tour	Tuesday, June 10, 2025, 4:00 PM local time
Pre-Proposal Conference and Tour	Monday, June 16, 2025, 1:30 PM local time
Deadline for Proposer Questions	Thursday, June 26, 2025, 4:30 p.m. local time
City Response to all Questions	Week of June 30th
Proposals Due	Tuesday, July 22, 2025, 4:30 p.m. local time
Short List and Interview Notice	Friday, August 1, 2025
Interviews (if needed)	Week of August 11th
Intent to Award Notice	Tuesday, August 19th, 2025
Council Approval and Executed Agreement(s)	Tuesday, September 23, 2025

All dates are subject to change. Should dates change, BOI shall notify prospective Proposers via written addendum. BOI is not responsible for costs or losses incurred by any Proposer due to date changes.

5. PRE-PROPOSAL CONFERENCE

Pre-Proposal Conferences and tour will be held on Monday, June 16, 2023, at 1:30 local time. The Conference will be held in the Boise River Room located on the 3rd floor of the Boise Airport terminal building, 3201 Airport Way, Boise, Idaho. Parking will be validated. **Attendance at these meetings by prospective Proposers is not mandatory but is highly recommended and pre-registration is required on or before Tuesday, June 10, 2025, 4:00 PM local time.** Note: space is limited so **no more than three** representatives from each Proposer will be allowed to attend the tour.

A virtual meeting invitation will also be sent to pre-registered attendees for members of a Proposer's team who cannot attend in person. **To pre-register for the virtual meeting invitation**, please e-mail Brady DeYoung at bdeyoung@cityofboise.org.

The Pre-Proposal Conference will be the only opportunity afforded prospective Proposers to discuss, as a group, the scope and requirements of this RFP and to receive a tour of the development parcels.

The Pre-Proposal Conference is also the opportunity for prospective Proposers to raise any concerns or objections about the RFP and Agreement requirements to the City. Any changes, additions, or deletions to this RFP that may come from these

conferences will be issued by the City in writing and sent to those who have registered as participating Proposers in accordance with Item 3 (RFP Communications). Addenda, if issued, shall be acknowledged as received by the Proposer on the Proposal Form. No oral changes or modifications shall be made to this RFP or any Proposal.

6. TERM OF AGREEMENT

The City intends to enter into a twenty (20) year agreement with a 10-year option (renewed at City's sole discretion). For more information see Attachment A – Sample Ground Lease Agreement.

7. RENTS AND FEES

Rent, fees, and charges are described in Section 4 of the Agreement, the Selected Proposer will be required to pay the greater of the Minimum Initial Land Rent of \$0.56 per square foot per annum or the initial land rent proposed by the Successful Proposal. For more information how rent proposals will be evaluated see Section 3, Item 19 and Section 6 of this RFP.

Payments shall be made in accordance with Section 4 of the Agreement.

Rents shall be adjusted in accordance Section 1 and Exhibit B of the Agreement.

8. SUBMISSION DEADLINE AND PROCEDURE

Proposals are due no later than **Tuesday, July 22, 2025, 4:30 p.m. local time**. Late Proposals, Proposals that are not signed by an authorized signatory for the Proposer, or Proposals that fail to substantially comply with RFP requirements will be rejected as **non-responsive**. Proposers are encouraged to confirm that the City is in receipt of their Proposal prior to the July 22nd cut-off time.

Proposals shall be submitted to the Boise Airport Administrative Offices, Attn: Brady DeYoung, 3201 Airport Way, Suite 1000, Boise, ID 83705.

Proposals must be submitted as (a) 1 original hard copy bound with tabbed dividers labeled by tab number and (b) two (2) non-returnable flash drives each containing a single Adobe PDF-format document (with each tab bookmarked). Electronic files shall not be password protected. The submission shall be made in one (1) sealed envelope or box and clearly labeled "Boise Airport Aeronautical Land Lease Opportunity"

In the event an inconsistency is discovered between the content of the hard and electronic Proposal copies, the content of the hard copy will be given precedence.

9. SAMPLE LEASE AGREEMENT

A copy of the Sample Lease Agreement is included as Attachment A. The Selected Proposer will be required to execute the respective Agreement in substantially the same form as currently written. Elements of the selected Proposal as negotiated and agreed to by the City will be included in the final executed Agreement.

Proposers should carefully review the Agreement to gain a full understanding of its terms and conditions. Proposers are encouraged to ask questions on any sections of the Agreement so they can be addressed prior to submitting a Proposal.

A Selected Proposer must execute the Agreement and provide all ancillary documents, including Security Deposit and Insurance Certificates, not later than ten (10) business days after the City provides the final, executable version of the Agreement. In the event a Selected Proposer refuses or fails to timely execute and return the Agreement to the City, the Proposer will be deemed to have abandoned its Proposal and the Proposal security as described in Section 6 – Proposal Format shall be forfeited to the City, and the City may decide whether to proceed to contract with another Proposer at that time.

10. PROPOSERS COSTS

The Proposer will be responsible for all costs and expenses (including costs associated with interviews and site visits) incurred in preparing or responding to the RFP. All materials and documents submitted in response to the RFP become the property of the City and will not be returned.

11. PUBLIC INFORMATION

The Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, provides for the open inspection and copying of public records. Public records include any writing containing information relating to the conduct or administration of the public's business prepared, owned, used, or retained by the City regardless of the physical form or character. ***Any and all information a Proposer submits to the City in response to this RFP is likely to be considered a public record subject to disclosure by the City to any person or entity who requests it.*** Such disclosures occur without prior notice to the submitting entity and regardless of whether the information to be disclosed has been marked confidential. However, the Public Records Act does contain some narrowly defined exemptions, such as for trade secrets (Idaho Code § 74-107(1)) and certain financing records (Idaho Code § 74-107(2)).

Any Proposer that would like the City to review an element of their Proposal for application of a statutory exemption to its disclosure obligation **must** submit the Proposal with both of the following included:

- a. conspicuous confidentiality marking on **each page** of the pertinent document believed to be exempt; and
- b. identification of the specific basis for non-disclosure under the Idaho Public Records Act.

The following is not acceptable or in accordance with the Public Records Act and **will not be honored**:

- a. Marking an entire Proposal as exempt (e.g., by addition of a header, footer, or watermark on all or most pages indicating confidentiality); or
- b. Placing a statement or legend on one (1) page of the Proposal stating that all or substantially all of the Proposal is confidential.

12. ACCEPT, REJECT OR WITHDRAW PROPOSALS

The City issues this RFP with the intent to select Proposers for award of concession packages based upon the evaluation criteria and scoring methodology described herein. However, the City reserves the right, in its sole discretion, to award or not to award an Agreement and to cancel the solicitation. The City further reserves the right to accept or to reject any or all Proposals and to waive minor irregularities in a Proposal. The foregoing decisions may be made by the City according to what it deems, in its sole judgment, to be in the City's best interest and such decisions are not subject to an administrative protest process.

Non-responsive Proposals will be rejected without evaluation. The City may deem a Proposal non-responsive if the Proposal:

- (a) is not received by Boise Airport Administration prior to the submission deadline;
- (b) lacks an authorized signature for a proposing entity;
- (c) fails to include documents specifically required in the RFP;
- (d) fails to include submission of the Proposal security; or
- (e) fails to substantially comply with any other RFP requirement deemed material by the City.

No Proposal may be withdrawn after the deadline for Proposal submission.

13. BUSINESS ORGANIZATION

This RFP requires Proposers to provide information concerning their organization such as the legal name of the organization, physical address for proposing entity's principal place of business, and more, within their Proposal. Proposers must be authorized to operate in the State of Idaho to be eligible to enter into an Agreement with the City. Accordingly, by submitting a Proposal, the proposing entity certifies that it is active and in good status with the Idaho Secretary of State at the time of submission or, if it is selected for an award, it will obtain a certificate of good standing or a certificate of registration from the Idaho Secretary of State within fifteen (15) days

of issuance of the Notice of Intent to Award. Further information regarding authorization to do business in the State of Idaho may be found in Art. XI, § 10, Idaho Constitution and Chapter 21, Title 30, Idaho Code. This status must be continuously maintained by the Selected Proposer throughout the term of the Agreement.

In addition, through submission of a Proposal, the Proposer certifies the proposing entity will comply with all applicable laws and regulations regarding taxes and licenses enacted or issued by the State of Idaho, Ada County, and City of Boise.

14. INDEPENDENT PROPOSAL (NO COLLUSION)

By submitting a Proposal, Proposers certify that their Proposals have been derived independently and without consultation, communication, or agreement with others, that may restrict competition or be perceived as collusion. The person executing the Proposal must certify that he or she is legally responsible and authorized to bind the Proposer's organization to the requirements of this RFP and for the Term of the Agreement included therein. For these purposes, Proposals must contain completed **Form 2, Proposer's Statement Form**.

15. GOVERNING LAW

The laws of the State of Idaho shall govern any Agreement executed between the Selected Proposer and the City. Further, the place of performance and transaction of business shall be deemed to be the County of Ada, State of Idaho. In the event of a legal dispute between the parties to an Agreement, the dispute shall be resolved exclusively in a State or Federal court located in Ada County, Idaho.

16. AIRPORT SECURITY

Selected Proposers must observe all security requirements of 49 CFR 1542, and the Airport Security Program, applicable parts of which will be furnished to Lessee, as approved by the Transportation Security Agency, and to take such steps as may be necessary or directed by the City to ensure that subcontractors, employees, invitees, and guests observe these requirements.

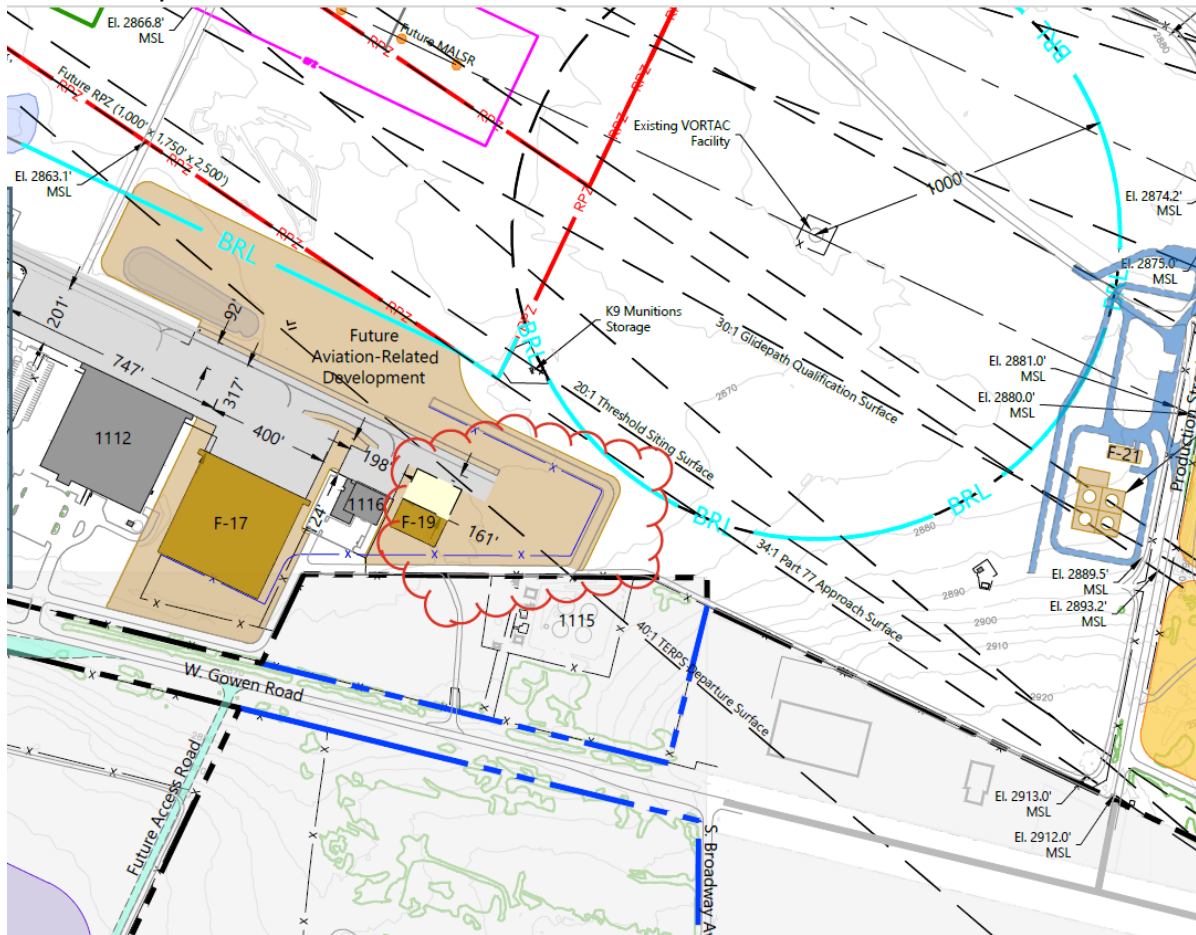
17. FEDERAL AVIATION ADMINISTRATION REQUIREMENTS

Successful Proposers will be required to comply with all Federal Aviation Administration (FAA) requirements for development at Bois Airport (BOI), including compliance with the National Environmental Policy Act (NEPA) and 14 CFR Part 77.9, and required FAA Obstruction Evaluation/Airport Airspace Analysis (Forms 7460-1 and 7460-2).

Boise Airport's Airport Layout Plan (ALP) as updated in 2024, identifies the development parcels as potential future development with a future structure on development parcel A identified as F-19.

Successful Proposer(s) must submit detailed Project Descriptions and site plans to facilitate updates to the Boise Airport Layout Plan (ALP), as mandated by the FAA. Site plans must be provided to the Boise Airport in one of the following formats: 1) georeferenced CAD; and 2) georeferenced PDF tied to Boise Airport's PACS and SACS control. PACS and SACS are a control station established in the vicinity of an airport and tied directly to the National Spatial Reference System. This control consists of permanent marks with precisely determined latitudes, longitudes and elevations. PACS and SACS are designated by the National Geodetic Survey and must meet the specific siting, construction, and accuracy requirements.

ALP Excerpt



Successful Proposers will also be responsible for obtaining and performing all necessary documentation and assessments for the NEPA process.

Following conditional approval of the ALP update by the FAA, the Project Descriptions and site plans will be submitted to the FAA for NEPA process determination. Required documentation and assessments may include, but are not limited to, FAA Obstruction

Evaluation/Airport Airspace Analysis (Forms 7460-1 and 7460-2), Phase I Environmental Assessments, and Cultural Resource Surveys. Additional information on FAA environmental impact policies and procedures can be accessed at: Order 1050.1F Environmental Impacts: Policies and Procedures: https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.current/documentnumber/1050.1

Order 5050.4B NEPA Implementing Instructions for Airport Actions: https://www.faa.gov/airports/resources/publications/orders/environmental_5050_4/

Boise Airport will coordinate the submission of environmental documentation to the FAA. However, Proposers, at their own expense, are responsible for developing all required documentation, studies, and analyses as mandated by the FAA.

In compliance with 14 CFR Part 77.9, any construction or alteration, including temporary alterations, located at Boise Airport requires filing a Notice of Proposed Construction or Alteration (FAA Form 7460-1) at least 45 business days before construction begins. E-filing through the FAA's Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) system is preferred, accessible here: <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>

Proposers planning to utilize construction equipment such as geotechnical drilling rigs must promptly submit FAA Form 7460-1 to prevent project delays. The form should indicate the temporary alteration is "on-airport." The due diligence period will not be extended due to delays caused by Proposer's failure to file a complete FAA Form 7460-1 at least 45 business days prior to the intended equipment usage.

18. PROTEST OF AWARD

Any Proposer who submitted a responsive Proposal, other than the highest ranking Proposer, may object to an award recommendation identified in a Notice of Intent to Award by utilizing the formal protest process described herein. Any such protest must be submitted in writing within **seven (7) calendar days** of the date that the Notice of Intent to Award is transmitted to participating Proposers.

An award protest must satisfy each of these prerequisites to consideration: be in writing, be submitted by a Proposer of a responsive Proposal, be clearly marked as a formal protest, identify this RFP, describe the specific basis for alleging a recommended award is erroneous, and be timely delivered to the City's Purchasing Manager by hand, mail (USPS or courier), facsimile, or e-mail:

Missy Grothaus
City of Boise Purchasing Manager
150 N. Capitol Blvd.
mgrothaus@cityofboise.org

A Proposer submitting a protest is strongly encouraged to confirm the Purchasing Manager's actual receipt of the protest prior to the submission deadline. Any protest

received by the Purchasing Manager after the seven-day deadline will not be considered.

The Purchasing Manager will review a protest for compliance with the requirements stated above. If the Purchasing Manager determines a protest fails to satisfy any of the above requirements the protest will not be considered further. A protest that meets the above requirements will stay the solicitation process until it is resolved through City administrative processes referenced below. The Selected Proposer will be informed of the protest and stay.

The Purchasing Manager will evaluate the merits of the protest, consult with City staff involved in issuance of the RFP, and issue a written determination resolving the protest as soon as practicable. The Purchasing Agent will resolve the protest by deciding to affirm, modify, or reject the award recommendation. The basis for the decision must be included in the determination. If the intended award is rejected, the Purchasing Manager may direct that the Proposals be re-scored, that the RFP be canceled, or such other action the Purchasing Manager determines to be in the City's best interest.

19. PROPOSAL EVALUATION AND SCORING

Responsive Proposals will be evaluated and scored by the Evaluation Committee according to the criteria and methodology identified below. The Proposals will be ranked according to highest score for each development parcel for the purpose of determining lease award recommendations. Selected Proposers must execute and return the Agreement provided by City staff.

Responsive Proposals shall be evaluated based on the following criteria:

EVALUATION CRITERIA	MAXIMUM POINTS
Proposed Development	250
Proposed Capital Investment	175
Financial Capacity	175
Revenue to the Airport	150
Experience and Qualifications of Proposer and Development Team	150
Development Project Timeline	100
TOTAL PROPOSAL POINTS	1000
Interview (if necessary)	1000

Each of the above-identified criteria will be used to evaluate Proposal content with each criteria further described in Section 6 – Proposal Format below.

Note: 50 points will automatically be added under Proposed Development, if the Proposer intends to be the end user of the facility (owner/occupied rather than subleased)

Interview (if necessary)

Those Proposers who are judged by the Evaluation Committee to have provided the best overall proposals (shortlist) may be invited to make a presentation to the Evaluation Committee and respond to questions about their proposal. The Evaluation Committee reserves the right to forego the interview process. Prior to the interview, the City will provide the firms with the interview format. The selection team may also ask other questions during the interview that were not provided ahead of time.

20. AWARD OF AGREEMENT

City staff will submit the respective Agreement which has been executed by the Selected Proposer to Boise City Council with a recommendation for approval. Boise City Council will ultimately decide on behalf of the City whether to (a) approve an award to the recommended Proposer, (b) approve the Agreement, and (c) authorize execution of the Agreement. If the City Council decides to provide the recommended approvals and authorization, it will do so in an open meeting by resolution. It is important to note that **only City Council** may approve award of an Agreement to a Selected Proposer and then **only the City's Mayor** may execute the Agreement on behalf of the City.

21. COMPLETE RESPONSE

Proposers must submit complete and concise responses to the RFP. Proposals will remain valid for one hundred and eighty (180) days. All Proposals will be retained by the City. Proposals should be prepared simply and economically, providing complete details as requested.

Section 4 AIRPORT INFORMATION

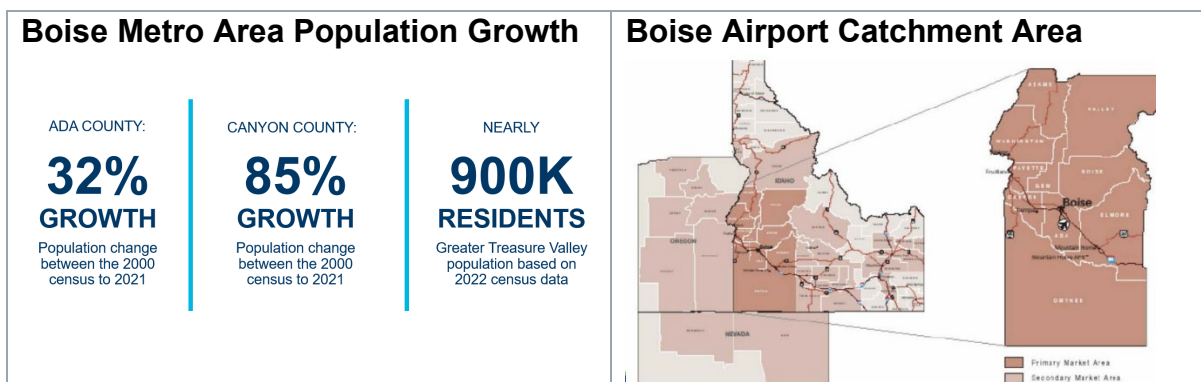
1. BOISE AIRPORT SUMMARY

This summary is intended only to provide potential Proposers with a brief familiarization with City of Boise and the Boise Airport. The City does not guarantee the accuracy of the information herein and Proposers are encouraged to perform their own due diligence prior to submission of a Proposal. Additional information about the Boise Airport and the City may be found on the following websites: www.iflyboise.com and <https://www.cityofboise.org/>.

A. About the City of Boise

Idaho's capital city, Boise, is the largest city in Idaho, the economic heart of the Treasure Valley, and the eighth fastest growing metropolitan areas in the nation. Situated along a river and expansive foothills, Boise is fortunate to have unparalleled access to outdoor recreation just minutes from its vibrant downtown. Home to major employers such as HP Inc., Micron Technology, Albertsons, and the Simplot Corporation, the city provides tremendous economic opportunity for its highly educated and experienced workforce. In addition to a significant corporate presence, Boise has received recent national recognition for its creative entrepreneurial and startup community.

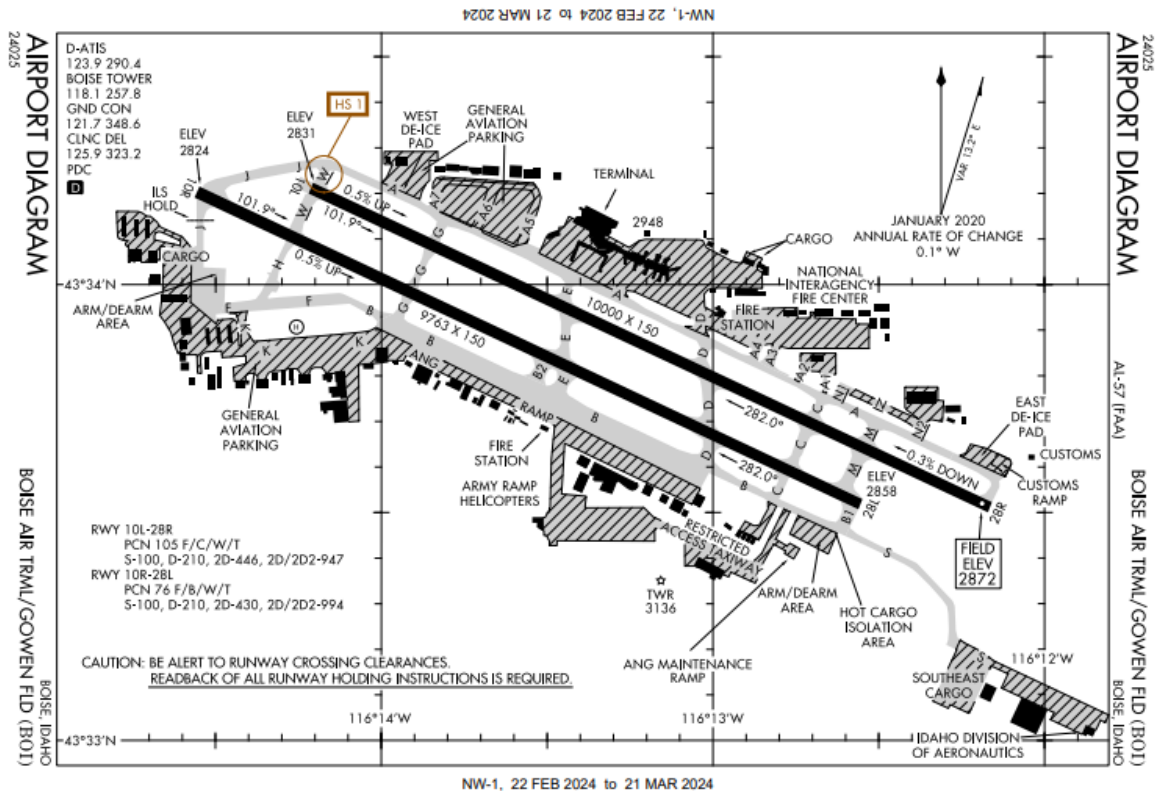
Boise Airport's primary air service area is comprised of southwest Idaho and eastern Oregon. BOI is Idaho's only medium-hub airport and is conveniently located in the heart of the Treasure Valley, a region that has recently experienced explosive population growth. This exponential growth in our community has translated into an increased demand for air service, with passenger travel increasing by an astonishing 81% in the last decade (2014-2024).



B. About the Boise Airport

Boise Airport (BOI) is owned by the City of Boise and operated by the City's Department of Aviation. This Department is overseen by the Airport Director with an advisory Airport Commission appointed by the Mayor and approved by the City Council.

BOI's airfield has two east-west parallel runways and parallel taxiways (Airport Design Group IV). Runway 10R-28L is 150 feet by 9,763 feet and has a CAT III ILS on 10R. Runway 10L-28R is 150 feet by 10,000 feet and has a CAT I ILS on 28R.



Boise Airport's Aircraft Rescue and Fire Fighting is classified as Index C which means it provides ARFF services for aircraft at least 126 feet but less than 159 feet in length.

The Boise Airport is currently underway on a multiyear terminal area capital expansion plan, BOI Upgrade, to grow in pace with our community. For more information on BOI Upgrade please see our website at: <https://www.iflyboise.com/commercial-opportunities/boi-upgrade>

Section 5 DESCRIPTION OF OPPORTUNITY

The City invites all interested parties to submit Proposals in accordance with the requirements of the RFP. To increase participation, City staff may have contacted individuals or entities known to do business relevant to this RFP to advise of its issuance. In addition, the City advertised the issuance of this RFP in the Idaho Business Review and has posted information on our website www.iflyboise.com.

The City of Boise is soliciting proposals from interested parties to lease land and design, construct, and operate general aviation hangar facilities at the Boise Airport on one or both available development parcels located in the southeast quadrant of the airfield and further described below and in the draft Record of Survey attached as **Exhibit A**.

Development Parcel A

Approximately 78,411.43 square feet (1.800 acres)

Address: 1332 W. Gowen Road, Boise ID 83705

Development Parcel B

Approximately 185,197.45 square feet (4.252 acres)

Address: 1250 W. Gowen Road, Boise ID 83705

The proposed development must align with airport infrastructure, existing FAA standards, and BOI's long-term growth objectives.

The land use analysis from the 2020 Boise Airport Master Plan Update identifies the two (2) development parcels which are a subject of this RFP for general aviation aeronautical development as described in this RFP. Each development parcel offers opportunities for hangar development and associated aviation facilities. These parcels, located within the southeast quadrant of Boise Airport, are accessed from the runways from Taxiway S and Taxilane S, which can accommodate aircraft with wingspans up to 94 feet. Landside access is from W. Gowen Road via an airport owned and maintained access road. Improvements on the development parcels will have an address of W. Gowen Road.

The development parcels are zoned I-1 (Light Industrial) and are suitable for General Aviation aeronautical development. The development parcels shall be delivered in an "as is" condition, inclusive of existing utility easements and subsurface conditions. Developers will be responsible for designing, constructing, financing, and installing all necessary improvements for the proposed development. All construction and improvements must comply with Boise Airport's rules and regulations https://www.iflyboise.com/media/2083/rulesregs-boi_nov2024.pdf, local building and fire codes, and FAA standards and design criteria. Furthermore, all development at Boise Airport must adhere to applicable federal, state, and local laws and regulations.

This RFP seeks Proposals for two separate development parcels. Proposers may submit:

- A proposal for Parcel A individually,
- A proposal for Parcel B individually,
- A proposal for the joint development of both parcels (integrated development),

- Or any combination of the above within the same submission.

If submitting a proposal for an integrated development, Proposers must clearly indicate whether the integrated development is contingent upon the award of both parcels, or if each individual parcel proposal is intended to stand alone for independent evaluation and potential award.

Multiple Proposals per development parcel are prohibited. The following shall be deemed multiple Proposals for a development parcel:

- The City receives more than one Proposal from a Proposer; or
- The City receives one Proposal from a Proposer, and one or more Proposals from any entity or person “affiliated” with the Proposer in the manner described below.

If multiple Proposals are received from a Proposer, all Responses for that package from that Proposer shall be deemed non-responsive and will be rejected.

A Proposer is “affiliated” with an entity or person if they are:

- A parent and its subsidiary
- A holding company and its constituent company
- Constituent companies of a single common holding company
- Subsidiaries of a common parent
- A limited liability company and a member or manager of the limited liability company
- Limited liability companies with common members or managers
- A partnership and one of its partners or multiple partners in a single partnership
- A person or entity proposing as a joint venture partner or joint venture on separate Proposals.
- A person or entity proposing as a sole Proposer and also proposing as a joint venture partner on a separate Proposal.
- Two or more Proposers where the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), majority owner or stockholder, joint venture partner, managing, managing partner, or controlling partner, or controlling owner of one Proposer is also the president, vice president, officer (including chief operating officer, chief executive officer, and chief financial officer), majority owner or stockholder, managing partner, or controlling owner of, or is owned or controlled by any other Proposer.
- All of the above examples apply to partner of joint venture or other partnership the same as if those partners were the Proposer.

It is the intent of the City that this prohibition applies regardless of whether the affiliated person or entity submits a Proposal independently or as a partner of a joint venture or other partnership.

Section 6 PROPOSAL FORMAT

Responses to information requested in this section must be complete and submitted in the order requested. Each response must be clearly marked to identify the question or information request to which the response is intended to address. Information included in each section should be clearly identified and page numbered.

All proposals are required to follow the format and process specified below. Each Proposer shall provide detailed evidence of its competency, capability, and expertise to develop and operate aeronautical facilities at the Airport consistent with the City's goals of providing safe, efficient, and environmentally responsible services and facilities that meet the community's and users' expectations.

Proposers may take the form of a single company or a joint venture.

This RFP seeks Proposals for two separate development parcels. Proposers may submit:

- A proposal for Parcel A individually,
- A proposal for Parcel B individually,
- A proposal for the joint development of both parcels (integrated development),
- Or any combination of the above within the same submission.

If submitting a proposal for an integrated development, Proposers must clearly indicate whether the integrated development is contingent upon the award of both parcels, or if each individual parcel proposal is intended to stand alone for independent evaluation and potential award.

Please note:

- If the integrated proposal is contingent on the award of both parcels, and the Evaluation Committee determines that only one parcel is suitable for award, the City reserves the right to decline the integrated proposal in its entirety.
- If individual proposals are submitted and evaluated independently, the City may choose to award only one parcel based on the evaluation outcomes.

The City desires succinct proposals that address the specific content requirements. To facilitate the review of all submittals, **each proposal shall meet the following format requirements.**

1. No more than one hundred (100) pages (including the cover letter and appendix materials).
2. Typewritten, with a minimum font size of 11 point for narrative text, on 8-1/2" X 11" sheet size (but folded 11" X 17" exhibits are acceptable).
3. Submitted as (a) 1 original hard copy bound with tabbed dividers labeled by tab number and (b) two (2) non-returnable flash drives each containing a single

Adobe PDF-format document (with each tab bookmarked). Electronic files shall not be password protected. The submission shall be made in one (1) sealed envelope or box and clearly labeled "Boise Airport Aeronautical Land Lease Opportunity"

The original written proposal (cover letter and forms) must be signed in ink by the individual or authorized representative of the proposing entity who can make contractual commitments and/or sign agreements on behalf of the Proposer;

Each proposal shall consist of the following elements in the prescribed order. Failure of Proposer to provide all of the information requested may lead to rejection of its Proposal.

Tab 1 – General Information:

1. Cover Letter (2-page limitation) including the following information:
 - a) Legal name in which the Proposer would enter into the Agreement. If Proposer is a joint venture, then indicate all partners and each partner's percentage of ownership interest in joint venture.
 - b) Proposer's contact person and that person's telephone number and email address.
 - c) A statement as to whether Proposer and/or Proposer's partners, subcontractor(s), joint venture associates or any other individual or entity of Proposer's team (including any third parties Proposer intends to rely upon for financing) has *any potential conflicts* that may arise in the performance of the services requested in this RFP, performing the work, or operating the facility contemplated within this RFP;
 - d) A statement that the signatory is an officer or principal of the Proposer and has the authority to submit the proposal on behalf of, and to bind, the Proposer;
 - e) Other general information the Proposer desires to include as an introduction to the Proposal.
2. Proposal Guarantee - Proposals must be accompanied certified cashier's check or bank draft payable to City of Boise, in the amount of \$5,000 for each development parcel for which the Proposer is submitting a Proposal (\$10,000 for integrated development). The checks or draft must be attached to the Proposal Form and will be held by the City, without interest, as the Proposal Guarantee for a reasonable period of time until the Selected Proposer has been selected and an Agreement finalized and the security deposit and all required documents received, after which the Proposal guarantee will be returned. If, after issuance of a Notice of Intent to Award identifying the Selected Proposer, the Selected Proposer should fail to execute and return to the City the Agreement along with the required insurance certificates and required

documents, within ten (10) business days after receipt of the Agreement documents provided by City to Selected Proposer for execution, the Proposal guarantee shall be forfeited to the City for coverage of costs and expenses incurred by the City to reach an executed Agreement and the City may proceed with an Intent to Award to the next highest ranked Proposer(s).

3. Proposer's Statement Form– Each Proposer must submit a completed "Proposer's Statement Form",

Tab 2 - Proposed Development Plan (250 points)

1. Identify whether the proposal is for development parcel A or development parcel B, or an integrated development using both parcels.

If Proposer proposes on both development parcels, it shall include the following items 2-5 for each development parcel appropriately labeled for each parcel.

2. Proposers shall provide a narrative fully describing the proposed development plan(s). Proposer may identify more than one option for development, consistent with the available property and other site constraints. If the proposal includes multiple alternative development concepts, Proposer should explain the advantages and disadvantages of each and the bases upon which the Proposer will decide which alternative to pursue.
3. Proposer shall indicate whether they are willing to make commitments such as sustainable construction and structures, LEED compliance, reduced carbon footprint, solar generation (FAA glare analysis required), etc. Such commitments will be favorably considered.
4. Proposers must present conceptual layout drawings and renderings of their proposed development. Proposer may, but are not required to, submit a set of Conceptual Development Parcel/Facility Plans, prepared by a licensed architect and engineer fully depicting the proposed development. If the Proposer identifies more than one alternative development plan, drawings for each alternative should be provided. Drawings should depict structures, parking and landscaping at a scale sufficient for the City to understand the scope and nature of the Proposal.
5. The proposal should provide a general description of the planned facilities and operations for conducting and/or providing the proposed services and should outline a technical approach in sufficient detail to allow the City to understand the plan for development and operation of the proposed facilities.

At a minimum, this section must provide the following information:

- a) The size and location of the building(s) and site improvements, the proposed design and terms for the construction of any space and the ownership, leasing or sub-leasing thereof.

- b) The number, type, and basing of aircraft proposed to be provided (as applicable) and/or a detailed description of all equipment and facilities;
- c) The number of persons proposed to be employed, if any (including the job title/duties, if known), whether the employees will be Airport-based (full-time, part-time and seasonal) or transient, and the certifications required, if any, for the facility or each person to provide a proposed aeronautical activity;
- d) The hours of proposed operation;
- e) The types and limits of insurance coverage to be maintained;
- f) Evidence of ability to obtain required insurance coverages, including construction bonding, such as a commitment letter from an underwriter or a current certificate of insurance showing comparable insurance limits, confirming that the Proposer and/or construction contractor is insurable for the required coverages at the required limits as defined in Section 7.03 and Section 8 of the Agreement. The City reserves the sole right to determine if Proposer will meet the required insurance limits as defined in this solicitation.

Note: 50 points will automatically be added if the Proposer intends to be the end user of the facility (owner/occupied rather than subleased)

Tab 3 – Proposed Capital Investment (175 points)

If Proposer proposes on both development parcels, it shall include the following for each development parcel, appropriately labeled for each parcel:

Proposer shall provide the estimated amount of capital investment required to complete the proposed project at the Airport, separately including furniture, fixtures and equipment and anticipated additional capital investment required to maintain and upgrade facilities over the lease term. These items should be listed by category.

Tab 4 – Financial Capacity (175 points)

Proposer shall provide a brief narrative discussion of its financial responsibility and capability to fulfill the proposal.

The following information must be provided, either as part of the narrative or as an appendix.

If Proposer proposes on both development parcels, then it shall include the following for each development parcel, appropriately labeled for each parcel:

1. All sources of capital must be identified. If third-party financing is contemplated (whether it be individuals, related entities, banks or other institutions) a letter from each third party is required indicating it has been briefed regarding the proposal and believes it is feasible to provide financing for its portion of the proposed project. If the third-party providing financing is not an established Idaho, national or international financial institution, the Proposer should explain in detail how the third party will obtain funds to provide financing.
2. Documentation for Proposer, and Proposer's partners and/or investors of financial capability to fund internally and/or finance proposed Capital Investment such as audited financial statements and/or letters of intent from investors or financial institutions. Also, the letter must include a contact name, title, address, phone, and e-mail address for the individual signing the letter.
3. Provide cost estimates for operating and maintaining the proposed facilities and specify the source of funds for sustaining operation and maintenances of said facility.
4. The City may, at its discretion, request that a Proposer provide additional documentation and/or answer targeted questions about its financial capability and/or financial projections, for itself and/or any proposed third party or sublessee. The City may conduct its own research of the Proposer's financial condition.

Tab 5 – Revenue to the Airport (150 points)

If Proposer proposes on both development parcels, then it shall include the following for each development parcel, appropriately labeled for each parcel:

The minimum initial land rent that the City shall consider for the Property is \$0.56 per square foot per annum. A Proposer is encouraged to offer a higher land rent or revenue share to enhance the Proposer's position. Note: Rents shall be adjusted annually in accordance with the Agreement.

1. Define the proposed structure and amounts of rent and/or revenue to the City. Note, the City will not accept rent less than the Initial Minimum Rent of \$0.56 psf/yr with annual adjustments in accordance with the Agreement.
2. The City wishes to avoid accepting a Proposal in which the Proposer contemplates an immediate sale, assignment, or transfer of the lease. If the Proposer proposes any profit or revenue share (either on a regular recurring

basis or upon transfer of control of the enterprise), the Proposer should provide sufficient detail for the City to evaluate the financial implications of such a proposal.

The following fees are the *minimum* that will be acceptable in connection with a sale, assignment, or transfer of the lease:

- Years 1-5 – no sale, assignment or transfer permitted
- Years 6-10 – fee of 30% of gross sale/transfer price upon sale, assignment or transfer
- Year 11 and subsequent years – fee of 10% of gross sale/transfer price upon sale, assignment or transfer

Tab 6 – Experience and Qualifications (150)

If Proposer proposes on both development parcels, then it shall include the following for each development parcel, appropriately labeled for each parcel:

1. The Proposer shall provide the Proposer's key personnel and their experience with design, finance, construction, operating, maintenance, operation and repair of aviation facilities. Including the development team (architect/engineer/design team and construction team). Include specific examples and identify roles and responsibilities with particular attention to work experience.
2. Any other information that Proposer deems relevant for evaluation of the team. Proposer is invited to describe any particular aspects of its organization which, by way of background, experience, unique qualifications, or other bases, sets its team apart from the competition. The City recognizes that a Proposer cannot guarantee the employment of any members of the team but would treat as a positive attribute any verifiable statements concerning the long-term availability of key team members. The experience of key team members is much more important than the experience of a company whose personnel will not be available for the facility at the Airport.
3. Include resumes or other relevant material.

Tab 7 – Development Project Timeline (100 points)

If Proposer proposes on both development parcels, then it shall include the following for each development parcel, appropriately labeled for each parcel:

Provide an estimated project timeline including design, permitting, and construction from award to occupancy. This will be evaluated based upon the proposed schedule and its practicality and reasonableness, at City's sole discretion. Proposer should also take into consideration the requirements in the Agreement.

Section 9
REQUIRED FORM

Return with Proposal
PROPOSER'S STATEMENT FORM

Proposer Acknowledge Receipt of the Following Addenda(s), if applicable:

Addenda	Date
1.	
2.	
3.	
4.	

The Proposer's name and address exactly as it would appear on the Lease Agreement.

Proposer is bound by its written proposal for a period of one hundred and eight (180) days following the date of proposal opening and may not withdraw its offer during this period. It is understood by the Proposer that the City of Boise reserves the right to reject any and all written proposals.

Proposer asserts that they have thoroughly read, understand and acknowledge all aspects of this Request for Proposal and understand that they are bound by all aspects and provisions of this Request for Proposal and its contents.

The Proposer hereby agrees to enter into the Agreement with the City of Boise under the terms and conditions as set forth in the Request for Proposal dated June 3, 2025.

This Proposal is genuine and is not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of group, association, organization, or corporation; the Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal; the Proposer has not solicited or induced any individual or entity to refrain from submitting a Proposal; and the Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over the City.

The submission of this Proposal is the duly authorized act of the Proposer and the undersigned is duly authorized and designated to execute this Proposal.

Signature: _____

Printed Name & Title _____

Organization Name: _____

Date: _____

Exhibit A

Draft Record of Survey



Attachment A
SAMPLE GROUND LEASE AGREEMENT

Attachment A
BOISE AIRPORT
AERONAUTICAL GROUND LEASE
[insert Lessee name]

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**BOISE AIRPORT
AERONAUTICAL GROUND LEASE**
[insert Lessee name]

This Boise Airport Aeronautical Ground Lease ("Lease") is made and entered into effective the [insert day] day of [insert month], [insert year] ("Effective Date") between the city of Boise City, a municipal corporation formed and existing pursuant to Title 50, Idaho Code ("Lessor"), and [insert lessee name], a [insert state and corporate structure (e.g., corporation, limited liability company, partnership, etc.)] ("Lessee"). Lessor and Lessee are collectively referred to herein as the "Parties" and individually as a "Party."

In consideration of the Parties' covenants, the conditions contained in this Lease, and Lessee's payments of Rents and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION - 1 BASIC LEASE TERMS

The foregoing basic lease definitions and terms (the "Basic Lease Terms") are incorporated into and made a material part of this Lease. If there is any conflict between the Basic Lease Terms in this Section I and the terms in the remaining sections of this Lease, the terms in this Section I shall control.

"Premises"	That certain real property consisting of approximately [insert acres/square feet] located at [insert address], Boise, Idaho, as more particularly described and approximately depicted on <u>Exhibit A-1</u> (attached hereto and incorporated herein), and any Improvements existing as of the Effective Date or added after the Effective Date.
"Initial Project Improvements"	The certain new Improvements to be constructed after the Effective Date by Lessee as specifically described in <u>Exhibit A-2</u> .
"Construction Completion Date"	Insert Date
"Existing Storage Tanks"	None
"Expiration Date"	Twenty (20) years from the Rent Commencement Date
"Rent Commencement Date"	The earlier of (i) the date of issuance of the Certificates of Occupancy or (ii) one (1) year from the Effective Date.
"Base Rent"	The land area of the Premises ([insert #] acres) multiplied by the agreed-upon rental cost of \$[insert #]

per acre per annum, subject to and including any Annual Rent Increases and Market Re-Alignments. The initial Base Rent shall be:

Annual Base Rent: **Insert \$**

Monthly Installments: **Insert \$**

The Lessee will complete a survey of the Premises prior to the Rent Commencement Date at Lessee's expense. If the survey shows the Premises comprises a land area different than that set forth above, the Parties will execute an amendment to this Lease, amending the definitions of "Premises" and "Base Rent" to reflect the change in the land area and the annual base rent and monthly installments calculations.

"Annual Rent Increases"

Base Rent shall increase annually on the anniversary of the Rent Commencement Date by an amount equal to the change in the Consumer Price Index for the month of **[insert]** year-over-year multiplied by the then-current Base Rent, as more particularly described in Exhibit B. In no event shall the Base Rent decrease by application of the Annual Rent Increases formula described herein.

"Market Re-Alignments"

At the end of every tenth (10th) year following the Rent Commencement Date, the Base Rent shall be realigned to match market conditions as more particularly described in Exhibit B. In no event shall the Base Rent decrease by application of the Market Re-Alignments formula described herein.

"Renewal Options":

A ten (10) year Renewal Option, at Lessor's sole discretion

"Construction Dates":

Plans Submission:

Effective Date + 90 days

Permit Applications:

Plans Submission + 45 days

Permit Approvals:

Permit Applications + 60 days

Construction Commencement:

Permit Approvals + 60 days

Construction Completion:

See above for Construction Completion Date

"Security Deposit":

Insert (10% of the annual rent)

"Completion Bond":

Yes, see Section 7.01.01.08.

"Permitted Use"

[insert definition] Note: must be aeronautical use

“Rent Payment Address”: Boise Airport
Attn: Airport Accounting
3201 Airport Way, Suite 1000
Boise, ID 83705

Address for Notices to Lessor: Boise Airport
Attn: Property/Contract Manager
3201 Airport Way, Suite 1000
Boise, ID 83705

Address for Notices to Lessee: **[Insert address]**

Total Due on Signing: **[Insert]**

SECTION - 2 LEASE OF PREMISES; ACCEPTANCE OF PREMISES

EFFECT ON PRIOR LEASES; INGRESS AND EGRESS

2.01 **Leased Premises.** Subject to all terms, covenants, and conditions of this Lease, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises for the Term.

2.02 **Acceptance of Premises.** Lessee hereby acknowledges that: (a) Lessee has had the opportunity to inspect the Premises and accepts the Premises in its “AS IS, WHERE IS, AND WITH ALL FAULTS” condition; (b) the Premises is acceptable for Lessee’s intended Permitted Use; (c) neither Lessor nor any of Lessor’s agents has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease; and (d) Lessee expressly waives any warrant of condition or of habitability or suitability for occupancy, use, habitation, fitness for a particular purpose, or merchantability, express or implied, relating to the Premises.

2.03 **Effect on Prior Leases, Subleases, and Assignments.** Upon execution of this Lease, any preceding lease, sublease, assignment, or other agreement for use of the Premises between City and Lessee, or City and Lessee’s predecessor, successor, or assigned, will be deemed cancelled as of the Effective Date. Notwithstanding, nothing herein shall be construed as intending to cancel or otherwise affect any provision in such preceding lease, sublease, assignment, or other agreement, which by its terms, is intended to survive the expiration or termination of such agreement.

2.04 **Right of Ingress and Egress.** Lessee shall have the non-exclusive rights of ingress and egress across Airport runways, taxiways, aprons, and access roads, provided, Lessee’s ingress and egress activities: (a) shall be conducted in accordance with all City, FAA, and other rules and regulations designated now or in the future; (b) shall be in common with others; (c) shall not impede or interfere, in any way, with the operation of the Airport by the City; (d) shall be limited to common use areas designated by the City now or in the future; and (e) may be temporarily suspended by the City, FAA,

or other regulator entity in the event of an emergency or a threat to the Airport during the time period of such emergency or threat or any other time the City deems appropriate. Furthermore, Lessor is under no obligation or liability to Lessee or its agents, employees, contractors, or assigns to maintain or repair any Airport runways, taxiways, aprons, or access roads; and Lessee shall be responsible and liable for any damage or injury to the Airport runways, taxiways, aprons, or access roads caused by Lessee or its agents, employees, contractors, or assigns.

SECTION - 3 TERM OF LEASE

3.01 **Initial Term.** The term "Initial Term" means the period commencing on the Effective Date and ending on the earlier of the Expiration Date, or, if applicable, the date the Lease is terminated early in accordance with the terms and conditions of this Lease or pursuant to law. Notwithstanding the foregoing, and from and after the Effective Date, this Lease shall be in full force and effect, and Lessee shall keep, perform, and observe all terms, covenants, conditions, agreements, indemnities, and other promises to be kept, performed, and observed by Lessee with respect to the Premises prior to the Rent Commencement Date.

3.02 **Renewal Term.** The Lessee may request, subject to the provisions hereinafter provided, to renew the Initial Term for one (1) period of ten (10) years ("Renewal Term") on the following terms and conditions:

3.02.01 The Lessee shall make the request for a Renewal Term provided herein by notifying Lessor in writing not more than twelve (12) months and not less than six (6) months prior to the expiration of the Initial Term ("Renewal Request"). Time is of the essence with respect to the deadline in this provision for requesting a Renewal Term;

3.02.02 Within ninety (90) days after receipt of Lessee's Renewal Request, Lessor shall notify Lessee of Lessor's decision regarding the request;

3.02.03 Lessor retains sole and absolute discretion in deciding whether to approve or reject any Renewal Request, and nothing in this Lease shall be construed as providing the Lessee any right to a renewal;

3.02.04 If Lessor approves the request, any approved renewal shall be upon the same terms, covenants, and conditions as provided in this Lease, unless otherwise agreed to in writing by the Parties, and, Lessor shall advise Lessee of the adjusted Base Rent;

3.02.05 If Lessee does not request a Renewal Term, if Lessor rejects Lessee's Renewal Request, or if Lessor fails to respond to Lessee's Renewal Request within the time allotted, then the Lease shall expire at the end of the Initial Term, unless terminated earlier;

3.02.06 Any use of the term "Term" herein shall include the Initial Term and,

if applicable, an approved Renewal Term; and

3.02.07 The right to request a Renewal Term is personal to the originally named Lessee and such a request may be made only by the originally named Lessee, unless otherwise agreed in advance by Lessor in writing.

3.03 **Expiration.** This Lease, unless terminated earlier, shall expire at the end of the Term.

3.03.01 ***Occupation After Expiration With Consent.*** If Lessor provides written consent to the Lessee authorizing Lessee's continued occupancy of the Premises by Lessee after the expiration of this Lease, Lessee's occupancy shall operate and be construed as a month-to-month lease, and Lessee will pay Lessor at the Base Rent in force and effect for the last month of the Term prior to expiration and subject to adjustments provided for under this Lease, unless otherwise specified in said written consent. All other Rent, costs, and obligations under this Lease remain in place. Such a month-to-month lease may be terminated at the end of any such monthly period by Lessor upon providing a minimum of ten (10) days written notice to Lessee.

3.03.02 ***Occupation After Expiration without Consent.*** If Lessee continues occupancy of the Premises after the expiration of this Lease without written consent from Lessor, Lessee shall be considered a Holdover Tenant on a month-to-month basis without claim of right (but subject to all terms and conditions of this Lease); and, in addition to Lessee's liability for failing to surrender possession of the Premises, Lessee shall be obligated to pay Lessor, as Additional Rent, a charge equal to one hundred and fifty (150%) of the Base Rent in force and effect for the last month of the Term prior to expiration ("Holdover Rent") and one hundred percent (100%) of any additional Rent due and owing during the last month of the Term prior expiration or that comes due during Lessee's occupation after expiration. Nothing herein shall be construed as Lessor waiving any claims, rights, or damages related to Lessee's failure to surrender possession of the Premises after expiration of the Term, all of which claims, rights, and damages Lessor expressly reserves.

3.04 **Termination.** City may terminate this Agreement prior to the end of the Term upon the occurrence of any Event of Default.

3.05 **No Waiver.** Unless otherwise agreed by Lessor and Lessee in writing, no receipt or acceptance of money by Lessor from Lessee after the expiration or termination of this Lease, after the commencement of any suit, or after final judgment for possession of the Premises, shall reinstate, continue, or extend the terms of this Lease or affect any such notice, demand, or suit or imply consent for any action for which Lessor's consent is required or operate as a waiver of any right of the Lessor to retake and resume possession of the Premises or to use self-help as authorized by law.

SECTION - 4 RENT AND OTHER PAYMENTS

4.01 **Base Rent.** Lessee covenants and agrees to pay Base Rent, as set forth in the Basic Lease Terms and in Exhibit B, to Lessor commencing on the Rent Commencement Date and through the Term.

4.02 **Time and Manner of Rent Payments.** Lessee shall pay Base Rent to Lessor in equal monthly installments in advance with the first payment due on the Rent Commencement Date and all subsequent payments due on the first (1st) day of each month during the Term, without notice or demand from Lessor. Unless Lessor otherwise notifies Lessee in writing of a different address, Lessee shall make all Rent payments to Lessor at the address specified in the Basic Lease Terms. Lessor and Lessee will prorate, on a per diem basis, Base Rent for any partial month within the Term. If Lessor shall at any time or times accept Rent to which Lessor is entitled hereunder after the same is due and payable, such acceptance shall not excuse a delay upon subsequent occasions, or constitute, or be construed as, a waiver of any or all of Lessor's rights hereunder. Lessee's obligation for the payment of Rent shall survive the expiration or early termination of this Lease.

4.03 **Additional Rent.** Lessee shall pay to Lessor all Additional Rent payable to Lessor pursuant to the terms and conditions of this Lease within thirty (30) days after written demand therefore from Lessor, unless a different time period is specified in this Lease. The term "Additional Rent" means all charges, expenses, and other monetary obligations, other than Base Rent, of Lessee to Lessor under the terms of this Lease, whether or not specified as Additional Rent herein, including but not limited to any payments that may become due by reason of any default of Lessee or failure to comply with the agreements, terms, covenants, and conditions of this Lease to be performed by Lessee. "Rent" shall mean Base Rent and Additional Rent, collectively.

4.03.01 **Operation, Maintenance, and Repair Costs.** Lessee shall pay, as Additional Rent, all Operating Costs. Lessee shall pay in its own name the Operating Costs directly to the appropriate third-parties, including any fine, penalty, interest, or cost that may be added thereto by the third-party for late- or non-payment thereof. The term "Operating Costs" means all costs of operating, maintaining, and repairing the Premises including, but not limited to: Property Taxes; Utilities; signage; permits, licenses, and certificates necessary to operate, manage, and lease the Premises; insurance for the Premises; supplies, tools, equipment, and materials used in the operation, maintenance, and repair of the Premises; accounting, legal, inspection, consulting, and other services; equipment rental (or installment equipment purchase or equipment financing agreements); management agreements (including the cost of any management fee actually paid thereunder, up to customary and reasonable amounts); wages, salaries, and other compensation and benefits for all persons engaged in the operation, maintenance, and repair of the Premises; payments under any easement, operating agreement, declaration, or restrictive covenant; landscaping; trash and rubbish removal; seal coating, slurry coating, patching, re-paving, resurfacing, overlaying, and re-striping parking

facilities; roof repairs; and operation, maintenance, and repair of all electrical systems, lighting systems, lights, poles, bulbs and ballasts.

4.03.02 ***Property Taxes.*** The term "Property Tax" means all real and personal property taxes and assessments imposed by any governmental authority or agency on the Premises, or on personal property located on the Premises, for the Term; any assessments levied in lieu of such taxes; any non-progressive tax on the lease of the Premises; and any other costs levied or assessed by, or at the direction of, any federal, state, or local government authority in connection with the use or occupancy of the Premises, less any tax refunds obtained as a result of an application for review thereof.

4.03.03 ***Utilities.*** The term "Utilities" means all utility services supplying the Premises, including, but not limited to, electricity, water, sewer, standby water for sprinkler, gas, telephone, heating, air conditioning, ventilation, and all other utilities and other communication services.

4.04 **Security Deposit.** Contemporaneously with the execution of this Lease, Lessee will deposit the Security Deposit amount set forth in the Basic Lease Terms as a security deposit to serve as a guarantee that Lessee will comply with all terms, covenants, and conditions of this Lease. In the event Lessee breaches any of the terms, covenants, or conditions of this Lease, Lessor may, at Lessor's option, perform such term, covenant, or condition, or cause the same to be performed, and any cost or expense incurred by Lessor (including reasonable compensation for Lessor's time spent in performing said breached term, covenant, or condition), may, at Lessor's option, be paid from the Security Deposit; and Lessee agrees to immediately, upon Lessor's demand, replenish the security deposit to restore it to its original amount. Nothing in this Section 4.04, including the amount of Security Deposit required, shall be construed as a limit or waiver of damages incurred by Lessor as a result of any breach of this Lease by Lessee.

4.05 **Lease Amendment Charge.** In the event Lessee requests an amendment or modification of the Lease, Lessee shall, in its next monthly Rent payment, include a five-hundred-dollar (\$500) payment for administrative expenses related to the development and review of the amendment.

4.06 **Delinquent Payment Charge.** If any payment of Rent payable under this Lease is not received by Lessor within twenty (20) days of when due, Lessee shall pay to Lessor, as Additional Rent, interest on the overdue amount at the rate of eighteen percent (18%) per annum from the date when the same was due according to the terms of this Lease until received by Lessor. Such payment shall be in addition to, and not in lieu of, any other remedy Lessor may have; and nothing in this Section 4.06 shall be construed as a limit or waiver of damages incurred by Lessor as a result of any breach of this Lease by Lessee, as an extension of any due date set forth in this Lease, or as providing an opportunity or period to cure a delinquent payment.

4.07 **Absolute Net Lease.** This Lease is intended to be an absolute net lease, also known as an absolute net-net-net lease, whereby Lessee is responsible for paying

all charges, costs, and expenses related to the Premises arising or becoming due during the Term, including, but not limited to Property Taxes, insurance premiums, Operating Costs, and Utilities, and whereby Lessor is not in any way responsible for such charges, costs, or expenses and shall receive the Rent undiminished by such charges, costs, and expenses.

4.08 **Independent Obligation.** Notwithstanding any contrary term or provision of this Lease, Lessee's covenant and obligation to pay Rent is independent from any of Lessor's covenants, obligations, warranties, or representations in this Lease. Lessee will pay Rent without any right of offset or deduction.

SECTION - 5 LESSEE OBLIGATIONS; LESSOR RIGHTS AND OBLIGATIONS; QUIET ENJOYMENT

5.01 Lessee's Obligations.

5.01.01 ***Use of Premises.*** Lessee will use the Premises exclusively for the Permitted Use and shall not use the Premises for any other purposes.

5.01.02 *Compliance with Applicable Laws.*

5.01.02.01 **Generally applicable laws.** Lessee, in its use of the Premises, will comply with all statutes, ordinances, laws, rules, regulations, and restrictive covenants applicable to the Premises, including but not limited to compliance with all Environmental Laws and the rules and regulations of the National Fire Protection Association, the applicable Fire Rating Bureau, and any similar body. Lessee will also promptly take and pay for all substantial and non-substantial actions necessary to comply with all laws regulating the use by Lessee of the Premises. The term "Environmental Laws" means any and all federal, State of Idaho, and local laws, regulations, rules, permit terms, codes, and ordinances now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, releases, pollutants, animals or plants, noise, or products and/or relate to the protection of health, natural resources, safety or the environment

5.01.02.02 **Airport operations and security laws.** Lessee will comply with all applicable security requirements of the Federal Aviation Administration (FAA), Transportation Security Administration (TSA), or any other government agency in existence now or as may be later created to regulate airport operations and security ("Federal Regulatory Agencies"), and the Airport Security Plan, applicable parts of which shall be furnished to Lessee, as approved by the Federal Regulatory Agencies; and Lessee will take such steps as necessary or directed by the Lessor to ensure that Lessee's sublessees, assignees, contractors, subcontractors, employees, invitees, agents, and guests observe these requirements. If the Lessor incurs any fines and/or penalties imposed by the Federal Regulatory Agencies or any expense in enforcing the regulations of applicable Federal Regulations pertaining to airport security as a result of the acts or omissions of Lessee or Lessee's sublessees, assignees, contractors,

subcontractors, employees, invitees, agents, and guests, Lessee agrees to pay and/or reimburse all such costs and expense. Lessee further agrees to rectify at its own expense any security or other deficiency as may be determined as such by the Lessor or the Federal Regulatory Agencies. The Lessor reserves the right to take any action necessary to address or rectify any security or other deficiency in the event Lessee fails to remedy the security or other deficiency; and Lessee will reimburse Lessor for Lessor's costs and expenses should Lessor take action itself to rectify the deficiency.

5.01.02.03 **Required federal provisions.** Lessee acknowledges that Lessor is required by the Federal Aviation Administration (FAA) under the terms of Lessor's FAA grant assurances to include in this Lease certain required contract provisions, included as Exhibit C hereto ("Required Federal Provisions"). Lessee agrees to comply with the Required Federal Provisions and, where applicable, include the Required Federal Provisions without limitation or alteration in each and every contract, subcontract, sublease, or other agreement related to the Premises. Lessee further acknowledges that the FAA may from time to time amend such required contract provisions and agrees that Lessor may unilaterally modify the Required Federal Provisions to the extent such modifications are necessary to comply with Lessor's FAA grant assurances by providing written notice to Lessee and without the need for formal amendment to this Lease.

5.01.03 **Operational Requirements.**

5.01.03.01 **General obligations.** Lessee shall, at Lessee's sole cost and expense, operate, maintain, and repair all aspects of the Premises, including but not limited to any equipment, systems, fixtures, above or underground storage tanks, or other improvements relating thereto. Lessee shall keep the Premises in a good state of repair and condition (normal wear and tear excepted), including keeping the Premises in a neat and orderly condition as determined by Lessor in its sole discretion, free from filth, debris, trash, refuse, overloading, danger of fire, or any pests or nuisances, and in compliance with all federal, state, and local laws.

5.01.03.02 **Landscaping.** Lessee shall water, trim, and weed all landscaped areas as necessary to maintain a healthy, neat appearance. Lessee shall keep any vegetation in non-landscaped areas cut close to the ground.

5.01.03.03 **Trash and garbage.** Lessee shall make suitable arrangements for the storage, collection, and removal of all trash, garbage, and other refuse resulting from Lessee's activities on the Premises. Lessee shall provide appropriate, covered, commercial type receptacles for such trash, garbage, and other refuse, and will maintain these receptacles, screened from view from adjoining properties and public streets, in an attractive, safe, and sanitary manner as determined by Lessor in its sole discretion. Lessee shall not allow any trash or litter to accumulate on the Premises.

5.01.03.04 **Outdoor storage.** Outdoor storage of any equipment or materials must be specifically approved by Lessor in writing which approval shall not be

unreasonably withheld. Storage of such items may be required to be in a fenced enclosure; screening may also be required. Approval of outdoor storage by the Lessor shall not be construed as approval for Lessee to maintain, either in reality or appearance, a junkyard or salvage yard.

5.01.03.05 Signage. Lessee shall not install any sign, picture, advertisement, notice, lettering, or decoration to be painted, affixed, or displayed on the Premises where the item is prominently visible outside the property boundary, without, in each instance, first obtaining the prior written approval of Lessor, which approval may address, among other things, the color, size, location, text, and method of installation of the requested signage. All Lessee signage and advertising must also comply with all rules and regulations of the City of Boise, and/or any other legal authority with such signage jurisdiction.

5.01.03.06 Inspection, Maintenance, and Repair Plan and Schedule.

5.01.03.06.01 Plan and schedule. Lessee shall maintain a reasonable inspection, maintenance, and repair plan and schedule to ensure compliance with its obligations under Section 5.01.

5.01.03.06.02 Responding to a maintenance or repair matter. Lessee shall rectify any maintenance or repair matter promptly and no later than thirty (30) days of Lessee identifying, Lessee being notified of, or the time Lessee should have reasonably identified, said matter.

5.01.03.06.03 Damage Caused by Lessee. Lessee, at Lessee's sole cost and expense, shall promptly repair or replace any damage to the Premises that occurs during the Term to its former or better condition in a good and workmanlike manner.

5.01.03.06.04 Lessee's reimbursement obligations. In the event the Lessor, pursuant to this Lease, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like to repair or replace any damage to the Premises that occurs during the Term, Lessee shall pay Lessor as Additional Rent upon demand within thirty (30) days of receipt thereof for all actual costs incurred by the Lessor hereunder. Costs will be charged on a time and materials basis at rates not exceeding local industry standards. Nothing in this Section 5.01.03.06.04 shall be construed as a limit or waiver of damages incurred by Lessor as a result of any breach of this Lease by Lessee

5.01.03.07 Stormwater Systems.

5.01.03.07.01 Lessee's Obligations. To the extent on-site stormwater management/Best Management Practice (BMP) facilities exist on the Premises, Lessee shall, at Lessee's sole cost and expense, adequately maintain the stormwater management/BMP facilities in accordance the approved Operation and Maintenance manual. This includes all pipes and channels built to convey stormwater to

the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions as described in the approved Operation and Maintenance Manual.

5.01.03.07.02 Inspection. Lessee shall inspect the stormwater management/BMP facility annually or as specified in the Operation and Maintenance Manual. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover all drainage facilities including but not limited to swales, outlet structures, ponds, access roads, etc. Deficiencies shall be noted in the inspection report. The Annual Inspection Report form included in the Operation and Maintenance manual is to be used to establish what good working condition is acceptable to the City.

5.01.03.07.03 Lessor's access. Lessee hereby grants permission to Lessor, its authorized agents and employees, to enter upon the Premises and to inspect the stormwater management/BMP facilities whenever Lessor deems necessary. Reasonable access shall be provided to all drainage facilities. The purpose of inspection is to follow-up on reported deficiencies, determine the general condition of stormwater facilities, and/or to respond to citizen complaints. Lessor shall provide Lessee copies of the inspection findings and a directive to commence with the repairs if necessary.

5.01.03.07.04 Lessee's failure to maintain. In the event Lessee fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the Lessor, Lessor may enter upon the Premises and take whatever steps necessary to correct deficiencies identified in the inspection report, and Lessee will reimburse the costs of such repairs to Lessor. It is expressly understood and agreed that the Lessor is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Lessor.

5.01.03.08 Storage tanks.

5.01.03.08.01 Lessee's Obligations. To the extent there are any Existing Storage Tanks on the Premises or Lessee installs or uses new above- or below-ground storage tanks on the Premises, Lessee shall, at Lessee's sole cost and expense, adequately maintain said storage tanks consistent with all applicable laws, regulations, codes, ordinances, and compliance plans. Lessee shall not replace any Existing Storage Tanks, or install or use any new above- or below-ground storage tanks on the Premises, without Lessor's prior written consent.

5.01.03.08.02 Inspection. Lessee shall inspect the storage tanks consistent with all applicable laws, regulations, codes, ordinances, and compliance plans.

5.01.03.08.03 Lessor's access. Lessee hereby grants permission to Lessor, its authorized agents and employees, to enter upon the Premises

and to inspect the storage tanks, and any actual or potential leaks, whenever Lessor deems necessary.

5.01.03.08.04 Actual or Potential Leaks. If Lessee identifies any known or potential leaks from the storage tanks, Lessee shall take all steps necessary to investigate and remediate such leaks consistent with applicable laws, regulations, codes, and ordinances, including but not limited to engaging the appropriate experts to evaluate the cause and extent of the leaks; notify Lessor in writing within ten (10) days of identification of such leaks; and, within thirty (30) days, provide Lessor with a schedule and plan for remediation. If an evaluation and remediation plan cannot be provided within thirty (30) days, Lessee shall provide an explanation as well as a timeframe for completing the evaluation and remediation plan.

5.01.03.09 **Utilities.** Lessee shall, at Lessee's own cost and expense, obtain all utility services supplying the Premises, including but not limited to electricity, water, sewer, standby water for sprinkler, gas, telephone and all other utilities and other communication services, in its own name, effective as of the Effective Date, and shall pay the cost directly to the applicable utility, including any fine, penalty, interest or cost that may be added thereto for non-payment thereof. Lessee shall not install any equipment that can exceed the capacity of any utility facilities and if any equipment installed by Lessee requires additional utility facilities, the same shall be installed at Lessee's sole cost and expense in compliance with all code requirements and subject to Section 7 below. Lessor shall not be liable to Lessee for any loss or damage caused by or resulting from any variation, interruption, or failure of said services unless caused by the negligent or wrongful act or omission of Lessor; and no temporary interruption or failure of such services for any reason shall be deemed a breach or default of this Lease by Lessor, an eviction of Lessee, or relieve Lessee from any of Lessee's obligations hereunder including Lessee's obligation to pay Rent.

5.01.04 **Prohibitions.** Lessee shall comply with, and take such steps as necessary to ensure that all users of the Premises comply with, the following requirements:

5.01.04.01 **Nuisance, Waste, and Other Objectionable Conditions.** No activity shall be conducted on the Premises that constitutes, creates, or involves: a nuisance or waste; any dangerous, injurious, noxious, or otherwise objectionable conditions; any residential use; trailer courts; labor camps; junkyards; mining and quarrying; dumping, disposal, incineration, or reduction of garbage, sewage, offal, dead animals, or refuse; treatment, storage, transport, or disposal of hazardous material or hazardous waste; fat rendering; stockyards or slaughtering of animals; smelting of iron, tin, zinc, or other ores; or large animal raising.

5.01.04.02 **Increases Insurance Rates or Risk.** No activity shall be conducted on the Premises that causes, or could cause, an increase in Lessor's

insurance rates or the fire insurance rating for the Premises or adjoining property, or that makes or could make such insurance unobtainable.

5.01.04.03 **Hazardous Activities.** No activity shall be conducted on the Premises that may be, or may become, hazardous to public health or safety, that shall increase, or that shall be illegal.

5.01.04.04 **Vibration or Shock.** No activity shall be conducted on the Premises that results in a vibration or shock that is perceived, or could be perceived, by a person with normal sensibilities as measured on the Premises or within fifty (50) feet beyond the property line.

5.01.04.05 **Noise.** No activity shall be conducted on the Premises that results in noise objectionable to a person of normal sensibilities as measured on the Premises or within fifty (50) feet beyond the property line.

5.01.04.06 **Air Pollution.** Except for the operation of motor vehicles to, from, and on the Premises as incidental to the use thereof: (1) any use producing smoke, gas, dust, odor, fumes, aerosols, particulates, products of combustion, or any other atmospheric pollutant shall be conducted within a completely enclosed building; (2) any use producing atmospheric emissions shall comply with the standards of the U.S. Environmental Protection Agency, the Idaho Department of Environmental Quality, any local environmental regulatory body, or any successor organizations performing similar functions, as such regulations exists on the Effective Date or which may be enacted during the Term; and (3) the emission of noxious odors that are detectable at any point beyond the property line of the Premises shall not be permitted.

5.01.04.07 **Heat or Glare.** Any operation producing intense glare or heat shall be performed within an enclosed screened area in such manner that the glare or heat emitted will not be discernible from the property line.

5.01.04.08 **Electronic or Radio Interference.** No electrical, electronic, or radio emissions shall be produced that will interfere, obstruct, or adversely affect the operation of air navigation aids or airport communications.

5.01.04.09 **Illumination.** The maximum height of any lighting standards on the Premises shall be limited to thirty (30) feet above ground level. The intensity of illumination shall be limited to 10 foot candles or 0.1 lumens per square foot per open areas or surface areas visible at the property line. The design and location of exterior lighting shall comply in all respects to the requirements of the FAA or any other governmental agency having applicable jurisdiction with respect to height, type, and placement of lighting standards as they may affect the safety of flight operations into, from, and around the airport.

5.01.04.10 **Liquid or Solid Refuse and Waste.** No liquid or solid refuse or waste shall be kept, stored, or allowed to accumulate on any lot. No other substance,

condition, or element in such amount as to affect the surrounding area or adjoining premises shall be allowed.

5.01.04.11 **Crime-Free Premises.** No criminal activity shall be engaged in, facilitated, permitted, or allowed on or near the Premises, including but not limited to violent criminal activity, human trafficking or prostitution, Drug-Related Criminal Activity, or any other activity that threatens health, safety, or welfare. The term "Drug-Related Criminal Activity" means the illegal manufacture, sale, distribution, purchase, use or possession with the intent to manufacture, sell, distribute, or use of a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802, or possession of drug paraphernalia.

5.01.04.12 **No Liens.** Lessee shall keep the Premises free and clear of all liens of whatever kind or nature. Lessee shall indemnify, defend, save, and hold Lessor harmless from and against any and all liability, loss, damage, cost, attorneys' fees, and all other expenses on account of any prohibited lien.

5.01.04.13 **Abandonment of Premises.** Lessee shall not cease operations at the Premises for more than one hundred twenty (120) consecutive days for any reason other than repairs, remodeling, or force majeure ("Abandon" or "Abandonment"), Lessor may elect to terminate this Lease and recover possession of the Premises by giving Lessee thirty (30) days prior written notice of such election to terminate, and upon such termination, subject to the Lessee's rights and options under Section 10.2 herein.

5.02 **Lessor's Rights and Obligations.**

5.02.01 **Right of Flight.** Lessor reserves to itself, its successors and assigns, for the use and benefit of the public, a continuing right and easement over the Premises for aircraft navigation and to take any action it deems necessary to prevent the construction, erection, alteration or growth of any structure, tree or other object in the vicinity of the runways at Boise Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Subpart C of Part 77 of the Federal Aviation Regulations. Lessor reserves for itself, its successors and assigns, the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from Boise Airport and the right to prevent any other use of the Premises which would constitute an airport hazard.

5.02.02 **Lessor's Access.** Lessor or its agents may enter the Premises at all reasonable times for the purpose of completing an inspection to ensure compliance with the terms, covenants, and conditions of this Agreement. Lessor shall give Lessee twenty-four (24) hours prior written notice of such entry, except in the case of an emergency when Lessor may enter immediately as necessary. Any entry to the Premises obtained by Lessor by any of said means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Lessee from the Premises or any portion thereof.

5.02.03 ***No Operation, Maintenance, or Repair Obligations.*** Lessor shall not be responsible in any way for operating, maintaining, or repairing the Premises, or for the costs of the same.

5.03 ***Quiet Enjoyment.*** Lessor covenants to control its activities and personnel such that if and so long as Lessee pays Rent as and when due and keeps, observes, and fully satisfies all other covenants, obligations and agreements of Lessee under this Lease, Lessee shall hold and enjoy the Premises peaceably and quietly, subject to the provisions of this Lease.

SECTION - 6 HAZARDOUS MATERIALS

6.01 Definitions.

6.01.01 ***Hazardous Materials.*** As used in this Lease, the term "Hazardous Materials" means any pollutants, contaminants, wastes, or hazardous, dangerous, ignitable, reactive, corrosive, or toxic chemicals, materials, or substances that are or become regulated by Environmental Laws. Hazardous Materials includes, without limitation: (a) any "hazardous substance," as that term is defined in the Federal Water Pollution Control Act (33 U.S.C. § 1317) or equivalent state laws; (b) any "hazardous waste," as that term is defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or equivalent state laws; (c) any "hazardous material," as that term is defined in the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq. or equivalent state laws; (d) any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq. or equivalent state laws; (e) petroleum or petroleum products; (f) asbestos or asbestos- containing materials; (g) polychlorinated biphenyls ("PCBs") or substances or compounds containing PCBs; (h) radon; (i) radioactive materials or byproducts; (j) medical waste, infectious waste, or potentially infectious biomedical waste; or (k) materials known to cause cancer or reproductive problems; (l) lead or lead-containing products; or (m) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the Premises or surrounding property. For purposes of this Lease, the term "Hazardous Materials" shall not include nominal amounts of ordinary household cleaners, office supplies, or janitorial supplies that are not regulated under any Environmental Laws.

6.01.02 ***Hazardous Materials Laws.*** As used in this Lease, the term "Hazardous Materials Laws" means all laws, regulations, rules, and ordinances, as amended, hereafter amended, or hereafter enacted, of the United States, the State of Idaho, or any local government authority having jurisdiction over the Premises: (a) relating to the environment, human health, or natural resources; (b) regulating, controlling, or imposing liability or standards of conduct concerning any Hazardous Materials; (c) relating to the investigation, response, clean up, remediation, prevention, mitigation, or removal of any Hazardous Materials; or (d) requiring notification or disclosure of releases

of Hazardous Materials or of the existence of any environmental conditions on or at the Premises.

6.02 **Notice of Use of Hazardous Materials.** Lessee shall not—and Lessee shall ensure its officers, directors, employees, agents, contractors, subcontractors, successors, assigns, lessees, sublessees, concessionaires, invitees, and any other occupants (“Lessee’s Representatives”) shall not—use, generate, manufacture, refine, produce, process, store, or dispose of Hazardous Materials on, under, or about the Premises, bring Hazardous Materials onto the Premises, or transport Hazardous Materials to or from the Premises, without Lessor’s prior written approval, which shall not be unreasonably withheld.

6.03 **Compliance with Hazardous Materials Laws.** Lessee shall not—and Lessee shall ensure Lessee’s Representatives shall not—use, generate, manufacture, refine, produce, process, store, or dispose of Hazardous Materials on, under, or about the Premises, bring Hazardous Materials onto the Premises, or transport Hazardous Materials to or from the Premises, in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Laws. Lessee shall be solely responsible for the cost and expense of compliance with Hazardous Materials Laws, and Lessee shall utilize prudent industry practices concerns Hazardous Materials. Lessee shall cooperate with Lessor and permit Lessor and all governmental authorities having jurisdiction reasonable access to the Premises for purposes of conducting any environmental monitoring required by applicable Hazardous Materials Laws. Lessee shall be solely responsible for any reporting or warning obligations under Hazardous Materials Laws relating in any way to the Lessee’s use of the Premises, regardless of whether Hazardous Materials Laws permit or require Lessor to report or warn.

6.04 **Remediation of Hazardous Materials during the Term.** If at any time during the Term any contamination of the Premises by Hazardous Materials occurs where the contamination is caused by the act or omission of Lessee or Lessee’s Representatives (“Lessee Contamination”), then Lessee, at its sole cost and expense, will promptly and diligently remove the Hazardous Materials from the Premises, or the groundwater underlying the Premises, to the extent reasonably possible in accordance with the requirements of the applicable Hazardous Materials Laws and industry standards then prevailing in the Hazardous Materials management and remediation industry in Idaho. However, Lessee will not take any required remedial action in response to any Lessee Contamination in, on, or about the Premises or enter into any settlement agreement, consent, decree, or other compromise in respect to any claims relating to any Lessee Contamination without first notifying Lessor of Lessee’s intention to do so and affording Lessor the opportunity to appear, intervene, or otherwise appropriately assert and protect Lessor’s interest with respect thereto. In addition to all other rights and remedies of the Lessor hereunder, if Lessee does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Lessee Contamination, and thereafter commence the required remediation of any Hazardous

Materials released or discharged in connection with Lessee Contamination within thirty (30) days after Lessor has reasonably approved Lessee's remediation plan and all necessary approvals and consents have been obtained and thereafter continue to prosecute said remediation to completion in accordance with the approved remediation plan, then Lessor, at its sole discretion, will have the right, but not the obligation, to cause said remediation to be accomplished, and Lessee will reimburse Lessor, as Additional Rent, within fifteen (15) business days of Lessor's demand for reimbursement of all amounts reasonably paid by Lessor (together with interest from the date of expenditure on said amounts at Lessor's Interest Rate until paid), when the demand is accompanied by proof of payment by Lessor of the amounts demanded. Lessee will promptly deliver to Lessor copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the Premises as part of Lessee's remediation of any Lessee Contamination.

6.05 **Removal of Hazardous Materials at End of Term.** On or before the expiration or earlier termination of this Lease, Lessee, at its sole cost and expense, shall completely remove from the Premises (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Lessee causes to be present in, on, under, or about the Premises.

6.06 **Notice of Hazardous Materials Actions.** Lessee will immediately notify Lessor of any of the following actions affecting Lessor, Lessee, or the Premises that result from or in any way relate to Lessee's use of the Premises or Hazardous Materials in, on, under, or about the Premises after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any claims made or threatened by any person relating to damage, contribution, liability, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (c) any reports made by any person, including Lessee, to any environmental agency relating to any Hazardous Materials, including any complaints, notices, warnings, or asserted violations. Lessee will also deliver to Lessor, as promptly as possible and in any event within five (5) business days after Lessee first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Lessee's use thereof. Upon Lessor's written request, Lessee will promptly deliver to Lessor documentation acceptable to Lessor reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Premises. All such documentation will list Lessee or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Lessor.

6.07 **Hazardous Materials Indemnification.** Lessee shall indemnify, defend, and hold harmless Lessor and Lessor's subdivisions, elected and appointed officials, officers, directors, employees, agents, affiliates, representatives, contractors, volunteers, guests, business invitees, and all of the persons acting for, by, or through, and in any way on behalf of Lessor from, against, and for any and all losses, damages, liabilities,

deficiencies, claims, demands, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind ("Claims"), including reasonable attorneys' fees, arising or resulting, in whole or in part, directly or indirectly, from: (a) any Lessee Contamination; or (b) Lessee's, or Lessee's Representatives', failure to comply with any Hazardous Materials Laws concerning the Premises. Lessee's obligations under this Section include, without limitation and whether foreseeable or unforeseeable, (a) the costs of any required or necessary repair, clean-up, remediation, detoxification, or decontamination of the Premises; (b) the costs of implementing any closure, remediation, or other required action in connection therewith; (c) the value of any loss of use and any diminution in value of the Premises; and (d) consultants' fees, legal fees, fines, administrative costs of a third party, experts' fees and response costs.

6.08 **Survival.** The rights, obligations, and provisions of this Section 6 shall be deemed to be a separate contract between Lessor and Lessee and shall survive any sublease, assignment, expiration, or termination of this Lease.

SECTION - 7 IMPROVEMENTS

7.01 **Approval of Improvements.** Lessee shall not make any alternations, additions, or improvements, including, but not limited to, constructing any new buildings or structures, or adding, disturbing, or changing the exterior, interior, HVAC, plumbing, or wiring of any existing buildings or structures in, on, or to the Premises (collectively, "Improvements") without Lessor's prior written approval, which may be withheld, conditioned, or delayed in Lessor's sole and absolute discretion.

7.01.01 **Lessee's Initial Project Improvements.** Lessor hereby approves for development the certain new Improvements defined above as "Initial Project Improvements." The provisions of this Section 7.01.01 shall apply exclusively to the Initial Project Improvements and shall not extend to other Improvements. All other terms and conditions of this Lease shall apply universally, including to the Initial Project Improvements.

7.01.01.01 **Project Entitlements, Contributions, and Payments.** Lessee will be solely responsible, at its cost and expense, to obtain any and all governmental consents and approvals and other entitlements necessary or desirable for the development, construction, and operation of the Initial Project Improvements. Lessor will reasonably cooperate (but will not be obligated to incur any material cost, expense, time, or effort) with Lessee in connection with Lessee's application for and pursuit of the necessary approvals. Lessor makes no guarantees or assurances that the permits or other necessary governmental consents and approvals will be granted by City for the envisioned project.

7.01.01.02 **Plans Submission Period.** Within ninety (90) days of the Effective Date, Lessee shall submit to Lessor detailed engineering plans, architectural designs, structural drawings, and all relevant specifications (collectively, the "Plans") for

Lessor's review ("Plans Submission Period"). The Plans shall include, but are not limited to, site plans; floor plans; elevation drawings; mechanical, electrical, and plumbing schematics; finish designs of interior public areas; plans for all exterior improvements (including parking, sidewalks, outside lighting, and landscaping); and signage. The Plans must conform with all applicable federal, state, and local laws, regulations, rules, and ordinances. Within fifteen (15) days of Lessor receiving the Plans, Lessor will provide written notice to Lessee approving, conditioning, or rejecting the Plan submittals. Lessor shall not unreasonably condition or reject the Plans, or unreasonably withhold a decision on said Plans. Lessee shall construct the Initial Project Improvements in strict conformance with the Plans as approved, conditioned, or rejected by the Lessor.

7.01.01.03 Permit Application Submission Period. Within forty-five (45) days of Lessor's completion of its review of the Plans ("Permitting Application Submission Period"), Lessee shall submit applications and any then due associated fees to the relevant government authorities to obtain any and all zoning, platting, site plan approvals, conditional use permits, building permits, variances, or similar requirements necessary for Lessee to construct the Initial Project Improvements and operate and otherwise use the Premises for the Permitted Uses in accordance with all applicable federal, state, city, county, and local laws, regulations, and ordinances as well as in accordance with the Plans (collectively, "Necessary Approvals"). If Lessee does not obtain submit the Necessary Approvals within the Permitting Application Submission Period, the Lease shall be terminated, unless extended further by the written approval by both Parties. If the Lease is terminated under this provision, the Parties' rights and responsibilities under this Lease shall be terminated, each Party will be responsible for any and all of their costs or expenses incurred in relation to the Lease or the Premises and neither Party will be responsible for reimbursing the other Party for the same, and this Lease shall be deemed not to have become effective.

7.01.01.04 Necessary Approvals Period. Within sixty (60) days after the end of the Permitting Application Submission Period ("Necessary Approvals Period"), Lessee shall, at Lessee's sole cost, obtain any and all Necessary Approvals on terms satisfactory to Lessee. If Lessee does not obtain all Necessary Approvals on terms satisfactory to Lessee within the 60-day period, provided Lessee has been diligently pursuing such Necessary Approvals, the Necessary Approvals Period shall be extended by up to two (2) additional thirty-day periods (in no event shall the Necessary Approvals Period, as extended, exceed one hundred twenty (120) days) without cost to Lessee, by Lessee providing written notification thereof to Lessor. If Lessee does not obtain the Necessary Approvals within the Necessary Approvals Period, the Lease shall be terminated, unless extended further by the written approval by both Parties. If the Lease is terminated under this provision, the Parties' rights and responsibilities under this Lease shall be terminated, each Party will be responsible for any and all of their costs or expenses incurred in relation to the Lease or the Premises and neither Party will be responsible for reimbursing the other Party for the same, and this Lease shall be deemed not to have become effective.

7.01.01.05 Construction Commencement Date. Within sixty (60) days after the end of the Necessary Approvals Period (“Construction Commencement Date”), Lessee shall Commence Construction of the Initial Project Improvements. The term “Commence Construction” shall mean that Lessee has undertaken physical work on the Premises in accordance with the Plans that demonstrates meaningful progress toward completion, including foundation excavation, vertical construction, or relocation or installation of utilities. If Lessee does not Commence Construction of the Initial Project Improvements by the Construction Commencement Date, the Lease shall be terminated, unless extended further by the written approval by both Parties. If the Lease is terminated under this provision, the Parties’ rights and responsibilities under this Lease shall be terminated, each Party will be responsible for any and all of their costs or expenses incurred in relation to the Lease or the Premises and neither Party will be responsible for reimbursing the other Party for the same, and this Lease shall be deemed not to have become effective.

7.01.01.06 Construction Completion Date. Lessee shall complete construction of the Initial Project Improvements and receive any necessary Certificates of Occupancy by the Construction Completion Date.

7.01.01.07 Unavoidable Delay. The Plans Submission Period, Permitting Application Submission Period, Necessary Approvals Period, Construction Commencement Date, and Construction Completion Date shall be extended, without penalty, in the event of a delay caused solely by a failure of the Lessor to perform its obligations hereunder (collectively, “Lessor Delay”) or a Force Majeure Event, and the length of any such extension shall be limited to the amount of time of the relevant Lessor Delay or Force Majeure Event.

7.01.01.08 Construction Contract and Bonding. Lessee will enter into a contract (“Construction Contract”) with a contractor licensed pursuant to the provisions of Idaho Code § 54-1901 et. seq. for the construction of the Initial Project Improvements. Lessee will provide or cause to be provided, payment and performance bonds in the amount of the full amount of the value of the work being performed to ensure timely completion of the improvements. Each bond must guarantee to the Lessor the completion of the work being performed by the contractor as well as full payment of all suppliers, material suppliers, laborers or sub-contractors employed in the project.

7.01.01.09 Construction Coordination; Management. After the Effective Date, Lessee will have full, unfettered access to the Premises at all times. Lessee will be solely responsible for coordinating all construction activities subject to the terms of this Lease.

7.02 Costs and Standards of Improvements. All Improvements shall be made at Lessee’s sole cost and expense. All work with respect to any Improvements shall be performed in a first-class and workmanlike manner, shall be of a quality equal to or exceeding the then-existing construction standards for the Premises and must be of a

type, materials, and finish (including floor coverings and ceilings) customary for Permitted Use and the Premises. Improvements shall be diligently prosecuted to completion. All Improvements shall be made strictly in accordance with all laws, regulations, ordinances, and insurance requirements relating thereto. Lessee shall secure all licenses and permits necessary for any Improvements prior to the commencement of such work. Lessee shall give Lessor reasonable written notice prior to the commencement of any Improvements and shall allow Lessor to enter the Premises and post appropriate notices to avoid liability to contractors or material suppliers for payment for any Improvements. Lessor shall have no obligation to pay any costs or expenses of any kind relating to any Improvements.

7.03 **Construction Insurance Requirements.** During construction of any Improvements on the Premises by Lessee or on behalf of Lessee, Lessee shall require contractors to secure, pay for, and maintain all-risk, course of construction, or special form builders risk insurance, covering risks of physical loss or damage to the Premises (including without limitation the transmission lines to the interconnection facilities, buildings, temporary structures, materials, supplies, and equipment to be incorporated in the project to construct the Improvements) from perils including, but not limited to, fire, collapse, flood, earth movement, lighting, collapse, testing, debris removal, demolition and increased cost of construction, expediting expense, extra expense and all other perils not specifically included under a standard "all-risk" or special form builders risk policy. Such insurance shall cover all property during construction and testing, and shall include the Lessor, Lessee, design builder, consultants, contractors, and subcontractors to the construction project as insureds. The policy shall be written on a replacement cost basis and shall contain an agreed amount endorsement waiving any coinsurance penalty. Lessee shall require all consultants to maintain Professional Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per claim/Two Million Dollars (\$2,000,000) aggregate. Lessee's liability insurance required under this Lease will cover the actions of Lessee's contractors or Lessee will require its contractors to maintain the same limits of Commercial General Liability Insurance, Automobile Insurance, and Workers Compensation Insurance required of Lessee, with the Lessor being listed as additional insured on the contractors CGL policy.

7.04 **Ownership of Improvements.** Throughout the Term, Lessee shall hold all rights, title, and interest in and to any Improvements, including those Improvements existing as of the Effective Date or added after the Effective Date.

7.05 **End of Term**

7.05.01 **Disposition of Improvements.** By the earlier of sixty (60) days prior to the Expiration Date or fifteen (15) days of Lessee receiving a Notice of Termination, Lessee shall provide to Lessor a listing of all improvements then-currently on the Premises. Lessor shall then have the option to acquire all rights, title, and interest in the Improvements, in whole or part, without any payment from or cost to Lessor. If Lessor makes such election, Lessee shall surrender all such Improvements in good order and condition as part of the Premises, and Lessee shall execute and deliver to Lessor any

deeds, bills of sale, assignments, or other documents Lessor deems necessary or appropriate to transfer title in the Improvements to Lessor. For any Improvements Lessor elects not to acquire, Lessee shall remove such Improvements (which may include removing buildings and their foundations) from the Premises prior to the expiration or termination of the Lease at Lessee's sole cost and expense. Nothing herein shall be construed to require acceptance by Lessor of Improvements.

7.05.02 **Removal of Personal Property.** Prior to the expiration or termination of Lease, Lessee shall remove all personal property from the Premises at its sole cost and expense.

7.05.03 **Plans, Reports, and Other Documents.** Prior to the expiration or termination of Lease, Lessee shall deliver to Lessor any originals or copies of any plans, reports, contracts, or other items or documents relating to the Improvements on the Premises that Lessee has in its possession.

7.05.04 **Closure Testing.** Lessor may require Lessee to conduct reasonable, commonly accepted testing procedures at Lessee's sole cost and expense to demonstrate that the land has not been degraded during Lessee's tenancy including, but not limited to Phase I Environmental Site Assessment, Phase II Environmental Site Assessment, and/or similar environmental tests. Lessee shall remediate, remove, and dispose of any tanks and/or environmental condition(s) on the Premises at its sole cost and expense. All removals of soil and/or improvements including, but not limited to, underground and/or above ground storage tanks, shall be in compliance with all applicable laws, regulations, rules, and ordinances. Lessee shall immediately provide to Lessor a copy of all relevant documentation received by Lessee during the course of the remediation, removal, and/or disposal.

7.05.05 **Survival.** The provisions of this Section 7.05 shall be deemed to be a separate contract between the Parties and shall survive the expiration or any default, termination or forfeiture of this Lease.

SECTION - 8 INSURANCE AND INDEMNIFICATION – Note: Insurance requirements are subject to change based on the site uses proposed.

8.01 **Required Insurance Coverages.** Lessee, at all times during the Term, at Lessee's sole cost and expense, will maintain the following insurance:

8.01.01 **Commercial General Liability Insurance.** Lessee shall maintain in force during the Term commercial general liability, bodily injury, and property damage insurance in comprehensive form including but not limited to blanket contractual liability coverage for Lessee's use of the Premises, liability assumed under this Lease and all contracts relative to this Lease, products, completed operations liability for the duration of the Lease, independent Lessees coverage, personal injury, environmental liability, and broad form property damage with any excess liability in umbrella form, with such coverage

and limits as reasonably may be required by Lessor from time to time, but in no event for less than the sum of Two Million Dollars (\$2,000,000) per occurrence, and which insurance shall not exclude work on airport property. The insurance shall be issued by an insurer licensed to do business in the State of Idaho.

8.01.02 **Property Insurance.** Lessee shall maintain in force during the Term a policy or policies of insurance covering loss or damage to the Premises, including any and all buildings and improvements, Lessee's personal property, business interests, equipment, machinery, inventory, trade fixtures, goods, and furniture, and personal property of others on the Premises, providing protection against all perils included in a Causes of Loss – Special Form policy (or successor) that provides coverage for all risks and perils (including but not limited to, fire, theft, windstorms, hail, ice-damning, explosions, vandalism, malicious mischief, and employee accidents) in the amount of their full replacement cost (i.e., the cost to replace without deduction for depreciation). Lessor shall not in any way be responsible for any loss or damage to the Premises, including any and all buildings and improvements, Lessee's personal property, business interests, equipment, machinery, inventory, trade fixtures, goods, and furniture, or personal property of others on the Premises.

8.01.03 **Automobile Insurance.** In the event Lessee uses a motor vehicle in the operation of its business, it shall maintain in force during the Term, automobile liability insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of One Million Dollars (\$1,000,000.00) for bodily injury and property damage.

8.01.04 **Workers Compensation.** Lessee shall maintain in force during the Term workers compensation coverage with limits consistent with the statutory requirements of the State of Idaho and include employer's liability coverage with minimum limits of: bodily injury by accident—\$500,000 each accident; bodily injury by disease—\$500,000 each employee; and bodily injury by disease—\$500,000 policy limit. Lessee shall provide a certificate showing proof of said insurance coverage.

8.01.05 **Idaho Petroleum Storage Tank Fund.** To the extent there are any Existing Storage Tanks on the Premises or Lessee installs or uses new above- or below-ground storage tanks on the Premises, Lessee, as the owner and/or operator of said storage tanks, shall, at its sole cost and expense, and throughout the Term, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, liability insurance from the Idaho Petroleum Storage Tank Fund under Title 41 Chapter 49 Petroleum Clean Water Trust Act and shall include the Lessor as additional insured.

8.01.06 **Additional Insurance.** Any other form or forms of insurance as Lessor or Lessor's mortgagees may reasonably require from time-to-time, in form and amounts, and for insurance risks against which a prudent lessee or tenant of a comparable size and in a comparable business would protect itself.

8.02 **Policy Requirements.** Concurrent with the execution of this Lease, Lessee shall provide to Lessor proof of coverage for each insurance required in this Lease, by providing a certificate(s) of Lessee's insurance coverage, a copy of the declarations page of each insurance policy, and a copy of all endorsement(s) applicable to the insurance required herein. The certificate(s) of insurance, or endorsement(s) attached thereto, shall provide that: (a) insurance coverage shall not be canceled, changed in coverage, or reduced in limits without at least thirty (30) days prior written notice to Lessor; (b) Lessor, and its agents, officers, servants, and employees are named as additional insureds; (c) the policy shall be considered primary and non-contributory as regards any other insurance coverage Lessor may possess, including any self-insured retention or deductible Lessor may have, and any other insurance coverage Lessor may possess shall be considered excess insurance only; (d) the limits of liability required therein are on an occurrence basis; and (e) the policy shall be endorsed with a severability of interest or cross-liability endorsement, providing that the coverage shall act for each insured and each additional insured, against whom a claim is or may be made in a manner as though a separate policy had been written for each insured or additional insured; however, nothing contained herein shall act to increase the limits of liability of the insurance company. Any deductibles must be declared in writing to and approved by Lessor. At the option of Lessor, either (a) Lessee shall reduce or eliminate such deductibles as respects Lessor; or (b) Lessee shall procure a bond equal to the amount of such deductibles or self-insured retentions guaranteeing payment of losses and related investigations, claims administration and defense expenses (including attorneys' fees, court costs and expert fees). If the insurance coverage required herein is canceled, changed in coverage or reduced in limits, Lessee shall, within fifteen (15) days, but in no event later than the effective date of cancellation, change or reduction, provide to Lessor a certificate showing that insurance coverage has been reinstated or provided through another insurance company. Upon failure to provide such certificate, without further notice and at its option, Lessor may, in addition to all its other remedies, procure insurance coverage at Lessee's expense whereupon Lessee promptly shall reimburse Lessor for such expense. The Lessor reserves the right to modify its insurance requirements to reflect operational and market conditions. The Lessee shall procure and maintain insurance coverage from an insurance company or companies licensed to do business in the State of Idaho and possessing a financial strength rating of at least A- and a financial size category of VII or higher from A.M. Best or an equivalent rating service.

8.03 **Lessee's Failure to Insure.** In the event that Lessee at any time fails to obtain and maintain the insurance required under this Lease, Lessor may, at Lessor's sole and absolute discretion, immediately terminate this Lease or obtain such insurance for Lessor's benefit. If Lessor obtains insurance for Lessor's benefit under this Section, Lessee will pay to Lessor, all costs and expenses Lessor incurs obtaining such insurance. Lessor's exercise of its rights under this Section does not relieve Lessee from any default under this Lease.

8.04 **No Limitation.** The establishment of minimum insurance requirements in this Lease shall not, in any manner, be deemed as a representation by Lessor that such limits are sufficient and shall not limit, in any manner, Lessee's liability under this Lease or Lessee's obligation to indemnify, protect, defend and hold harmless Lessor as specified in this Lease, except for the effect of any waiver of subrogation as provided below.

8.05 **Waiver of Subrogation.** Each party's insurer waives all right of subrogation, and all rights based upon and assignment from its insured, against the other party, its officers, directors, partners, members, managers, employees, agents, concessionaires, licensees and invitees, and in the case of Lessee, its subtenants and their officers, directors, partners, members, managers, employees, agents, concessionaires, licensees and invitees, in connection with any loss or damage thereby insured against; provided that the foregoing reference shall not be deemed a consent by Lessor to any sublease of the premises. If any policy of insurance requires the agreement of a party's insurer as a condition to the effectiveness of this mutual waiver of subrogation, such party agrees to make a commercially reasonable effort to obtain such agreement. Notwithstanding any other provision of this Lease to the contrary, neither party to this Lease or its officers, directors, partners, members, managers, employees, agents, concessionaires, licenses and invitees shall be liable to the other for loss or damage covered by insurance required to be carried under this Lease, and each party to this Lease hereby waives any rights of recovery against the other and its officers, directors, partners, members, managers, employees, agents, concessionaires, licenses and invitees for injury or loss on account of such covered risks.

8.06 **Indemnification of Lessor.** To the fullest extent permitted by law, Lessor and Lessor's subdivisions, elected and appointed officials, officers, directors, employees, agents, affiliates, representatives, contractors, volunteers, guests, business invitees, and all of the persons acting for, by, or through, and in any way on behalf of Lessor shall not be liable for any damages, losses, liabilities, claims, injuries, or death, either to person, property, or emotional or economic interests of any nature whatsoever, which is sustained by Lessee; Lessee's officers, directors, partners, members, managers, employees, agents, concessionaires, licensees, or invitees; persons claiming through Lessee; or any other third party, except only to the extent that such damages, losses, liabilities, claims, injuries, or death are caused by the intentional misconduct of Lessor. Lessee shall indemnify, defend, and hold harmless Lessor and Lessor's subdivisions, elected and appointed officials, officers, directors, employees, agents, affiliates, representatives, contractors, volunteers, guests, business invitees, and all of the persons acting for, by, or through, and in any way on behalf of Lessor from, against, and for any and all losses, damages, liabilities, deficiencies, claims, demands, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind ("Claims"), including reasonable attorneys' fees, arising, alleged to arise out of, or relating in any way to any acts or omissions incurred in connection with Lessee's use or occupancy of the Premises at any time whether pursuant to this Lease or a previous lease with Lessor,

including use of above-ground and underground storage tanks, Lessee's breach of this Lease or any previous Lease between Lessee and Lessor in connection with the Premises.

Lessee's indemnification and hold harmless obligations under this Section apply to both direct and third-party Claims and are triggered upon Lessor's provision of notice of a Claim to Lessee. Lessee's duty to defend applies immediately regardless of whether Lessor has paid any sums or incurred any detriment arising out of or relating directly or indirectly to any Claim.

Lessee shall assume control of the defense, appeal, or settlement of a Claim by sending prompt written notice of the assumption to Lessor through which it will acknowledge responsibility for the defense. Lessee will then undertake, conduct and control the defense through counsel approved by Lessor, at Lessee's sole cost and expense. Lessee shall give prompt written notice to Lessor of any proposed settlement. Lessee may not settle or compromise any Claim or consent to the entry of any judgment without Lessor's prior written consent. Notwithstanding anything to the contrary herein, Lessor may defend a claim with counsel of its own choosing and without Lessee's participation when Lessor determines it is in its best interests to do so.

Limits of insurance will not be deemed a limitation of Lessee's above-described covenant to indemnify, hold harmless and defend.

The rights, obligations, and provisions of this Section shall be deemed to be a separate contract between Lessor and Lessee and shall survive any sublease, assignment, expiration, or termination of this Lease.

SECTION - 9 EVENTS OF DEFAULT; REMEDIES

9.01 **Event of Default.** The occurrence of any one or more of the following constitute a breach of this Lease and an "Event of Default" by Lessee under this Lease:

9.01.01 ***Failure to Pay Rent.*** Lessee fails to pay Rent, or other payments required under this Lease, to City as and when due;

9.01.02 ***Failure to Pay Property Taxes, Insurance, Operating Costs, or Utilities.*** Lessee fails to pay any Property Taxes, insurance premiums, Operating Costs, or Utilities as and when due;

9.01.03 ***Failure to Keep Premises Free of Criminal Activity.*** Lessee fails to keep the Premises free and clear of any criminal activity, including but not limited to violent criminal activity, human trafficking or prostitution, Drug-Related Criminal Activity, or any other activity that threatens health, safety, or welfare;

9.01.04 ***Failure to Comply with Required Federal Provisions, or Laws and Regulations; or Interference with Right of Flight.*** Lessee fails to comply with the Required Federal Provisions, Airport Rules and Regulations, or any other applicable

Federal, State, or local laws, rules, or regulations; or Lessee's actions or omissions threaten to interfere with City's operations or the right of flight at the Airport, or causes or may cause significant harm to City, the Airport tenants or users, or the general public;

9.01.05 *Failure to Vacate upon Expiration or Termination of the Lease.*

Lessee occupies all or any portion of the Premises beyond the earlier of the Expiration Date or Termination Date without Lessor's prior written approval;

9.01.06 *Miscellaneous Defaults.* (a) Lessee makes a material misrepresentation to City regarding this Lease, or City discovers Lessee made a material misrepresentation to City which induced City to enter into this Lease; (b) Lessee makes a general assignment or general arrangement for the benefit of creditors; (c) a petition for adjudication of bankruptcy or for reorganization or rearrangement of Lessee or Lessee's indebtedness is filed by Lessee or a third-party; (d) a trustee or receiver is appointed to take possession of Lessee's interest in the Lease, Lessee's interest in the Premises, or a majority of Tenant's assets located at the Premises, and possession is not restored to Lessee within thirty (30) days; (e) majority of Lessee's assets, majority of Lessee's assets located at the Premises, or Lessee's interest in the Lease or the Premises is subject to attachment, execution, or other judicial seizure not discharged within thirty (30) days; or

9.01.07 *Other Defaults.* Lessee fails to comply with any term, covenant, or condition of this Lease not otherwise addressed above in this Section 8.01.

9.02 *Cure Period Only Upon Written Approval.* Upon occurrence of any Event of Default, City may terminate this Lease immediately and without providing Lessee any opportunity to cure the Event of Default. Lessee shall not be entitled to an opportunity to cure an Event of Default, unless upon express written approval by City.

9.03 *Cross-Default.* The occurrence of an Event of Default under any other agreement between City and Lessee shall be, at the option of City, an Event of Default under this Lease.

9.04 *Remedies.*

9.04.01 *Remedies Upon Default.* In the event of any Event of Default, Lessor may, at its option, exercise any and all of the remedies listed below. No such remedy herein or otherwise conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, and every power and remedy given by the Lease to Lessor may be exercised from time to time and as often as the occasion may rise or may be deemed expedient:

9.04.01.01 *Rent Collection Action.* Lessor may bring suit for the collection of any unpaid Rent, together with any other damages, expenses, fees, and/or costs incurred by Lessor as result of the default;

9.04.01.02 **Specific Performance Action.** Lessor may bring a suit for specific performance by Lessee of any unperformed Lessee obligation under the Lease, together with any other damages, expenses, fees, and/or costs incurred by Lessor as result of the default;

9.04.01.03 **Enter Premises and Complete Lessee's Obligations.** Lessor may enter upon the Premises, without being liable for prosecution or any claim for damages therefor, and complete any unperformed Lessee obligations under the Lease, in which event Lessee shall pay to Lessor, as Additional Rent, any expenses Lessor incurs in completing Lessee's obligations under the Lease; and Lessor shall not be liable for any damages resulting to Lessee from such action, unless caused by the reckless or intentional misconduct of Lessor;

9.04.01.04 **Terminate Lessee's Right to Possess Premises.** Lessor may terminate Lessee's right to possess the Premises after three (3) days' written notice to Lessee, and Lessee's right to possess the Premises shall terminate on the date specified in the notice. Lessee shall quit and surrender possession of the Premises by the date in the notice.

9.04.01.04.01 Expelling Lessee after Surrender Date. If Lessee does not quit and surrender possession of the Premises by the date in the notice, Lessor may enter upon the Premises immediately or at any subsequent time without additional notice or demand (which additional notice or demand is hereby expressly waived by Lessee) without being liable for prosecution of any claims for damages therefor (which claims are hereby expressly waived by Lessee), and Lessor may expel Lessee and those claiming rights under Lessee and remove, dispose of, store, or return their effects as allowed by law without being guilty of any manner of trespass. Lessee agrees that if Lessor shall cause Lessee's effects to be removed from the Premises pursuant to the terms hereof or of any court order, Lessor's act of so removing such effects shall be deemed to be the act of and for the account of Lessee. Lessee shall pay to Lessor, as Additional Rent, any expenses Lessor incurs in expelling Lessee or those claiming rights under Lessee and in removing, disposing of, storing, or returning their effects; and Lessor shall not be liable for any damages resulting to Lessee from such action, unless caused by the reckless or intentional misconduct of Lessor. Lessor is not obligated to hold or store Lessee's property, or property of Lessee's agents, employees, invitees, assigns, or sublessees, and instead Lessor may dispose of such property at Lessor's discretion.

9.04.01.04.02 Re-Letting. If Lessor terminates Lessee's right to possess the Premises, Lessor is not obligated to but may relet all or any part of the Premises for all or a portion of the remaining Term to a third party or parties.

9.04.01.04.03 Accelerated Rent Obligation. If Lessee's right to possess the Premises are terminated, Lessor shall have the right, without notice to Lessee, to accelerate the Rent due for the balance of the Term and to collect the present value of the same from Lessee.

9.04.01.04.04 Additional Rent. Lessee shall pay to Lessor, as Additional Rent, any "Re-entry and Re-Letting Costs," which is defined as all reasonable costs and expenses Lessor incurs re-entering and/or reletting all or any part of the Premises, including, without limitation, all costs and expenses Lessor incurs (a) maintaining or preserving the Premises after an Event of Default; (b) recovering possession of the Premises, removing persons and property from the Premises (including, without limitation, court costs and reasonable attorneys' fees) and disposing of, storing, or returning such property; (c) reletting, renovating, restoring, altering, or improving the Premises; (d) real estate commissions, advertising expenses, legal fees, and similar expenses paid or payable in connection with reletting all or any part of the Premises; (e) the value of free rent and other concessions Lessor gives in connection with re-entering or reletting all or any part of the Premises; and (f) attorney fees and costs.

9.04.01.05 **Terminate the Lease.** Lessor may terminate this Lease after three (3) days' written notice to Lessee, and this Lease shall terminate on the date specified in the notice. Lessee shall quit and surrender possession of the Premises by the date in the notice.

9.04.01.05.01 Termination of Lease Must Be Express. Unless Lessor specifically states that it is terminating this Lease, Lessor's pursuit of any other remedies under this Lease, including but not limited to termination of Lessee's right to possess the Premises, is not to be construed as an election by Lessor to terminate this Lease or Lessee's obligations and liabilities under this Lease.

9.04.01.05.02 Expelling Lessee after Surrender Date. If Lessee does not quit and surrender possession of the Premises by the date in the notice, Lessor may enter upon the Premises immediately or at any subsequent time without additional notice or demand (which additional notice or demand is hereby expressly waived by Lessee) without being liable for prosecution of any claims for damages therefor (which claims are hereby expressly waived by Lessee), and Lessor may expel Lessee and those claiming rights under Lessee and remove, dispose of, store, or return their effects as allowed by law without being guilty of any manner of trespass. Lessee agrees that if Lessor shall cause Lessee's effects to be removed from the Premises pursuant to the terms hereof or of any court order, Lessor's act of so removing such effects shall be deemed to be the act of and for the account of Lessee. Lessor is not obligated to hold or store Lessee's property, or property of Lessee's agents, employees, invitees, assigns, or sublessees, and instead Lessor may dispose of such property at Lessor's discretion.

9.04.01.05.03 Damages. If this Lease is terminated, Lessee shall be liable for and shall pay to Lessor the sum of all Rent and other indebtedness accrued to date of such termination, plus, as damages, an amount equal to the present value of (1) the Base Rent for the remaining portion of the Term (had the Term not been terminated prior to the date of expiration stated in the Basic Lease Terms); plus (2) the unamortized balance of any costs and expenses Lessor incurs (a) maintaining or preserving the Premises after an Event of Default; (b) recovering possession of the

Premises, removing persons and property from the Premises (including, without limitation, court costs and reasonable attorneys' fees) and disposing of, storing, or returning such property; (c) reletting, renovating, restoring, altering, or improving the Premises; (d) real estate commissions, advertising expenses, legal fees, and similar expenses paid or payable in connection with reletting all or any part of the Premises; and (e) the value of free rent and other concessions Lessor gives in connection with re-entering or reletting all or any part of the Premises; less (3) any rent received by Lessor in reletting the Premises at reasonable market rates. It is agreed by the parties that the actual damages which might be sustained by Lessor by reason of Lessee's default hereunder are uncertain and difficult to ascertain, and that the foregoing measure of damages is fair and reasonable.

9.04.02 **Actual Losses.** Lessee will reimburse and compensate Lessor on demand and as Additional Rent for any actual loss Lessor incurs in connection with, resulting from, or related to an Event of Default, regardless whether suit is commenced or judgment is entered, including, but is not limited to, all reasonable legal fees, costs, and expenses (including paralegal fees and other professional fees and expenses) incurred (a) investigating, negotiating, restoring, settling, or enforcing any of Lessor's rights or remedies or otherwise protecting Lessor's interests under this Lease; and (b) protecting Lessor's interests in any bankruptcy or insolvency proceeding involving Lessee, including, without limitation, any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay; and such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

9.04.03 **Lessee's Waiver and Indemnification.** Lessee waives and releases all claims Lessee may have resulting from Lessor's re-entry and taking possession of the Premises by any lawful means and removing, disposing, storing, or returning Lessee's property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under applicable laws. Lessee releases and will indemnify, defend (with counsel reasonably acceptable to Lessor), protect and hold harmless Lessor from and against any and all claims occasioned by Lessor's lawful re-entry of the Premises and disposition of Lessee's property or property of Lessee's agents, employees, invitees, assigns, or sublessees. No such reentry is to be considered or construed as a forcible entry by Lessor. Lessor will not be liable for re-entering or taking possession of the Premises, or disposing of Lessor's property or property of Lessee's agents, employees, invitees, assigns, or sublessees.

9.05 **No Waiver.** Except as specifically set forth in this Lease, no failure by Lessor or Lessee to insist upon the other party's performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, constitutes a waiver of any such breach or of any breach or default by the other party in its performance of its obligations under this Lease. Except as specifically set forth in this Lease, none of the

terms of this Lease to be kept, observed, or performed by a party to this Lease, and no breach thereof, are waived, altered, or modified except by a written instrument executed by the other party. One or more waivers by a party to this Lease is not to be construed as a waiver of a subsequent breach of the same covenant, term or condition.

9.06 **Lien by Lessor.** Upon the occurrence of an Event of Default by Lessee, Lessor shall have a lien upon all goods, chattels, personal property, or equipment, save and except delivery vehicles or rolling stock, or any other items specifically exempted under law, belonging to Lessee which are on, in, or become a part of, the Premises, as security for Rent due and to become due for the remainder of the Term, which lien shall not be in lieu of or in any way affect any statutory lien given by law, but shall be cumulative thereof. Lessee shall seek permission of the Lessor to subordinate its lien to potential lenders of the lessee for improvements. Said permission shall not be unreasonably withheld.

SECTION - 10 DAMAGES; CASUALTY

10.01 **Notice of Casualty.** If any Improvements are damaged or destroyed by any peril, including but not limited to, fire, wind storm, or other casualty (each such occurrence, a "Casualty"), at any time, whether covered by insurance to be provided under this Lease, or not, Lessee shall notify Lessor thereof within seven (7) days of the Casualty and this Lease shall continue in full force and effect.

10.02 **Not Tenantable within 12 Months.** If a Casualty renders the Premises, in whole or material part, unusable by Lessee for the Permitted Uses and the Premises cannot be restored to a point that it is usable for the Permitted Uses within twelve (12) months from the date of the Casualty, Lessee shall notify Lessor within thirty (30) days of the Casualty and provide documentation justifying the expected schedule for restoring the Premises. In such event, either party may choose to terminate the Lease through written notice delivered to the other Party within sixty (60) days after the Casualty. If neither party provides such notice within sixty (60) days, Lessee shall, at its sole cost and expense, repair and restore the Premises to as near their condition prior to the Casualty as is reasonably possible with all commercially reasonable diligence and speed.

10.03 **Tenantable within 12 Months.** If a Casualty does not render the Premises, in whole or material part, unusable by Lessee for the Permitted Uses or the Premises can be restored to a point that it is usable for the Permitted Uses within twelve (12) months from the date of the Casualty, Lessee shall, at its sole cost and expense, repair and restore the Premises to as near their condition prior to the Casualty as is reasonably possible with all commercially reasonable diligence.

10.04 **Lessee's Failure to Proceed with Restoration.** If Lessee is obligated to repair and restore the Premises as set forth in Sections 10.01 and 10.2 above, and Lessee does not commence restoration within sixty (60) days after the receipt of insurance proceeds for the Casualty, or proceed thereafter with reasonable diligence to

completion, Lessor may, at Lessor's option, terminate this Lease by a written notice delivered to Lessee within thirty (30) days after the right to terminate arises.

10.05 **Insurance Proceeds.** Lessee shall only have the right or interest to any insurance proceeds from Lessee insurance and shall only be entitled to condemnation rewards associated with the Improvements constructed and paid for by Lessee. Lessor shall receive all other payments from either insurance or condemnation proceeds on the Premises.

10.06 **Rent.** In the case of termination under Section 10, Rent and other sums payable during the then current Term shall be due and payable through the date of such termination. In the event that Lessee is obligated to repair and restore the Premises under Section 10, all Rents and other sums payable will continue to be due in full throughout any restoration period.

SECTION - 11 GENERAL PROVISIONS

11.01 **Eminent Domain.** If during the Term the Premises, Improvements, or any substantial part thereof are taken through the exercise of the power of eminent domain, this Lease shall automatically terminate as of the date of such taking. In case of a partial taking of the Premises, if the remainder is insufficient for Lessee's uses as allowed herein, or if the time required to restore the remainder of the Premises in a proper condition for use by Lessee will exceed six (6) months, or if Lessee does not commence to restore the Premises within sixty (60) days after the receipt of condemnation proceeds for any taking, and proceed thereafter with reasonable diligence to completion, Lessor may, at Lessor's option, terminate this Lease by a written notice delivered to Lessee within thirty (30) days after the right to terminate arises.

11.02 **Assignment and Transfer.** Lessee shall not have the right to assign or transfer this Lease, or any interest in the Premises, during the first five (5) years of the Term. After the first five (5) years of the Term, the Lessee shall not have the right to assign or transfer this Lease, or any interest in the Premises without the prior written consent of Lessor, which approval may be withheld at Lessor's sole and absolute discretion. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code, 11 U.S.C. §§101 et seq., shall be deemed without further act or deed to have assumed all the obligations arising under this Lease on or after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption.

11.02.01 Assignment and Transfer Fee. Any approved assignment or transfer of this Lease, or any interest in the Premises will be subject to the following fees:

- Years 1-5 – no assignment or transfer permitted
- Years 6-10 – fee of 30% of gross sale/transfer price upon assignment or transfer

- Year 11 and subsequent years – fee of 10% of gross sale/transfer price upon assignment or transfer

11.03 **Subleasing.** Lessee may not sublease all or any part of the space demised hereunder without the prior written consent of Lessor, which approval may be withheld at Lessor's sole and absolute discretion. Any approved sublease shall be subject to the same conditions, obligations and terms as set forth herein and Lessee shall be responsible for the observance by its sublessees of the terms and covenants contained in this Lease, and Lessor's approval may be withheld at the sole discretion of Lessor, or Lessor may require conditions for approval, including but not limited to personal guarantees, physical modifications to the Premises, or sharing of any sublet rent to be collected. Lessee shall furnish Lessor with a copy of any proposed sublease for review.

11.04 **Subordination to Agreements with the United States.** This Lease is subject and subordinate to the provisions of any agreement heretofore or hereafter made between the Lessor and the United States Government relative to the operation or maintenance of the Boise Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to the Lessor for Boise Airport purposes, or the expenditure of federal funds for the improvement or the development of the Boise Airport, including the expenditure of federal funds for the development of the Boise Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time-to-time. Lessor covenants that it has no existing agreements with the United States government in conflict with the express provisions hereof.

11.05 **Time is of the Essence.** Time is and shall be deemed of the essence in respect to the performance of each provision of this Lease.

11.06 **Force Majeure.** If either party will be delayed or prevented from the performance of any act required by this Lease by reason of acts of God, pandemic, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, without fault and beyond the reasonable control and planning foresight of the party obligated (financial inability excepted)(collectively, "Force Majeure Events" and each, individually a "Force Majeure Event" or an "event of Force Majeure"), performance of the act, other than the payment of Rent, may be extended. The delayed party must provide to the other party written notice promptly upon onset of a delay due to the occurrence of a Force Majeure Event and said notice must specify the particularly applicable Force Majeure Event and the Lease obligation(s) that will be affected thereby. Upon provision of the foregoing notice, the delayed party's performance will be excused for a period no longer than the duration of the Force Majeure Event; provided, however, nothing in this Section will excuse Lessee from the prompt payment of any rent or other charge required of Lessee except as may be expressly provided elsewhere in this Lease.

11.07 **Notices.** All notices provided to be given under this Lease shall be given by certified or registered mail, return receipt requested, postage fully prepaid, addressed

to the Address for Notices to Lessor and Address for Notices to Lessee, as applicable. Any notice so given shall be deemed properly delivered, given, served, or received on the date shown for delivery or rejection on the return receipt. Any party may change the address to which notices shall thereafter be given upon five (5) days prior written notice to all other parties in the manner set forth in this paragraph.

11.08 **Attorney's Fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Lease, the prevailing party shall be entitled to recover reasonable attorney's fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

11.09 **Idaho Law.** The laws of the State of Idaho shall govern the validity, interpretation, performance, and enforcement of this Lease. The parties irrevocably agree that venue for any action between them in connection with this Lease shall be brought and maintained exclusively in the state or federal courts located in Ada County, Idaho, and each party irrevocably submits and waives any objection to exclusive jurisdiction of such courts in any suit, action, or proceeding

11.10 **Cumulative Rights and Remedies.** All rights and remedies of Lessor here enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

11.11 **Interpretation.** Words of gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

11.12 **Agreement Made in Writing.** This Lease contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their respective successors in interest. This Lease may only be amended by a document signed by both parties. The recitals and exhibits and attachments are hereby incorporated herein by reference and made a part of this Lease. To the extent any provisions contained in any recitals, exhibits or attachments to this Lease conflict with the terms herein, the provisions of this Lease shall prevail.

11.13 **Headings.** The Table of Contents of this Lease and the captions of the various sections of this Lease are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Lease or any part or parts of this Lease.

11.14 **Severability.** If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision which is found to be illegal, invalid, or unenforceable, there will be added as part of this Lease a provision as similar to such

illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

11.15 **Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their successors, assigns, legal representatives, heirs, executors and administrators.

11.16 **Rules and Regulations.** Lessee shall observe and comply with all applicable Laws and Rules and Regulations governing the conduct and operation of the Boise Airport whether established and promulgated by Lessor, by the Boise Airport Commission, by a political subdivision of the State of Idaho having jurisdiction, by the State of Idaho, or by the United States and its agencies thereof. All applicable Rules and Regulations now in existence, or as herein amended, or hereinafter promulgated and adopted, are incorporated herein and made a part hereof by reference.

11.17 **Taxes and Other Charges.** The Lessee shall pay all taxes, and governmental charges of any kind whatsoever that may be lawfully assessed against the Lessee or the Lessor, with respect to the Premises, during the Term. The Lessee in good faith may contest any tax or governmental charge; provided that the Lessee may not permit such tax or governmental charge to remain unpaid during the period of such contest and any appeal therefrom unless in the opinion of counsel satisfactory to the Lessor such action will not adversely affect any right or interest of the Lessor.

11.18 **National Emergency.** In the event the rights and privileges hereunder are suspended for a period of greater than twenty-one (21) days by reason of war or other national emergency requiring occupation of the Premises by the federal government, either party shall have the option of terminating this Lease. If this Lease is terminated as set forth in this paragraph, Lessor shall give Lessee thirty (30) days, or the maximum period that is reasonably practicable if such period is shorter than thirty days, to vacate the Premises.

11.19 **Authorization to Enter into Lease.** If Lessee signs this Lease on behalf of an entity, each of the persons executing this Lease on behalf of Lessee warrants to Lessor that Lessee is an entity duly authorized and formed pursuant to law, that Lessee is qualified to do business in the State of Idaho, that Lessee has full right and authority to enter into this Lease, and that each and every person signing on behalf of Lessee is authorized to do so. Upon Lessor's request, Lessee will provide evidence satisfactory to Lessor confirming these representations.

11.20 **Discrimination Prohibited.** In accordance with Boise City Code, Lessee agrees, that there will be no discrimination against, or segregation of, any person or group of persons on the basis of race, color, religion, sex, sexual orientation, gender identity/expression, creed, national origin, ancestry, age or disability by Lessee in the leasing, subleasing, transferring, occupancy, tenure or use of the Premises or any portion thereof by Lessee.

11.21 **State Required Certifications:** Due to its status as a political subdivision of the state of Idaho, Owner is subject to certain contract constraints imposed by Idaho law that, if not complied with, may render a contract void. For purposes of compliance with such statutes, Emergent hereby certifies and agrees as follows:

11.21.01 **Anti-Boycott:** To the extent required by Idaho Code § 67-2346, Lessee certifies that, as of the Effective Date, it is a Company that is not engaged in a Boycott of goods or services from Israel or territories under Israel's control and Lessee agrees that it will not engage in such a Boycott for the duration of the Agreement. As used in this particular provision, "Boycott" and "Company" shall be defined as stated in Idaho Code § 67-2346(3)(a) and (b).

11.21.02 **Boycott of Particular Business Sector:** To the extent required by Idaho Code § 67-2347A, Lessee certifies that, as of the Effective Date, it is a Company that is not engaged in, and will not for the duration of the Lease engage in, a Boycott of any individual or company because the individual or company engages in or supports the (a) exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (b) manufacture, distribution, sale, or use of Firearms. As used in this particular provision, "Firearms" is defined as stated in Idaho Code § 18-3302(2)(d) and the terms "Boycott" and "Company" are defined as stated in Idaho Code § 67-2347A(4).

11.21.03 **Government of China Certification:** Lessee certifies that, as of the Effective Date, it is a Company that is not owned or operated by the Government of China and Lessee agrees that it will not be so owned or operated for the duration of the Lease. As used in this particular provision, "Government of China" and "Company" are defined.

11.21.04 **Funds for Abortion Certification:** (per I.C. 18-8705): Lessee certifies that it is not an Abortion Provider nor an Affiliate of an Abortion Provider such that entry into this Lease is not prohibited by Idaho Code § 18-8703. For purposes of this provision, "Abortion Provider" and "Affiliate of an Abortion Provider" are defined as stated in Idaho Code § 18-8702.

[Signatures to Follow]

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the Effective Date stated above.

LESSOR:

BOISE CITY,
a municipal corporation formed and existing pursuant
to Title 50, Idaho Code

By: _____
Lauren McLean
MAYOR

ATTEST: _____
Jamie Heinzerling
CITY CLERK

LESSEE:

(INSERT)

By: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A-1
PREMISES DESCRIPTION

SAMPLE

EXHIBIT A-2
IMPROVEMENTS

SAMPLE

EXHIBIT B
BASE RENT ANNUAL INCREASES

The base rent due and payable herein shall be increased annually as follows:

Within ninety (90) days of each annual Lease anniversary, beginning the Lease anniversary after the Rent Commencement Date, Lessor shall provide written notice to Lessee of the new annual Base Rent which shall be effective for the next year following each Lease anniversary.

In Lease anniversary years other than multiples of 10 years (i.e. 10th, 20th, etc.) the new annual Base Rent shall be calculated based on the change in the Consumer Price Index (CPI) over the prior year utilizing the month of _____.

The new annual Base Rent shall be an amount equal to the then current Base Rent multiplied times one (1) plus the percentage increase in the CPI from the previous year.

For example, if the Consumer Price Index from the prior year rose by two and one-half percent (2.5%) and the current Base Rent is \$100.00, then the Base Rent next year shall be \$102.50. ($\$100 \times [1.00 + 2.5\%] = \102.5)

In no event will the Base Rent be reduced as a result of this calculation. Should CPI be negative in any year, the then current Base Rent shall carry over to the next year.

For purposes of this Exhibit B, the following definitions will apply:

"Anniversary Year" - the end of the twelve-month period in which Lessee is paying the then current Base Rent. This is the rent which is being adjusted in accordance with CPI.

"Base Rent" – The annual rent. The Base Rent will be increased each year in accordance with this Exhibit B. The increased annual rent shall become that year's new Base Rent, subject to increase the subsequent year.

"Consumer Price Index" or CPI - the Revised Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84 = 100) or, if this Index is discontinued, any other renamed national index covering metropolitan areas.

The change in the Consumer Price Index (or other Index) used for calculating the new Base Rent shall be the percentage change from the Index twelve (12) months prior to the month at the time of calculation. The Consumer Price Index (or other Index) used in the calculation shall be the one published for the month of _____.

10 Year Anniversary Rent Adjustment (i.e. 10th, 20th, etc.):

On each 10-year lease anniversaries the Base Rent will be adjusted to the greater of:

Ten percent (10%) of the then fair market value of the Premises, disregarding the value of any improvements placed by the Lessee ("Ground Lease Property"); or

The new Base Rent as calculated using the annual increase methodology as described above (using the most recent CPI numbers).

In no event shall the adjusted Base Rent be less than the Base Rent established at the beginning of the immediately preceding year.

If mutually agreeable to the parties, the appraisal to determine the fair market value and thereby the rental adjustment may be foregone in which case the rent shall be adjusted according to the Consumer Price Index method.

Lessor shall provide Lessee within 150 days of the Lease anniversary with the new Base Rent as calculated above based on Lessor's estimate of then current fair market value of the Ground Lease Property. Lessee shall have thirty (30) days following receipt of the new Base Rent and calculation thereof to provide Lessor notice that Lessee disagrees with the estimated value, in which case Lessor shall select and hire at Lessor's sole costs a qualified appraiser to establish the then fair market value and notify the Lessee of this value ("First Appraisal"). If Lessee is not satisfied with the First Appraisal, Lessee within fifteen (15) days after receipt of First Appraisal shall notify Lessor of Lessee's decision to hire their own appraiser to generate another estimate of fair market value ("Second Appraisal").

If Lessee chooses to generate a Second Appraisal, once completed both appraisers shall meet within fifteen (15) days following completion to collaborate on a combined, jointly agreed upon fair market value. If the two appraisers cannot agree on the appraised value of the Ground Lease Property within thirty (30) days of their meeting date, they shall themselves select and hire a third appraiser to evaluate the First Appraisal and Second Appraisal to generate a combined appraisal taking into account all information in both appraisals ("Third Appraisal") which shall be used for calculation of the new adjusted Base Rent.

If the first and second appraiser cannot agree on an appropriate third appraiser, the third appraiser shall be selected by the following method:

1. The Lessor and Lessee shall each submit the names of two (2) qualified appraisers.
2. In the presence of both Lessor and Lessee, or their designated representatives, a list shall be compiled by drawing the names of the proposed appraisers from a hat

or other suitable object. The first name drawn shall be the first name on the list, etc.

3. The method of selection shall be by the alternate striking of names on the list until only one name remains. The one remaining shall be the selected third appraiser. The party who strikes the first name shall be determined by the flip of a coin.

In the event of the failure, refusal, or inability of any appraiser to act, a new appraiser shall be appointed in his stead; which appointment shall be made in the same manner as hereinbefore provided for the appointment of such appraiser so failing, refusing or being unable to act.

In any case, the fees and expenses of the third appraiser, if required, shall be shared equally by the Lessor and Lessee. Furthermore, any appraiser designated to serve in accordance with the provisions of this Lease shall be disinterested and shall be qualified to appraise real estate of the type covered by this Lease situated in Ada County, Idaho, and shall have been actively engaged in the appraisal of real estate situated in Ada County, Idaho, for a period of not less than five (5) consecutive years immediately preceding his appointment.

EXHIBIT C
REQUIRED FEDERAL PROVISIONS

A. Compliance with Nondiscrimination Provisions. During the performance of this Agreement, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as "Lessee") agrees as follows:

- 1. Compliance with Regulations:** Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
- 2. Non-discrimination:** Lessee __, with regard to the work performed by it during the term of this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Agreements, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Lessee of Lessee's obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to the Lessor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- 5. Sanctions for Noncompliance:** In the event of Lessee's noncompliance with the Non-discrimination provisions of this contract, the Lessor will

impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Agreement, in whole or in part.

6. Incorporation of Provisions: Lessee will include the provisions of paragraphs one through six of this Exhibit C, Section (A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Lessee will take action with respect to any contract or procurement as the Lessor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, Lessee may request Lessor to enter into any litigation to protect the interests of the Lessor. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

B. Real Property Acquired or Improved Under the Airport Improvement Program. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that Lessee will furnish its services in compliance with all other requirements imposed by or pursuant to the List of Nondiscrimination Acts And Authorities.

D. Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non- discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- v. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- ix. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non- discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and

adverse human health or environmental effects on minority and low-income populations;

- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E. General Civil Rights Provision. Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex (including gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If Lessee transfers its obligation to another, the transferee is obligated in the same manner as Lessee. This provision obligates Lessee for the period during which the property is owned, used or possessed by Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

F. Right of Re-entry. In the event of breach of any of the above Nondiscrimination covenants, the Lessor will have the right to terminate the Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. Subcontracts. Lessee agrees that it shall insert the above six provisions (Section (A) through Section (F)) in any agreement by which Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public under this Agreement.

Attachment A
Request for Proposals and Addendum

SAMPLE

**Attachment B
Lessee's Proposal**

SAMPLE