



AIRPORT COMMITTEE AGENDA
Tuesday, October 11, 2022 - 2:00 PM
Council Chambers

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613, or p.hawker@newportoregon.gov.

All meetings are live-streamed at <https://newportoregon.gov>, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day. To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

1. CALL TO ORDER

2. ROLL CALL

2.A Roll Call

[Staff_Report_roll_call_2022.pdf](#)

3. APPROVAL OF MINUTES

3.A Approval of Minutes

4. DISCUSSION/ACTION ITEMS

4.A Non-aeronautical use of hangars lease update.

[Staff_Report_Non_aeronautical_use_lease_update_2022.pdf](#)
[38906 Federal Register non-aeronautical use of airport hangars.pdf](#)
[2021_template_hangar_land_lease.pdf](#)

4.B Lease maintenance responsibility

[Staff_Report_water_conections_to_hangars_2022.pdf](#)
[Public_works_fee_structure_pg_43_47.pdf](#)

4.C World Fuel Update

[Staff_Report_World_fuel_lease_agreement_2022.pdf](#)
[Newport - Letter of Understanding v1.pdf](#)
[World_Fuel_City_of_Newport_Lease_Agreement_44293_8.8.17.pdf](#)
[World_Fuel_City_of_Newport_WFS_FSA_2017.pdf](#)
[World_Fuel_City_of_Newport_Phillips_66_Branding_Agreement_2017.pdf](#)

4.D McCrea lease of area east of hangar D-4

[Staff_Report_East_area_McCrea_hangar_2022.pdf](#)
[zz_ALP-11x17_Sheet_4_Terminal_Area_Plan.pdf](#)
[Staff_Report_TOFA_email_2021_to_McCrea.pdf](#)
[2022_McCrea_east_area.jpg](#)
[2022_McCrea_east_area_II.jpg](#)
[agreement_3294_McCrea_D4.pdf](#)

4.E FAA Bipartisan Infrastructure

[Staff_Report_Potential_FAA_AIP_projects_2022.pdf](#)
[BIL_FAQs_5-13-2022.pdf](#)
[ONP_BIL_CIP_Update_20220310.pdf](#)
[NPT000-HangarDev_220225.pdf](#)

5. OPERATIONS REPORT

5.A Operations Report

[Operations_Report_for_October_Meeting_2022.pdf](#)

6. COMMITTEE COMMENTS

7. PUBLIC COMMENTS

7.A Ken Williams

8. ADJOURN

9. AIRPORT COMMITTEE GOALS

- 1. Pursue commercial and/or private for-hire airline service to facilitate regional travel to the Central Coast*
- 2. Explore commercial/industrial development of AOA property*
- 3. Expansion of water and sewer services to the airport*
- 4. Explore the possibility of constructing additional T-Hangars*
- 5. Install solar panels at airport*
- 6. Develop a parking plan*
- 7. Partner with FEMA for emergency preparedness operations at the airport*



**STAFF REPORT FOR
AIRPORT COMMITTEE**

Meeting Date: August 9, 2022

Title: Airport Committee Roll Call

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: Please say here or present.

Background Information:

Member	Position	First Appointed	Current Term Begins	Current Term Ends
<u>Jeff Bertuleit</u>	Committee Chair		1/3/2022	12/31/2023
<u>Ken Brown</u>	Committee Member	6/17/2014	1/7/2019	12/31/2022
<u>Ralph Busby</u>	Committee Member	1/1/2016	1/3/2022	12/31/2023
<u>Dietmar Goebel</u>	Council Liaison	1/7/2019	1/7/2019	12/31/2020
<u>Cynthia Jacobi</u>	Council Liaison Alternate	5/21/2020	5/21/2020	5/21/2020
<u>Daniel McCrea</u>		1/18/2022	1/18/2022	12/31/2022
<u>Susan Reese Painter</u>	Committee Member	9/2/2014	1/7/2019	12/31/2022
<u>Jim Shaw</u>	Committee Member	11/8/2016	1/3/2022	12/31/2023
<u>Mark Watkins</u>	Committee Member		1/3/2022	12/31/2023



**STAFF REPORT
FOR AIRPORT COMMITTEE**

Meeting Date: 10/11/2022

Title: non-aeronautical use of hangars and lease language update.

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: make a recommendation to add language to leases.

Background Information:

The airport committee discussed storage of items non-aeronautical items in hangars. Committee discussed adding language to the lease defining what non-aeronautical items are. Airport staff pulled number 38910 Federal Register, vol. 81, no. 115 from June 15, 2016. Federal Register section II: Standards for aeronautical use of hangars, subsection "d" states, "While sponsors may adopt more restrictive rules for use of hangars, the FAA will generally not consider items to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar.
2. Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft.
3. Impede access to aircraft or other aeronautical contents of the hangar.
4. Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory).
5. Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances."

City Attorney David Allen Provided the following suggestion. A subsection 9.6 could be added to section 9 of the hangar lease template (attached) to read as follows, "Storage of non-aeronautical items that do not interfere with the aeronautical use of the hangar, as provided in current and applicable future Airport rules and regulations."

Fiscal Notes: none

Alternatives: none

Attachments: 38906 Federal Register, 2021 hangar lease template

in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014-0255, dated November 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-7524.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 20, 2016.

(i) Saab Service Bulletin 2000-38-011, dated October 22, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 9, 2014 (79 FR 45337, August 5, 2014).

(i) Saab Service Bulletin 2000-38-010, dated July 12, 2013.

(ii) Saab Service Newsletter SN 2000-1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(5) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email saab340techsupport@saabgroup.com; Internet <http://www.saabgroup.com>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-13740 Filed 6-14-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA 2014-0463]

Policy on the Non-Aeronautical Use of Airport Hangars

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of final policy.

SUMMARY: This action clarifies the FAA's policy regarding storage of non-aeronautical items in airport facilities designated for aeronautical use. Under Federal law, airport operators that have accepted federal grants and/or those that have obligations contained in property deeds for property transferred under various Federal laws such as the Surplus Property Act generally may use airport property only for aviation-related purposes unless otherwise approved by the FAA. In some cases, airports have allowed non-aeronautical storage or uses in some hangars intended for aeronautical use, which the FAA has found to interfere with or entirely displace aeronautical use of the hangar. At the same time, the FAA recognizes that storage of some items in a hangar that is otherwise used for aircraft storage will have no effect on the aeronautical utility of the hangar. This action also amends the definition of aeronautical use to include construction of amateur-built aircraft and provides additional guidance on permissible non-aeronautical use of a hangar."

DATES: The policy described herein is effective July 1, 2017.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Willis, Manager, Airport Compliance Division, ACO-100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3085; facsimile: (202) 267-4629.

ADDRESSES: You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (<http://www.faa.gov/regulations/search>);

(2) Visiting FAA's Regulations and Policies Web page at (http://www.faa.gov/regulations_policies); or

(3) Accessing the Government Printing Office's Web page at (<http://www.gpoaccess.gov/index.html>).

You can also get a copy by sending a request to the Federal Aviation

Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

SUPPLEMENTARY INFORMATION:

Authority for the Policy: This document is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

Background

Airport Sponsor Obligations

In July 2014, the FAA issued a proposed statement of policy on use of airport hangars to clarify compliance requirements for airport sponsors, airport managers, airport tenants, state aviation officials, and FAA compliance staff. (79 **Federal Register** (FR) 42483, July 22, 2014).

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) have agreed to comply with certain Federal policies included in each AIP grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97-248), as amended and recodified at 49 United States Codes (U.S.C.) 47107(a)(1), and the contractual sponsor assurances require that the airport sponsor make the airport available for aviation use. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make the airport available on reasonable terms without unjust discrimination for aeronautical activities, including aviation services. Grant Assurance 19, *Operation and Maintenance*, prohibits an airport sponsor from causing or permitting any activity that would interfere with use of airport property for airport purposes. In some cases, sponsors who have received property transfers through surplus property and nonsurplus property agreements have similar federal obligations.

The sponsor may designate some areas of the airport for non-aviation use,¹ with FAA approval, but aeronautical facilities of the airport must be dedicated to use for aviation purposes. Limiting use of aeronautical facilities for aeronautical purposes ensures that airport facilities are available to meet aviation demand at the airport. Aviation tenants and aircraft owners should not be displaced by non-

¹ The terms "non-aviation" and "non-aeronautical" are used interchangeably in this Notice.

aviation commercial uses that could be conducted off airport property.

It is the longstanding policy of the FAA that airport property be available for aeronautical use and not be available for non-aeronautical purposes unless that non-aeronautical use is approved by the FAA. Use of a designated aeronautical facility for a non-aeronautical purpose, even on a temporary basis, requires FAA approval. See FAA Order 5190.6B, *Airport Compliance Manual*, paragraph 22.6, September 30, 2009. The identification of non-aeronautical use of aeronautical areas receives special attention in FAA airport land use compliance inspections. See Order 5190.6B, paragraphs 21.6(f)(5).

Areas of the airport designated for non-aeronautical use must be shown on an airport's Airport Layout Plan (ALP). The AAIA, at 49 U.S.C. 47107(a)(16), requires that AIP grant agreements include an assurance by the sponsor to maintain an ALP in a manner prescribed by the FAA. Sponsor assurance 29, *Airport Layout Plan*, implements § 47107(a)(16) and provides that an ALP must designate non-aviation areas of the airport. The sponsor may not allow an alteration of the airport in a manner inconsistent with the ALP unless approved by the FAA. See Order 5190.6B, paragraph 7.18, and Advisory Circular 150/5070-6B, *Airport Master Plans*, Chapter 10.

Clearly identifying non-aeronautical facilities not only keeps aeronautical facilities available for aviation use, but also assures that the airport sponsor receives at least Fair Market Value (FMV) revenue from non-aviation uses of the airport. The AAIA requires that airport revenues be used for airport purposes, and that the airport maintain a fee structure that makes the airport as self-sustaining as possible. 49 U.S.C. 47107(a)(13)(A) and (b)(1). The FAA and the Department of Transportation Office of the Inspector General have interpreted these statutory provisions to require that non-aviation activities on an airport be charged a fair market rate for use of airport facilities rather than the aeronautical rate. See *FAA Policies and Procedures Concerning the Use of Airport Revenue*, (64 FR 7696, 7721, February 16, 1999) (FAA Revenue Use Policy).

If an airport tenant pays an aeronautical rate for a hangar and then uses the hangar for a non-aeronautical purpose, the tenant may be paying a below-market rate in violation of the sponsor's obligation for a self-sustaining rate structure and FAA's Revenue Use Policy. Confining non-aeronautical activity to designated non-aviation areas

of the airport helps to ensure that the non-aeronautical use of airport property is monitored and allows the airport sponsor to clearly identify non-aeronautical fair market value lease rates, in order to meet their federal obligations. Identifying non-aeronautical uses and charging appropriate rates for these uses prevents the sponsor from subsidizing non-aviation activities with aviation revenues.

FAA Oversight

A sponsor's Grant Assurance obligations require that its aeronautical facilities be used or be available for use for aeronautical activities. If the presence of non-aeronautical items in a hangar does not interfere with these obligations, then the FAA will generally not consider the presence of those items to constitute a violation of the sponsor's obligations. When an airport has unused hangars and low aviation demand, a sponsor can request the FAA approval for interim non-aeronautical use of a hangars, until demand exists for those hangars for an aeronautical purpose. Aeronautical use must take priority and be accommodated over non-aeronautical use, even if the rental rate would be higher for the non-aeronautical use. The sponsor is required to charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes. (64 FR 7721).

The FAA conducts land use inspections at 18 selected airports each year, at least two in each of the nine FAA regions. See Order 5190.6B, paragraph 21.1. The inspection includes consideration of whether the airport sponsor is using designated aeronautical areas of the airport exclusively for aeronautical purposes, unless otherwise approved by the FAA. See Order 5190.6B, paragraph 21.6.

The Notice of Proposed Policy

In July 2014, the FAA issued a notice of proposed policy on use of hangars and related facilities at federally obligated airports, to provide a clear and standardized guide for airport sponsors and FAA compliance staff. (79 FR 42483, July 22, 2014). The FAA received more than 2,400 comments on the proposed policy statement, the majority from persons who have built or are in the process of building an amateur-built aircraft. The FAA also received comments from aircraft owners, tenants and owners of hangars, and airport operators. The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) also provided comments on behalf of their membership. Most of the

comments objected to some aspect the proposed policy statement. Comments objecting to the proposal tended to fall into two general categories:

- The FAA should not regulate the use of hangars at all, especially if the hangar is privately owned.
- While the FAA should have a policy limiting use of hangars on federally obligated airports to aviation uses, the proposed policy is too restrictive in defining what activities should be allowed.

Discussion of Comments and Final Policy

The following summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice. The FAA discusses revisions to the policy based on comments received. In addition, the FAA will post frequently asked Questions and Answers regarding the Hangar Use Policy on www.faa.gov/airport-compliance. These Questions and Answers will be periodically updated until FAA Order 5190.6B is revised to reflect the changes in this notice.

1. *Comment: Commenters stated that the FAA should defer to local government and leave all regulation of hangar use to the airport operator.*

Response: The FAA has a contract with the sponsor of an obligated airport, either through AIP grant agreements or a surplus property deed, to limit the use of airport property to certain aviation purposes. Each sponsor of an obligated airport has agreed to these terms. The FAA relies on each airport sponsor to comply with its obligations under this contract. To maintain a standardized national airport system and standardized practices in each of the FAA's nine regional offices, the agency issues guidance on its interpretation of the requirements of the AIP and surplus property agreements. It falls to the local airport sponsor to implement these requirements. The FAA allows airport sponsors some flexibility to adapt compliance to local conditions at each airport.

However, some airport sponsors have adopted hangar use practices that led to airport users to complain to the FAA. Some airport users have complained that sponsors are too restrictive, and fail to allow reasonable aviation-related uses of airport hangars. More commonly, aircraft owners have complained that hangar facilities are not available for aircraft storage because airport sponsors have allowed the use of hangars for purposes that are unrelated to aviation,

such as operating a non-aviation business or storing multiple vehicles. By issuing the July 2014 notice, the FAA intended to resolve both kinds of complaints by providing guidance on appropriate management of hangar use. The agency continues to believe that FAA policy guidance is appropriate and necessary to preserve reasonable access to aeronautical facilities on federally obligated airports. However, the final policy has been revised in response to comments received on the proposal.

2. *Comment: Commenters, including AOPA, stated that the FAA lacks the authority to regulate the use of privately owned hangars.*

Response: The FAA has a statutory obligation to assure that facilities on aeronautically designated land at federally obligated airports are reasonably available for aviation use. Designated aeronautical land on a federally obligated airport is a necessary part of a national system of aviation facilities. Land designated for aeronautical use offers access to the local airfield taxiway and runway system. Land designated for aeronautical use is also subject to certain conditions, including FAA policies concerning rates and charges (including rental rates) which were designed to preserve access for aeronautical users and to support aeronautical uses. A person who leases aeronautical land on the airport to build a hangar accepts conditions that come with that land in return for the special benefits of the location. The fact that the tenant pays the sponsor for use of the hangar or the land does not affect the agreement between the FAA and the sponsor that the land be used for aeronautical purposes. (In fact, most hangar owners do not have fee ownership of the property; typically airport structures revert to ownership of the airport sponsor upon expiration of the lease term). An airport sponsor may choose to apply different rules to hangars owned by the sponsor than it does to privately constructed hangars, but the obligations of the sponsor Grant Assurances and therefore the basic policies on aeronautical use stated in this notice, will apply to both.

3. *Comment: Commenters believe that a policy applying the same rules to all kinds of aeronautical structures, and to privately owned hangars as well as sponsor-owned hangars, is too general. The policy should acknowledge the differences between categories of airport facilities.*

Response: A number of commenters thought that rules for use of privately constructed and owned hangars should be less restrictive than rules for hangars

leased from the airport sponsor. The Leesburg Airport Commission commented that there are different kinds of structures on the airport, with variations in rental and ownership interests, and that the FAA's policy should reflect those differences. The FAA acknowledges that ownership or lease rights and the uses made of various aeronautical facilities at airports will vary. The agency expects that airport sponsors' agreements with tenants would reflect those differences. The form of property interest, be it a leasehold or ownership of a hangar, does not affect the obligations of the airport sponsor under the Grant Assurances. All facilities on designated aeronautical land on an obligated airport are subject to the requirement that the facilities be available for aeronautical use.

4. *Comment: Commenters agree that hangars should be used to store aircraft and not for non-aviation uses, but, they argue the proposed policy is too restrictive on the storage of non-aviation related items in a hangar along with an aircraft. A hangar with an aircraft in it still has a large amount of room for storage and other incidental uses, and that space can be used with no adverse effect on the use and storage of the aircraft.*

Response: In response to the comments, the final policy deletes the criteria of "incidental" or "de minimis" use and simply requires that non-aviation storage in a hangar not interfere with movement of aircraft in or out of the hangar, or impede access to other aeronautical contents of the hangar. The policy lists specific conditions that would be considered to interfere with aeronautical use. Stored non-aeronautical items would be considered to interfere with aviation use if they:

- Impede the movement of the aircraft in and out of the hangar;
- Displace the aeronautical contents of the hangar. (A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft);
- Impede access to aircraft or other aeronautical contents of the hangar;
- Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory); or
- Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

Note: Storage of equipment associated with an aeronautical activity (e.g., skydiving, ballooning, gliding) would be considered an aeronautical use of a hangar.

5. *Comment: Commenters stated the policy should apply different rules to situations where there is no aviation demand for hangars, especially when hangars are vacant and producing no income for the sponsor.*

Response: At some airports, at some times, there will be more hangar capacity than needed to meet aeronautical demand, and as a result there will be vacant hangars. The FAA agrees that in such cases it is preferable to make use of the hangars to generate revenue for the airport, as long as the hangar capacity can be recovered on relatively short notice for aeronautical use when needed. See Order 5190.6B, paragraph 22.6. The final policy adopts a provision modeled on a leasing policy of the Los Angeles County Airport Commission, which allows month-to-month leases of vacant hangars for any purpose until a request for aeronautical use is received. The final policy requires that a sponsor request FAA approval before implementing a similar leasing plan:

- The airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis.
- The plan may be implemented only when there is no current aviation demand for the vacant hangars.
- Leases must require the non-aeronautical tenant to vacate the hangar on 30 days' notice, to allow aeronautical use when a request is received.
- Once the plan is approved, the sponsor may lease vacant hangars on a 30 days' notice without further FAA approval.

The agency believes this will allow airports to obtain some financial benefit from vacant hangars, while allowing the hangars to be quickly returned to aeronautical use when needed. FAA pre-approval of a month-to-month leasing plan will minimize the burden on airport sponsors and FAA staff since it is consistent with existing interim use guidance.

6. *Comment: Commenter indicates that the terms "incidental use" and "insignificant amount of space" are too vague and restrictive.*

Response: The FAA has not used these terms in the final policy. Instead, the policy lists specific prohibited conditions that would be considered to interfere with aeronautical use of a hangar.

7. *Comment: Commenter states Glider operations require storage of items at the airport other than aircraft, such as tow vehicles and towing equipment. This should be an approved use of hangars.*

Response: Tow bars and glider tow equipment have been added to the list of examples of aeronautical equipment. Whether a vehicle is dedicated to use for glider towing is a particular fact that can be determined by the airport sponsor in each case. Otherwise the general rules for parking a vehicle in a hangar would apply.

8. *Comment: Commenter states it should be clear that it is acceptable to park a vehicle in the hangar while the aircraft is out of the hangar being used.*

Response: The final policy states that a vehicle parked in the hangar, while the vehicle owner is using the aircraft will not be considered to displace the aircraft, and therefore is not prohibited.

9. *Comment: Commenters, including Experimental Aircraft Association (EAA), stated that aviation museums and non-profit organizations that promote aviation should not be excluded from hangars.*

Response: Aviation museums and other non-profit aviation-related organizations may have access to airport property at less than fair market rent, under section VII.E of the FAA Policy and Procedures Concerning the Use of Airport Revenue. (64 FR 7710, February 16, 1999). However, there is no special reason for such activities to displace aircraft owners seeking hangar space for storage of operating aircraft, unless the activity itself involves use and storage of aircraft. Accordingly, aviation museums and non-profit organizations will continue to have the same access to vacant hangar space as other activities that do not actually require a hangar for aviation use, that is, when there is no aviation demand (aircraft storage) for those hangars and subject to the discretion of the airport operator.

10. *Comment: Commenters suggest that the policy should allow a 'grace period' for maintaining possession of an empty hangar for a reasonable time from the sale of an aircraft to the purchase or lease of a new aircraft to be stored in the hangar.*

Response: The FAA assumes that airport lease terms would include reasonable accommodation for this purpose and other reasons a hangar might be empty for some period of time, including the aircraft being in use or at another location for maintenance. The reasons for temporary hangar vacancy and appropriate "grace periods" for various events depend on local needs and lease policies, and the FAA has not included any special provision for grace periods in the final policy.

11. *Comment: Commenters believe that the policy should allow some leisure spaces in a hangar, such as a lounge or seating area and kitchen, in*

recognition of the time many aircraft owners spend at the airport, and the benefits of an airport community.

Response: The final policy does not include any special provision for lounge areas or kitchens, either specifically permitting or prohibiting these areas. The policy requires only that any non-aviation related items in a hangar not interfere in any way with the primary use of the hangar for aircraft storage and movement. The airport sponsor is expected to have lease provisions and regulations in place to assure that items located in hangars do not interfere with this primary purpose.

12. *Comment: Commenters, including EAA, stated that all construction of an aircraft should be considered aeronautical for the purpose of hangar use, because building an aircraft is an inherently aeronautical activity. The policy should at least allow for use of a hangar at a much earlier stage of construction than final assembly.*

Response: The FAA has consistently held that the need for an airport hangar in manufacturing or building aircraft arises at the time the components of the aircraft are assembled into a completed aircraft. Prior to that stage, components can be assembled off-airport in smaller spaces. This determination has been applied to both commercial aircraft manufacturing as well as homebuilding of experimental aircraft.

A large majority of the more than 2,400 public comments received on the notice argued that aircraft construction at any stage is an aeronautical activity. The FAA recognizes that the construction of amateur-built aircraft differs from large-scale, commercial aircraft manufacturing. It may be more difficult for those constructing amateur-built or kit-built aircraft to find alternative space for construction or a means to ultimately transport completed large aircraft components to the airport for final assembly, and ultimately for access to taxiways for operation.

Commenters stated that in many cases an airport hangar may be the only viable location for amateur-built or kit-built aircraft construction. Also, as noted in the July 2014 notice, many airports have vacant hangars where a lease for construction of an aircraft, even for several years, would not prevent owners of operating aircraft from having access to hangar storage.

Accordingly, the FAA will consider the construction of amateur-built or kit-built aircraft as an aeronautical activity. Airport sponsors must provide reasonable access to this class of users, subject to local ordinances and building codes. Reasonable access applies to currently available facilities; there is no

requirement for sponsors to construct special facilities or to upgrade existing facilities for aircraft construction use.

Airport sponsors are urged to consider the appropriate safety measures to accommodate aircraft construction. Airport sponsors leasing a vacant hangar for aircraft construction also are urged to incorporate progress benchmarks in the lease to ensure the construction project proceeds to completion in a reasonable time. The FAA's policy with respect to commercial aircraft manufacturing remains unchanged.

13. *Comment: Commenter suggests that the time that an inoperable aircraft can be stored in a hangar should be clarified, because repairs can sometimes involve periods of inactivity.*

Response: The term "operational aircraft" in the final policy does not necessarily mean an aircraft fueled and ready to fly. All operating aircraft experience downtime for maintenance and repair, and for other routine and exceptional reasons. The final policy does not include an arbitrary time period beyond which an aircraft is no longer considered operational. An airport operator should be able to determine whether a particular aircraft is likely to become operational in a reasonable time or not, and incorporate provisions in the hangar lease to provide for either possibility.

14. *Comment: Commenter suggests that the FAA should limit use of hangars on an obligated airport as proposed in the July 2014 notice. Airport sponsors frequently allow non-aeronautical use of hangars now, denying the availability of hangar space to aircraft owners.*

Response: Some commenters supported the relatively strict policies in the July 2014 notice, citing their experience with being denied access to hangars that were being used for non-aviation purposes. The FAA believes that the final policy adopted will allow hangar tenants greater flexibility than the proposed policy in the use of their hangars, but only to the extent that there is no impact on the primary purpose of the hangar. The intent of the final policy is to minimize the regulatory burden on hangar tenants and to simplify enforcement responsibilities for airport sponsors and the FAA, but only as is consistent with the statutory requirements for use of federally obligated airport property.

Final Policy

In accordance with the above, the FAA is adopting the following policy statement on use of hangars at federally obligated airports:

Use of Aeronautical Land and Facilities

Applicability

This policy applies to all aircraft storage areas or facilities on a federally obligated airport unless designated for non-aeronautical use on an approved Airport Layout Plan or otherwise approved for non-aviation use by the FAA. This policy generally refers to the use of hangars since they are the type of aeronautical facility most often involved in issues of non-aviation use, but the policy also applies to other structures on areas of an airport designated for aeronautical use. This policy applies to all users of aircraft hangars, including airport sponsors, municipalities, and other public entities, regardless of whether a user is an owner or lessee of the hangar.

I. General

The intent of this policy is to ensure that the federal investment in federally obligated airports is protected by making aeronautical facilities available to aeronautical users, and by ensuring that airport sponsors receive fair market value for use of airport property for non-aeronautical purposes. The policy implements several Grant Assurances, including Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*.

II. Standards for Aeronautical Use of Hangars

a. Hangars located on airport property must be used for an aeronautical purpose, or be available for use for an aeronautical purpose, unless otherwise approved by the FAA Office of Airports as described in Section III.

b. Aeronautical uses for hangars include:

1. Storage of active aircraft.
2. Final assembly of aircraft under construction.
3. Non-commercial construction of amateur-built or kit-built aircraft.
4. Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
5. Storage of aircraft handling equipment, *e.g.*, towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

c. Provided the hangar is used primarily for aeronautical purposes, an airport sponsor may permit non-aeronautical items to be stored in hangars provided the items do not

interfere with the aeronautical use of the hangar.

d. While sponsors may adopt more restrictive rules for use of hangars, the FAA will generally not consider items to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar.
2. Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft.
3. Impede access to aircraft or other aeronautical contents of the hangar.
4. Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory).
5. Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

e. Hangars may not be used as a residence, with a limited exception for sponsors providing an on-airport residence for a full-time airport manager, watchman, or airport operations staff for remotely located airports. The FAA differentiates between a typical pilot resting facility or aircrew quarters versus a hangar residence or hangar home. The former are designed to be used for overnight and/or resting periods for aircrew, and not as a permanent or even temporary residence. *See* FAA Order 5190.6B paragraph 20.5(b)

f. This policy applies regardless of whether the hangar occupant leases the hangar from the airport sponsor or developer, or the hangar occupant constructed the hangar at the occupant's own expense while holding a ground lease. When land designated for aeronautical use is made available for construction of hangars, the hangars built on the land are subject to the sponsor's obligations to use aeronautical facilities for aeronautical use.

III. Approval for Non-Aeronautical Use of Hangars

A sponsor will be considered to have FAA approval for non-aeronautical use of a hangar in each of the following cases:

a. *FAA advance approval of an interim use:* Where hangars are unoccupied and there is no current aviation demand for hangar space, the airport sponsor may request that FAA Office of Airports approve an interim use of a hangar for non-aeronautical purposes for a period of 3 to 5 years. The FAA will review the request in accordance with Order 5190.6B

paragraph 22.6. Interim leases of unused hangars can generate revenue for the airport and prevent deterioration of facilities. Approved interim or concurrent revenue-production uses must not interfere with safe and efficient airport operations and sponsors should only agree to lease terms that allow the hangars to be recovered on a 30 days' notice for aeronautical purposes. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

b. *FAA approval of a month-to-month leasing plan:* An airport sponsor may obtain advance written approval month-to-month leasing plan for non-aeronautical use of vacant facilities from the local FAA Office of Airports. When there is no current aviation demand for vacant hangars, the airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis. The plan must provide for leases that include an enforceable provision that the tenant will vacate the hangar on a 30-day notice. Once the plan is approved, the sponsor may lease vacant hangars on a 30-day notice basis without further FAA approval. If the airport sponsor receives a request for aeronautical use of the hangar and no other suitable hangar space is available, the sponsor will notify the month-to-month tenant that it must vacate.

A sponsor's request for approval of an interim use or a month-to-month leasing plan should include or provide for (1) an inventory of aeronautical and non-aeronautical land/uses, (2) information on vacancy rates; (3) the sponsor's procedures for accepting new requests for aeronautical use; and (4) assurance that facilities can be returned to aeronautical use when there is renewed aeronautical demand for hangar space. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

c. *Other cases:* Advance written release by the FAA for all other non-aeronautical uses of designated aeronautical facilities. Any other non-aeronautical use of a designated aeronautical facility or parcel of airport land requires advance written approval from the FAA Office of Airports in accordance with Order 5190.6B chapter 22.

IV. Use of Hangars for Construction of an Aircraft

Non-commercial construction of amateur-built or kit-built aircraft is considered an aeronautical activity. As with any aeronautical activity, an airport sponsor may lease or approve the lease of hangar space for this activity without FAA approval. Airport sponsors are not required to construct special facilities or upgrade existing facilities for construction activities. Airport sponsors are urged to consider the appropriate safety measures to accommodate these users.

Airport sponsors also should consider incorporating construction progress targets in the lease to ensure that the hangar will be used for final assembly and storage of an operational aircraft within a reasonable term after project start.

V. No Right to Non-Aeronautical Use

In the context of enforcement of the Grant Assurances, this policy allows some incidental storage of non-aeronautical items in hangars that do not interfere with aeronautical use. However, the policy neither creates nor constitutes a right to store non-aeronautical items in hangars. Airport sponsors may restrict or prohibit storage of non-aeronautical items. Sponsors should consider factors such as emergency access, fire codes, security, insurance, and the impact of vehicular traffic on their surface areas when enacting rules regarding hangar storage. In some cases, permitting certain incidental non-aeronautical items in hangars could inhibit the sponsor's ability to meet obligations associated with Grant Assurance 19, *Operations and Maintenance*. To avoid claims of discrimination, sponsors should impose consistent rules for incidental storage in all similar facilities at the airport. Sponsors should ensure that taxiways and runways are not used for the vehicular transport of such items to or from the hangars.

VI. Sponsor Compliance Actions

a. It is expected that aeronautical facilities on an airport will be available and used for aeronautical purposes in the normal course of airport business, and that non-aeronautical uses will be the exception.

b. Sponsors should have a program to routinely monitor use of hangars and take measures to eliminate and prevent unapproved non-aeronautical use of hangars.

c. Sponsors should ensure that length of time on a waiting list of those in need of a hangar for aircraft storage is minimized.

d. Sponsors should also consider including a provision in airport leases, including aeronautical leases, to adjust rental rates to FMV for any non-incidentally non-aeronautical use of the leased facilities. In other words, if a tenant uses a hangar for a non-aeronautical purpose in violation of this policy, the rental payments due to the sponsor would automatically increase to a FMV level.

e. FAA personnel conducting a land use or compliance inspection of an airport may request a copy of the sponsor's hangar use program and evidence that the sponsor has limited hangars to aeronautical use.

The FAA may disapprove an AIP grant for hangar construction if there are existing hangars at the airport being used for non-aeronautical purposes.

Issued in Washington, DC, on the 9th of June 2016.

Robin K. Hunt,

Acting Director, Office of Airport Compliance and Management Analysis.

[FR Doc. 2016-14133 Filed 6-14-16; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 660, 801, and 809

[Docket No. FDA-2013-N-0125]

RIN 0910-AG74

Use of Symbols in Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing this final rule revising its medical device and certain biological product labeling regulations to explicitly allow for the optional inclusion of graphical representations of information, or symbols, in labeling (including labels) without adjacent explanatory text (referred to in this document as "stand-alone symbols") if certain requirements are met. The final rule also specifies that the use of symbols, accompanied by adjacent explanatory text continues to be permitted. FDA is also revising its prescription device labeling regulations to allow the use of the symbol statement "Rx only" or "R only" in the labeling for prescription devices.

DATES: This rule is effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: *For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health (CDRH):* Antoinette (Tosia) Hazlett, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5424, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-6119, email: Tosia.Hazlett@fda.hhs.gov.

For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The final rule explicitly permits the use of symbols in medical device labeling without adjacent explanatory text if certain requirements are met. The medical device industry has requested the ability to use stand-alone symbols on domestic device labeling, consistent with their current use on devices manufactured for European and other foreign markets. The final rule seeks to harmonize the U.S. device labeling requirements for symbols with international regulatory requirements, such as the Medical Device Directive 93/42/EEC of the European Union (EU) (the European Medical Device Directive) and global adoption of International Electrotechnical Commission (IEC) standard IEC 60417 and International Organization for Standardization (ISO) standard ISO 7000-DB that govern the use of device symbols in numerous foreign markets.

Summary of the Major Provisions of the Regulatory Action in Question

FDA has generally interpreted existing regulations not to allow the use of symbols in medical device labeling, except with adjacent English-language explanatory text and/or on in vitro diagnostic (IVD) devices intended for professional use. Under the final rule, symbols established in a standard developed by a standards development organization (SDO) may be used in medical device labeling without adjacent explanatory text as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d(c)) and the symbol is used according to the specifications for use of the symbol set

**NEWPORT MUNICIPAL AIRPORT
HANGAR SITE LAND LEASE AGREEMENT**

BETWEEN: The City of Newport, an Oregon Municipal Corporation (Lessor)

AND: _____ (Lessee)

EFFECTIVE DATE: _____

RECITALS

- A. The Newport Municipal Airport (Airport) is operated by and under the jurisdiction of Lessor. In accordance with sound Airport management practices, the Airport rules and regulations and the Airport Plan of Development, as updated and amended from time to time, and other relevant policies of Lessor that apply to Airport usage, certain areas of the Airport are reserved for each of the several types of activities that occur.
- B. Lessee desires to construct and maintain a hangar at the Airport in an area designated for such facilities, and Lessor is willing to Lease the land to Lessee for the purpose of constructing and maintaining such a hangar in accordance with the terms and conditions set forth in this Lease.
- C. The following are attached and incorporated as part of the Lease:

Exhibit A - Description and Map of Leased Premises (land only).

AGREEMENT

- 1. Lease. For the purpose stated in this Lease and on the other terms and conditions stated herein, Lessor leases to Lessee the land as described on the attached Exhibit A, consisting of 6,400 square feet (Leased Premises).
- 2. Initial Term for a New Lease. The period of the Lease will be fifteen (15) years, commencing _____ and expiring _____ subject to earlier termination in accordance with the terms of this Lease.
- 3. Extension Term. Provided Lessee is not in default in the performance of any term or condition of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of five (5) years per term, commencing with the expiration of the first or additional term, upon the following conditions:

- 3.1 The extension option may be exercised at any time between 360 and 60 days prior to the expiration of the initial term, or any extension term, with written notice given to Lessor by the Lessee. If not exercised within such period and in such manner, the option to extend shall be void. Even if exercised timely, the granting of the option is conditional upon the provisions in this Paragraph 3.
- 3.2 Within sixty (60) days after receipt of Lessee's notice of exercise of the extension option, Lessor shall cause the improvements to be inspected by the Building Official for the City of Newport. The inspection shall be for the purpose of determining the condition of the improvements.
- 3.3 Following the inspection, Lessor shall notify Lessee of the inspection results, including a list of any necessary repairs. The additional term shall be contingent upon Lessee's completion of any necessary repairs and/or resolution of code compliance issues.
- 3.4 Additionally, Lessor may require as a further condition to Lessee's right to continue the Lease for an extension term, that Lessee make such alterations, improvements, or repairs Lessor deems necessary or appropriate for the good of the Airport, taking into consideration the state of repair and condition of other similar and newer improvements located at the Airport, and the overriding desire to maintain clean, safe, and attractive facilities for other users of the Airport. Items considered for improvement shall include, but shall not be limited to, structural integrity of the hangar, exterior finish, condition and operation of doors, and condition of roof. To effectuate any such additional conditions, Lessee's right to continue the Lease during the extension term shall be subject to a supplemental document between Lessor and Lessee, setting forth a reasonable time, determined by Lessor, in which such alterations and repairs will be made, and providing that upon Lessee's failure to make such alterations and repairs within that period, the extension term shall immediately terminate, in which event the provisions of Paragraph 18 shall apply.
- 3.5 As used herein, the Building Official is the individual occupying that position or similar position at the time the inspection is made, or that person's designee or agent, or the individual occupying a similar position in a successor agency or governmental unit having building code jurisdiction over the Airport facilities.
- 3.6 Upon the expiration of the two (2) additional terms of five (5) year extensions, the lease shall terminate. At that time, Lessee may negotiate with Lessor on the terms and conditions of a new lease.

4. Basic Rent.

4.1 Basic rent is \$0.253 per square foot of ground space per year. Basic rent shall be due and payable on a monthly basis, _____monthly (_____ annually), prorated to the first day of the month following signing, and due on the same day of each month thereafter.

4.2 Any payments or partial payments not made under this Lease shall bear interest at the rate of twelve percent (12%) per annum until paid.

5. Adjustments to Basic Rent.

5.1 CPI Adjustment. The basic rent provided in Paragraph 4 shall be increased each year by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor. Comparisons shall be made using the index entitled, "U.S. City Average/All Items and Major Group Figures for all Urban Consumers Portland Area (1982-84 = 100)," or the nearest comparable data on changes in the cost of living, if such index is no longer published. The change shall be determined by comparison of the figure for the previous January 1, with that of January 1 of the current year. In no event shall this calculation cause a reduction in base rent below that payable during the preceding year. The proposed adjustment shall be presented to Lessee by Lessor thirty (30) days prior to the effective date of the assessment.

5.2 Challenge. Lessee may give Lessor notice, within thirty (30) days of the notice of rental adjustment, challenging Lessor's figures. If any such challenge is not made within thirty (30) days, Lessee's challenge to the figures presented by Lessor shall be deemed waived. The challenge shall be restricted to Lessor's calculations of increases relating to Lessee and, if not resolved by the parties, will be referred to arbitration as described in Paragraph 23.

5.3 Fee. An annual maintenance fee may be established for hangar lease sites at the Airport pursuant to resolution of the Newport City Council as provided under Newport Municipal Code section 9.40.010.

6. Taxes. Lessee shall pay when and if levied, any taxes on the Leased Premises, as well as any taxes on improvements and fixtures constructed and maintained on the Leased Premises. If any taxes on the Leased Premises are levied against the Lessor, they shall be reimbursed to the Lessor within thirty (30) days of written notice from Lessor to Lessee.

7. Pre-Approval of Plans: Required Reviews. Lessee shall construct and maintain upon the Leased Premises an aircraft hangar which shall in all respects comply with applicable laws, rules, regulations, ordinances, and resolutions of all governmental entities, including Lessor. The plans and specifications of the hangar shall be subject to approval by Lessor. Lessee shall submit such plans and specifications to the Community Development Department for departmental review process. No site preparation or construction shall be commenced without first obtaining the written approval of the City Manager or designee. The lease will be subject to Lessee obtaining any required reviews for impact on project storm water erosion control, and any other reviews deemed necessary by Lessor.
8. Construction of Improvements. Lessee shall construct its planned facilities and install therein all necessary fixtures, equipment, and accessories, all of which shall be in accordance with the terms and conditions of this Lease and any applicable city code or FAA requirements. Lessee shall complete construction of the new improvements within two (2) years after the Effective Date of this Lease. Existing improvements shall be deemed to have been appropriately constructed so long as they are well-maintained and meet all applicable city code and FAA requirements. It is expressly understood that upon the expiration of the Lease, all hangar improvements shall become property of Lessor.
 - 8.1 Lessee agrees to reimburse Lessor for the apportioned costs of roadway improvements including, but not limited to: excavation, paving, drainage, and fencing required for all extensions of the access road to the Leased Premises. Lessee shall be responsible for the cost of all extensions, as applicable, of all water, sewer, and other utilities to the Leased Premises, as well as any fees for obtaining service. Lessee shall be responsible for payment at the time improvements are completed. Lessee shall remit payment to Lessor within thirty (30) days from the date of invoice.
 - 8.2 Lessee agrees to construct, at Lessee's expense, aircraft access improvements, including without limitation driveways, taxi lanes, aprons, and ramps to its planned facility. Construction and location of the access improvements shall comply with specifications set forth by Lessor at the time of plan's approval. Lessee understands that those portions of the constructed Airport access improvements situated outside the boundaries of the Leased Premises shall become, immediately upon their completion to Lessor's satisfaction, the property of Lessor. All construction and any connections to the runway of any apron or taxi lane shall in addition be governed by any rules or regulations regarding Airport operations and must be approved of and overseen by Airport management. Constructed facilities shall not be occupied until access is completed and accepted by Lessor.

- 8.3 Upon completion of improvements, Lessee shall provide an 8 1/2" x 11" site plan detailing a scaled drawing of the Leased Premises, hangar foot print, office area, parking, landscaping, and any other improvements.
 - 8.4 The provisions provided above do not relieve Lessee from compliance with all applicable building code requirements and acquiring all necessary licenses and permits from any governmental authority.
 - 8.5 If the aircraft hangar or other improvements on the Leased Premises are damaged or destroyed, Lessee shall do whatever is necessary to repair, rebuild, or restore the structure and other improvements to substantially the same condition existing prior to the damage or destruction within 180 days of the date of destruction. Upon written request from Lessee, Lessor may extend the 180-day timeline to the extent reasonably necessary due to conditions beyond the control of Lessee.
9. Use of the Leased Premises. Use of the Leased Premises is limited to aeronautical uses. The Lessee may use the Leased Premises, at its own risk, for the following purposes and for no other purpose (including commercial or business use) without the prior written approval of the Airport Director:
- 9.1 Construction of an aircraft hangar for private use by the Lessee in accordance with Airport rules and regulations;
 - 9.2 Storage of aircraft;
 - 9.3 Supplies, equipment, and other ancillary items necessary for the safe operations and maintenance of the Lessee's aircraft;
 - 9.4 Construction, maintenance, and repair of Lessee's aircraft by Lessee or by a person or firm in accordance with current and applicable future Airport rules and regulations.
 - 9.5 The hangar cannot be used for temporary or permanent residential use.
10. Lessee's Additional Use Rights. Lessee shall have the use of Airport facilities and navigational aids for the purpose of landing, taking off, and taxiing of Lessee's aircraft, and related rights of ingress and egress 24 hours a day, subject to the current or any amended laws, rules, regulations, ordinances, and resolutions of applicable governmental bodies, including Lessor.
11. Restriction on Assignment and Sublease. Lessee shall not assign this Lease, or any interest herein, or sublease the Leased Premises without the prior

written consent of Lessor. As a condition of any consent to assignment, Lessor may require one or more of the following:

- 1 1 .1 Updating Lease. Lessor may require or allow Lessee and/or the assignee to execute Lessor's then current form of hangar site Lease, or a partial or complete amendment of this Lease to incorporate the terms and provisions of Lessor's then current form of hangar site Lease.
- 1 1 .2 Environmental Assessment. If Lessor reasonably believes that there is a question regarding hazardous materials or other environmental issues that relate to Lessee's use of the premises, Lessor may require, as a condition of assignment, an environmental assessment. Such assessment would be at Lessee's expense, as a condition of approval of assignment.
- 1 1 .3 Assumption. The assignee shall expressly assume Lessee's obligations under this Lease, as may be modified in accordance with Paragraph 1 1 .1. Any approval of assignment is not a release from any and all obligations of
Lessee under the Lease, except to the extent that Lessor specifically, in writing, releases Lessee from such obligations. This provision does not apply to any of assignor Lessee's obligations as set forth in Paragraph 12.6.
- 11.4 As a condition of approval, Lessor may require any improvements to the Leased Premises to bring it into compliance with rules or regulations of the Airport.
12. Specific Obligations of Lessee. In connection with Lessee's occupancy and use of the Leased Premises, the following specific conditions shall apply:
 - 12.1 Utilities. Lessor shall not be obligated to furnish any utilities or utility services to the Leased Premises. If, upon Lessee's request, Lessor agrees to provide utility services to the Leased Premises as a condition of providing service, Lessee shall be responsible for all costs of installation of such service, including transmission lines, connection fees and utility service charges. Prior to construction, a payment agreement in a form acceptable to the Lessor shall be entered into between the parties. If payment includes costs of any transmission lines that have the potential for use by other lessees, there would be included a repayment schedule to the original paying Lessee as other parties apply for service. Such reimbursement agreement shall not exceed ten (10) years in length.

- 12.2 Maintenance. Lessee shall, at its own cost, keep and maintain the Leased Premises, including hangar building, grounds, and all other improvements in good condition and repair. In determining whether or not the Leased Premises are in proper condition, the Airport Director shall take into consideration the appearance and character of other similar improvements at the Airport which are in good condition and repair. It is specifically acknowledged that the condition or repair includes appearance and improvements of the Leased Premises, and therefore the condition of paint or other exterior finish. Lessee shall not store parts, equipment, or other materials outside the hangar structure. Lessee shall not permit any refuse or debris to be deposited or to accumulate on the Leased Premises. Lessee shall not permit any bird nesting or attractants on the Leased Premises. Failure to maintain the Leased Premises shall be deemed a breach of this Lease.
- 12.3 Taxi Lane. The cost of construction of the taxi lane shall be an obligation of the Lessee. Such construction shall be subject to the approval of the Lessor. Once constructed, the Lessor shall be responsible for maintenance and repair of the taxi lane. A taxi lane is defined as the portion of the aircraft parking area used for access between taxiways and aircraft parking positions. A taxiway is defined as a path connecting runways with ramps, hangars, terminals, and other facilities.
- 12.4 Compliance with Laws. Lessee shall comply with all applicable laws, ordinances, resolutions, rules, and regulations of any governmental bodies having jurisdiction over the Airport with respect to Lessee's activity in relation to the use and occupancy of the Leased Premises: and of the Airport in general. Any act or failure to act by Lessee or by any subtenant, employee, invitee, or agent of Lessee in violation of any such laws, ordinances, resolutions, rules, and regulations shall be deemed a violation of this Lease.
- 12.5 Airport Rules and Regulations. Lessee's obligation under Paragraph 12.4 shall include, but not be limited to, the rules and regulations of the Airport. Lessor reserves the right to adopt additional rules and regulations and amend existing and future rules and regulations which govern the Leased Premises and the facilities at the Airport used by the Lessee. Lessee agrees to observe, obey, and abide by all such rules and regulations currently existing or hereafter adopted or amended. Any action or failure to act by Lessee or by any subtenant, employee, invitee, or agent of Lessee which is in violation of such rules and regulations shall be deemed a violation by Lessee of this Lease.

12.6 Environmental Laws. Lessee's obligations under this Lease specifically include, but are not limited to, strict and timely compliance with all environmental laws. Lessee shall ensure that all operations on the Leased Premises comply with all environmental laws and orders of any governmental authorities having jurisdiction under any environmental laws. Lessee shall exercise extreme care in handling hazardous substances and shall undertake any and all preventive, investigatory, or remedial action (including emergency response, removal, containment, and other remedial action) which is either required by any applicable environmental laws or orders of any governmental authority having jurisdiction under such laws, or necessary to prevent or minimize property damage, personal injury or damage to the environment or threat of any such damage or injury, by releases of, or exposure to, hazardous materials in connection with the Leased Premises or operations thereon. Lessee shall immediately notify Lessor upon becoming aware of any leak, spill, release or disposal of hazardous substances on, under, or adjacent to the Leased Premises. In the event Lessee fails to perform any of Lessee's obligations under this paragraph, Lessor may, but shall not be required to, perform such obligations at Lessee's expense. In performing any such obligations of Lessee, Lessor shall at all times be deemed the agent of Lessee and shall not, by reason of such performance, be deemed to be assuming any responsibility of Lessee under any environmental law or to any other third party. At any time Lessor reasonably requests, Lessee shall provide to Lessor further assurance of Lessee's compliance with this paragraph. The assurances shall be in a form and substance satisfactory to Lessor, in Lessor's sole discretion, and may include but not be limited to, Lessee providing to Lessor an environmental audit or assessment from a source acceptable to Lessor, at Lessee's expense.

12.6.1 As used in this Lease, the term "environmental laws" means all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health and the environment.

12.6.2 In this Lease, the term "hazardous materials" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical, or infectious characteristics, may cause or pose a present or potential hazard to human health and to the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported, or otherwise handled on the Leased Premises. The term includes, without limitation, petroleum products or crude oil or any fraction thereof, and any and all hazardous or toxic substances, materials, or wastes as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive

Environmental Response, Compensation, and Liability Act, and any other environmental laws.

- 12.7 Signs. In addition to complying with any rule(s) or regulation(s) of Lessor pertaining to signs, Lessee shall not permit to be maintained any sign on the Leased Premises or at the Airport without the prior written approval of the Airport Director. This approval and rules and regulations are in addition to any rules or regulations that would apply to this site by any applicable governmental jurisdiction.
- 12.8 Aviation Easement. Lessee acknowledges that its right to use the Leased Premises shall be secondary and subordinate to the operation of the Airport. Lessor reserves a right of flight for the passage of aircraft in the airspace above the Leased Premises together with the right to cause noise inherent in the operation of aircraft. Lessee shall not take any action or construct any improvements that interfere with the navigational aids of flight operations of the Airport.
- 12.9 Security. Lessee recognizes its obligation to comply with federal airport security regulations. Lessee shall reimburse Lessor in full for any fines or penalties levied against Lessor for security violations as a result of any actions on the part of Lessee, its agents, invitees, or employees.
13. Liability to Third Parties.
- 13.1 Lessee's Indemnification. Lessee shall at all times indemnify, protect, defend, and hold harmless Lessor, its officers, agents, and employees from any claims, demands, losses, actions, or expenses, including attorney fees, to which Lessor may be subject by reason of any property damage or personal injury arising or alleged to arise from the acts or omissions of Lessee, its agents, invitees, or employees, or in connection with the use, occupancy, or condition of the Leased Premises.
- 13.2 Liability Insurance Required. Lessee shall procure and maintain throughout the term of this Lease and any extension, at Lessee's cost, public liability and property damage insurance from a company authorized to do business in the State of Oregon with the combined single limit of not less than \$1 and the general aggregate of not less than \$2,000,000 for bodily injury, death, personal property or property damage in connection with Lessee's use or occupancy of the Leased Premises, or the exercise of enjoyment of rights or privileges granted by this Lease. Lessor shall have the right to require Lessee to increase the limits of such coverage from time to time to an amount deemed by Lessor to be reasonable in view of conditions and circumstances

existing at the time of such increase. Such circumstances include any modification by either court ruling or legislative change to the maximum recovery allowed under the Oregon Tort Claims Act. The insurance shall name Lessor, its officers, agents, and employees as additional insureds with the stipulation that the insurance, as to the interests of Lessor, shall not be invalidated by any act or neglect or breach of contract by Lessee. Lessee shall provide Lessor with a certificate of insurance evidencing the required coverage, with a thirty (30) day notice of cancellation or material change in coverage and shall provide Lessor with such evidence that the policy remains in force as Lessor may require from time to time.

- 13.3 Liens. Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Leased Premises and shall keep Leased Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 12% per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.
14. Subordination. This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the State of Oregon and/or the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airport, or any amendments thereto.
15. Cessation of Airport Operation. Lessor, regardless of the terms of this lease, as a result of any orders of the State of Oregon, the United States, or any other governmental unit or instrumentality, may cease airport operations. Lessee acknowledges Lessor's right to cease such operations and releases Lessor from any and all damage claims by Lessee against Lessor as a result of such cessation of operations. This release does not apply to any other party who may be the basis for Lessor's cessation of operations. Subject to the orders of cessation, Lessee

shall be granted a period of twelve (12) months free of any rents and fees in which to cause the Leased Premises to be restored to a condition free of all improvements, including hangars and debris. Lessor shall not be liable to Lessee for any damages related to loss in use of the Leased Premises due to action under this paragraph. This provision does not eliminate any obligations of Lessee as a

result of liability or indemnification obligations as set forth in other provisions of this lease.

16. **Airport Development.** Regardless of the term of this lease, Lessor, at Lessor's discretion or as a result of any orders of the State of Oregon, United States, or any other governmental unit or instrumentality having authority over the property may require the cessation of use of the specific Leased Premises for their leased purposes, prior to the expiration of this lease for the purpose of airport development. At Lessor's option and expense, Lessor shall either (1) dismantle and move to another leasable premises on the Airport property, and there re-erect Lessee's improvement(s) or, (2) purchase Lessee's improvement for fair market value as determined below. If Lessor acts under the first option, the lease reference to location of the Leased Premises shall change, and all other remaining terms of the expired lease shall continue in full force and effect.

Fair market value under the second option shall be for an amount not less than the fair market value of the improvement immediately prior to determination as determined by an appraisal conducted by an independent appraiser engaged by Lessor. Specifically, the appraiser shall not determine salvage value, but rather the fair market value of the improvement, assuming the Airport was to remain in existence or the party to continue to use the leased area. Purchase price shall be determined and all funds transferred within 180 days of termination. Obligations of removal shall be Lessor's. This action does not eliminate any obligations of Lessee as a result of any liability or indemnification obligations as set forth in other provisions of this lease.

17. **Eminent Domain.** If the Leased Premises and any improvements thereon are taken as a result of eminent domain proceedings, it shall be as if termination was a result of Paragraph 15, except the time allowed for removal of Lessee's improvements by Lessee shall be subject to the time limitation in any condemnation order or twelve (12) months, whichever is shorter. Lessor shall be entitled to all proceeds of condemnation as applied to the value of any real property condemned. Lessee shall be entitled to the value of all improvements. Lessee specifically waives any claims against Lessor as a result of condemnation, except such condemnation as may be instituted by Lessor upon Lessor's own actions and not as a result of any order by other governmental unit.

18. **Removal of Personal Property and Fixtures.**

- 18.1 Lessee shall remove all personal property and return the Leased Premises to proper condition upon the end of the term(s), or other cessation of use by Lessee, as set forth below. Lessee shall remove all Lessee property except fixtures permanently or semi-permanently affixed, which shall become

property of the Lessor upon lease termination or abandonment by Lessee, and restore the grounds to a clean and orderly condition free of all debris.

- 18.2 Abandonment. If Lessee abandons the Leased Premises, Lessor may treat such abandonment as a default under this Lease, and Lessor may exercise any rights it may have as in the case of default for which Lessee is not entitled to notice. Lessee shall be deemed to have abandoned the Leased Premises if it fails to occupy the same for a period of three (3) months; however, Lessor may consider Lessee to have abandoned the Leased Premises by other acts, words, or conduct evidencing abandonment or intent to abandon the Leased Premises. Any personal property remaining on the Leased Premises sixty (60) days after termination of this Lease for any reason shall be deemed as abandoned by Lessee and Lessor may make any disposition of such personal property as it deems appropriate. Lessor may charge Lessee for the reasonable costs incurred in disposing of such personal property. Upon abandonment, Lessee loses all rights and options set forth in Paragraph 18.1. Lessee remains responsible for all Lessors' costs.
19. Default. Lessee shall be in default under this Lease upon the occurrence of any one or more of the following events (time of payment and performance being of the essence):
- 19.1 Failure of Lessee to pay any rent or other charges within thirty (30) days after the same becomes due.
- 19.2 Except as otherwise provided in this Paragraph 19, the failure of Lessee to comply with any term or condition, to fulfill any obligation, or to cure any violation of this Lease within thirty (30) days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within thirty (30) days, this provision shall be deemed complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Lessor may require, as part of the cure of any violation by Lessee, reimbursement from Lessee for any and all costs and expenses incurred by Lessor by reason of Lessee's violation of this Lease.
- 19.3 If Lessee cures a deficiency in the manner described in Paragraph 19.2, Lessee's subsequent failure to comply with the same term or condition within twenty-four (24) months shall constitute immediate default without requirement of notice or opportunity to cure.

- 19.4 If Lessee sub-leases or otherwise assigns its interests in this Lease, except in accordance with the provisions of the Lease, default shall be automatic without requirement of notice or opportunity to cure.
- 19.5 Lessee shall also be in default in the event of:
1. Lessee's insolvency;
 2. An assignment by Lessee for the benefit of creditors;
 3. The filing by Lessee of a voluntary petition of bankruptcy action;
 4. Adjudication that Lessee is bankrupt;
 5. The filing of an involuntary petition of bankruptcy and the failure of Lessee to seek a dismissal of the petition within thirty (30) days after the filing; and
 6. The attachment of or the levy of execution on the Lease hold interest and failure of the Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days after such attachment or execution;
 7. Abandonment of the Leased Premises.
20. Inspections. Lessor shall have, at all times during normal business hours, the right to enter into the Leased Premises and inspect Lessee's facilities and operations for the purposes of determining Lessee's compliance with its obligations under this Lease. Lessor shall provide at least 24 hours' notice before any inspection except in cases of emergency. Notice shall be sufficient if prominently posted on the building on the Leased Premises 24 hours prior to the inspection.
21. Remedies on Default. In the event of a default, the Lease may be terminated at the option of the Lessor by notice in writing to Lessee. The notice of termination may be included in a notice of failure of compliance given under Paragraph 19. If the Leased Premises is abandoned by Lessee in connection with a default, termination shall be automatic and without notice. If the Lease is terminated for any reason, Lessee's liability to Lessor for damages for breach shall survive such termination, and the rights and obligations of the parties shall be as follows:
- 21.1 Lessee shall vacate the Leased Premises immediately, remove any property of Lessee including any fixtures which Lessee is required to remove at the end of the Lease term, perform any cleanup, alterations or other work required to leave the Leased Premises in the condition required by this

Lease at the end of the term, and deliver all keys to Lessor. Possession to any structure on the Leased Premises shall immediately revert to Lessor and Lessee shall have no right or claim against Lessor as a result thereof.

- 21.2 Lessor may re-enter, take possession of the Leased Premises, and remove any persons or property by legal action or self-help with the use of reasonable force and without liability for damages.
- 21.3 Following re-entry or abandonment, Lessor may relet the Leased Premises and in that connection may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession, and may make any suitable alterations and/or refurbish the Leased Premises, or change the character or use of the Leased Premises, but Lessor shall not be required to relet to any Lessee which Lessor may reasonably consider objectionable.
- 21.4 The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law or as set forth in this Lease.
- 21.5 Any holding over after the expiration of the lease, with the written consent of Lessor, will be construed to be a tenancy from month to month, at 150% of the Basic Rent payable for the period immediately before the expiration of the Term and will otherwise be on the terms and conditions of this Lease. If Lessor consents to any such holding over, either party may thereafter terminate the tenancy at any time upon thirty (30) days' advance written notice to the other party. Any holding over without consent will be a tenancy at sufferance, which Lessor may terminate at any time without notice.
22. Attorney Fees and Costs. In the event any action or claim relating to the enforcement or interpretation of any of the terms of this Lease is made, except as stated in Paragraph 23, the prevailing party shall be entitled to recover all costs, fees, and expenses reasonably incurred, whether or not taxable as costs, including without limitation, attorney fees, inspection and investigation costs, copying charges, and all other related expenses.

In the event any litigation is commenced relating to this Lease, including but not limited to any action or participation by Lessee or Lessor in or connected with a case or proceeding under the Bankruptcy Code or any successor statute, the prevailing party shall be entitled to recover all costs, fees and expenses reasonably incurred, before and after trial, and on appeal and review, whether or not taxable

as costs, including without limitation, attorney fees (including estimated fees to collect a judgment entered in favor of the prevailing party), witness fees (expert or otherwise), deposition costs, inspection and investigation costs, copying charges and all other related expenses. Expenses incurred in the event of arbitration shall be treated as if they were expenses incurred in litigation.

23. Arbitration. [f any contract dispute arises between the parties, it shall be decided by arbitration unless both parties agree to waive arbitration and proceed with litigation. Upon request for arbitration, the party requesting arbitration shall submit to the other party a list of the names of five independent arbitrators. The other party may select any one of the five. If the parties cannot decide on an arbitrator with qualifications that relate to the dispute at hand within fifteen (15) days, then either party may apply to the presiding judge of the Lincoln County Circuit Court, Oregon, to appoint the required arbitrator.

The Arbitrator shall proceed according to Oregon statutes governing arbitration, and any rules specifically adopted by the parties. If the parties do not agree upon rules for the arbitration, the Arbitrator shall establish rules and advise each respective party. The award of the Arbitrator shall have the effect provided in the Oregon Revised Statutes. The arbitration shall take place in Lincoln County, Oregon. Costs of arbitration and attorney fees and costs may be awarded to a party at the discretion of the Arbitrator.

24. Discrimination Prohibited. In connection with Lessee's use and occupancy of the Leased Premises and the conduct of its operations at the Airport, Lessee shall be bound by the following non-discrimination requirements:
- 24.1 General. Lessee will not discriminate against any person or class of persons by reason of race, color, national origin, sex, ancestry, creed, or on any other grounds prohibited by law.
 - 24.2 Civil Rights Act. Lessee will not on the grounds of race, creed, color, national origin or on any other prohibited grounds, discriminate or permit any discrimination against any person or group of persons in any manner prohibited by Part 21 of the Rules and Regulations of the Secretary of Transportation, effectuating Title VI of the Civil Rights Act of 1964. Without limiting the generality of the foregoing, Lessee agrees not to discriminate against any employees or applicants for employment because of race, creed, color, national origin or on any other prohibited grounds.
 - 24.3 FAA required terms. As required by the FAA, the following clauses are made part of Lessee's obligations under this Lease:

1. Lessee for itself, and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease for a purpose for which a US Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. Lessee for itself, and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall 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 or any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

25. Non-Waiver. Waiver by either party of strict performance of any provisions of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provisions in the future or of any other provision. No act or omission shall constitute a waiver of this non-waiver clause.

26. Notices. Any notice required or permitted under this Lease shall be considered given when actually delivered in person or when deposited with postage prepaid in the United States mail as registered or certified mail:

To Newport Municipal Airport
Lessor: c/o City of Newport 169 SW
Coast Highway Newport,
Oregon 97365 541.574.0603
s.nebel@newportoregon.gov

To
Lessee:

Or to such other address as may be specified from time to time by either of the parties in writing.

27. Interpretation and Liability. In interpreting this Lease, the singular shall include the plural. If Lessee consists of more than one individual or entity, each such individual and entity shall be jointly and severally liable for Lessee's obligations under this Lease.

The provisions of this Lease shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any actions or suits arising under this Lease must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.

28. Succession. Subject to the limitations set forth elsewhere in this Lease on the transfer of Lessee's interest, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors, and assigns.

29. Clearing Matters of Record. Only at the option of Lessor shall this Lease or a memorandum of this Lease be recorded. If, at the election of Lessor, Lessor determines to create and record a memorandum of this Lease, Lessee shall execute such memorandum at the request of Lessor. In the event this Lease or Lessee's interest in this Lease or in the Leased Premises becomes a matter of record by any means, directly or indirectly, without the consent of Lessor, then at any time after termination of this Lease or termination of Lessee's interest in this Lease, upon request by Lessor, Lessee shall execute documents: in recordable form, as Lessor may reasonably require evidencing the termination of Lessee's interest. This obligation shall survive termination of this Lease and termination of Lessee's interest in this Lease.

30. Inconveniences during Construction. Lessee recognizes that from time to time during the term of this Lease, it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity requiring accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or temporarily interrupt

Lessee's operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, and representatives by reason of such inconveniences or interruptions and, for and in further consideration of this Lease, Lessee waives any right to claim damages or other considerations therefore, except that rent payable under this Lease shall be abated proportionately during and for such period that access to the Leased Premises by aircraft of Lessee and its invitees is denied by reason of such inconveniences or interruptions.

- 31. Rights Not Exclusive. Except for Lessee's right to use and occupy the Leased Premises under this Lease, nothing in this Lease shall be construed as granting an exclusive right to Lessee.
- 32. Entire Agreement. This Lease contains the entire Agreement between the parties concerning the Leased Premises and supersedes all prior agreements, oral and written, concerning the Leased Premises. This Lease may be modified only in writing and signed by the parties.

The individuals executing this Lease warrant that they have full authority to execute this Lease and that they have thoroughly read this Lease prior to executing it.

LESSOR:

LESSEE.

City of Newport

By: Spencer R. Nebel, City Manager

Signature

Signature

Date

Date

Approved as to Form:

David N. Allen, City Attorney



**STAFF REPORT
FOR AIRPORT COMMITTEE**

Meeting Date: 10/11/2022

Title: Lease responsibility for water

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: Information only

Background Information:

During the September 2022 airport committee meeting discussion was had about water connections at the south hangars. Staff contacted City Engineer Aaron Collett regarding this issue. The following is his email response to airport staff.

In a more typical application, we would have a water main, say in the street. The new property would develop and tap the main, add a meter, etc. The Finance site has the current fees https://www.newportoregon.gov/dept/fin/documents/2022-2023_Fee_Schedule_Adopted.pdf and shows the cost of meters. Page 43 lays out the fee structure pretty well and I think we could come up with an analogous option for the airport. Meaning they pay to connect to any City 'main' that gets water nearby.

There are cases where infrastructure does not exist yet and has to be extended by the development. Not sure if we would have to do that here. If it is growth related, sometimes SDC credits can be used to help. I do not think this applies, but Derrick is the authority on how those work.

Meters for houses are usually near the edge of street/ROW. I think here we'd have to find a logical place, but perhaps near the hangar near the "road" still makes sense. That is where they could shut down their service if they had a break, so close to the structure is logical.

Hope this helps a bit,
Aaron

Fiscal Notes: none

Alternatives: none

Attachments: City of Newport Comprehensive Schedule of Fees and Charges pages 43-47.

		Public Works Utility Fees and Charges								
	Services Description	2021-22	2022-23	Changed	2022-23 Anticipated Revenue	GL Account				
Water Utility Rates and Charges										
<u>Connection Fee and Street Opening Fee - Section 8-1</u>										
A. The fee for a new connection to the water system is based on the size of service. The fees for new connections are:										
	Meter Size	Connection Fee	Connection Fee							
	5/8" x 3/4"	\$2,277.00	\$2,414.00	\$137.00		601-3390-45503				
	1 inch	\$2,647.00	\$2,806.00	\$159.00		601-3390-45503				
	Larger than 1 inch	Actual cost plus 10%	Actual cost plus 10%			601-3390-45503				
B. If cutting and restoration of asphalt streets is necessary, actual costs of the repair plus 10% will be added to the above costs.										
<u>Deposit - Section 8-2</u>										
The amount of deposit required under NMC 5.10.020 is based upon meter size and is generally equal to two months of average usage. Deposits will not be refunded prior to discontinuation of service except in extenuating circumstances and then only by authorization by the city Finance Director. Deposits for new utility accounts are:										
	Meter Size	Deposit	Deposit							
	5/8" x 3/4"	\$326.00	\$346.00	\$20.00						
	1 inch	\$400.00	\$424.00	\$24.00						
	1 1/4" x 1 1/2"	\$1,511.00	\$1,602.00	\$91.00						
	2 inch	\$1,986.00	\$2,105.00	\$119.00						
	3 inch and larger	\$2,926.00	\$3,102.00	\$176.00						
<u>Miscellaneous Charges - Section 8-3</u>										
A. The charge for a normal reconnection or additional connection is \$20.00, in addition to any connection fee established under Subsection 1.										
B. The reconnection fee following a for-cause (delinquent payment or other cause) disconnect is \$44.00.										
C. The charge for opening a connection in violation of NMC Chapter 5.10 is \$100.00.										
D. The fee for late payment is \$20.00.										
E. The fee for a non-payment notice is \$20.00.										
<u>Rates for Water Service Within the City - Section 8-4</u>										
The rates in this Subsection 4 apply to all service areas.										
The minimum monthly charge shall be based on the size of each meter except as otherwise defined within this section.										
The minimum charge for unmetered fire suppression systems shall be based upon the size of the service line entering the property.										
			\$4,600,000							
					\$50,000					
						601-3390-48001				
						601-3390-48001				
						601-3390-48001				
						601-3390-48001				
						601-3390-48001				

Public Works Utility Fees and Charges

Services Description	2021-22		2022-23		Changed	2022-23 Anticipated Revenue	GL Account
	Minimum Charge	Variable Cost per 1,000 Gallons	Minimum Charge	Variable Cost per 1,000 Gallons			
A. The charges in this Subsection A.A apply within the City of Newport.							
Single-family residence							
201 5/8" or 3/4"	\$20.79		\$22.04				601-3390-45501
202 1"	\$27.61		\$29.27				601-3390-45501
203 1 1/4" or 1 1/2"	\$42.05	\$4.49	\$44.57	\$4.76			601-3390-45501
204 2"	\$71.99		\$76.31				601-3390-45501
205 3"	\$107.46		\$113.91				601-3390-45501
206 4" or over	\$178.46		\$189.17				601-3390-45501
Single-family residence - low income qualified - 30% discount							
5/8" or 3/4"	\$14.55		\$15.43				601-3390-45501
1"	\$19.33		\$20.49				601-3390-45501
1 1/4" or 1 1/2"	\$29.44	\$3.14	\$31.20	\$3.33			601-3390-45501
2"	\$50.39		\$53.42				601-3390-45501
3"	\$75.22		\$79.74				601-3390-45501
4" or over	\$124.92		\$132.42				601-3390-45501
Multi-family residential							
201 5/8" or 3/4"	\$20.79		\$22.04				601-3390-45501
202 1"	\$27.61		\$29.27				601-3390-45501
203 1 1/4" or 1 1/2"	\$42.05	\$4.49	\$44.57	\$4.76			601-3390-45501
204 2"	\$71.99		\$76.31				601-3390-45501
205 3"	\$107.46		\$113.91				601-3390-45501
206 4" or over	\$178.46		\$189.17				601-3390-45501
Commercial							
207 5/8" or 3/4"	\$24.61		\$26.09				601-3390-45501
208 1"	\$32.67		\$34.63				601-3390-45501
209 1 1/4" or 1 1/2"	\$49.78	\$5.06	\$52.77	\$5.36			601-3390-45501
210 2"	\$85.23		\$90.34				601-3390-45501
211 3"	\$127.21		\$134.84				601-3390-45501
212 4" or over	\$211.47		\$224.16				601-3390-45501

Public Works Utility Fees and Charges

Services Description	2021-22	2022-23	Changed	2022-23 Anticipated Revenue	GL Account
Rates for Water Service Outside the City - Section 8-5					
B. The charges in this subsection 5 apply outside the City of Newport.					
Meter Size	Minimum Charge	Variable Cost per 1,000 Gallons	Minimum Charge	Variable Cost per 1,000 Gallons	
Single-family residence					
221 5/8" or 3/4"	\$39.67	\$42.05			601-3390-45501
222 1"	\$54.03	\$57.27			601-3390-45501
223 1 1/4" or 1 1/2"	\$75.09	\$79.60			601-3390-45501
224 2"	\$132.39	\$140.33			601-3390-45501
225 3"	\$196.99	\$208.81			601-3390-45501
226 4" or over	\$323.30	\$342.70			601-3390-45501
Multi-family residential					
221 5/8" or 3/4"	\$39.67	\$42.05			601-3390-45501
222 1"	\$54.03	\$57.27			601-3390-45501
223 1 1/4" or 1 1/2"	\$75.09	\$79.60			601-3390-45501
224 2"	\$132.39	\$140.33			601-3390-45501
225 3"	\$196.99	\$208.81			601-3390-45501
226 4" or over	\$323.30	\$342.70			601-3390-45501
Commercial					
227 5/8" or 3/4"	\$39.67	\$42.05			601-3390-45501
228 1"	\$54.03	\$57.27			601-3390-45501
229 1 1/4" or 1 1/2"	\$75.09	\$79.60			601-3390-45501
330 2"	\$132.39	\$140.33			601-3390-45501
331 3"	\$196.99	\$208.81			601-3390-45501
332 4" or over	\$323.30	\$342.70			601-3390-45501
Temporary Service Through Fire Hydrant - Section 8-6					
Fire hydrant temporary service installation (hydrant meter)	\$354.00	\$375.00	\$21.00		601-3390-45503
Monthly charge (no usage included)	\$273.00	\$289.00	\$16.00		601-3390-45503
Usage over 1,000 gallons (billed monthly)	\$7.00 per 1,000	\$8.30 per 1,000	\$1.30		601-3390-45503
Water Purchased and Privately Transported - Section 8-7					
The amount charged for water purchased and transported by the purchaser directly from any authorized city facility is \$8.30 per 1,000 gallons.	\$7.90 per 1,000	\$8.30 per 1,000	\$0.40		601-3390-45501
Right of Way Permit Review Fee - Section 8-8					
Right of way permit review fee.	\$0.00	\$50.00	\$50.00		601-3390-48001
Wastewater Utility Rates and Charges					

Public Works Utility Fees and Charges

	Services Description	2021-22	2022-23	Changed	2022-23 Anticipated Revenue	GI Account
	Connection Fee - Section 8-9				\$0	
	A. Sewer lateral inspection fee per connection.	\$0.00	\$200.00	\$200.00		602-3490-48001
	Metered Rates - Section 8-10				\$5,240,000	
	The charges imposed in this Subsection 1 apply to properties that have sanitary sewer service.					
	A-1. Single-family residences and duplexes within City limits					
	Minimum Charge		Minimum Charge			
	Variable Cost per 1,000 Gallons		Variable Cost per 1,000 Gallons			
	The charge for sewer service for single-family dwellings and duplexes within city limits shall be \$31.23 per month, plus \$8.01 per 1,000 gallons of water usage.	\$27.88	\$31.23	\$8.01		602-3490-45505
	A-2. Single-family residences and duplexes within City limits (low income qualified)					
	Minimum Charge		Minimum Charge			
	Variable Cost per 1,000 Gallons		Variable Cost per 1,000 Gallons			
	The charge for sewer service for single-family dwellings and duplexes within city limits shall be \$31.23 per month, plus \$8.01 per 1,000 gallons of water usage. These rates will be discounted by 30% for those residents who qualify.	\$19.52	\$21.86	\$5.61		602-3490-45505
	B. Multi-family residences, and single-family residences and duplexes outside of City limits					
	Minimum Charge		Minimum Charge			
	Variable Cost per 1,000 Gallons		Variable Cost per 1,000 Gallons			
	The basic charge for service for residential properties with three or more dwelling units, for all commercial properties, and for single-family residences and duplexes outside of City limits shall be \$36.01 per month plus \$11.87 per 1,000 gallons of water usage.	\$32.15	\$36.01	\$11.87		602-3490-45505
	C. Commercial properties					
	Minimum Charge		Minimum Charge			
	Variable Cost per 1,000 Gallons		Variable Cost per 1,000 Gallons			
	The basic charge for service for residential properties with three or more dwelling units, for all commercial properties, and for single-family residences and duplexes outside of City limits shall be \$36.01 per month plus \$11.87 per 1,000 gallons of water usage.	\$32.15	\$36.01	\$11.87		602-3490-45505
	An "Extra Strength Charge" of \$1.03 per pound of biochemical oxygen demand applies to commercial properties users when the biochemical oxygen demand exceeds 300 parts per million.	\$0.31 per pound	\$1.03 per pound	\$0.72		602-3490-45505
	An "Extra Strength Charge" of \$0.96 per pound of total suspended solids applies to significant industrial users.	\$0.92 per pound	\$0.96 per pound	\$0.04		602-3490-45505

Public Works Utility Fees and Charges

Services Description	2021-22	2022-23	Changed	2022-23 Anticipated Revenue	GL Account
The charges for monitoring sewage discharge shall be \$17.11 per combined sample and \$8.94 per test.	\$16.45 per combined sample & \$8.60 per test	\$17.11 per combined sample & \$8.94 per test	\$1.00		602-3490-45505
C. Fish plants The charge for sewer service for fish plants within city limits shall be based on meter size. If a plant has two meters they will be charged two individual rates based on the size of the meter.	No Change	No Change			
Individually Determined Rate - Section 8-11 Commercial customers that are legally disposing of all or part of their processing wastewater to an acceptable waterway in conformance with applicable federal, state, and city laws, regulations and permits shall have a sewer user charge established by the City Manager based on an individual determination of the impact of the property on the sewer system. The City Manager shall take into account, when establishing the sewer rate, the estimated quantity in gallons, as well as, any adverse treatment or maintenance costs that may be incurred by the city handling extra strength wastewater that is being returned to the city sanitary sewers.	No Change	No Change			
Septage - Section 8-12 The rate for disposal of septage at the city's wastewater treatment plant shall be \$0.20 per gallon.	\$0.19 per gallon	\$0.20 per gallon	\$0.01	\$88,019	602-3490-46502
Class A Sludge Sales - Section 8-13 Class A sludge manufactured at the city's wastewater treatment plant may be purchased for \$2.18 per cubic yard. The transportation of the sludge is the responsibility of the customer.	\$2.10 per cubic yard	No Change	(\$2.10)	\$88,019	602-3490-48001
Right of Way Permit Review Fee - Section 8-14 Right of way permit review fee.	\$0.00	\$50.00	\$50.00	\$50,000	602-3490-48001
Stormwater Utility Fees					
Storm Water Utility Fee - Section 8-15 A. The charges imposed in this subsection 1 will be applied to each properties impervious surface area or Equivalent Service Area (ESU). ESU is defined as follows: One ESU equals 2700 square feet of impervious surface area. Thus each residential unit will be assumed to be one ESU whereas a Multifamily and Commercial account will be assigned an ESU based on their impervious surface area.				\$1,065,000	
Residential - 1 ESU	\$8.62	\$9.05	\$0.43		603-3790-46705
Multi-family - Each ESU	\$8.62	\$9.05	\$0.43		
Commercial - Each ESU	\$8.62	\$9.05	\$0.43		
Street Fees - Section 8-16 Installation of Banners and Signs that Promote Attractions and Events				\$2,000	
A. A fee of \$150 is established for City crews to install and remove promotional banners.	\$17.75 per banner	\$150.00 per banner	\$132.25		251-3210-48001
B. The City Manager is authorized to waive fees related to signs the City owns or for which the event is City Sponsored.					



STAFF REPORT
FOR AIRPORT COMMITTEE

Meeting Date: 10/11/2022

Title: World Fuel letter of Understanding.

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: recommend to City Council to move forward with World Fuel new lease agreement and update FMU at self-serve tank, taking ownership of AV-trucks, and consider re-placing 3,000 gallon Jet-A re-fueler.

Background Information:

September of 2017 City of Newport entered into a lease agreement with World Fuel for a period of five years. Unless terminated by either party giving ninety days prior written notice to the other party before the termination of the Initial Term, this Lease Agreement will renew automatically at the end of the initial Term on a month-to-month basis.

World Fuel has offered to pay up to \$15,000 for a new FMU at the self-serve tank. Transfer ownership of av trucks to the City of Newport. Which can be sold to help pay for installation of new FMU. Lastly; also offered a lease on a newer Jet-A refueler to replace the current 3000 gallon 2001 Sterling. If the City of Newport is willing to enter into a new five year lease agreement with World Fuel.

The 3,000 gallon Jet-A re-fueler can be left off of consideration of this agreement due to monthly lease cost; and can be re-evaluated at a later date if the City choose.

Fiscal: \$15,000 in funding for new FMU, plus ownership of av-trucks.

Alternative: Keep current month to month lease agreement with World Fuel, FMU, and lease on av-truck.



September 14, 2022

Mr. Lance Vanderbeck
City of Newport
135 Southeast 84th St.
Newport, OR 97365

Proposed Terms for Fuel Supply Agreement and Phillips 66 Branding Agreement
CONFIDENTIAL

Dear Mr. Vanderbeck,

World Fuel Services, Inc. ("WFS") is pleased to present the following proposal to the City of Newport as the basis for supply of aviation fuels, under the Phillips 66 ("P66") brand and related services, and will define the commercial terms as such. Any agreement reached between WFS and the City of Newport for any part of this proposal will be made a part of the Fuel Supply Agreement, P66 Branding Agreement or other Agreements and addendums as required and become effective on the date of execution by the parties.

1) Commercial Terms:

- | | |
|--------------------|---|
| A) Products: | Jet-A and 100LL Aviation Gasoline |
| B) Term: | 5 Years (60 months) Fuel Supply Agreement Extension. |
| C) Delivery Point: | Newport, OR (KONP) |
| D) Payment Terms: | Net 10 days via EFT |
| E) Fuel Brand: | P66 |
| F) Credit Cards: | All retail credit card processing through WFS/P66 |
| PG) Contract Fuel: | All contract fuel through WFS Contract Fuel program, if opted into. |

2) WFS Offer:

World Fuel Services will:

- a) Provide \$15,000.00 towards QT Pod 4000 self-serve credit card processing unit.
- b) Turn over title to 1999 avgas refueler
- c) Lease 2015 vintage 3K Jet refueler to City of Newport for \$2404.00/mn

Statement of Intent

This proposal is not intended to be or to evidence any legally binding agreement or obligation on the part of either party and no offer, commitment, understanding or obligation of any nature shall be implied in fact, law or equity, unless and until a definitive agreement or amendment has been executed. Each party acknowledges that it will not take action or refrain from taking action in reliance on this Letter or the negotiations, and that any such reliance would be at its own risk. The parties further acknowledge that any tentative agreement that may result from further negotiations may be subject to the approvals of each parties respective board of directors and/or other management, and specific government agencies, which approvals may be withheld in their sole discretion. This letter is valid until 5:00 pm August 15, 2022. This proposal and our discussions are strictly confidential.

Thank you for the opportunity to supply your aviation fuels and service requirements. Please contact me at (614) 205-6590 if you have any questions or if you would like more information. We look forward to discussing this proposal with you further and the opportunity to earn your business.

Sincerely,

WORLD FUEL SERVICES, INC.

Mark Myers

Accepted and Agreed to:

City of Newport

By: _____

Its: _____

Bulk Territory Sales Manager, PNW

Date: _____

Cc: Maritza Kessler – Client Coordinator, Business Aviation
 Steven Highet – National Sales Director, West



3000 Bayport Drive, Suite 470, Tampa, Florida 33607 P: 800-544-3835 F: 813-882-4294
www.wfscorp.com

REFUELER LEASE AGREEMENT

This Refueler Lease Agreement (this “Lease Agreement”) outlines the terms and conditions under which **Ascent Aviation Group, Inc.**, both for itself and its Affiliates (collectively “Lessor”) agrees to lease refuelers (hereinafter the “Refuelers”) to **City of Newport** (“Lessee”). The terms and conditions shall continue until modified as provided herein by either of the parties hereto.

Lessor: **Ascent Aviation Group, Inc.**
One Mill Street
Parish, NY 13131
800-272-3681

Lessee: **City of Newport**
135 Southeast 84th St.
Newport Municipal Airport
Newport, OR 97365
541-867-7422

Refuelers: See Attached Exhibit “A”.

1. **Term** – This Lease Agreement and all obligations herein shall begin on **September 1, 2017** and shall continue for a period of **Five (5) years**. Unless terminated by either party giving ninety (90) days prior written notice to the other party before the termination of the Initial Term, this Lease Agreement will renew automatically at the end of the Initial Term on a month-to-month basis.
2. **Payments** – Lessee shall pay Lessor the total sum of, **see Attached Exhibit “A”**, US Dollars per month plus any applicable taxes for the lease of said Refuelers. This sum is payable and due on the first of each month, and any such payment not received by the 10th of each month shall be subject to additional late charges.
3. **Delivery and Return of Refueler** – Lessor will arrange to have the Refuelers delivered to Lessee. At the termination of this Lease Agreement, Lessee shall be responsible for return costs of said Refuelers, not to exceed \$2500.00 for each, in the same good order and condition in which it was received by Lessee, reasonable wear and tear accepted. If Lessee does not maintain a Fuel Supply Agreement during the term of the Lease with Lessor, then Lessee will be responsible for inbound and outbound freight charges. **Lessee is responsible for all costs associated with the application and removal of any customer and/or site specific decals and imaging.** Upon non-compliance of said Lease by Lessee, Lessor shall have the right to take possession of said Refuelers at any time.

Pre-surrender Inspection – At least 30 days prior to surrender of the Refuelers, but in no event earlier than 60 days prior to such surrender, an in depth physical inspection will be conducted by an appropriate service representative on behalf of, and selected by Lessor, and paid for by Lessor. Any part, component, or function found not to be within the manufacturer’s tolerances and operational specifications will be replaced or brought within those tolerances and specifications to the satisfaction of Lessor, at the sole cost and expense of Lessee. The cost of physical damage, both internal and external, will be the responsibility of the Lessee, and there shall be no broken glass. Pumping system will be fully operational with no missing or damaged parts. Tires shall be of matched generic type and tread design, and have a minimum of 10/32^{nds} remaining tread. Batteries shall be fully operational, hold a charge, and perform with the manufacturer’s standards, with no dead cells or cracked cases. Brake drums shall not be cracked, and have an average of 50% remaining wear, and brake linings shall have no less than 50% remaining lining. Paint and/or body damage must not exceed \$500.00 per unit including but not limited to, body, fenders, bumpers, grill, fuel tanks, rust damage etc. Interior must be in good condition. Dash panels and interior trim pieces must not be missing and be free of any holes, cracks or breaks. No rips, tears or burn holes in the seats will be accepted. All gauges and knobs must be in working condition and not missing. Interior damage must not exceed \$150.00. There shall be no fluid leaks on the engine, engine components and drivetrain. Leaks are defined as A) normal build up, B) wet accumulation, C) drips. A is acceptable, where B & C are not acceptable and must be repaired/replaced prior to turning back in. Engines must be free of all engine warning and error lights and active codes. All trucks 2008 and newer must have an operational diesel particulate filter capable of regeneration. All emissions components and systems, including but not limited to DPF, EGR, EGR cooler, SCR and DEF systems must be operational and pass industry test and inspection.

Product hoses shall be less than 5 years old, and free from abrasions, cuts, soft spots, carcass separation, worn covers, blisters, exposed reinforcement, cracks, twists and sharp bends that give the appearance of pending failure. Product hose life will be based on available hose life left in hose and costs prorated, with 10 year new hoses being 100%, 5 years remaining 50% etc. Hose certificates must be available.

4. **Condition of Refueler** – It is understood and agreed that the Refuelers provided hereunder will be well-maintained and operable when delivered; but Lessor makes no warranties, express or implied, concerning same. Without making itself a party to any warranties, and without becoming liable thereon, Lessor agrees to make available for the benefit of Lessee any warranties, which Lessor has or may obtain from manufacturers, dealers or sellers of said Refuelers. Lessee or Lessee’s agent will inspect the

Refuelers at the point of delivery, prior to accepting it, and represents that it is qualified to do so. A Bill of Lading, signed by Lessee or Lessee's agent, shall be proof that Lessee has inspected and accepted the Refuelers in satisfactory condition.

5. **Maintenance of Refueler --**

Lessee is responsible for all maintenance except that Lessor shall provide major repairs and/or replacements, as set forth in Exhibit "B" attached hereto and made a part hereof, for the vehicle drive train (engine, transmission, differential) and product delivery system (pumps, power take-off) which, in Lessor's sole but reasonable judgment, are not necessitated by Lessee's neglect, abuse, accident or failure to perform maintenance as provided in this Lease Agreement for a period of sixty (60) days from original delivery date. Lessee shall provide, at Lessor's request, documentation that all Preventive Maintenance and Inspections, as required by the manufacturer of the Refuelers and this Lease Agreement, have been completed as set forth in Exhibit "D".

All other repairs and replacements of the Refuelers which the Lessor deems necessary or desirable shall be made by and at the expense of the Lessee. Approved changes in maintenance responsibilities will require this Lease Agreement to be modified accordingly by written amendments executed by Lessor and Lessee. If Lessee fails to perform any maintenance or repair for which Lessee is obligated hereunder within ten (10) days after notification and request by the Lessor, the Lessor may (without prejudice to its other rights on account of such breach of this Lease Agreement) perform such maintenance or repair and shall be reimbursed by Lessee on demand for all reasonable, necessary and documented costs incurred by the Lessor relating to the necessary maintenance or repair.

6. **Refueler Inspections-** Lessee agrees to perform all State, Federal, Provincial and Commercial inspections as required by specific location.

7. **Operation of Refueler** – Refuelers shall be used only for dispensing fuel purchased from Lessor unless otherwise agreed to in writing. Lessee shall exercise direct control over all persons who operate the Refuelers and shall insure that such persons operate the Refuelers safely and in accordance with all laws, ordinances, rules and regulations, which apply to the use of refuelers on airports. Lessee agrees to use the Refuelers only for the purpose for which it is intended. The Refuelers may not be driven on public streets and highways nor used by a third party without the express written consent of Lessor.

8. **Inspection of Refueler** – Upon forty-eight (48) hours' notice, Lessee shall afford Lessor and/or its designated representatives access to the premises where the Refuelers is located for the purpose of inspecting the Refuelers and all applicable maintenance or other records relating thereto at any reasonable time during normal business hours and at Lessor's sole cost and expense; provided, however, if Lessee defaults as to its obligation hereunder, no prior notice or other limitation shall apply to Lessor's inspection rights and any such inspection shall be at Lessee's expense. Lessee shall, whenever reasonably requested by Lessor, advise Lessor of the exact location of any and all items of the Refuelers.

9. **Indemnification** – To the fullest extent permitted by applicable law, Lessee shall indemnify, defend and hold harmless Lessor and agents, employees, and successors of any of them or any other entity as required by this Lease Agreement from and against claims, suits, penalties, damages, losses, response costs, administrative order, notice letter, or enforcement action and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Lease Agreement provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of the tangible property including clean up or remediation costs due to threat of release, discharge, escape of hazardous substance or waste, including aviation gasoline, jet fuel, pre-blended jet fuel, motor gasoline, diesel fuel and biodiesel fuel but only to the extent caused by the negligent acts or omissions of Lessee or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person.

Lessee shall pay or reimburse Lessor, and indemnify, defend and hold Lessor harmless from, on an after-tax basis, all taxes, assessments, fees and other governmental charges paid or required to be paid by Lessor or Lessee in any way arising out of or related to the Refueler or any Lease Agreement before or during the term or after the term in the event Lessee defaults, including but not limited to, foreign, US, state, county and municipal fees, taxes and assessments, and property, value-added, sales, use, gross receipts, excise, stamp and documentary taxes, and all related penalties, fines, additions to tax and interest charges ("Impositions"), excluding only taxes based on or measured by Lessor's net income unless such taxes are in lieu of any Imposition Lessee would otherwise be required to pay hereunder. Lessee shall timely pay any Imposition for which Lessee is primarily responsible under law and any other Imposition not payable or not paid by Lessor, but Lessee shall have no obligation to pay any Imposition being contested in good faith and by appropriate legal proceedings, the nonpayment of which does not, in the opinion of Lessor, result in a material risk of adverse effect on the title, property, use, disposition or other rights of Lessor with respect to the Refueler. Upon Lessor's request, Lessee shall furnish proof of its payment of any Imposition.

10. **Insurance** – Lessee shall provide and maintain at all times the following insurance and name Lessor (To be shown as: World Fuel Services, its affiliates, subsidiaries, and the directors, officers, agents and employees of each.) as additionally insured to the extent of this indemnity in respect thereof and this insurance shall be primary and non-contributing over all collectible insurance including self-insurance: Commercial General Liability with limits not less than \$1,000,000 USD each occurrence and \$2,000,000 USD annual aggregate. Such coverage must include Airport Premise/Operation and Products/Complete Operations. Other insurance required includes; independent contractors; personal injury liability; contractual liability; workers compensation covering all employees of Lessee; and physical damage coverage covering the value of any leased equipment. As on-site operator, Lessee must provide pollution and remediation liability insurance with limits at least \$1,000,000 USD that includes coverage for a spill or release cleanup. Certification of such coverage including Commercial Umbrella coverage (if in force), shall be provided by Lessee, and not be changed or canceled without at least thirty (30) days prior written notice to Lessor.
11. **Title to Refueler** – Title to the Refuelers remains with Lessor and or third party throughout the term of this Lease Agreement. Lessee shall not encumber the Refuelers in any way. Lessee does not have any ownership interest in the Refuelers and may not assign the Refuelers or this Lease Agreement to anyone without the express written consent of Lessor, which shall not be unreasonably withheld or delayed. During the term of this Lease Agreement, Lessor shall have the option of substituting the Refuelers identified above with the Refuelers of substantially similar specifications. Substituted Refuelers shall be subject to this Lease Agreement. Substitutions will not cause increases in the amount of the payments due under this Lease Agreement.
12. **Default** – If Lessee defaults in any of its obligations of this Lease Agreement, Lessor shall give notice to Lessee concerning the nature of the default. If such default is not corrected within ten (10) days of such notice (other than a payment default for which no cure period is applicable), Lessor shall have the right to terminate this Lease Agreement. Should this Lease Agreement be terminated for this or for any other reason whatsoever, Lessor shall have the right to take immediate possession of the Refuelers without demand or legal process and free of all rights of Lessee. Lessee specifically waives any right of action it might otherwise have arising out of such entry and repossession, whereupon all rights of Lessee in the Refuelers or its contents shall terminate immediately. In the event of any action, legal or equitable, by either party to enforce this Lease Agreement or any of its provisions, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court and taxed as costs in the action.
13. **Acceleration** - Lessor reserves the right, in addition to all other rights and remedies available to it under the law, in equity or otherwise, to accelerate and demand payment of all amounts due, if Lessee fails to make any payment or otherwise comply with the terms as herein provided, if Lessee is in breach of any other agreement with Lessor, or if Lessor, in its sole discretion, at any time deems itself insecure with regard to the creditworthiness or financial condition of Lessee.
14. **Notices** – All notices required to be given, shall be in writing and posted or hand delivered to the addresses shown above.
15. **Governing Law; Venue; Waiver of Jury Trial.** This Lease Agreement, including all exhibits attached hereto, is governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions. Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party arising from or relating to this Lease Agreement in any forum other than, at Lessor's option, either 1) the courts sitting in Oswego County, New York, or 2) the courts sitting in the county (or its equivalent) where the Refuelers are physically located. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS LEASE AGREEMENT, INCLUDING ALL EXHIBITS ATTACHED HERETO, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
16. **Assignment and Waiver-** Lessee shall not assign this Lease Agreement without the written consent of Lessor. The Refuelers may be owned by a third party and leased by Lessor, and this Lease Agreement may be subordinate to such Lease. In the event that such third party becomes entitled to possession of the Refuelers, Lessee agrees to abide by such Lease or enter into a new lease with such third party. As used herein, an "Affiliate" of Lessor is any corporation, partnership, joint venture or other entity in which World Fuel Services Corporation, a Florida corporation, owns, directly or indirectly, an equity interest of fifty percent (50%) or more. The waiver by either party of the breach of any provision hereof shall not constitute a waiver of any subsequent or continuing breach of such provision or provisions.
17. **Entire Agreement** – The terms and conditions of this Lease Agreement constitute the entire agreement among the parties with respect to the Refuelers and supersede all previous negotiations, representations or agreements between the parties, whether written or oral. If any part of this Lease Agreement is deemed to be unenforceable, the remainder of this Lease Agreement shall remain in full force and effect. Only a written instrument executed by Lessor and Lessee may amend this Lease Agreement.

In Witness Whereof, the parties have hereby agreed to all of the above terms and conditions as of the date last indicated below.

Lessor: **ASCENT AVIATION GROUP, INC.**

Lessee: **CITY OF NEWPORT**

By: _____

By: _____

Steve Drzymalla
SVP, Business Aviation

Printed Name and Title

Date: _____

Date: _____

**EXHIBIT "A" ATTACHED TO
REFUELER LEASE AGREEMENT
City of Newport
135 Southeast 84th St.
Newport Municipal Airport
Newport, OR 97365**

REFUELER DESCRIPTIONS:

Asset # 44293
1999 Isuzu 750 Gallon Avgas Refueler
VIN: JALB4B140X7003670
Physical Damage Value: \$23,000.00 USD
Lease Rate: \$1.00/per year, plus applicable tax
Term: September 1st, 2017-August 31st, 2022

If Lessee does not maintain a Fuel Supply Agreement with Lessor during the term of the Lease, then Lessee will be responsible for inbound and outbound freight charges and monthly lease cost of \$737.00 per month.

Note: Lessee Insurance Responsibilities begin from date of delivery to Newport Municipal Airport (ONP)

In Witness Whereof, the parties have hereby agreed to all of the above terms and conditions stated in **Exhibit "A"**, as of the date last indicated below.

Lessor: **ASCENT AVIATION GROUP, INC.**

Lessee: **CITY OF NEWPORT**

By: _____

By: _____

Steve Drzymalla
SVP, Business Aviation

Printed Name and Title

Date: _____

Date: _____

**EXHIBIT "B" ATTACHED TO
REFUELER LEASE AGREEMENT**

Repairs provided by the Lessor to said Refuelers, as stated in Paragraph 5 of this Lease Agreement, are further defined as follows. If any repairs are caused by the Lessee failing to perform maintenance required in Exhibit "D", Lessee shall be responsible for all such repairs.

1. ENGINE
 - (a) Block and internal components
 - (b) Cylinder heads, head gaskets and valves
 - (c) Blower or turbo charger assembly
 - (d) Timing chain and gear assembly, gasket and seal
 - (e) Flywheel and ring gear
 - (f) Front and rear crankshaft seal
 - (g) Oil pump and shaft

2. TRANSMISSION
 - (a) Housing and internal components
 - (b) Torque converter
 - (c) Input and output shaft bearings and seals

3. DIFFERENTIAL
 - (a) Housing and internal components (ring gear and pinion assembly)
 - (b) Pinion bearing and seal

4. FRAME, AXLES, WHEELS AND SUSPENSION
 - (a) Chassis frame rails and cross members
 - (b) Springs, load cushions and airbags
 - (c) Walking beams and torsion bars
 - (d) Wheel hubs
 - (e) Axles, king pins and spindles
 - (f) Steering box internal components including bearings and seals

5. BRAKE SYSTEM
 - (a) Air compressor internal components
 - (b) Master cylinder and vacuum booster

6. PRODUCT PUMP, PTO, AND TRANSFER CASE
 - (a) Housing and internal components
 - (b) Input and output shaft bearings and seals

EXHIBIT "D"
REFUELER LEASE AGREEMENT
PREVENTATIVE MAINTENANCE SCHEDULE

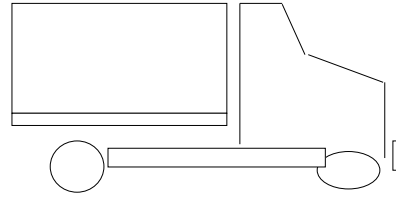
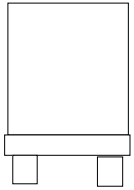
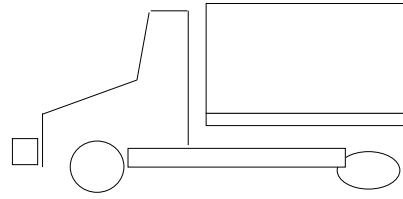
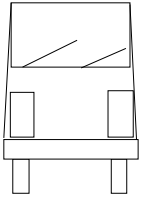


World Fuel Services PM Checklist

FBO		UNIT #	VIN#			
MILES		DATE	TECHNICIAN:			
HOURS		CUSTOMERS SIGNATURE				
UNDER THE HOOD		Description of Inspection	Repair	OK	Date, Condition or Replacement	Initials
1	AIR FILTER	Record Condition and Change Date - Should be changed at least annually or every 1000 hours				
2	ENGINE OIL	Record Condition and Change Date - Should be changed at least every 6 months or 500 hours				
3	ENGINE OIL SAMPLES	Annually, take an oil sample and send out for analysis				
4	OIL FILTER	Record Condition and Change Date - Should be changed at least every 6 months or 500 hours				
5	AUTOMATIC TRANSMISSION	Record Condition and level - check for burnt smell or discoloration. Fluid and filters should be changed annually with manufacturers recommended fluid				
6	FUEL LINE & FILTERS	Record Condition and Change Date - Filters should be changed at least annually				
7	ANTIFREEZE	Top off as needed, protection should be between -25 and -30				
8	COOLANT SYSTEM	Check for hose and radiator leaks - Confirm overfill bottle in good condition				
9	BELTS	Check for cracking or glazing, replace as necessary				
10	BATTERY TERMINALS & CABLES	Check for loose or corroded terminals, clean and repair as needed				
CAB		monthly	Repair	OK		
1	CLEANLINESS	Is the inside of the cab clean and free of clutter				
2	WINDSHIELD CAB GLASS	Do windows roll up and down, are there any cracks or chips in the windshield ? What is the condition of the mirrors?				
3	WIPER BLADES, ARMS, & HOSES	Repair or replace as needed				
4	STARTING SYSTEM	Does the key turn freely, does the engine turn over slow				
5	ENGINE OPERATION	Start engine to build up air pressure, check all gauges				
5a	ENGINE OPERATION	Is there excessive rattling in the engine during operation, does it smoke excessively during start up ?				
5b	ENGINE OPERATION	Check low air warning buzzer and light.				
6	ELECTRICAL CHARGING SYSTEM	Record voltage or does the gauge read + / - 12 volts				
7	LIGHTING SYSTEM	Do the dash and dome lights work ?				
8	EXTERIOR LIGHTS	Do all of the exterior lights work properly ?				
9	STEERING - Condition	Does the steering wheel have excessive play when turning ?				
10	PARKING - BRAKE SYSTEM	Does the brake hold the truck when in gear ?				
11	CLUTCH / TRANSMISSION	Check for excessive play in the linkage - should be greased at least once per year				
12	AIR COMPRESSOR	Does the compressor pump up the system in a timely manner ?				

CHASSIS		Semi- Annual	Repair	OK	
1	TANK AND SILLS	Check the tightness of the tank to the chassis & condition of sill boards/monthly for 1st 6 months/then every 6 months			
2	TIRE & WHEELS	Check for loose or missing lugs & slippage on spoke style wheels/record tread depth.			
3	EXHAUST SYSTEM	Check for cracks or holes in pipe & muffler. Check condition of hangers			
4	SUSPENSION	Check over all condition looking for broken or cracked parts			
5	CHASSIS LUBE	Check zirks for evidence of grease, should be done at least every 6 months			
5a	KING PINS	Raise front axle to grease King Pins, turn wheels lock to lock to distribute lube.			
6	TRANSMISSION LUBE	Check and fill as necessary			
7	DIFFERENTIAL LUBE	Check and fill as necessary			
8	UNIVERSAL JOINTS	Check zirks for evidence of grease, should be done at least every 6 months. Does the PTO have safety wire?			
9	AIR RESERVOIR	Check drains and cables			
10	BRAKES - ADJUSTMENT	Drive truck in an open space away from obstructions. Adjust brakes only if you are certified to do so, if not call a contractor			
11	PARKING BRAKE	Check parking brake, check parking brake pop out valve to release at 35 lbs.			
PUMPING SYSTEM		Semi- Annual	Repair	OK	Date, Condition or Replacement
1	PUMP GEAR BOX LUBE	after first 100 hrs of ops then every 500 hrs or semi annual			
2	ELECTRICAL	Check all of the boots on the micro switches, look at LED's on proximity switches			
3	BRAKE INTERLOCK	Test all interlocks and brake over ride switch (Replace seal on over ride switch after checking)			
4	NOZZLES & SCREENS	Check screens for debris, proper gasket / o-ring , broken parts or leaks			
5	PRODUCT HOSE	Extend out completely checking all surfaces			
6	HOSE REEL	Check sprocket for broken teeth & alignment of chain. Remove zirks from swivels, replace with plug			
7	GROUND REEL	Extend out completely checking for cracks or rips, note over all condition and brand, perform continuity test and note results			
8	DISPENSING SYSTEM - LEAKS	General condition of plumbing including pipes and flanges			
9	WATER SUMP VALVES & DRAIN	Ensure they are operating and do not leak, check that Morrison valves closes			
10	AIR CONTROLS	With the engine off listen for escaping air from the system.			
11	METER - SEAL	Does the meter have the proper seal			
12	METER - TOTALIZER	Record totalizer reading			
13	METER	Record date of calibration			
14	PRODUCT FILTER SPECS	Model - Element - Gasket Numbers			
15	PRODUCT FILTER DATE OF CHANGE	If not replaced by you, what was the last date of change			
TANK		Semi- Annual	Repair	OK	Date, Condition or Replacement
1	MAN WAY GASKETS	Look for cracked or missing o-ring			
2	TANK INTERIOR - Condition	Check inside of tank looking for rust and debris. Clean as required.			
3	CATWALK DRAINS CLEAR	Check condition of drain tubes, should free of cracks and not discolored. Check for obstructions that may be blocking drain tubes			
MISCELLANEOUS		Monthly	Repair	OK	Date, Condition or Replacement
1	PRODUCT ID / DECALS	Check for missing decals inside cab & over all condition of exterior			
2	FIRE EXTINGUISHERS	Check for seal or missing pin, note date of inspection, must be B/C units			
3	AIR SYSTEM LEAKS	Inspect for leaks and note locations of leaks			
4	PRIST INJECTOR	Test for proper operation and verify injection rate			

NOTE ANY DAMAGE



NOTES

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FUEL SUPPLY AGREEMENT

THIS FUEL SUPPLY AGREEMENT (this “Agreement”) is made and entered into this 1st day of September, 2017 (the “Effective Date”) by and between **CITY OF NEWPORT (“Customer”)**, an Oregon municipality located at 169 SW Coast Highway, Newport, OR 97365 and **WORLD FUEL SERVICES, INC.**, a Texas corporation on its behalf and on behalf of its Affiliates (collectively “Seller”) located at 9800 N.W. 41st Street, Miami, FL 33178.

WITNESSETH:

WHEREAS, Seller markets and distributes aviation fuels, and Customer is in the business of operating an aviation facility which uses aviation fuels; and

WHEREAS, the parties have agreed that Seller will sell aviation fuels to Customer and Customer will purchase aviation fuels from Seller in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and undertakings set forth herein, Customer and Seller hereby agree:

1. **Scope.** During the Term (as defined below), Seller agrees to sell and Customer agrees to purchase all of Customer’s requirements at Customer fixed-based operation site at Newport Municipal Airport (KONP), 135 Southeast 84th Street, Newport, OR 97365 (the “FBO”) for branded and unbranded aviation gasoline, jet fuel, and any other products sold hereunder exclusively from Seller and that it will not purchase any such fuels or products for the FBO from any other corporation, company, entity, or person. Customer represents and warrants that all products and services purchased hereunder will be for the purpose of conducting its business and that no aviation gasoline purchased hereunder shall be used or sold for non-aviation use. In addition, Seller offers a comprehensive Contract Fuel Program and in the event Customer engages in contract fuel sales, Customer agrees to use Seller’s Contract Fuel Program exclusively. Customer covenants that all contract fuel sales will be through Seller’s Contract Fuel Program and that it will not use any other supplier’s contract fuel program. Customer acknowledges that Seller has provided Customer with information relating to the Contract Fuel Program.

2. **Duration and Renewal.** This Agreement shall be for an initial term of five (5) years beginning on the Effective Date (the “Initial Term”). If at the end of the Initial Term, Customer has not purchased at least 260,000 gallons of combined aviation fuel from Seller (the “Required Minimum Gallons”), this Agreement shall automatically renew for one or more subsequent annual terms until Customer has purchased at least the Required Minimum Gallons. If upon the expiration of the Initial Term or any annual renewal term, Customer has purchased the Required Minimum Gallons, then this Agreement shall automatically renew for subsequent annual periods (“Subsequent Terms”, and with the Initial Term, the “Term”) unless cancelled by either party providing written notice to the other party of its election to terminate at least ninety (90) days prior to the end of the Initial Term or the applicable Subsequent Term.

3. **Pricing.** Unless otherwise agreed in writing by the parties, the price per gallon for products sold hereunder shall be as established by Seller from time to time in its discretion. Prices are exclusive of all Taxes (as defined in Section 10) additives, freight charges, surcharges and fees. Notwithstanding any written agreement to the contrary, if Seller’s cost of supplying fuel or services to Customer increases then, upon written notice to Customer, Seller may adjust its prices at affected delivery locations. Price changes will take effect as of the date of notification.

4. **Product and Product Standard.** Seller warrants to Customer that the products sold hereunder are Jet A Turbine Fuel and 100LL Aviation Gasoline and that such products will comply with the following requirements, as applicable: Jet A Turbine Fuel produced by a refinery in the United States shall meet ASTM D 1655, latest revision, and Jet A Turbine Fuel produced by a refinery in Canada shall meet the requirements of CAN/CGSB-3.23, latest revision. 100LL aviation gasoline produced by a refinery in the United States shall meet ASTM D 910, latest revision. Seller warrants to Customer that it has title to the products delivered hereunder, and Seller warrants to Customer that it has the right to sell such products and that they are free from liens and adverse claims of every kind. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION, SELLER MAKES NO WARRANTIES OF ANY KIND TO CUSTOMER REGARDING THE PRODUCT SOLD HEREUNDER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. **Credit and Payment Terms.** Payment by Customer shall be made by means of electronic funds transfer, and the terms shall be net fifteen (15) days subject to credit approval by Seller. Past due amounts shall accrue interest at a rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by applicable law, whichever is less. All amounts more

than fifteen (15) days past due shall incur an additional five percent (5%) administrative fee. Any waiver by Seller of interest charges or administrative fees on a particular invoice shall not be construed as a waiver by Seller of its right to impose such charges on other or subsequent deliveries. Seller reserves the right to apply Customer's payments to any outstanding invoices or obligations of Customer, as determined by Seller in its sole discretion, without regard to the aging of any account. Customer shall be liable for all fees and costs, including without limitation attorney's fees, incurred by Seller in connection with any collection activities undertaken by Seller for the non-payment of any amounts due hereunder by Customer. Seller reserves the right to modify or cancel the credit terms provided to Customer at any time, in its sole discretion upon notice to Customer. If Seller selects not to extend or cancels any credit terms provided to Customer, prior to each delivery of aviation fuel, Customer shall: (a) make a prepayment to Seller; (b) cause to be issued a letter of credit in favor of Seller in a form, in an amount and from a bank that is acceptable to Seller from time to time in its sole discretion, or (c) give other security to Seller in a manner, of a type, in a form and in an amount that is acceptable to Seller. Seller reserves the right, in addition to all other rights and remedies available to it under the law, in equity or otherwise, to suspend further performance of Services, and demand payment of all outstanding balances, if Customer fails to make any payment as herein provided, or if Seller at any time deems itself insecure with regard to the creditworthiness or financial condition of Customer.

6. Force Majeure. Neither party shall be liable for its failure to satisfy its obligations hereunder as a result of any cause beyond its control, including acts of God, acts of federal, state or local government, compliance with requests, regulations or orders of any governmental authority, fire, storm, flood, earthquake, explosion, accidents, acts of the public enemy, terrorism, war, riot, strike, lockout, or unavailability of or delays in delivery of any product which is the subject of this Agreement. If any such *force majeure* interruption occurs with respect to Seller's supply, Seller may substitute another fuel of the same brand, a different brand, or no brand so long as such aviation fuel meets the standards set forth in Section 4 above, and/or the quantities of aviation fuel required to be supplied under this Agreement may be ratably reduced for the period during which such *force majeure* interruption may exist.

7. Title and Risk of Loss. Seller's liability relating to the aviation fuel sold hereunder shall cease and title and risk of loss shall pass to Customer when said product passes the flange between Seller's delivery line and Customer's connection or vehicle.

8. Inspection and Measurement. Customer's inspection and measurement shall be based on meters or on certified tank truck capacities according to terminal practice. All quantities shall be adjusted to 60 degrees F temperature (unless otherwise specified by State Regulations) in accordance with the latest revised applicable parts of ASTM Designation D: 1250, IP Designation: 200 Petroleum Tables. The term "gallon" shall mean a U.S. gallon of 231 cubic inches. The term "tank truck" shall mean a transport truck with a tank storage capacity of not less than 3,000 gallons.

9. Deliveries. Deliveries shall be made at such times within the usual business hours of Seller as may be required by Customer, provided that reasonable advance notice is given by Customer. Seller shall prepare and furnish the receiving party with copies of bills of lading and other shipping papers. Seller shall not be required to make deliveries into vehicles supplied by Customer unless they are clean and empty immediately prior to delivery and shall not be required to load or deliver quantities less than the full capacity of the vehicle, except as otherwise authorized by Seller from time to time. If deliveries are to be made into Customer's storage facilities, Customer shall provide storage facilities sufficient to enable it to receive such deliveries and shall provide Seller with unimpeded and adequate ingress and egress twenty-four hours per day. Customer shall reimburse Seller on demand for any demurrage or other charges incurred by Seller by reason of Customer's failure to unload any delivery vehicle or release the same within the time allowed therefor without demurrage or other charge even though such failure may have arisen from causes beyond the control of Customer. All deliveries of aviation fuels shall be in full bulk transport quantities unless otherwise agreed by Seller. Seller's ability to offer products in the quantities and at the prices provided for under this Agreement is dependent upon the ratability of Customer's demand. As such, Seller reserves the right to implement measures to control the proportionality, consistency and ratability of Customer's demand.

10. Taxes. All prices are quoted in U.S. Dollars (unless otherwise specified) and exclude all duties, taxes, assessments, fees, and other charges, whether foreign or domestic, including, but not limited to, excise tax, VAT, GST, mineral oil tax, sales tax, use tax or any other tax, license fees, inspection fees, landing fees, airport fees, fees for the privilege of buying, selling or loading aviation fuel, or other charges imposed by any governmental authority or agency or regulatory body, or third party upon, or measured by the gross receipts from or volume sold of any commodity, or on the production, manufacture, transportation, sale, use, delivery or other handling of such commodity, or any component thereof, or on any feature or service related thereto or of any invoice, existing at the time of any sale hereunder (collectively "Taxes"), which shall be added to the applicable price. When permitted, Customer shall assume and be directly responsible to the proper governmental units for any Taxes. When the laws, regulations or ordinances impose upon Seller the obligation to collect or pay such amounts, Customer shall pay to Seller all such amounts for which Seller may be liable. If Customer is entitled to purchase products free of any Tax, Customer shall furnish Seller proper exemption certificates. Customer acknowledges that it remains solely responsible for all Taxes and shall indemnify Seller against any liability for such Taxes even if Seller fails to include any such Taxes in its invoices. Customer's obligations under this Section 10 shall extend to any Taxes which are assessable against Customer as a result of any subsequent change in, or in interpretation of, any laws relating to such Taxes.

11. Conduct of Customer's Business. In the performance of this Agreement, Customer is engaged as an independent contractor. Customer shall conduct all operations hereunder in compliance with all applicable laws, ordinances and regulations of all governmental authorities, including but not limited to those issued by the U.S. Department of Transportation and those relating to the, production, manufacture, transportation, sale, use, delivery or other handling of products purchased hereunder. Customer shall diligently promote the sale of the petroleum products purchased under this Agreement, and shall conduct the operation of Customer's business in such a manner as to promote goodwill toward Seller and its products. Customer agrees to assist in the administration of any promotional programs Seller or its suppliers may establish for its customers.

12. Insurance.

(a) Customer shall maintain at Customer's own expense during the Term: (i) Workers' Compensation and Employment Liability Insurance as prescribed by applicable law; (ii) Aviation General Liability (bodily injury and property damage) Insurance of not less than \$1,000,000 combined single limit per occurrence, but in the aggregate with respect to Products and Completed Operations Liability and any one offense/aggregate with respect to Personal Injury, and including but not limited to, personal injury, premises-operations, products and completed operations, and contractual Liability; (iii) Business Automobile Liability (bodily injury and property damage) Insurance of not less than \$1,000,000.00 combined single limit per occurrence, on all owned, non-owned and hired vehicles which are used by Customer; and (iv) any other insurance or surety bonding that may be required under the laws, ordinances and regulations of any governmental authority.

(b) The insurance specified in subsection (a) of this Section 12 shall require the insurer to provide Seller with thirty (30) days' prior written notice of any cancellation or material change in the insurance and shall name Seller as additional insured. The insurance required under clause (i) of subsection (a) above shall contain a waiver of subrogation against Seller and an assignment of statutory lien, if applicable.

(c) The insurance required under subsection (a) above shall provide that it is primary coverage to insurance carried by Seller. The insurance required above shall be issued by insurance companies which are reasonably acceptable to Seller. The insurance companies shall have no recourse against Seller, or any other additional insured, for payment of any premiums or assessments under any policy issued by a mutual insurance company. Customer shall be responsible for all deductibles in all of Customer's insurance policies. Customer shall furnish Seller with certificates for all insurance coverage.

(d) Seller has the right to modify, delete, add to or otherwise change the insurance requirements set forth in sections (a) through (c) inclusive provided that Seller provides Customer with thirty (30) days' notice of such change.

13. Indemnification. Each party shall indemnify, defend and hold the other party and its directors, officers, employees and agents harmless from and against any and all expenses (including attorneys' fees) liabilities and claims of whatsoever kind and nature, including but not limited to, those for damage to property (including property of the parties) or for injury to or death of any person (including a party), directly or indirectly, arising or alleged to arise out of or in any way connected with the willful misconduct, negligent acts or omissions, violation of law, or breach of this Agreement by the indemnifying party. The foregoing indemnity shall not apply to the extent such expense, liability or claims result from the negligent acts or omissions or willful misconduct of the party seeking indemnification.

14. Quality Control. Customer shall maintain the quality of Seller's aviation products and shall comply with any quality control procedures prescribed by Seller and its supplier. In no event shall Customer permit automotive engine fuels or kerosene to be sold as Seller aviation fuels or dispensed through equipment bearing Seller's or its suppliers' insignia. Customer shall immediately report to Seller any accident or incident involving a fueled aircraft. Any claim made by Customer for deficiency in product quality or quantity shall be waived unless made in writing within forty-eight (48) hours after delivery.

15. Confidential Information. Customer shall hold in confidence all manuals, guides, forms, instructions, software programs and other proprietary materials provided by Seller for Customer's use in promoting and selling Seller products, and all technical information, trade secrets and other confidential business information that is disclosed to Customer by Seller (collectively "Confidential Information"). Customer shall not use Confidential Information for any purpose other than developing business for Seller's products and services, and shall not disclose Confidential Information to anyone other than Customer's employees or agents who have a need to know Confidential Information. Customer's obligations under this Section 15 shall survive termination of this Agreement. The recipient's obligations with respect to confidentiality and disclosure set forth herein shall not apply to Confidential Information that (i) is already in the recipient's, its subsidiaries' or affiliates' possession, provided that such information is not subject to another confidentiality agreement with disclosing party; (ii) is or becomes generally available to the public other than as a result of a wrongful disclosure by recipient or its representatives; (iii) becomes available to recipient, its subsidiaries or affiliates on a non-confidential basis from a source other than disclosing party, provided that such source is not bound by a confidentiality agreement with or other obligation of secrecy to Disclosing Party; or (iv) is subsequently independently developed by employees or agents of recipient, its subsidiaries or affiliates without any use of disclosing party's Confidential Information.

16. Termination.

(a) Seller may, in addition and without prejudice to any of its other rights or remedies hereunder, terminate this Agreement upon giving Customer seven (7) days' prior written notice (or such other period as is specified herein) if any one or more of the following occurs and Customer fails to cure such breach within the applicable notice period: (i) Customer breaches or defaults on any covenant, condition or other provision of this Agreement, the branding schedule, note, security agreement, lease, or any other agreement of the parties; (ii) Customer fails to pay to Seller in a timely manner when due all sums to which Seller is legally entitled (whether or not such sums are owed under this Agreement); (iii) willful adulteration, commingling, mislabeling or misbranding of aviation fuels or other violations by Customer of trademarks utilized by Seller occur or unlawful, fraudulent or deceptive acts or practices or criminal misconduct by Customer relevant to Customer's performance of this Agreement occur; or (iv) Customer becomes insolvent, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, is adjudicated bankrupt, permits a receiver to be appointed, or permits or suffers a material disposition of its assets. With respect to a breach of subsection 16(a)(ii), in addition to all other rights hereunder, Seller may immediately suspend performance hereunder or terminate this Agreement without giving Customer notice or opportunity to cure.

(b) If Seller continues to accept orders from Customer following the expiration of the Term, such sales shall be upon all of the terms and conditions hereof except that the relationship of the parties may be terminated at will.

(c) In the event this Agreement is terminated, all other agreements and instruments between the parties shall also terminate, and all amounts owing under any note or other document shall become due and payable. In addition, upon termination of this Agreement, any and all indemnity obligations, parties' rights upon breach, all collateral and security interests in favor of Seller, obligations arising upon termination (such as discontinuing the use of the trademarks and tradenames of Seller's supplier), confidentiality provisions, and any other terms of this Agreement which by their nature should survive termination shall all survive.

(d) No termination of this Agreement, even if on account of Seller's default, shall excuse Customer from paying any unpaid amounts owing for aviation fuel previously delivered hereunder, or from paying other outstanding amounts due Seller under this Agreement. The remedies provided in this Agreement are cumulative and not exclusive of any other remedies provided by law. **HOWEVER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES.**

17. Miscellaneous.

(a) Notices. All notices to be given hereunder by either party shall be in writing and sent by first class United States mail to the other, delivered to the address first listed above or at such other address or facsimile number as either party may designate to the other by written notice in the manner provided pursuant to this Section 17(a).

(b) Entire Agreement. This Agreement, the branding agreement, all security agreements, notes, leases, and all other related documents of the parties constitute the entire agreement between the parties. The parties agree to execute and deliver a replacement branding agreement in substantially the same form (unless a new supplier requires a different form) if Seller determines to substitute aviation fuel of a different brand so long as such aviation fuel meets the requirements and standards set forth in Section 4. No other promises, agreements or warranties additional to this Agreement, the branding agreement, or other documents listed above shall be deemed a part hereof, nor shall any alteration or amendment of this Agreement or the branding agreement be effective without the express written agreement of both parties.

(c) No Conflict. Each of Customer and Seller represents and warrants to the other that neither the execution and delivery of this Agreement by it, nor the consummation of the transactions contemplated hereby, will: (a) violate or conflict with, or result in a breach of any provision of, or constitute a default under any existing agreement or other instrument or obligation to which it is a party, (b) violate applicable law; or (c) require any action, or consent or approval of, or review by, any other party, except as shall have been duly obtained and effective as of the date of this Agreement.

(d) Assignment; Waiver. This Agreement may not be assigned by Customer, either voluntarily, involuntarily, or by operation of law, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Fuel and/or services may be provided by an Affiliate of Seller. As used herein, an "Affiliate" of Seller is any corporation, partnership, joint venture or other entity in which World Fuel Services Corporation, a Florida corporation, owns, directly or indirectly, an equity interest of fifty percent (50%) or more. In any transaction hereunder, the Affiliate issuing the invoice to Customer shall be deemed the Seller of the fuel and/or services. The waiver by either party of the breach of any provision hereof shall not constitute a waiver of any subsequent or continuing breach of such provision or provisions.

(e) Governing Law, Disputes. This Agreement shall be construed in accordance with the laws of the State of Florida without regard to conflict of laws provisions. Customer hereby consents to the jurisdiction of any state or federal court situated in Dade County, Florida and waives any objections based on forum non conveniens with regard to any actions, claims, disputes or proceedings relating to this Agreement, any related document, or any transactions arising therefrom, or enforcement and/or interpretation of any of the foregoing; provided, nothing herein shall affect a party's right to bring proceedings against the other party in the competent courts of any other jurisdiction or jurisdictions. Customer and Seller hereby waive any and all right to trial by jury in any action or proceeding relating to this Agreement or any documents relating to this Agreement, or any transaction arising herefrom or connected hereto. Customer and Seller each represents to the other that this waiver is knowingly, willingly and voluntarily given.

(f) Attorneys' Fees. In the event of any lawsuit between Seller and Customer arising out of or relating to the transactions or relationship contemplated by this Agreement, the substantially prevailing party shall be entitled to recover its reasonable costs including its reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties have executed this Agreement which is made effective as of the date first above written.

WORLD FUEL SERVICES, INC.

CITY OF NEWPORT

By: _____

By: _____

Steve Drzymalla
SVP, Business Aviation

Printed Name and Title

Date: _____

Date: _____



BRANDING AGREEMENT
(PHILLIPS 66® BRAND)

This BRANDING AGREEMENT (this “Branding Agreement”) is made and entered into this 1st day of September, 2017 by and between CITY OF NEWPORT, an Oregon municipality (“Customer”) located at 169 SW Coast Highway, Newport, OR 97365 and WORLD FUEL SERVICES, INC., a Texas corporation on its behalf and on behalf of its Affiliates (as defined in the FSA) (collectively “Seller”) located at 9800 N.W. 41st Street, Miami, FL 33178.

During the term of this Branding Agreement, CITY OF NEWPORT (“Customer”) is authorized to and shall offer Company Products for sale under the Company Marks subject to the following terms and conditions:

1. Customer is hereby authorized to sell aviation fuels and other petroleum products supplied by Company pursuant to the Fuel Supply Agreement between Customer and Seller dated September 1, 2017 (“FSA”) at the locations listed in the FSA (each a “Location”), under certain brands and signs, and under certain trade names, trademarks, trade dresses, brand names, labels, insignias, symbols and imprints owned by Company or used by Company in its business (collectively “Company Marks”) as are specifically authorized by Company from time to time. Such aviation fuels and other petroleum products sold by Seller to Customer, and held for sale by Customer, under Company Marks pursuant to this Branding Agreement and the FSA are hereafter referred to as the “Company Products.” Each of the following petroleum products shall be continuously stocked and offered for sale at Customer’s Location in such quantities as are necessary to meet the demand therefore: Company’s Aviation Gasoline 100LL and Company’s Jet A Turbine Fuel.
2. Any and all signs, decals, posters, placards, plates, devices, graphic materials or other form of advertising matter consisting in whole or in part of the name of Company or any Company Marks (collectively, “Branded Materials”) will be obtained by Customer, at Seller’s expense, only from Company. Any and all rights in Company Marks and Branded Materials are, and shall remain, the property of Company. Any use of Company Marks or Branded Materials other than as specifically set forth herein shall be strictly prohibited. No signs, emblems, graphic materials or other form of advertising for competing products or brands may be displayed at any Location where Company Products are offered without the express written consent of Seller.
3. Customer agrees that it will not use or display any Branded Materials (a) in a manner which causes or is calculated to cause confusion as to the type, characteristics, quality or manufacture of any fuel or other product which Customer offers for sale; or (b) for the purpose of selling or promoting the sale of aviation fuel other than fuels supplied by Seller; or (c) for the purpose of selling or offering for sale any product which has been diluted or adulterated whether intentionally or not. Customer will at all times maintain its facilities and conduct its operations in compliance with those standards and procedures established from time to time by Company and applicable to aviation fixed based operators displaying any of the Company Marks or Branded Materials. Such standards and procedures may include (without limitation) image quality standards for the brand displayed, quality control and refueling procedures for products bearing such brand, and standards for services offered and facilities utilized by Customer in conjunction with such products. Seller or Philips 66 Company may, as each deems appropriate, including through the use of third party contractors, conduct periodic tests or inspections to confirm Customer’s compliance with its obligations hereunder.
4. Seller desires to maintain the quality of Company Products sold hereunder. Accordingly, Customer will not in any manner mix, commingle, adulterate, blend, dilute or otherwise change the composition of any of Company Products purchased from Seller hereunder and resold by Customer under Company Marks unless mutually agreed by both parties pursuant to a site specific co-mingling agreement. If Customer offers for sale products purchased on an unbranded basis, Customer shall refrain from all use of Company Marks on or in connection with the sale of such products. Customer further agrees to protect the identity of Company’s products and Company Marks by all reasonable means that would prevent customer confusion or misinformation, including, but not limited to, compliance with any guidelines issued by Seller and/or Company to prevent such confusion.
5. Customer shall accept and honor for payment all Company Accepted Credit Cards and Debit Cards as outlined in the then current Company Credit Card Guide and subject to the terms thereof. “Company Accepted Credit Cards” are defined in the Company Credit Card Guide, which is incorporated herein by this reference, and which may be revised from time to time or discontinued at Company’s sole discretion, and which may be supplemented with Company’s marketing website communications, and other forms of notification to Customer (all referred to collectively as the “Credit Card Guide”). Customer shall accept other payment methods designated by Company from time to time in the Company Credit Card Guide. Customer shall use Company’s approved Electronic Point of Sale (“EPOS”) devices for transaction processing.

6. Customer may be eligible to enroll in the Phillips 66-Branded Airport Dealers Excess Liability Insurance Program (the "Excess Liability Program"). In order to apply for enrollment, Customer must complete the following documents relating to the P66 Excess Liability Program and submit them to Company: (1) Invitation to Enroll; and (2) Letter of Understanding. Customer shall be required to meet such eligibility requirements as established by Company from time to time. Upon request, Seller will provide Customer with the necessary documentation to apply for enrollment; provided, however, that Customer's eligibility and enrollment in the Program shall be in the sole discretion of Company.
7. Upon termination of this Branding Agreement, or in any event upon demand by Company, Customer shall immediately discontinue the posting, mounting, display or other use of Company Marks or Branded Materials. In addition, Customer, at its own expense, shall uninstall and return to Company all salvageable signage and shall promptly return to Seller (or destroy) any and all Branding Material or other items that display Company Marks and shall obliterate the appearance of Company Marks from any of Customer's real or personal property.
8. Company reserves the right at any time to change its product line and specifications, trade dress, trade names, and trademarks or to change or withdraw any services offered in connection with any products such as, but not limited to, credit card acceptance. In the event of such change, Company shall be relieved of all obligation to sell such discontinued products or to offer such discontinued products, trade dress, trade name, trademark or services to Seller and Customer; and, if Company shall market any other brand or product in lieu of the discontinued items, this Branding Agreement shall embrace such new brands or products. Neither Company nor Seller shall be liable to Customer by reason of any such changes.
9. This Branding Agreement shall have the same term as the FSA and shall terminate only when the FSA terminates, unless earlier terminated by Seller upon notice to Customer: (a) if Customer fails to comply with the requirements of this Branding Agreement; or (b) if a new Branding Agreement is substituted for this Branding Agreement pursuant to the terms of the FSA. The parties agree to execute and deliver a replacement branding agreement in substantially the same form (unless a new supplier requires a different form) if Seller determines to substitute aviation fuel of a different brand so long as such aviation fuel meets the requirements and standards set forth in Section 4 of the FSA.
10. Customer may not assign or transfer any right to use Company Marks or Branded Materials without Company's prior approval.
11. The term "**Company**" as used in this Branding Agreement refers to **Phillips 66 Company** as owner of the brands, marks, and other intellectual property which is the subject matter of this Branding Agreement. The term "**Seller**" as used in this Branding Agreement refers to World Fuel Services, Inc. or one of its Affiliates (as defined in the FSA) in its capacity as "Seller" under the FSA.
12. This Branding Agreement is hereby incorporated by reference in and made part of the FSA for all purposes.

IN WITNESS WHEREOF, the parties have executed this Branding Agreement which is made effective as of this 1st day of September, 2017.

WORLD FUEL SERVICES, INC.

CITY OF NEWPORT

By: _____

By: _____

Steve Drzymalla
SVP, Business Aviation

Printed Name and Title

Date: _____

Date: _____



**STAFF REPORT
FOR AIRPORT COMMITTEE**

Meeting Date: 10/11/2022

Title: Lease East area of Hangar D1, McCrea.

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: Recommend not leasing area east of Mr. McCrea’s hangar. Require to have trailers parked in long term parking at current annual rate.

Background Information:

During the September 13, 2022 Airport committee meeting Dan McCrea request to lease the area east of hangar D-4. Mr. McCrea provided information the he would like to store aircraft recovery trailers in this area and when his plane is pulled out of his hangar it is in the movement area or Taxiway Object Free Area (TOFA).

Airport Design Advisory Circular 150/530-13B Section 4.5.4 defines the TOFA as an area adjacent to the Taxiway Safety Are (TSA) that is clear of objects not fixed-by-function to provide vertical and horizontal wingtip clearance.

The TOFA for taxiway Echo is 131 feet wide, or 65.5 feet form center line. This surface runs the entire length of taxiway echo. There cannot be any item in this area that is not related to aircraft navigation, i.e. signs, taxiway markers, or lights.

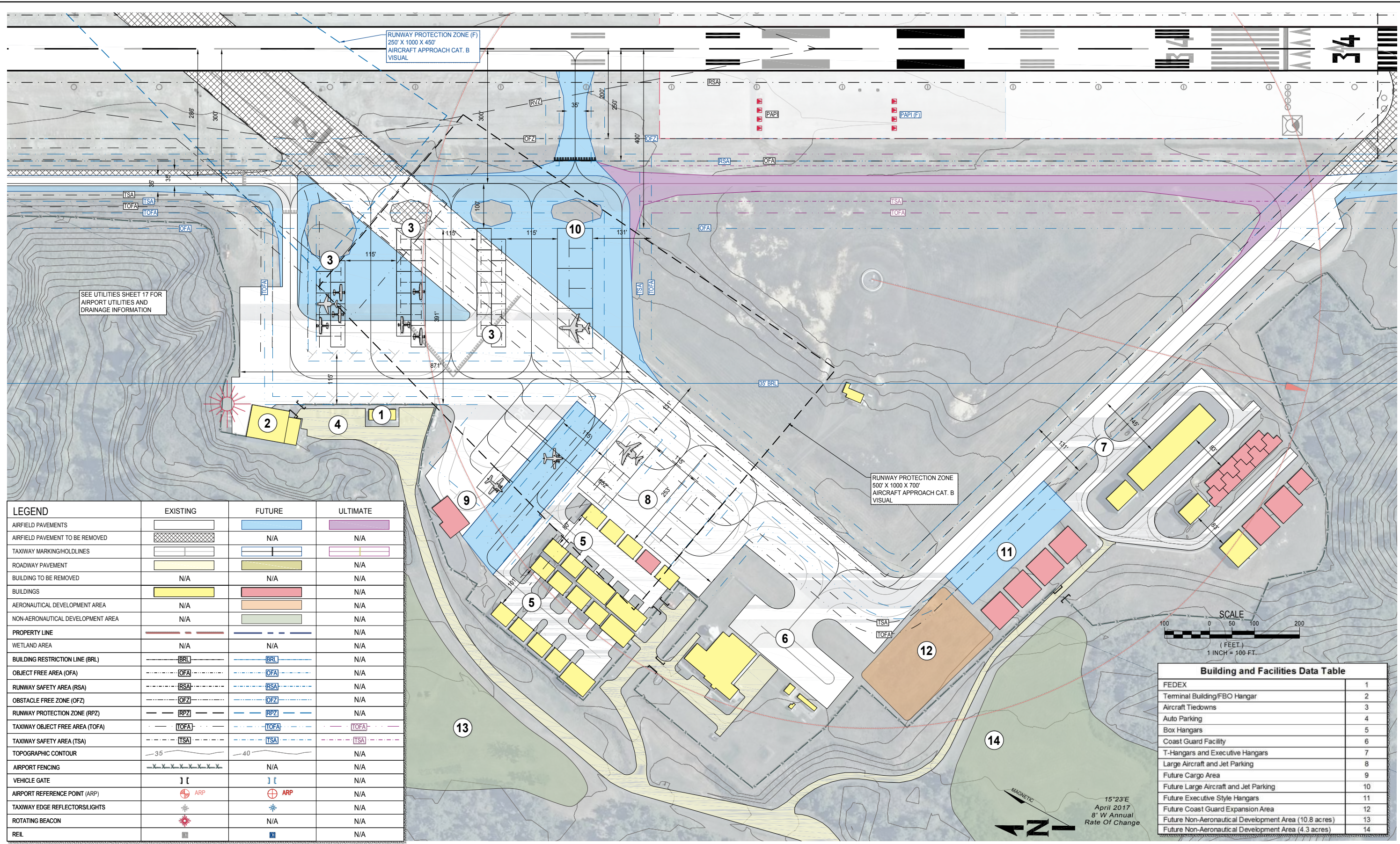
Grant Assurance 19. Operation and Maintenance. Sub-section a. states, “The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state, and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary.”

Fiscal Notes: Long term parking is \$480 per year generating more revenue for the airport than land lease.

Alternatives: Lease area east of Mr. McCrea’s hangar with understanding items cannot be parked in the TOFA or impede access to operations or users.

Attachments: McCrea lease 3294, three exhibits of TOFA for Taxiway Echo, Email from 2021 to Mr. McCrea explaining the TOFA.

[DATE: ----] [AUTHOR: mdane] [PLOTTER: None] [STYLE: WHP-Standard.ctb] [PATH: P:\City of Newport\009837W\Design\Drawings\Civil\AIP\Sheets\009837W-d-terminal-area.dwg] [LAYOUT: 4 Terminal Area]



LEGEND	EXISTING	FUTURE	ULTIMATE
AIRFIELD PAVEMENTS	[Symbol]	[Symbol]	[Symbol]
AIRFIELD PAVEMENT TO BE REMOVED	[Symbol]	N/A	N/A
TAXIWAY MARKING/HOLDLINES	[Symbol]	[Symbol]	[Symbol]
ROADWAY PAVEMENT	[Symbol]	[Symbol]	N/A
BUILDING TO BE REMOVED	N/A	N/A	N/A
BUILDINGS	[Symbol]	[Symbol]	N/A
AERONAUTICAL DEVELOPMENT AREA	N/A	[Symbol]	N/A
NON-AERONAUTICAL DEVELOPMENT AREA	N/A	[Symbol]	N/A
PROPERTY LINE	[Symbol]	[Symbol]	N/A
WETLAND AREA	N/A	N/A	N/A
BUILDING RESTRICTION LINE (BRL)	[Symbol]	[Symbol]	N/A
OBJECT FREE AREA (OFA)	[Symbol]	[Symbol]	N/A
RUNWAY SAFETY AREA (RSA)	[Symbol]	[Symbol]	N/A
OBSTACLE FREE ZONE (OFZ)	[Symbol]	[Symbol]	N/A
RUNWAY PROTECTION ZONE (RPZ)	[Symbol]	[Symbol]	N/A
TAXIWAY OBJECT FREE AREA (TOFA)	[Symbol]	[Symbol]	[Symbol]
TAXIWAY SAFETY AREA (TSA)	[Symbol]	[Symbol]	[Symbol]
TOPOGRAPHIC CONTOUR	-35	-40	N/A
AIRPORT FENCING	[Symbol]	N/A	N/A
VEHICLE GATE	[Symbol]	[Symbol]	N/A
AIRPORT REFERENCE POINT (ARP)	[Symbol]	[Symbol]	N/A
TAXIWAY EDGE REFLECTORS/LIGHTS	[Symbol]	[Symbol]	N/A
ROTATING BEACON	[Symbol]	N/A	N/A
REIL	[Symbol]	[Symbol]	N/A



FEDEX	1
Terminal Building/FBO Hangar	2
Aircraft Tiedowns	3
Auto Parking	4
Box Hangars	5
Coast Guard Facility	6
T-Hangars and Executive Hangars	7
Large Aircraft and Jet Parking	8
Future Cargo Area	9
Future Large Aircraft and Jet Parking	10
Future Executive Style Hangars	11
Future Coast Guard Expansion Area	12
Future Non-Aeronautical Development Area (10.8 acres)	13
Future Non-Aeronautical Development Area (4.3 acres)	14

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 Portland, OR 97225
 503-626-0455 Fax 503-526-0775
 www.whpacific.com

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SHEET INFO	
DESIGNED	MD/RI
DRAWN	RI
CHECKED	MD
APPROVED	DN
LAST EDIT	2/2/2018
PLOT DATE	2/2/2018
SUBMITTAL	

REVISIONS				
NO.	BY	DATE	REMARKS	

TERMINAL AREA PLAN

CITY OF NEWPORT, OR.
 NEWPORT MUNICIPAL AIRPORT MASTER PLAN UPDATE

PROJECT NUMBER P0009837W	DRAWING FILE NAME 0009837W-D-TERMINAL-AREA	SCALE 1"=100'
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**STAFF REPORT
FOR AIRPORT COMMITTEE**

Meeting Date: 10/11/2022

Title: Email regarding TOFA for Dan McCrea's hangar D-4.

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: information only

Background Information:

Hey Dan,

Just a reminder, about the FAA's Taxiway Object Free Area (TOFA). Below is an email sent to you on June 14, 2021 with the TOFA measurements for Taxiway Echo.

Thank you for your time,

Lance Vanderbeck
City Of Newport
Airport Director
541-867-7422 Office
541-867-3656 Fax

From: Lance Vanderbeck
Sent: Monday, June 14, 2021 9:26 AM
To: 'Dan McCrea' <redtruck454@hotmail.com>
Subject: FW: Hangar question.

Hey Dan,

Below is the hangar off taxiway measurements.

Thank you for your time,

Lance Vanderbeck
City Of Newport
Airport Director
541-867-7422 Office
541-867-3656 Fax

From: Geoff Vaughn <GVaughn@preappinc.com>
Sent: Friday, February 12, 2021 5:02 PM
To: Lance Vanderbeck <L.Vanderbeck@NewportOregon.gov>
Subject: RE: Hangar question.

Hey Lance,

The space between hangars can vary but is typically dependent on local building codes and how the hangars will be used (fire walls, etc...). I can look into next week in the City code if you'd like.

The Taxiway Echo OFA is 131' in total width (65.5' either side of taxiway centerline). If the hangar owner wants to pull their aircraft out in front of the hangar to work on (or another reason it would sit out front) then hangar should sit back further to allow other aircraft to pass.

I know the Master Plan showed apron space in front of hangars along Echo.

Have a great weekend!

Geoff

From: Lance Vanderbeck <L.Vanderbeck@NewportOregon.gov>
Sent: Friday, February 12, 2021 2:52 PM
To: Geoff Vaughn <GVaughn@preappinc.com>
Subject: Hangar question.

Hey Geoff,

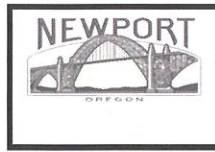
1. How much space can should be between hangars?
2. For the hangar off of echo, what is TOFA measurement; or how far back from the edge of echo can the building sit?

Thank you for your time,

Lance Vanderbeck
City Of Newport
Airport Director
541-867-7422 Office
541-867-3656 Fax







AUTHORIZATION FOR AGREEMENTS, MOUs, OR OTHER DOCUMENTS OBLIGATING THE CITY

All contracts, agreements, grant agreements, memoranda of understanding, or any document obligating the city (with the exception of purchase orders), requires the completion of this form. The City Manager will sign these documents after all other required information and signatures are obtained.

Document: Dan McCrea Lease Date: 1/04/22

Statement of Purpose: Dan McCrea land lease from Northcom 75 LLC. Needs to be executed with correct dates per Council meeting from January 3, 2022. Draft needs to be removed from lease Dan_McCrea_Email_is_redtruck454@hotmail.com

Department Head Signature: [Signature] 1-4-22

Remarks, if any: _____

City Attorney Review and Signature: [Signature] Date: 1/10/2022

Other Signatures as Requested by the City Attorney: _____

						Name/Position
	Signature					Date: _____
Budget Confirmed:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>			
Certificate of Insurance Attached:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>			
City Council Approval Needed:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>			Date: <u>1/03/22</u>	

After all the above requested information is complete and signatures obtained, return this form, along with the original document to the City Manager for signature. No documents should be executed prior to the City Manager's approval as evidenced by signature of this document.

City Manager Signature: [Signature] Date: 1-28-22

Once all signatures and certificates of insurance have been obtained, return this document, along with the original, fully-executed agreement, MOU, or other document to the City Recorder. A copy of grant agreement and all project funding documents, must be forwarded to the Finance Department for tracking and audit purposes.

City Recorder Signature: _____ Date: _____

Date posted on website: _____

**NEWPORT MUNICIPAL AIRPORT
HANGAR SITE LAND LEASE AGREEMENT**

BETWEEN: The City of Newport, an Oregon Municipal Corporation (Lessor)

AND: Daniel B. McCrea (Lessee)

EFFECTIVE DATE: January 31, 2022

RECITALS

- A. The Newport Municipal Airport (Airport) is operated by and under the jurisdiction of Lessor. In accordance with sound Airport management practices, the Airport rules and regulations and the Airport Plan of Development, as updated and amended from time to time, and other relevant policies of Lessor that apply to Airport usage, certain areas of the Airport are reserved for each of the several types of activities that occur.
- B. Lessee has been assigned the Leased Premises from Northcom 75, LLC, a 1031 exchange agent, under the terms of the March 16, 2021 lease with the City, with assignment to Lessee as of August 20, 2021. Lessee desires to construct and maintain a hangar at the Airport in an area designated for such facilities, and Lessor is willing to Lease the land to Lessee for the purpose of constructing and maintaining such a hangar in accordance with the terms and conditions set forth in this Lease.
- C. The following are attached and incorporated as part of the Lease:
Exhibit A - Description and Map of Leased Premises (land only).

AGREEMENT

- 1. Lease. For the purpose stated in this Lease and on the other terms and conditions stated herein, Lessor leases to Lessee the land as described on the attached Exhibit A, consisting of 6,400 square feet (Leased Premises).
- 2. Initial Term for a New Lease. The period of the Lease will be fifteen (15) years (see recital B above), commencing August 20, 2021 and expiring March 15, 2036 subject to earlier termination in accordance with the terms of this Lease.
- 3. Extension Term. Provided Lessee is not in default in the performance of any term or condition of this Lease, Lessee shall have the option to extend this Lease for two (2) additional terms of five (5) years per term, commencing with the expiration of the first or additional term, upon the following conditions:
 - 3.1 The extension option may be exercised at any time between 360 and 60 days prior to the expiration of the initial term, or any extension term, with

written notice given to Lessor by the Lessee. If not exercised within such period and in such manner, the option to extend shall be void. Even if exercised timely, the granting of the option is conditional upon the provisions in this Paragraph 3.

- 3.2 Within sixty (60) days after receipt of Lessee's notice of exercise of the extension option, Lessor shall cause the improvements to be inspected by the Building Official for the City of Newport. The inspection shall be for the purpose of determining the condition of the improvements.
- 3.3 Following the inspection, Lessor shall notify Lessee of the inspection results, including a list of any necessary repairs. The additional term shall be contingent upon Lessee's completion of any necessary repairs and/or resolution of code compliance issues.
- 3.4 Additionally, Lessor may require as a further condition to Lessee's right to continue the Lease for an extension term, that Lessee make such alterations, improvements, or repairs Lessor deems necessary or appropriate for the good of the Airport, taking into consideration the state of repair and condition of other similar and newer improvements located at the Airport, and the overriding desire to maintain clean, safe, and attractive facilities for other users of the Airport. Items considered for improvement shall include, but shall not be limited to, structural integrity of the hangar, exterior finish, condition and operation of doors, and condition of roof. To effectuate any such additional conditions, Lessee's right to continue the Lease during the extension term shall be subject to a supplemental document between Lessor and Lessee, setting forth a reasonable time, determined by Lessor, in which such alterations and repairs will be made, and providing that upon Lessee's failure to make such alterations and repairs within that period, the extension term shall immediately terminate, in which event the provisions of Paragraph 18 shall apply.
- 3.5 As used herein, the Building Official is the individual occupying that position or similar position at the time the inspection is made, or that person's designee or agent, or the individual occupying a similar position in a successor agency or governmental unit having building code jurisdiction over the Airport facilities.
- 3.6 Upon the expiration of the two (2) additional terms of five (5) year extensions, the lease shall terminate. At that time, Lessee may negotiate with Lessor on the terms and conditions of a new lease.

4. **Basic Rent.**

- 4.1 Basic rent is \$0.253 per square foot of ground space per year. Basic rent shall be due and payable on a monthly basis, \$134.93 monthly (\$1,619.20

annually), prorated to the first day of the month following signing, and due on the same day of each month thereafter.

4.2 Any payments or partial payments not made under this Lease shall bear interest at the rate of twelve percent (12%) per annum until paid.

5. **Adjustments to Basic Rent.**

5.1 **CPI Adjustment.** The basic rent provided in Paragraph 4 shall be increased each year by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor. Comparisons shall be made using the index entitled, "U.S. City Average/All Items and Major Group Figures for all Urban Consumers Portland Area (1982-84 = 100)," or the nearest comparable data on changes in the cost of living, if such index is no longer published. The change shall be determined by comparison of the figure for the previous January 1, with that of January 1 of the current year. In no event shall this calculation cause a reduction in base rent below that payable during the preceding year. The proposed adjustment shall be presented to Lessee by Lessor thirty (30) days prior to the effective date of the assessment.

5.2 **Challenge.** Lessee may give Lessor notice, within thirty (30) days of the notice of rental adjustment, challenging Lessor's figures. If any such challenge is not made within thirty (30) days, Lessee's challenge to the figures presented by Lessor shall be deemed waived. The challenge shall be restricted to Lessor's calculations of increases relating to Lessee and, if not resolved by the parties, will be referred to arbitration as described in Paragraph 23.

5.3 **Fee.** An annual maintenance fee may be established for hangar lease sites at the Airport pursuant to resolution of the Newport City Council as provided under Newport Municipal Code section 9.40.010.

6. **Taxes.** Lessee shall pay when and if levied, any taxes on the Leased Premises, as well as any taxes on improvements and fixtures constructed and maintained on the Leased Premises. If any taxes on the Leased Premises are levied against the Lessor, they shall be reimbursed to the Lessor within thirty (30) days of written notice from Lessor to Lessee.

7. **Pre-Approval of Plans.** Lessee shall construct and maintain upon the Leased Premises an aircraft hangar which shall in all respects comply with applicable laws, rules, regulations, ordinances, and resolutions of all governmental entities, including Lessor. The plans and specifications of the hangar shall be subject to approval by Lessor. Lessee shall submit such plans and specifications to the Airport Director. The Airport Director may withhold approval of Lessee's plans and specifications when, in the Director's reasonable judgment, the proposed development is not consistent with the plans, policies, rules, regulations,

standards of quality, and practices at the Airport. No site preparation or construction shall be commenced without first obtaining the written approval of the City Manager.

8. **Construction of Improvements.** Lessee shall construct its planned facilities and install therein all necessary fixtures, equipment, and accessories, all of which shall be in accordance with the terms and conditions of this Lease and any applicable city code or FAA requirements. Lessee shall complete construction of the new improvements within one (1) year after the Effective Date of this Lease. Existing improvements shall be deemed to have been appropriately constructed so long as they are well-maintained and meet all applicable city code and FAA requirements. It is expressly understood that upon the expiration of the Lease, all hangar improvements shall become property of Lessor.

8.1 Lessee agrees to reimburse Lessor for the apportioned costs of roadway improvements including, but not limited to: excavation, paving, drainage, and fencing required for all extensions of the access road to the Leased Premises. Lessee shall be responsible for the cost of all extensions, as applicable, of all water, sewer, and other utilities to the Leased Premises, as well as any fees for obtaining service. Lessee shall be responsible for payment at the time improvements are completed. Lessee shall remit payment to Lessor within thirty (30) days from the date of invoice.

8.2 Lessee agrees to construct, at Lessee's expense, aircraft access improvements, including without limitation driveways, taxi lanes, aprons, and ramps to its planned facility. Construction and location of the access improvements shall comply with specifications set forth by Lessor at the time of plan's approval. Lessee understands that those portions of the constructed Airport access improvements situated outside the boundaries of the Leased Premises shall become, immediately upon their completion to Lessor's satisfaction, the property of Lessor. All construction and any connections to the runway of any apron or taxi lane shall in addition be governed by any rules or regulations regarding Airport operations and must be approved of and overseen by Airport management. Constructed facilities shall not be occupied until access is completed and accepted by Lessor.

8.3 Upon completion of improvements, Lessee shall provide an 8 ½" x 11" site plan detailing a scaled drawing of the Leased Premises, hangar foot print, office area, parking, landscaping, and any other improvements.

8.4 The provisions provided above do not relieve Lessee from compliance with all applicable building code requirements and acquiring all necessary licenses and permits from any governmental authority.

8.5 If the aircraft hangar or other improvements on the Leased Premises are damaged or destroyed, Lessee shall do whatever is necessary to repair,

rebuild, or restore the structure and other improvements to substantially the same condition existing prior to the damage or destruction within 180 days of the date of destruction. Upon written request from Lessee, Lessor may extend the 180-day timeline to the extent reasonably necessary due to conditions beyond the control of Lessee.

9. **Use of the Leased Premises.** Use of the Leased Premises is limited to aeronautical uses. The Lessee may use the Leased Premises, at its own risk, for the following purposes and for no other purpose (including commercial or business use) without the prior written approval of the Airport Director:
 - 9.1 Construction of an aircraft hangar for private use by the Lessee in accordance with Airport rules and regulations;
 - 9.2 Storage of aircraft;
 - 9.3 Supplies, equipment, and other ancillary items necessary for the safe operations and maintenance of the Lessee's aircraft;
 - 9.4 Construction, maintenance, and repair of Lessee's aircraft by Lessee or by a person or firm in accordance with current and applicable future Airport rules and regulations.
 - 9.5 The hangar cannot be used for temporary or permanent residential use.
10. **Lessee's Additional Use Rights.** Lessee shall have the use of Airport facilities and navigational aids for the purpose of landing, taking off, and taxiing of Lessee's aircraft, and related rights of ingress and egress 24 hours a day, subject to the current or any amended laws, rules, regulations, ordinances, and resolutions of applicable governmental bodies, including Lessor.
11. **Restriction on Assignment and Sublease.** Lessee shall not assign this Lease, or any interest herein, or sublease the Leased Premises without the prior written consent of Lessor. As a condition of any consent to assignment, Lessor may require one or more of the following:
 - 11.1 **Updating Lease.** Lessor may require or allow Lessee and/or the assignee to execute Lessor's then current form of hangar site Lease, or a partial or complete amendment of this Lease to incorporate the terms and provisions of Lessor's then current form of hangar site Lease.
 - 11.2 **Environmental Assessment.** If Lessor reasonably believes that there is a question regarding hazardous materials or other environmental issues that relate to Lessee's use of the premises, Lessor may require, as a condition of assignment, an environmental assessment. Such assessment would be at Lessee's expense, as a condition of approval of assignment.

- 11.3 Assumption. The assignee shall expressly assume Lessee's obligations under this Lease, as may be modified in accordance with Paragraph 11.1. Any approval of assignment is not a release from any and all obligations of Lessee under the Lease, except to the extent that Lessor specifically, in writing, releases Lessee from such obligations. This provision does not apply to any of assignor Lessee's obligations as set forth in Paragraph 12.6.
- 11.4 As a condition of approval, Lessor may require any improvements to the Leased Premises to bring it into compliance with rules or regulations of the Airport.
12. **Specific Obligations of Lessee.** In connection with Lessee's occupancy and use of the Leased Premises, the following specific conditions shall apply:
- 12.1 Utilities. Lessor shall not be obligated to furnish any utilities or utility services to the Leased Premises. If, upon Lessee's request, Lessor agrees to provide utility services to the Leased Premises as a condition of providing service, Lessee shall be responsible for all costs of installation of such service, including transmission lines, connection fees and utility service charges. Prior to construction, a payment agreement in a form acceptable to the Lessor shall be entered into between the parties. If payment includes costs of any transmission lines that have the potential for use by other lessees, there would be included a repayment schedule to the original paying Lessee as other parties apply for service. Such reimbursement agreement shall not exceed ten (10) years in length.
- 12.2 Maintenance. Lessee shall, at its own cost, keep and maintain the Leased Premises, including hangar building, grounds, and all other improvements in good condition and repair. In determining whether or not the Leased Premises are in proper condition, the Airport Director shall take into consideration the appearance and character of other similar improvements at the Airport which are in good condition and repair. It is specifically acknowledged that the condition or repair includes appearance and improvements of the Leased Premises, and therefore the condition of paint or other exterior finish. Lessee shall not store parts, equipment, or other materials outside the hangar structure. Lessee shall not permit any refuse or debris to be deposited or to accumulate on the Leased Premises. Lessee shall not permit any bird nesting or attractants on the Leased Premises. Failure to maintain the Leased Premises shall be deemed a breach of this Lease.
- 12.3 Taxi Lane. The cost of construction of the taxi lane shall be an obligation of the Lessee. Such construction shall be subject to the approval of the Lessor. Once constructed, the Lessor shall be responsible for maintenance and repair of the taxi lane. A taxi lane is defined as the portion of the aircraft parking area used for access between taxiways and

aircraft parking positions. A taxiway is defined as a path connecting runways with ramps, hangars, terminals, and other facilities.

- 12.4 Compliance with Laws. Lessee shall comply with all applicable laws, ordinances, resolutions, rules, and regulations of any governmental bodies having jurisdiction over the Airport with respect to Lessee's activity in relation to the use and occupancy of the Leased Premises, and of the Airport in general. Any act or failure to act by Lessee or by any subtenant, employee, invitee, or agent of Lessee in violation of any such laws, ordinances, resolutions, rules, and regulations shall be deemed a violation of this Lease.
- 12.5 Airport Rules and Regulations. Lessee's obligation under Paragraph 12.4 shall include, but not be limited to, the rules and regulations of the Airport. Lessor reserves the right to adopt additional rules and regulations and amend existing and future rules and regulations which govern the Leased Premises and the facilities at the Airport used by the Lessee. Lessee agrees to observe, obey, and abide by all such rules and regulations currently existing or hereafter adopted or amended. Any action or failure to act by Lessee or by any subtenant, employee, invitee, or agent of Lessee which is in violation of such rules and regulations shall be deemed a violation by Lessee of this Lease.
- 12.6 Environmental Laws. Lessee's obligations under this Lease specifically include, but are not limited to, strict and timely compliance with all environmental laws. Lessee shall ensure that all operations on the Leased Premises comply with all environmental laws and orders of any governmental authorities having jurisdiction under any environmental laws. Lessee shall exercise extreme care in handling hazardous substances and shall undertake any and all preventive, investigatory, or remedial action (including emergency response, removal, containment, and other remedial action) which is either required by any applicable environmental laws or orders of any governmental authority having jurisdiction under such laws, or necessary to prevent or minimize property damage, personal injury or damage to the environment or threat of any such damage or injury, by releases of, or exposure to, hazardous materials in connection with the Leased Premises or operations thereon. Lessee shall immediately notify Lessor upon becoming aware of any leak, spill, release or disposal of hazardous substances on, under, or adjacent to the Leased Premises. In the event Lessee fails to perform any of Lessee's obligations under this paragraph, Lessor may, but shall not be required to, perform such obligations at Lessee's expense. In performing any such obligations of Lessee, Lessor shall at all times be deemed the agent of Lessee and shall not, by reason of such performance, be deemed to be assuming any responsibility of Lessee under any environmental law or to any other third party. At any time Lessor reasonably requests, Lessee shall provide to Lessor further assurance of Lessee's compliance with this paragraph. The

assurances shall be in a form and substance satisfactory to Lessor, in Lessor's sole discretion, and may include but not be limited to, Lessee providing to Lessor an environmental audit or assessment from a source acceptable to Lessor, at Lessee's expense.

12.6.1 As used in this Lease, the term "environmental laws" means all state, federal, and local statutes, regulations, and ordinances relating to the protection of human health and the environment.

12.6.2 In this Lease, the term "hazardous materials" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical, or infectious characteristics, may cause or pose a present or potential hazard to human health and to the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported, or otherwise handled on the Leased Premises. The term includes, without limitation, petroleum products or crude oil or any fraction thereof, and any and all hazardous or toxic substances, materials, or wastes as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and any other environmental laws.

12.7 Signs. In addition to complying with any rule(s) or regulation(s) of Lessor pertaining to signs, Lessee shall not permit to be maintained any sign on the Leased Premises or at the Airport without the prior written approval of the Airport Director. This approval and rules and regulations are in addition to any rules or regulations that would apply to this site by any applicable governmental jurisdiction.

12.8 Aviation Easement. Lessee acknowledges that its right to use the Leased Premises shall be secondary and subordinate to the operation of the Airport. Lessor reserves a right of flight for the passage of aircraft in the airspace above the Leased Premises together with the right to cause noise inherent in the operation of aircraft. Lessee shall not take any action or construct any improvements that interfere with the navigational aids of flight operations of the Airport.

12.9 Security. Lessee recognizes its obligation to comply with federal airport security regulations. Lessee shall reimburse Lessor in full for any fines or penalties levied against Lessor for security violations as a result of any actions on the part of Lessee, its agents, invitees, or employees.

13. **Liability to Third Parties.**

13.1 Lessee's Indemnification. Lessee shall at all times indemnify, protect, defend, and hold harmless Lessor, its officers, agents, and employees

from any claims, demands, losses, actions, or expenses, including attorney fees, to which Lessor may be subject by reason of any property damage or personal injury arising or alleged to arise from the acts or omissions of Lessee, its agents, invitees, or employees, or in connection with the use, occupancy, or condition of the Leased Premises.

- 13.2 **Liability Insurance Required.** Lessee shall procure and maintain throughout the term of this Lease and any extension, at Lessee's cost, public liability and property damage insurance from a company authorized to do business in the State of Oregon with the combined single limit of not less than \$1,000,000 and the general aggregate of not less than \$2,000,000 for bodily injury, death, personal property or property damage in connection with Lessee's use or occupancy of the Leased Premises, or the exercise of enjoyment of rights or privileges granted by this Lease. Lessor shall have the right to require Lessee to increase the limits of such coverage from time to time to an amount deemed by Lessor to be reasonable in view of conditions and circumstances existing at the time of such increase. Such circumstances include any modification by either court ruling or legislative change to the maximum recovery allowed under the Oregon Tort Claims Act. The insurance shall name Lessor, its officers, agents, and employees as additional insureds with the stipulation that the insurance, as to the interests of Lessor, shall not be invalidated by any act or neglect or breach of contract by Lessee. Lessee shall provide Lessor with a certificate of insurance evidencing the required coverage, with a thirty (30) day notice of cancellation or material change in coverage and shall provide Lessor with such evidence that the policy remains in force as Lessor may require from time to time.
- 13.3 **Liens.** Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Leased Premises and shall keep Leased Premises free from any liens. If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of 12% per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy which Lessor may have on account of Lessee's default.
14. **Subordination.** This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the State of Oregon and/or the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of state or federal funds for the development of the Airport, or any amendments thereto.
15. **Cessation of Airport Operation.** Lessor, regardless of the terms of this lease, as a result of any orders of the State of Oregon, the United States, or any other

governmental unit or instrumentality, may cease airport operations. Lessee acknowledges Lessor's right to cease such operations and releases Lessor from any and all damage claims by Lessee against Lessor as a result of such cessation of operations. This release does not apply to any other party who may be the basis for Lessor's cessation of operations. Subject to the orders of cessation, Lessee shall be granted a period of twelve (12) months free of any rents and fees in which to cause the Leased Premises to be restored to a condition free of all improvements, including hangars and debris. Lessor shall not be liable to Lessee for any damages related to loss in use of the Leased Premises due to action under this paragraph. This provision does not eliminate any obligations of Lessee as a result of liability or indemnification obligations as set forth in other provisions of this lease.

16. **Airport Development.** Regardless of the term of this lease, Lessor, at Lessor's discretion or as a result of any orders of the State of Oregon, United States, or any other governmental unit or instrumentality having authority over the property may require the cessation of use of the specific Leased Premises for their leased purposes, prior to the expiration of this lease for the purpose of airport development. At Lessor's option and expense, Lessor shall either (1) dismantle and move to another leasable premises on the Airport property, and there re-erect Lessee's improvement(s) or, (2) purchase Lessee's improvement for fair market value as determined below. If Lessor acts under the first option, the lease reference to location of the Leased Premises shall change, and all other remaining terms of the expired lease shall continue in full force and effect.

Fair market value under the second option shall be for an amount not less than the fair market value of the improvement immediately prior to determination as determined by an appraisal conducted by an independent appraiser engaged by Lessor. Specifically, the appraiser shall not determine salvage value, but rather the fair market value of the improvement, assuming the Airport was to remain in existence or the party to continue to use the leased area. Purchase price shall be determined and all funds transferred within 180 days of termination. Obligations of removal shall be Lessor's. This action does not eliminate any obligations of Lessee as a result of any liability or indemnification obligations as set forth in other provisions of this lease.

17. **Eminent Domain.** If the Leased Premises and any improvements thereon are taken as a result of eminent domain proceedings, it shall be as if termination was a result of Paragraph 15, except the time allowed for removal of Lessee's improvements by Lessee shall be subject to the time limitation in any condemnation order or twelve (12) months, whichever is shorter. Lessor shall be entitled to all proceeds of condemnation as applied to the value of any real property condemned. Lessee shall be entitled to the value of all improvements. Lessee specifically waives any claims against Lessor as a result of condemnation, except such condemnation as may be instituted by Lessor upon Lessor's own actions and not as a result of any order by other governmental unit.

18. **Removal of Personal Property and Fixtures.**

18.1 Lessee shall remove all personal property and return the Leased Premises to proper condition upon the end of the term(s), or other cessation of use by Lessee, as set forth below. Lessee shall remove all Lessee property except fixtures permanently or semi-permanently affixed, which shall become property of the Lessor upon lease termination or abandonment by Lessee, and restore the grounds to a clean and orderly condition free of all debris.

18.2 Abandonment. If Lessee abandons the Leased Premises, Lessor may treat such abandonment as a default under this Lease, and Lessor may exercise any rights it may have as in the case of default for which Lessee is not entitled to notice. Lessee shall be deemed to have abandoned the Leased Premises if it fails to occupy the same for a period of three (3) months; however, Lessor may consider Lessee to have abandoned the Leased Premises by other acts, words, or conduct evidencing abandonment or intent to abandon the Leased Premises. Any personal property remaining on the Leased Premises sixty (60) days after termination of this Lease for any reason shall be deemed as abandoned by Lessee and Lessor may make any disposition of such personal property as it deems appropriate. Lessor may charge Lessee for the reasonable costs incurred in disposing of such personal property. Upon abandonment, Lessee loses all rights and options set forth in Paragraph 18.1. Lessee remains responsible for all Lessor's costs.

19. **Default.** Lessee shall be in default under this Lease upon the occurrence of any one or more of the following events (time of payment and performance being of the essence):

19.1 Failure of Lessee to pay any rent or other charges within thirty (30) days after the same becomes due.

19.2 Except as otherwise provided in this Paragraph 19, the failure of Lessee to comply with any term or condition, to fulfill any obligation, or to cure any violation of this Lease within thirty (30) days after written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within thirty (30) days, this provision shall be deemed complied with if Lessee begins correction of the default within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. Lessor may require, as part of the cure of any violation by Lessee, reimbursement from Lessee for any and all costs and expenses incurred by Lessor by reason of Lessee's violation of this Lease.

- 19.3 If Lessee cures a deficiency in the manner described in Paragraph 19.2, Lessee's subsequent failure to comply with the same term or condition within twenty-four (24) months shall constitute immediate default without requirement of notice or opportunity to cure.
- 19.4 If Lessee sub-leases or otherwise assigns its interests in this Lease, except in accordance with the provisions of the Lease, default shall be automatic without requirement of notice or opportunity to cure.
- 19.5 Lessee shall also be in default in the event of:
1. Lessee's insolvency;
 2. An assignment by Lessee for the benefit of creditors;
 3. The filing by Lessee of a voluntary petition of bankruptcy action;
 4. Adjudication that Lessee is bankrupt;
 5. The filing of an involuntary petition of bankruptcy and the failure of Lessee to seek a dismissal of the petition within thirty (30) days after the filing; and
 6. The attachment of or the levy of execution on the Lease hold interest and failure of the Lessee to secure a discharge of the attachment or release of the levy of execution within ten (10) days after such attachment or execution;
 7. Abandonment of the Leased Premises.
20. **Inspections.** Lessor shall have, at all times during normal business hours, the right to enter into the Leased Premises and inspect Lessee's facilities and operations for the purposes of determining Lessee's compliance with its obligations under this Lease. Lessor shall provide at least 24 hours' notice before any inspection except in cases of emergency. Notice shall be sufficient if prominently posted on the building on the Leased Premises 24 hours prior to the inspection.
21. **Remedies on Default.** In the event of a default, the Lease may be terminated at the option of the Lessor by notice in writing to Lessee. The notice of termination may be included in a notice of failure of compliance given under Paragraph 19. If the Leased Premises is abandoned by Lessee in connection with a default, termination shall be automatic and without notice. If the Lease is terminated for any reason, Lessee's liability to Lessor for damages for breach shall survive such termination, and the rights and obligations of the parties shall be as follows:

- 21.1 Lessee shall vacate the Leased Premises immediately, remove any property of Lessee including any fixtures which Lessee is required to remove at the end of the Lease term, perform any cleanup, alterations or other work required to leave the Leased Premises in the condition required by this Lease at the end of the term, and deliver all keys to Lessor. Possession to any structure on the Leased Premises shall immediately revert to Lessor and Lessee shall have no right or claim against Lessor as a result thereof.
- 21.2 Lessor may re-enter, take possession of the Leased Premises, and remove any persons or property by legal action or self-help with the use of reasonable force and without liability for damages.
- 21.3 Following re-entry or abandonment, Lessor may relet the Leased Premises and in that connection may relet all or part of the Leased Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession, and may make any suitable alterations and/or refurbish the Leased Premises, or change the character or use of the Leased Premises, but Lessor shall not be required to relet to any Lessee which Lessor may reasonably consider objectionable.
- 21.4 The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law or as set forth in this Lease.
- 21.5 Any holding over after the expiration of the lease, with the written consent of Lessor, will be construed to be a tenancy from month to month, at 150% of the Basic Rent payable for the period immediately before the expiration of the Term and will otherwise be on the terms and conditions of this Lease. If Lessor consents to any such holding over, either party may thereafter terminate the tenancy at any time upon thirty (30) days' advance written notice to the other party. Any holding over without consent will be a tenancy at sufferance, which Lessor may terminate at any time without notice.
22. **Attorney Fees and Costs.** In the event any action or claim relating to the enforcement or interpretation of any of the terms of this Lease is made, except as stated in Paragraph 23, the prevailing party shall be entitled to recover all costs, fees, and expenses reasonably incurred, whether or not taxable as costs, including without limitation, attorney fees, inspection and investigation costs, copying charges, and all other related expenses.

In the event any litigation is commenced relating to this Lease, including but not limited to any action or participation by Lessee or Lessor in or connected with a case or proceeding under the Bankruptcy Code or any successor statute, the

prevailing party shall be entitled to recover all costs, fees and expenses reasonably incurred, before and after trial, and on appeal and review, whether or not taxable as costs, including without limitation, attorney fees (including estimated fees to collect a judgment entered in favor of the prevailing party), witness fees (expert or otherwise), deposition costs, inspection and investigation costs, copying charges and all other related expenses. Expenses incurred in the event of arbitration shall be treated as if they were expenses incurred in litigation.

23. **Arbitration.** If any contract dispute arises between the parties, it shall be decided by arbitration unless both parties agree to waive arbitration and proceed with litigation. Upon request for arbitration, the party requesting arbitration shall submit to the other party a list of the names of five independent arbitrators. The other party may select any one of the five. If the parties cannot decide on an arbitrator with qualifications that relate to the dispute at hand within fifteen (15) days, then either party may apply to the presiding judge of the Lincoln County Circuit Court, Oregon, to appoint the required arbitrator.

The Arbitrator shall proceed according to Oregon statutes governing arbitration, and any rules specifically adopted by the parties. If the parties do not agree upon rules for the arbitration, the Arbitrator shall establish rules and advise each respective party. The award of the Arbitrator shall have the effect provided in the Oregon Revised Statutes. The arbitration shall take place in Lincoln County, Oregon. Costs of arbitration and attorney fees and costs may be awarded to a party at the discretion of the Arbitrator.

24. **Discrimination Prohibited.** In connection with Lessee's use and occupancy of the Leased Premises and the conduct of its operations at the Airport, Lessee shall be bound by the following non-discrimination requirements:

24.1 **General.** Lessee will not discriminate against any person or class of persons by reason of race, color, national origin, sex, ancestry, creed, or on any other grounds prohibited by law.

24.2 **Civil Rights Act.** Lessee will not on the grounds of race, creed, color, national origin or on any other prohibited grounds, discriminate or permit any discrimination against any person or group of persons in any manner prohibited by Part 21 of the Rules and Regulations of the Secretary of Transportation, effectuating Title VI of the Civil Rights Act of 1964. Without limiting the generality of the foregoing, Lessee agrees not to discriminate against any employees or applicants for employment because of race, creed, color, national origin or on any other prohibited grounds.

24.3 **FAA required terms.** As required by the FAA, the following clauses are made part of Lessee's obligations under this Lease:

1. Lessee for itself, and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does

hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease for a purpose for which a US Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. Lessee for itself, and its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall 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 or any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the Lessee shall use the Leased Premises in compliance with all requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
25. **Non-Waiver.** Waiver by either party of strict performance of any provisions of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provisions in the future or of any other provision. No act or omission shall constitute a waiver of this non-waiver clause.
 26. **Notices.** Any notice required or permitted under this Lease shall be considered given when actually delivered in person or when deposited with postage prepaid in the United States mail as registered or certified mail:

To Lessor: Newport Municipal Airport / c/o City of Newport
169 SW Coast Highway
Newport, Oregon 97365
541.574.0603
s.nebel@newportoregon.gov

To Lessee: Daniel B. McCrea
P.O. Box 2258 / 353 E. Darkey Creek Rd.
Waldport, OR 97394
435.730.1324
redtruck454@hotmail.com

Or to such other address as may be specified from time to time by either of the parties in writing.

27. **Interpretation and Liability.** In interpreting this Lease, the singular shall include the plural. If Lessee consists of more than one individual or entity, each such individual and entity shall be jointly and severally liable for Lessee's obligations under this Lease.

The provisions of this Lease shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to conflict of law principles. Any actions or suits arising under this Lease must be brought in the appropriate court of the State of Oregon, and the parties hereby consent to venue in Lincoln County Circuit Court, Oregon, unless exclusive jurisdiction is in federal court, in which case venue shall be in federal district court for the District of Oregon.

28. **Succession.** Subject to the limitations set forth elsewhere in this Lease on the transfer of Lessee's interest, this Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors, and assigns.
29. **Clearing Matters of Record.** Only at the option of Lessor shall this Lease or a memorandum of this Lease be recorded. If, at the election of Lessor, Lessor determines to create and record a memorandum of this Lease, Lessee shall execute such memorandum at the request of Lessor. In the event this Lease or Lessee's interest in this Lease or in the Leased Premises becomes a matter of record by any means, directly or indirectly, without the consent of Lessor, then at any time after termination of this Lease or termination of Lessee's interest in this Lease, upon request by Lessor, Lessee shall execute documents, in recordable form, as Lessor may reasonably require evidencing the termination of Lessee's interest. This obligation shall survive termination of this Lease and termination of Lessee's interest in this Lease.
30. **Inconveniences During Construction.** Lessee recognizes that from time to time during the term of this Lease, it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity requiring accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or temporarily interrupt Lessee's operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, and representatives by reason of such inconveniences or interruptions and, for and in further consideration of this Lease, Lessee waives any right to claim damages or other considerations therefore, except that rent payable under this Lease shall be abated proportionately during and for such period that access to the Leased

Premises by aircraft of Lessee and its invitees is denied by reason of such inconveniences or interruptions.

- 31. **Rights Not Exclusive.** Except for Lessee's right to use and occupy the Leased Premises under this Lease, nothing in this Lease shall be construed as granting an exclusive right to Lessee.
- 32. **Entire Agreement.** This Lease contains the entire Agreement between the parties concerning the Leased Premises and supersedes all prior agreements, oral and written, concerning the Leased Premises. This Lease may be modified only in writing and signed by the parties.

The individuals executing this Lease warrant that they have full authority to execute this Lease and that they have thoroughly read this Lease prior to executing it.

LESSOR:

City of Newport
By: Spencer R. Nebel, City Manager



Signature

1-28-22

Date

LESSEE:

Daniel B. McCrea

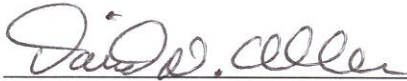


Signature

1/31/2022

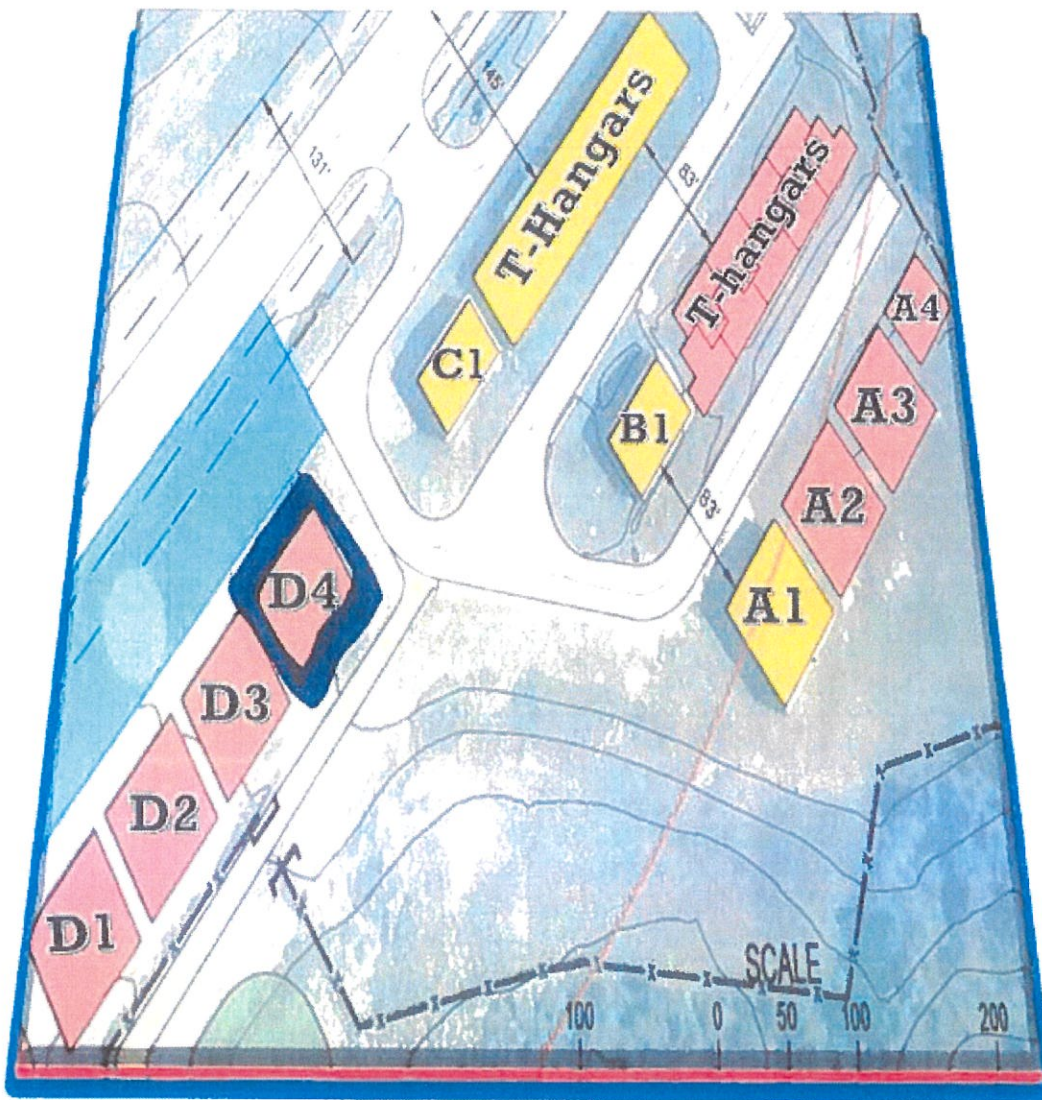
Date

Approved as to Form:



David N. Allen, City Attorney

Newport Municipal Airport South Hangar Area





**STAFF REPORT
FOR AIRPORT COMMITTEE**

Meeting Date: 10/11/2022

Title: FAA Bipartisan Infrastructure law (BIL)

Prepared by: Lance Vanderbeck, Airport Director

Recommended Motion: Information only

Background Information:

In May 2022, the FAA released the Bipartisan Infrastructure law FAQ. This document answers frequently asked questions (FAQs) stakeholders may have related to the grant funds available for airports under the Public Law 117-58-Infrastructure Investment and Jobs Act referred to as the Bipartisan Infrastructure Law (BIL).

The BIL includes approximately \$25 billion for the National Airspace System.

Approximately \$5 billion is for improvements to FAA owned facilities and equipment. FAA's Air Traffic Organization (ATO) will administer these funds.

These FAQs pertain to the approximately \$20 billion for airport infrastructure improvements that will be administered by FAA's Office of airports. The Federal Aviation Administration (FAA) has additional information for airport sponsors at www.faa.gov/bil.

The guidance here is not legally binding in its own right and FAA will not rely on it as a separate basis for affirmative enforcement action or other administrative penalty. Conformity with this guidance, as distinct from existing statutes, regulations, and grant assurances, is voluntary only, and nonconformity will not affect existing rights and obligations.

In September airport staff held a meeting with FAA ADO to discuss how to best use our share of the BIL money. Hangars are open to be built with this money. It is the goal of airport staff to use this money to start development on the north end of the airport.

FAA was open to this and will provide an update CIP letter in January hopefully reflecting the request to build hangars with this funding source.

Fiscal: Total: \$1.6 million: Federal Funds \$1,475, 000.00: Sponsor match \$163,888.89

Attached: FAA-BIL_FAQs_513-2022.pdf, ONP_BIL_CIP update_20220310, NPT-hangarDev_220225.pdf.



Federal Aviation Administration

Bipartisan Infrastructure Law Frequently Asked Questions

This document answers frequently asked questions (FAQs) stakeholders may have related to the grant funds available for airports under the Public Law 117-58-Infrastructure Investment and Jobs Act referred to as the Bipartisan Infrastructure Law (BIL).

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For questions related to BIL, please email: 9-ARP-BILAirports@faa.gov.

This guidance adds new questions Q-U44 through Q-U71, Q-A1 through Q-A4, and Q-SB1 through Q-SB6. This update also includes clarifying edits to questions Q-3, Q-U1(2), Q-U10, and Q-U31.

These FAQs will be updated periodically.

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General Questions

Q-1: How does the Bipartisan Infrastructure Law (BIL) benefit airports?

A: Title VIII of Division J of the Infrastructure Investment and Jobs Act (Public Law 117-58) of 2021 (BIL) provides \$25 Billion for the National Aerospace System (NAS). Five billion dollars of the BIL funds will be administered by FAA's Air Traffic Organization (ATO) will fund much needed FAA facilities upgrades. FAA's Office of Airports (ARP) will administer the remaining approximately \$20 billion in grant funds for airport infrastructure, terminal development, including multimodal terminal development and on-airport rail access projects, and airport owned towers.

Q-2: Where is this funding coming from?

A: The \$25 billion comes directly from the U.S. Treasury's General Fund.

Q-3: Are the BIL funds split into different funding buckets?

A: Yes. Five billion dollars is being administered by ATO for improvements to FAA-owned facilities. ARP will administer approximately \$20 billion of BIL funds to airport sponsors. The \$20 billion is allocated over 5 years (\$4 billion annually). Of the \$20 billion, FAA will receive up to \$118 million annually for administration of BIL funds and the Office of Inspector General (OIG) receives \$2 million annually for oversight of BIL funds.

(1) Airport Infrastructure Grants (AIG) include formula allocations (AIG Allocated) and competitive (AIG Competitive) funds of up to \$14.55 billion.

- a) Primary Airports share not more than \$2.39 billion annually based enplanement and cargo volume.
- b) Non-Primary Airports share not more than \$500 million annually, based on airport classification in the National Plan of Integrated Airport System (NPIAS) and the aggregated NPIAS eligible development cost for each classification.
- c) AIG provides \$20 million annually in competitive grants (AIG Competitive) for sponsor owned contract towers participating in the Federal contract tower program and the contract tower cost share program (FCT). These funds are available to: construct, repair, improve, rehabilitate, modernize, replace, or relocate an airport control tower; acquire and install air traffic control, communications, and related equipment in an airport control tower; and construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. **(To date there is no FAA-certified remote tower technology.)**

(2) Approximately \$4.85 billion (\$970 million annually) for competitive Airport Terminal Program (ATP) grants including multi-modal terminal development and on-airport rail access projects. These funds can also be

used for projects for relocating, reconstructing, repairing, or improving an airport-owned air traffic control tower (ATCT), whether staffed by FAA or in the FCT program.

Q-4: Who is eligible to receive AIG and ATP funding under BIL?

A: AIG Formula Infrastructure Allocations (AIG Allocated): Funds are available to sponsors of airports as defined in 47102 of title 49, United States Code (U.S.C.); that is, airport sponsors meeting statutory and policy requirements under this section and identified in the FAA’s published [National Plan of Integrated Airport Systems \(NPIAS\)](#), updated with current year data, and are eligible to receive discretionary funds per 49 U.S.C. 47115.

AIG Competitive Infrastructure Funds (AIG Competitive): Funds are available to sponsors of airports eligible to receive discretionary funds per 49 U.S.C. 47115 and participating in the FCT program under 49 U.S.C. 47124.

ATP: Funds are available to sponsors of airports eligible to receive discretionary funds per 49 U.S.C. 47115.

Q-5: Are any airports not eligible to receive funding under BIL?

A: All airports in the NPIAS, except unclassified airports, are eligible. Unclassified airports are not eligible for discretionary funding under BIL.

Q-6: Are airport sponsors in the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, and Midway Island eligible for BIL Grants?

A: AIG Allocated: Yes, but they do not receive an allocation. Only sponsors of airports in categories defined in 49 U.S.C. 47102 receive allocations. Airports must be included in the [NPIAS](#) to receive an allocation of AIG funds. Airports in the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, and Midway Island are not included in the NPIAS. While these airport sponsors may be eligible for some AIP discretionary funding under 49 U.S.C. 47115, they are not eligible for *AIG Allocated* funds under BIL.

AIG Competitive: Yes. Funds are available to sponsors of airports eligible to receive discretionary funds per 49 U.S.C. 47115 and participating in the FCT program under 49 U.S.C. 47124. Airports in the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, and Midway Island are eligible for discretionary funds. These sponsors could compete for AIG Competitive funding if they are accepted into the FCT program.

ATP: Yes. Funds are available to sponsors of airports eligible to receive discretionary funds per 49 U.S.C. 47115. Airports in the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, and Midway Island are eligible for discretionary funds.

Q-7: Are airports in U.S. territories eligible for BIL Grants?

A: Yes. Funds are available to sponsors of airports in categories defined in 49 U.S.C. 47102 and identified in the FAA’s published [NPIAS](#), updated with current year data, and are eligible to receive discretionary funds per 49 U.S.C. 47115. Airports in U.S. territories (American Samoa, Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and Guam) meet these requirements. They receive AIG Allocation funds based on their information in the NPIAS, can compete for AIG Competitive funds if in the FTC program, and can compete for ATP funds.

Q-8: Why do airports with a NPIAS category of Unclassified not receive AIG Allocated funds under BIL?

A: Unclassified airports are not eligible for discretionary funds under BIL (see Q-5). Also, consistent with their role in the national airport system, unclassified airports have no development needs identified in the published NPIAS, updated with current year data.

Q-9: What is the period of availability for FAA to obligate AIG funds?

A: Approximately \$2.91 billion (approximately \$2.89 billion of AIG Allocated funds and \$20 million AIG Competitive funds) is available annually starting fiscal year (FY) 2022 through FY 2026. Funds not obligated at the end of the fourth FY will be recovered and made available for competitive grants in the fifth year. See Q-F3.

FY funds are first made available:	Funds must be obligated (under grant) by:	Any unobligated funds must be obligated (under grant) as competitive grants in:
2022	September 30, 2025	FY 2026
2023	September 30, 2026	FY 2027
2024	September 30, 2027	FY 2028
2025	September 30, 2028	FY 2029
2026	September 30, 2029	FY 2030

Q-10: What is the period of availability for FAA to obligate ATP funds?

A: Approximately \$970 million of ATP funds are available annually starting FY 2022 through FY 2026. Funds not obligated at the end of the fifth FY will expire. See Q-F4.

FY funds are first made available:	Funds must be obligated (under grant) by:	Funds recovered after the following FYs expire:
2022	September 30, 2026	FY 2026
2023	September 30, 2027	FY 2027
2024	September 30, 2028	FY 2028
2025	September 30, 2029	FY 2029
2026	September 30, 2030	FY 2030

Questions on Allocation of Funds

Q-F1: How will BIL AIG funds be allocated/awarded to airport sponsors?

A: BIL allocates the \$14.55 billion into two programs over 5 years; AIG Allocated and AIG Competitive. AIG Allocated funds are specific, annual allocations to each eligible airport. These amounts are allocated separately for primary and non-primary airports. AIG Competitive funds are awarded annually through a competitive Notice of Funding Opportunity (NOFO) process specifically for FCT improvements.

(1) AIG Allocated.

- a) Primary Commercial Service Airports and eligible Cargo Airports share not more than \$2.39 billion annually based first on the statutory Airport Improvement Program (AIP) primary and cargo entitlement formulas. The FY 2022 allocation for primary airports is based on best of calendar year (CY) 2018, CY 2019, or CY 2020 enplanements. The FY 2023 allocation for primary airports will be based on best of CY 2018, CY 2019, or CY 2021 enplanements. Starting in FY 2024, the amount formulated for each airport is based upon the most recent CY enplanements. Cargo allocations are required by the legislation to be based on the most recent CY per 49 U.S.C. 47114(c)(2). FY 2022 cargo allocations were based on CY 2020.

After allocating based on the statutory AIP entitlement formulas, the remainder is then allocated based on the number of enplanements the airport had in CY 2019 as a percentage of total 2019 enplanements for all primary airports for FY 2022 and FY 2023. Starting FY 2024, the amount formulated for each airport is based upon the most recent CY enplanements.

- b) Non-Primary Airports share not more than \$500 million annually. The apportioned funds for each non-primary airport are based on the categories published in the NPIAS, updated with current year data, reflecting the percentage of the aggregate published eligible development costs for each such category, and then dividing the allocated funds evenly among the eligible airports in each category, rounding up to the nearest thousand dollars. For example, all airports classified as Local receive the same allocation.

(2) AIG Competitive.

- a) Sponsors of airports participating in the FCT program under 49 U.S.C. 47124, are eligible to share not more than \$20 million annually. Instructions for applying for these funds will be outlined in a NOFO, which will be issued annually until the program expires. Projects will be selected by FAA based on sponsor's information submitted in response to the criteria as outlined in the NOFO.

Q-F2: How will BIL ATP funds be awarded to airport sponsors?

A: Sponsors of primary and non-primary airports eligible for discretionary funding under 49 U.S.C. 47115(a) are eligible to share approximately \$970 million annually. Not more than 55% of these funds go to large hub airports, not more than 15% go to medium hub airports, not more than 20% go to small hub airports, and not less than 10% go to non-hub and non-primary airports. Instructions for applying for these funds will be outlined in a NOFO, which will be issued annually until the program expires. Projects will be selected by FAA based on sponsor's information submitted in response to the criteria as outlined in the NOFO.

Q-F3: What happens to unobligated BIL AIG funds?

A: Funds not obligated at the end of the fourth fiscal year will be recovered and made available for competitive grants in the fifth year. Up to \$100 million of these recovered funds will first be provided for competitive grants for FCTs. Any remaining funds will be available for competitive grants for eligible work that reduces airport emissions, reduces noise impact to the surrounding community, reduces dependence on the electrical grid, or provides general benefits to the surrounding community. Instructions for applying for these recovered funds will be outlined in a NOFO, which will be issued annually so the recovered funds are assigned to the competitive projects beginning in FY 2026 (October 1, 2025) through FY 2030 (September 30, 2030). Projects will be selected by FAA, based on sponsor's information submitted as outlined in the NOFO. Funds recovered after the fifth year will return to the General Fund.

Q-F4: What happens to unobligated BIL ATP funds?

A: Funds not obligated at the end of the fifth fiscal year will expire. ATP funds recovered prior to the end of the fifth fiscal year can be used to amend open ATP grants or made available for new ATP grants based on a competitive process. At the end of the fifth fiscal year, any unobligated or recovered funds will return to the General Fund.

Q-F5: What is the Federal share under BIL?

A: **AIG Allocated:** The Federal share is the same as for AIP grants, ranging from 50% to 95%, as outlined in 49 U.S.C. 47109. (For further explanation of the statutory provision see Section 4-9 of [FAA Order 5100.38D](#), Change 1 (AIP Handbook)). This includes grants made using unobligated AIG funds for projects not related to FCTs. See Q-F3.

AIG Competitive: The Federal share for FCT improvements is 100%. This includes grants made using unobligated AIG funds for FCT projects. See Q-F3.

ATP: The Federal share for terminal and sponsor owned ATCT improvements is 80% for large and medium hub airports and 95% for small hub, non-hub, and non-primary airports.

Q-F6: Do airport sponsors have to contribute a local match for AIG and ATP grants under the BIL?

A: **AIG Allocated:** Yes. The sponsor's match is the same as for sponsor's AIP grants, ranging from 5% to 50%. This includes grants made using unobligated AIG funds for projects not related to FCT. See Q-F3.

AIG Competitive: No. The Federal share for FCT improvements is 100%. This includes grants made using unobligated AIG funds for FCT projects. See Q-F3.

ATP: Yes. The sponsor's match is 20% for large and medium hub airports and 5% for small hub, non-hub, and non-primary airports.

Q-F7: Is the BIL funding tied to the annual appropriation process?

A: No. BIL does not require an annual appropriation. The funding is appropriated and will be available at the beginning of each FY.

Q-F8: How is the NPIAS airport categorization used to determine BIL AIG Allocated funds for non-primary airport sponsors?

A: Under BIL, not more than \$500 million is allocated annually to non-primary airports based on the categories published in the [NPIAS](#), updated with current year data. [FAA Order 5090.5, Formulation of the NPIAS and ACIP](#), defines the criteria for each category or role.

Q-F9: Will FY 2023-FY 2026 AIG Allocated funds for primary and cargo eligible airports vary from FY 2022 allocations?

A: Yes. The AIG allocations will be determined each year based on the enplanement and cargo landed weight. The FY 2023 allocation for primary airports will be based on best of CY 2018, CY 2019, or CY 2021 enplanements, and CY 2021 cargo landed weight. After FY 2023, enplanement and cargo allocations will be based on the most recent CY data. We expect there will be changes each year in the allocation. The extent of the changes will be impacted on changes in enplanements, cargo data, or if the airport changes between the primary and non-primary categories after FY 2023.

Q-F10: How are airports that change from primary to non-primary status handled in AIG allocation formulas?

A: FY 2022 and FY 2023 primary airport allocations are based on highest enplanements for CY 2018, CY 2019 and next full CY (CY 2020 or CY 2021 respectively). An airport that was classified as a primary airport in any of those years is considered a primary airport for FY 2022 and FY 2023. The most recent CY enplanements are used to determine an airport's classification for FY 2024-FY 2026 allocations. An airport classified as non-primary after FY 2023 will receive a non-primary allocation.

Q-F11: Will FY 2023-FY 2026 AIG Allocated funds for non-primary airports vary from FY 2022 allocations?

A: Airports changing from primary to non-primary, or visa-versa, or changes to the number of unclassified airports could impact the overall non-primary allocations. Airports changing classification (National, Regional, Local, Basic) in updated

versions of the NPIAS could also impact the overall non-primary allocations. Allocations for non-primary airports that do not change NPIAS classification should not vary significantly from year to year.

Q-F12: Will non-primary airports that change from unclassified to classified as the NPIAS is updated with current year data qualify for AIG Allocated funds?

A: Yes. If the airport's classification changes from unclassified to classified, that airport would be eligible for an allocation the following FY based on the airport's new classification. Similarly, if an airport drops to unclassified it would lose allocations the following FY.

Q-F13: Does a non-primary airport that has unobligated AIG allocations and changes from classified to unclassified lose those funds?

A: No. Unobligated AIG allocations are available until they expire (see Q-9).

Q-F14: Will unobligated AIG Allocated funds be converted to discretionary funding annually?

A: No. The funds are available for obligation until the end of the fourth FY. In the fifth FY, unobligated funds are recovered and used for competitive grants. See Q-9 and Q-F3.

Q-F15: Is there a cap limiting the maximum amount of AIG Allocated funds?

A: No. The legislation specifically states that there shall be no maximum apportionment limit under 49 U.S.C. 47114(c)(1)(C)(iii).

Q-F16: Is there a reduction in AIG Allocated funds for medium and large hub airports collecting a Passenger Facility Charge (PFC)?

A: No. The legislation specifically states that these funds are not subject to the reduced apportionments of 49 U.S.C. 47114(f).

Q-F17: Does the "best of" calculation apply to cargo?

A: No. The legislation references section 49 U.S.C. 47114(2), requiring cargo apportionments to be based on prior CY landed weight. There was no "best of" provision for cargo.

Questions on Use of Grant Funding

Q-U1: How can an airport sponsor use BIL AIG funds?

A: AIG funds under BIL include AIG Allocated and AIG Competitive funds. Allowable use of AIG funds are as follows:

- (1) AIG Allocated. An airport sponsor may use these funds for airport-related projects defined under 49 U.S.C. 40117(a)(3). AIG Allocated funds cannot be used to pay for debt service. The FAA has used the guidance in the [AIP Handbook](#) as a component of PFC eligibility determination under section 40117.
- (2) AIG Competitive. An airport sponsor may use these funds to sustain, construct, repair, improve, rehabilitate, modernize, replace, or relocate a non-approach FCT ATCT, and to acquire and install air traffic control, communications, and related equipment to be used in those ATCT. (For further information on ATCT construction see Table O-3 *Other Building Project Requirement (Other than Terminal)*, Item h, in the [AIP Handbook](#). For further information on FCT minimum equipment and facilities list and FAA FCT new start and replacement tower process, see [FAA Order JO 7210.78 FAA Contract Tower \(FCT\) New Start and Replacement Tower Process](#)). A list of eligible equipment is found in Appendix A of [Reauthorization Program Guidance Letter \(R-PGL\) 19-02: Planning and Project Eligibility](#). AIG Competitive funds can also be used to construct a remote tower certified by the FAA including acquisition and installation of air traffic control, communications, or related equipment. To date there is no FAA certified remote tower technology. AIG Competitive funds cannot be used to pay for debt service.

Q-U2: What are the eligible uses of ATP funds?

A: ATP grants under BIL are awarded competitively and can be used for justified terminal development projects as defined under 49 U.S.C. 47102(28), including multi-modal projects. On-airport rail access projects, as outlined in 86 FR 48793 ([PFC Update 75-21](#)), are also eligible. Finally, projects for relocating, reconstructing, repairing, or improving an airport-owned ATCT, either staffed by FAA or in the FCT program, are also eligible.

Q-U3: Can BIL funds be used at an airport that cannot meet FAA design standards?

A: Standard Airport Sponsor Assurances, which require airports to meet standards and specifications approved by the FAA, will apply to BIL grants, unless a Modification to Standards has been approved by FAA.

Q-U4: What grant obligations will an airport be required to meet by accepting a BIL grant?

A: Standard Airport Sponsor Assurances, will apply to BIL grants. The grant assurances apply for the useful life of the facilities developed or equipment acquired under the grant, except for exclusive rights, airport revenue, and civil rights, which are perpetual. There is no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with BIL funds

Q-U5: Are projects constructed with BIL funds expected to meet a minimum useful life?

A: Yes. See section 3-12 of the [AIP Handbook](#) on minimum useful life.

Q-U6: Can BIL funds be used to pay the matching share for AIP grants?

A: No. 49 U.S.C. 40117(a)(3) is referenced in the legislation with respect to project eligibility. BIL funds are Federal funds from the General Treasury, which require a sponsor match. They are not PFC funds, which are considered local funds.

Q-U7: Can BIL matching share be paid using pay as you go PFC funds?

A: Yes. Projects must be included in an approved PFC application. The review and approval of a new application, if one is needed due to an amendment of an approved application, takes a significant amount of time from notification to carriers/public to start of PFC collection.

Q-U8: Will requests to use BIL funds for projects included in an approved PFC application be considered?

A: Yes. Sponsors must submit an amendment to an approved PFC, which decreases the total collection authority or deletes an approved project, before submitting for payment under a BIL grant. Sponsors should consult with their local ADO/RO if considering changes to an approved PFC application.

Q-U9: Can BIL funds be used to pay debt service?

A: No. The legislation does not allow funds to be used for debt service, including the financing cost of bonding.

Q-U10: Do any BIL funded projects require a Benefit-Cost Analysis (BCA)?

A: No. Title 49 U.S.C. 47115(d) identifies the requirements for a BCA for certain AIP discretionary projects. Section 47115(d) is not referenced in the BIL, therefore BCAs are not required. Also, a BCA is not required for installation of weather reporting equipment (AWOS-III or better). Other controls are in place to ensure projects are justified and reasonable.

Q-U11: Can multi-year (MY) grants be issued using BIL funds?

A: No. BIL grants cannot include future year allocations. Allocations may change annually. See U-32 and U-33.

Q-U12: Can AIP/BIL funds be included in a single grant?

A: No. AIP and BIL funds come from different sources and cannot be mingled into a single grant.

Q-U13: Will AIG and ATP grants include a period of performance (POP)?

A: Yes, they will include the standard four (4) years POP.

Q-U14: Are BIL funds tied to the AIP funding schedule?

A: No. BIL funds are administered separately throughout the FY.

Q-U15: Can AIG Allocated funds be transferred between airport sponsors?

A: No. AIG Allocated funds are airport sponsor specific funds.

Q-U16: Can an airport sponsor with multiple airports receiving AIG Allocated funds transfer funds between its airports?

A: Yes. BIL formula allocation funds are airport sponsor specific funds, which can be moved between airports within their system.

Q-U17: The BIL indicates that AIG funds are available for four years and ATP funds are available for five years. How far along must a project be at the end of these obligation periods to not lose BIL funds?

A: Funds need to be obligated as outlined under Q-F3 and Q-F4. Funds not obligated as outlined will expire and return to the General Fund.

Q-U18: Will design only grants be allowed using AIG Allocated funds?

A: Yes. AIG Allocated funds can be used to fund a design only grant. A design only grant will include a grant condition that the associated development will begin within two years after the design is completed.

Q-U19: Will design only grants be eligible using AIG Competitive or ATP funds?

A: Yes. Design only grants may not compete as well as those projects that are already designed or part of an alternative delivery method. Any design only grant will require a realistic funding plan to ensure completion of the project. A design only grant will include a grant condition that the associated development will begin within two years after the design is completed.

Q-U20: In order to qualify for a grant under the BIL, must projects be "shovel ready" or is a project still under design eligible?

A: No. As with PFC eligibility, a grant can be for design or environmental review, taking into consideration the normal AIP requirement. Construction grants will be issued based on bids. The annual NOFO for AIG Competitive and ATP funds will outline the application and screening process for these funds.

Q-U21: What happens to unused BIL funds if grants are closed with a recovery?

A: AIG Allocated funds recovered before the end of the fourth year remain available for the airport's use. AIG Competitive and ATP funds recovered before they expire will be returned to a competitive process. See Q-F3 and Q-F4.

Q-U22: How can an airport sponsor use BIL recovered funds?

A: AIG Allocated funds that have not expired can be either used in a new, AIG-allocated grant or amended into an existing AIG-allocated grant for eligible projects as outlined in Q-U23. Recovered AIG Competitive and ATP funds that have not expired can be either used in a new competitive grant or amended into an existing grant as outlined in Q-U23.

Q-U23: Can BIL grants be amended to cover cost overruns?

A: Yes. BIL grants using AIG Allocated funds can be amended within their four-year period of availability, but only with sponsor's available AIG Allocated funds. Grants funded with AIG Competitive or ATP funds will be considered by FAA competitively at a national level.

Q-U24: Can BIL funds be used to reimburse costs previously incurred?

A: Yes. FAA will reimburse sponsors for eligible project related costs incurred on or after November 15, 2021, which is the date of enactment of BIL, as long as all Federal funding procurement requirements and FAA design and construction standards, are met (see the [AIP Handbook](#)). This applies to all BIL funds (AIG and ATP).

Q-U25: Can BIL funds be used to fund future phases of a project that is already under construction?

A: Yes. BIL funds can be used for eligible costs of future phases of projects incurred on or after November 15, 2021, as long Federal procurement requirements per 2 CFR 200 and FAA design and construction standards are met (see [AIP Handbook](#)).

Q-U26: Will requests to use competitive BIL funds for projects with planned AIP discretionary [on FAA's Airports Capital Improvement Plan (ACIP)] be considered?

A: Yes. Priority will not be given to such projects and selection for competitive BIL funds is not guaranteed. AIP discretionary funded projects that are removed from the FAA's ACIP and not selected for BIL funding will likely be delayed until funding (AIP, BIL, PFC, etc.) is available. Replacement AIP discretionary projects will not be considered.

Q-U27: Are AIG Allocated funds required to be used for higher priority projects if the airport is receiving AIP discretionary funds in the same FY?

A: No. AIG Allocated funds have expanded availability for projects considered lower priority under AIP. Airports are still required to meet basic planning guidelines for AIG funds such as project justification, project consistency with the master plans, appropriate project scope, and project documentation on an approved Airport Layout Plan (ALP). Additional guidelines with specific examples will be developed and included in future BIL guidance and AIP guidance. If an ADO has concerns about the types of projects being funded with AIG and an airport's requested discretionary project, then it should reach out to the BIL Team and APP for further discussions.

Q-U28: Can a Sponsor still request AIP discretionary funds while saving AIG Allocated funds?

A: Yes. AIG Allocated funds have expanded availability for projects considered lower priority under AIP. Airports are still required to meet basic planning guidelines for AIG funds such as project justification, project consistency with the master plans, appropriate project scope, and project documentation on an approved ALP. Additional guidelines with specific examples will be developed and included in

future BIL guidance and AIP guidance. If an ADO has concerns about the types of projects being funded with AIG and an airport's requested discretionary project, then it should reach out to the BIL Team and APP for further discussions.

Q-U29: Will airports be expected to use AIG Allocated funds before receiving AIG Competitive or ATP funds?

A: No, sponsors can receive an AIG Competitive or ATP grant while saving AIG Allocated funds for a larger project. The use of AIG Allocated funding will be taken into consideration when making AIG Competitive and ATP funding decisions.

Q-U30: Can alternative delivery methods be used for projects funded under BIL?

A: Yes. Use of Design-Build, and Construction Manager at Risk (CMAR), in addition to the traditional design, bid, build delivery are allowable. Please refer to Section 3-43 and Table U-9 of the [AIP Handbook](#).

Q-U31: If using alternative delivery methods, does the sponsor need to have a maximum guaranteed price to be to be considered for an AIG Competitive or ATP grant?

A: No. Sponsors must provide the information outlined in the annual NOFO. Projects will be selected by FAA based on sponsor's information submitted in response to the criteria as outlined in the NOFO. A guaranteed maximum price is required to receive a grant (see Q-U20).

Q-U32: If a project costs more than an airport's annual AIG Allocated funds, can the airport proceed with the project in year one, or will it have to wait until enough funds have accumulated?

A: An airport has options in this scenario. In addition to waiting to accumulate AIG allocations; a sponsor can phase the project so that annual grants can be issued using available BIL funds; use AIP funds for a defined project phase; or construct the project and request reimbursement with future allocations, at the sponsor's risk.

Q-U33: Can an Airport borrow AIG Allocated funds from a future year?

A: No, funding will not be available ahead of the FY in which it is allocated. AIG allocations can be used for phased projects, saved for up to four years to use on a larger project, or construct a project and request reimbursement with future allocations, at the sponsor's risk.

Q-U34: Can AIG Allocated funds be transferred from an airport being replaced to its replacement airport?

A: Yes, provided the replacement airport has been approved by FAA and has an airport identification code assigned.

Q-U35: Can AIG Allocated funds be used to acquire vehicles or ground support equipment equipped with low-emission technology if the airport is located outside of an air quality nonattainment area or maintenance area?

A: No. Title 49 USC 40117(a)(3)(G) (incorporated into BIL-eligibility) requires airports to be located in a nonattainment area or maintenance area for this type of equipment.

Q-U36: Can AIG Competitive or ATP funds be used to replace a FAA owned ATCT with a sponsor owned FCT?

A: No. FAA owned ATCT are the responsibility of ATO, not ARP. Use of ARP BIL funding to replace a FAA owned ATCT would be supplementing ATO's appropriated funds, which is impermissible.

Q-U37: Is the construction, improvement, or expansion of Customs and Border Patrol (CBP) or United States Department of Agriculture (USDA) inspection facilities as part of a terminal project eligible for BIL grants?

A: For either AIG Allocated or ATP funds, the shell of the CBP facilities is eligible. The USDA inspection facilities are only eligible for AIG Allocated or ATP funds if they are required in the terminal for screening passengers or their baggage, for example in Hawaii where all passenger baggage (checked and carry-on) is screened by the USDA.

Q-U38: Are eligibility calculations required for terminal development grants using AIG Allocated or ATP funds?

A: Yes. Eligibility calculations similar to those done under PFC will be required for AIG Allocated and ATP terminal grants.

Q-U39: Are eligibility calculations required for on-airport rail access grants under ATP?

A: Yes. The process for making eligibility calculations is outlined in [PFC Update 75-21](#) (86 FR 48793, August 31, 2021).

Q-U40: Can ATP funds be used to fund improvements for Terminals at non-primary airports?

A: Yes. Not less than 10% of the annual ATP funding is available for non-hub and non-primary airports. Instructions for applying for these funds will be outlined in a NOFO, which will be issued annually for FY 2022-2026. Projects will be selected by FAA based on sponsor's information submitted in response to the criteria as outlined in the NOFO.

Q-U41: Do ATP grants count toward the \$20M discretionary cap?

A: No. The \$20M cap under 49 U.S.C. 47119(f) applies to AIP funds and is not incorporated into BIL legislation.

Q-U42: Are ATP grants for terminal development for non-primary airports limited to the \$200,000 cap?

A: No. The \$200,000 cap under 49 U.S.C. 47119(b)(2) applies to AIP funds and is not incorporated into BIL legislation.

Q-U43: How will roadway projects that meet the definition of Terminal Development be prioritized for ATP funding?

A: Access roads servicing exclusively airport traffic that leads directly to or from an airport passenger terminal building and walkways that lead directly to or from an airport passenger terminal building are considered terminal development. These projects will be evaluated as terminal development projects as outlined in the annual NOFO. Sponsors should consider use of AIG Allocated funds for eligible, standalone access road improvements.

Q-U44: Can BIL funded projects include a local hiring preference?

A: The BIL provides authority to use geographical and economic hiring preferences, including local hiring preferences, for construction jobs, subject to any applicable State and local laws, policies, and procedures. Local hiring preferences cannot be used for any portions of a project funded under AIP per 2 CFR 200.319(c).

Q-U45: Why must an airport comply with 2 CFR 200 under BIL?

A: The BIL grants are funded from the General Fund; therefore, the Airport Infrastructure Program and the Airport Terminal Program make Federal Awards to non-Federal entities. These programs are subject to [2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) (2 CFR § 200.101). In addition, BIL requires us to use the project grant authority required under 49 USC 47104 which further federalizes the funds.

Q-U46: Do limits for grant amendments apply to BIL funds?

A: Yes. For consistency across programs, and to reflect what FAA believes to be best practices, AIP amendment limits will apply to BIL funds. AIG Competitive and ATP funds must use like year funds and are not guaranteed. For more information see Q-U23.

Q-U47: Can BIL AIG Allocated funds be used on sponsor-owned revenue producing aeronautical support facilities such as fuel farms and hangars?

A: Yes. Revenue producing aeronautical support facilities are defined under 49 U.S.C. 47102(24) as fuel farms, hangar buildings, self-service credit card aeronautical fueling systems, airplane wash racks, major rehabilitation of a hangar owned by a sponsor, or other aeronautical support facilities that the Secretary determines will increase the revenue producing ability of the airport.

AIG Allocated funds have expanded eligibility beyond AIP. BIL eligibility allows these types of projects to be funded at any airport, regardless of size. The AIP statutory “airside needs” test is not applicable to BIL projects. However, to be BIL-eligible, the project would still need to be a new installation or major improvement to increase revenue production at the airport. Because the goal of BIL is to improve the nation’s infrastructure, maintenance and repair are not eligible. For example, the expansion of a fuel farm to include a new fuel tank, increasing capacity, would be eligible as a new installation. A project to replace old fuel tank supply lines would be considered general maintenance and ineligible.

- Q-U48: If using AIG Allocated funds for sponsor-owned revenue producing aeronautical support facilities, does the airside need test apply?**
- A:** No. There is no requirement in BIL to certify or demonstrate that airside needs within the next three years will be met. Section 49 U.S.C 47110(h), which places limitations on these types of projects, including the airside needs test, does not apply to AIG Allocated funds.
- Q-U49: Can AIG Allocated funds be transferred from a primary airport to a nonprimary airport if they have the same sponsor?**
- A:** Yes. See Q-U16.
- Q-U50: Can a sponsor transfer AIG Allocated funds to an unclassified airport in their system?**
- A:** No. Unclassified airports are not eligible to receive BIL funds. See Q-8.
- Q-U51: If an airport transfers its AIG Allocated funds between a primary airport and a nonprimary airport, how is the Federal share calculated?**
- A:** The Federal share of the AIG Allocated grant will be calculated according to the statutory Federal share of the airport receiving the grant offer. See Q-F5.
- Q-U52: If an airport banks AIG Allocated funds, is the Federal share based on when the funds were allocated or when the grant is issued?**
- A:** The Federal share of the AIG Allocated grant will be the airport's statutory Federal share for the FY of the grant offer.
- Q-U53: Is the Federal share for ATP funds based on the FY the project is announced or the FY when the grant is issued?**
- A:** Due to the different percentages of ATP funds available for large, medium, small, and nonhub/nonprimary airports, the federal share is based on the FY the project is announced by the Secretary through our Notice of Intent to Fund process.
- Q-U54: Can BIL funds be used to acquire and install Explosive Detection System (EDS) machines?**
- A:** Use of AIG Allocated or ATP funds for acquisition and installation of the EDS machines used to screen passenger checked baggage is potentially eligible. The Transportation Security Administration (TSA) must agree in writing that the EDS machines are required, and TSA must provide evidence that they cannot finance them in the near term. Coordinate with your local ADO/RO.
- Q-U55: Can BIL funds be used to construct building modifications necessary to support an EDS?**
- A:** Use of AIG Allocated or ATP funds for building modifications needed to accommodate EDS machines used to screen passenger-checked baggage is eligible. TSA must agree in writing that the proposed space for EDS machines is only that which is needed to meet the minimum space requirement. Coordinate with your local ADO/RO.

Q-U56: Does the provision to use CY 2018, CY 2019, or the most recent CY enplanements (See Q-F1(1)(a)) apply when determining an airport's hub status for ATP funding?

A: No, 49 U.S.C. 47114(c)(1)(J) only applies to AIP and AIG formula allocations. The airport's hub status is based on the most recent full calendar year enplanements.

Q-U57: When using annual AIG Allocated grants to reimburse a large multi-year project, will each grant require its own specific usable unit of work?

A: No. For phased projects, the grant offer must include a special condition that requires the sponsor to complete a safe, useful, and usable unit of work within a reasonable timeframe. Each grant agreement must specifically describe the work being reimbursed under that grant. Refer to Section 3-21 of the [AIP Handbook](#).

Q-U58: Are airports required to certify that they have all safety and security equipment, and access and equipment for passengers boarding or exiting non-air carrier aircraft to receive a BIL grant for terminal development?

A: No. This requirement under 49 U.S.C. 47119(a)(1)(A) applies to AIP funds and is not incorporated into BIL.

Q-U59: Does the requirement for the sponsor to certify that projects affecting safety, security, or capacity, including pavement condition, for projects that include eligible terminal revenue producing areas apply to BIL?

A: No. This requirement under 49 U.S.C. 47119(a)(2)(B) applies to AIP funds and is not incorporated into BIL legislation.

Q-U60: Can BIL AIG Allocated funds be used for revenue generating parking for vehicles of passengers or delivering of passengers?

A: No. Use of AIG Allocated funds for revenue generating parking lots (including parking structures or garages) is not eligible for BIL funding for any size airport.

Q-U61: What is the Build America, Buy America (BABA) Act?

A: Buy American requirements under 49 U.S.C. 50101, Build America, Buy America requirements in sections 70912(6) and 70914 in Public Law No: 117-58, the Infrastructure Investment and Jobs Act, also known as BIL. The BABA Act will be required for both BIL and AIP grants. FAA's Buy American requirements are more restrictive than BABA, but BABA includes more specific requirements for construction materials. More information and implementation guidance will be provided as it becomes available.

Q-U62: Can alternative delivery methods be used for airside construction?

A: Yes, refer to 2 CFR 200 and Appendix U of the [AIP Handbook](#).

Q-U63: The statute lists achieving Leadership in Energy and Environmental Design (LEED) accreditation standards as one example of improving energy efficiency. Can a similar standard be used?

A: Yes. One goal of ATP is to fund projects that improve energy efficiency. Achieving LEED or similar standards provides a method for measuring a project's impact.

Q-U64: Can engineering or other project formulation costs incurred prior to enactment of the BIL be reimbursed?

A: No. Costs incurred prior to November 15, 2021, cannot be reimbursed with BIL funds. The airport must verify that an invoice submitted after November 15, 2021, does not include costs incurred prior to that date.

Q-U65: Can a Reimbursable Agreement (RA) signed or paid prior to enactment of the BIL be reimbursed?

A: Costs incurred prior to November 15, 2021 (when the work was actually performed), cannot be reimbursed with BIL funds. If the RA was signed and/or paid prior to that date, BIL funds can be used but only for costs incurred after November 15, 2021.

Q-U66: Can AIG Allocated funds and ATP funds be combined in a single grant?

A: No. They can be combined to fund a project or phase of a project but must be separate grants.

Q-U67: Are projects that increase energy efficiency of an airport's power sources, such as solar or geo-thermal, eligible for BIL funding?

A: Yes. If in a nonattainment or maintenance area meeting the criteria for the VALE program see Q-U35.

For all other airports AIG Allocated funds can be used to assess the airport's energy requirements in order to identify opportunities to increase energy efficiency at the airport as outlined under 49 U.S.C. 47140(a). AIG Allocated funds can be used for improvements identified in the energy assessment that increase energy efficiency at the airport under 49 U.S.C. 47140(b). Contact your ADO for additional guidance.

Q-U68: Is an energy efficiency assessment required for an ATP project to increase energy efficiency?

A: No. FAA will not require an assessment if the energy efficiency project is in support of the terminal. One of the project considerations for ATP projects is to improve energy efficiency, including upgrading environmental systems, upgrading plant facilities, and achieving LEED (or similar) accreditation standards as part of a new terminal construction, expansion, or rehabilitation.

Q-U69: Do FAA's AIP or similar contract provisions apply to BIL funded projects?

A: Yes. The BIL grants are funded from the General Fund; therefore, the Airport Infrastructure Program and the Airport Terminal Program are both Federal Grant

Programs. BIL funded projects must comply with FAA's [Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects](#). This includes Disadvantaged Business Enterprise, Davis-Bacon, Civil Rights, Equal Employment Opportunity (EEO), and Veteran's Preference, among other required contract provisions.

Q-U70: What procurement method must be used for alternative project delivery such as Construction Manager at Risk (CMAR) or Design-Build (D-B)?

A: Sponsors must use the competitive proposal method as outlined in 2 CFR 200(b)(2)(iii) and FAA guidance in Appendix U of the [AIP Handbook](#). Price (fee/profit) must be a consideration in the selection process and sponsor must provide a cost or price analysis per 2 CFR 200.320. For D-B, 49 U.S.C. 47142(a)(6) requires three (3) or more proposals. Applicable Federal contract requirements must be included as part of the sponsor's solicitation and in all contracts and subcontracts resulting from the procurement (See Q-U69). Selection of a CMAR or D-B that doesn't meet these requirements is not eligible for BIL funding. Contracts and grants for CMAR or D-B are based on a negotiated guaranteed maximum price (GMP), representing the ceiling project price.

Q-U71: Can a sponsor be reimbursed for sponsor-furnished proprietary equipment and materials (i.e., baggage handling system equipment or steel for a terminal project) that were procured separately for a non-federally funded project?

A: FAA will only reimburse sponsors for eligible project related costs incurred on or after November 15, 2021, which is the date of enactment of BIL. See Q-U24. Sponsor furnished materials and equipment must be purchased (cost incurred) after BIL was enacted and follow federal contract provisions, including 2 CFR 200, to be eligible for reimbursement, installation, inspection, and testing. In addition, Buy American and Buy America, Build America must be followed for the costs of the equipment and/or materials to be eligible for reimbursement.

Questions on Grant Application, Payments, and Closeouts

Q-A1: How does an airport apply for a BIL grant?

A: **AIG Allocated:** Follow AIP process including projects in the CIP, submittal of the SF-424, *Application for Federal Assistance* and other documents as required by [FAA Airports Standard Operating Procedure \(SOP\) 6.00](#) and the local ADO or RO.

AIG Competitive: For projects selected through the competitive process under the annual NOFO, follow AIP process including projects in the CIP, submittal of the SF-424, *Application for Federal Assistance* and other documents as required by [FAA Airports SOP 6.00](#) and the local ADO or RO.

ATP: For projects selected through the competitive process under the annual NOFO, follow AIP process including projects in the CIP, submittal of the SF-424, *Application for Federal Assistance* and other documents as required by [FAA Airports SOP 6.00](#) and the local ADO or RO.

Q-A2: Can a project using a combination of AIP and BIL funds be included on a single grant application?

A: No. Separate applications are required for each fund type.

Q-A3: How will an airport sponsor submit payment requests?

A: FAA will use the existing U.S. Department of Transportation Delphi eInvoicing system for payment requests, following FAA's payment policy.

Q-A4: What documentation is required for closing out a BIL Grant?

A: ADOs will use AIP closeout process per [FAA Airports SOP 10.00](#). After the grant is closed, it remains subject to audit. The airport sponsor must retain grant documentation for three years after the grant is closed as required by 2 CFR 200.334.

Questions related to the State Block Grant Program

Q-SB1: How will BIL funds be administered to airports covered under the FAA's State Block Grant Program (SBGP)?

A: FAA interprets 49 U.S.C. 47128, State Block Grant Program, as giving direction to provide each State Block Grant participating state program administration responsibilities for grants issued under BIL. This interpretation is consistent with our long-standing practice. For airports covered under the FAA's SBGP, the FAA will issue block grants to states designated for projects at specific locations. BIL funds are location specific, similar to AIP discretionary funding. When projects are ready to move forward, location-specific funding will be awarded based on BIL availability and actual construction bids or negotiated agreement.

Q-SB2: Will the State Block Grant Participating State be provided *program* administration costs related to BIL funding?

A: No. The FAA is applying many of the same program administration rules for BIL as for AIP. For states that participate in the FAA's SBGP, program administration costs are not allowable for BIL grants, but project administrative costs could be allowable through direct billing. See Q-SB3.

Q-SB3: Can the State Block Grant Participating State be reimbursed for *project* administrative costs related to BIL grants?

A: Yes. The state can charge for project administrative costs that are directly related to administering the eligible project (many are normally done by a consultant or other hired company) such as application preparation, contract management, engineering oversight, bidding, etc. BIL programs, like AIP, are subject to the requirements of 2 CFR Part 200. See the AIP Handbook for further detail on how FAA applies these requirements in the airport development grant context.

Q-SB4: For those BIL projects administered under the block grant, who would have the responsibility to complete NEPA?

A: The state's environmental compliance responsibilities when administering BIL funds under the Block Grant Program will vary depending on if the project involves the use of only BIL funds, or a mixture of funding sources. In general, BIL AIG Allocated

funds will be similar to AIP entitlement and state apportionment funds, where the state retains NEPA responsibility. For ATP and AIG Competitive funded projects, the FAA retains oversight and NEPA responsibility, similar to AIP discretionary funded projects.

Q-SB5: What is the State Block Grant state's role in planning for AIG Allocated funded projects?

A: The FAA sent guidance out to states and sponsors early in CY 2022, with specific instructions to start updating state Capital Improvement Program (CIP) submissions. This information will be used by FAA to update our NPIAS, as well as our three year Airports Capital Improvement Program (ACIP). State Block Grant states should incorporate the additional AIG specific project into the state's CIPs. Contact your local ADO for additional details.

Q-SB6: How does the State Block Grant state apply for an AIG grant?

A: The state's application process will mirror the AIP discretionary application process. This includes ensuring projects are shown in state's CIP, the project is on the airport's approved ALP, and submittal of the SF-424, *Application for Federal Assistance* and other documents as required. See Q-A1. When projects are ready to move forward, location-specific funding will be granted based on BIL availability and actual construction bids or negotiated agreements.

Airport/Sponsor: Newport Municipal Airport/City of Newport

Prepared By: Precision Approach Engineering, Inc.

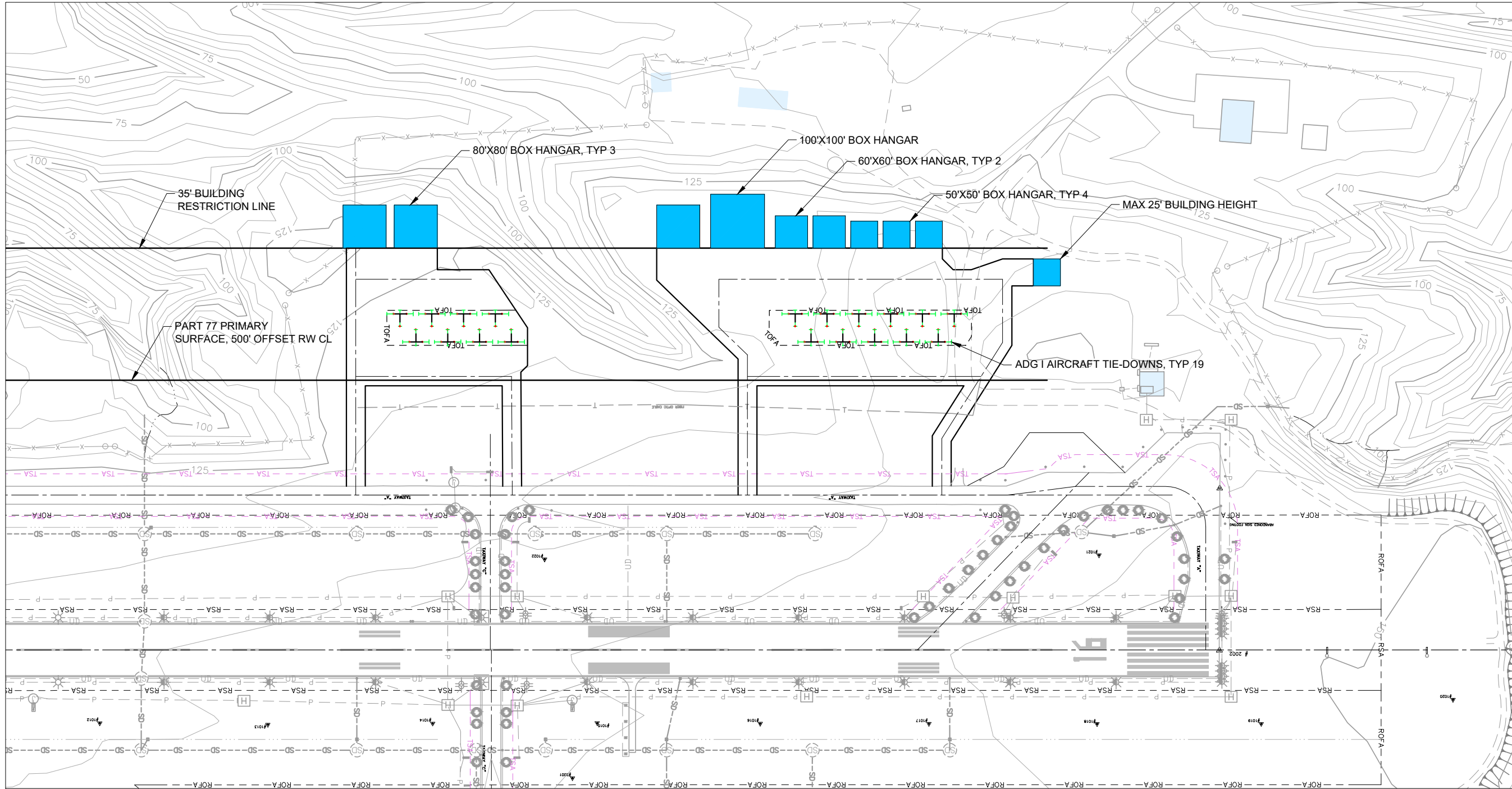
Date: 3/10/2022

Sponsor Match: 10%

Sponsor Non-Primary Entitlements (NPE): \$ 150,000.00 /year

Airport Infrastructure Grant Funds (BIL): \$ 295,000.00 /year

Year	Project Name	NPE*	ST	DI	BIL	Sponsor Match	Total Federal	Total Project	Comments
2023	Carry Over		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
2024	Carry Over	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
2025	Install AWOS	\$ 450,000.00	\$ -		\$ -	\$ 50,000.00	\$ 450,000.00	\$ 500,000.00	
2025	New T-Hangar(s) - Design	\$ -	\$ -	\$ -	\$ 100,000.00	\$ 11,111.11	\$ 100,000.00	\$ 111,111.11	Sponsor owned t-hangars
2026	Carry Over	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
2026	New T-Hangar(s) - Construction	\$ -	\$ -	\$ -	\$ 1,375,000.00	\$ 152,777.78	\$ 1,375,000.00	\$ 1,527,777.78	Sponsor owned t-hangars
2027	Carry Over	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Totals		\$ 450,000.00	\$ -	\$ -	\$ 1,475,000.00	\$ 213,888.89	\$ 1,925,000.00	\$ 2,138,888.89	



Weed spraying: Received Email form Michael Cavanaugh confirming the below. The draft plan/policy is set to go back in front of Council during a work session in November. Until then, the only plan/policy that is official is the P&R Dept. policy that was built in 2012. That plan only covers areas within parks. If you're hoping to use a pesticide sooner, I would discuss this with Spencer. There is no city policy stopping you from using a pesticide product in your area as long as you follow all state and federal requirements (applicators license, type of product, public posting, etc.).

Oregon Airport Managers Association (OAMA): September 14th OAMA Board Meeting. Agenda included: Fall Conference update, registration update, sponsorship, and review of the draft agenda for the fall conference in October.

Crew Car: No update at this time City Administration requested a price comparison for the style of car Power is offering the City for a replacement crew car. City Administration staff also brought up the issues of advertising on the side of the crew car and it being a single business in Newport. I have not had the time to look into the price comparison or address the advertising concerns. Update, Power Auto has agreed to the MOU with the City of Newport. We will hopefully be getting the replacement crew car in August. Power Auto has a replacement crew car for the crown Vic that was stolen. It is a 2014 Ford Fiesta they are willing to work with us on price exchange for an advertising sticker to be placed on the door for no longer than 24 months.

163 Letter: Submitted 163 letter for review for MCWatkins front area on September 7th. Waiting for FAA review process.

Equipment: AWOS temp and dew point went down. DBT replaced it and tested fine. Guide wheel for T-hangar gate is on order. Back Gate operator motor went out. F&W Fence will be out in October to look at back gate operator and box hangar gate and main hangar gate for opening and closing issues.

Commercial Business in hangars: Sent email to Fire Chief Murphy, Community Development Director Derrick Tokos, Building Official Joseph Lease asking the airport committees question about aircraft maintenance, power plant repair, airframe, oxygen services, and flight school in hangars. Waiting for response.

Budget and Lease: Working with finance on a report for the airport committee on revenues and expenditures for the airport. Here are a few end of Fiscal year 21-22 revenues. Jet – A \$349,559.42: Av-Gas \$77,798.94: Rents & Leases \$161,963.72: Rental cars fees \$26, 716.59. I am hopeful to have a report for the November Airport Committee meeting.

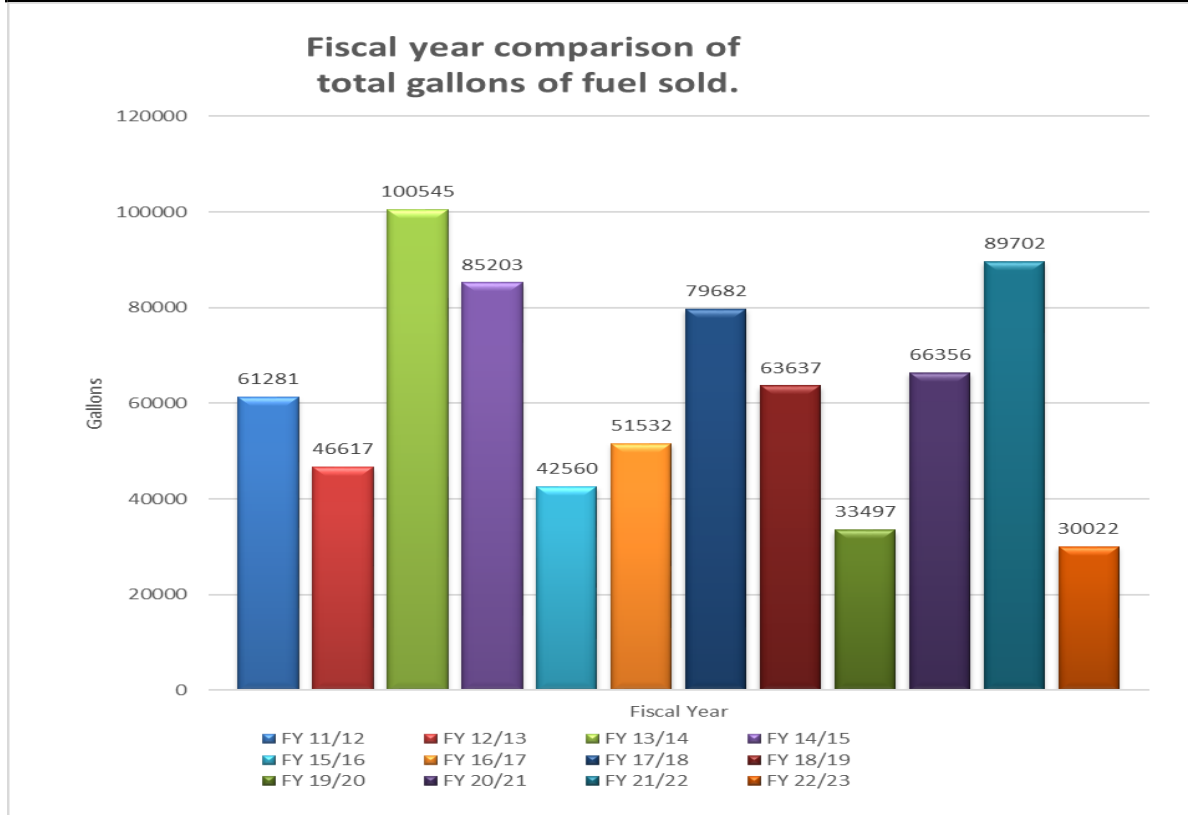
Minutes: Administration staff is working on the issues with airport committee minutes.

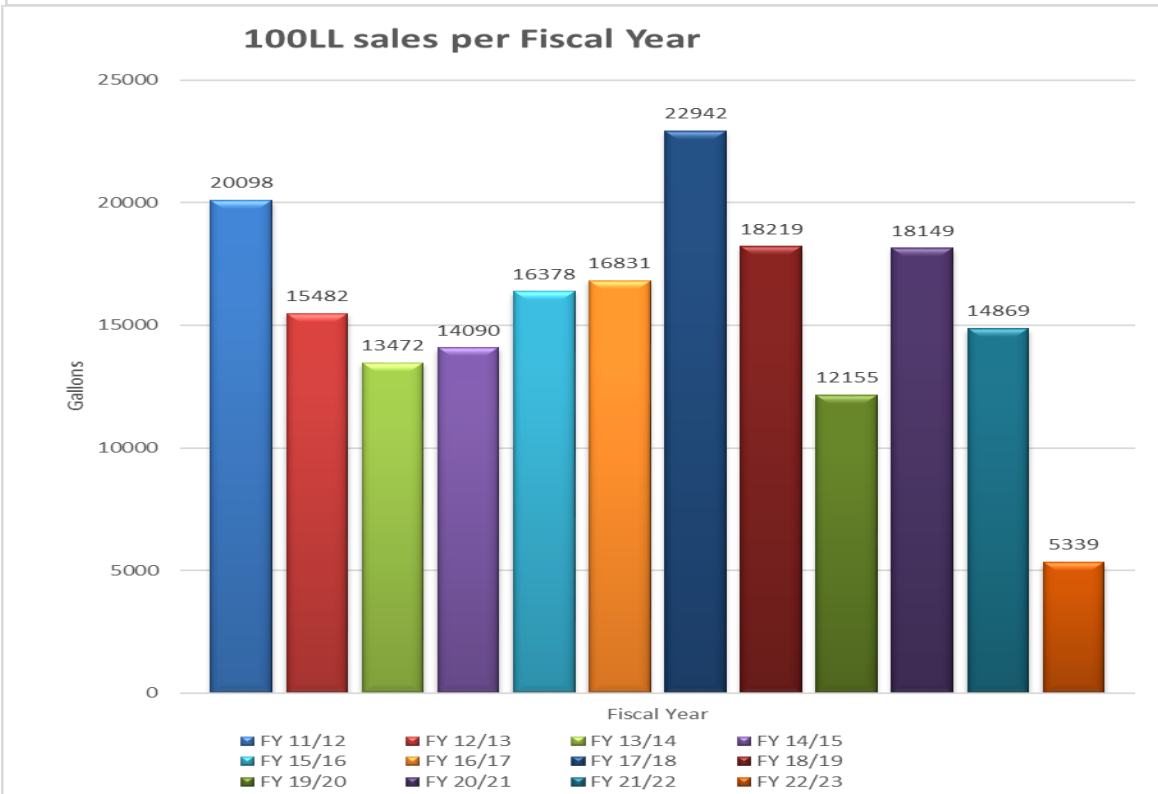
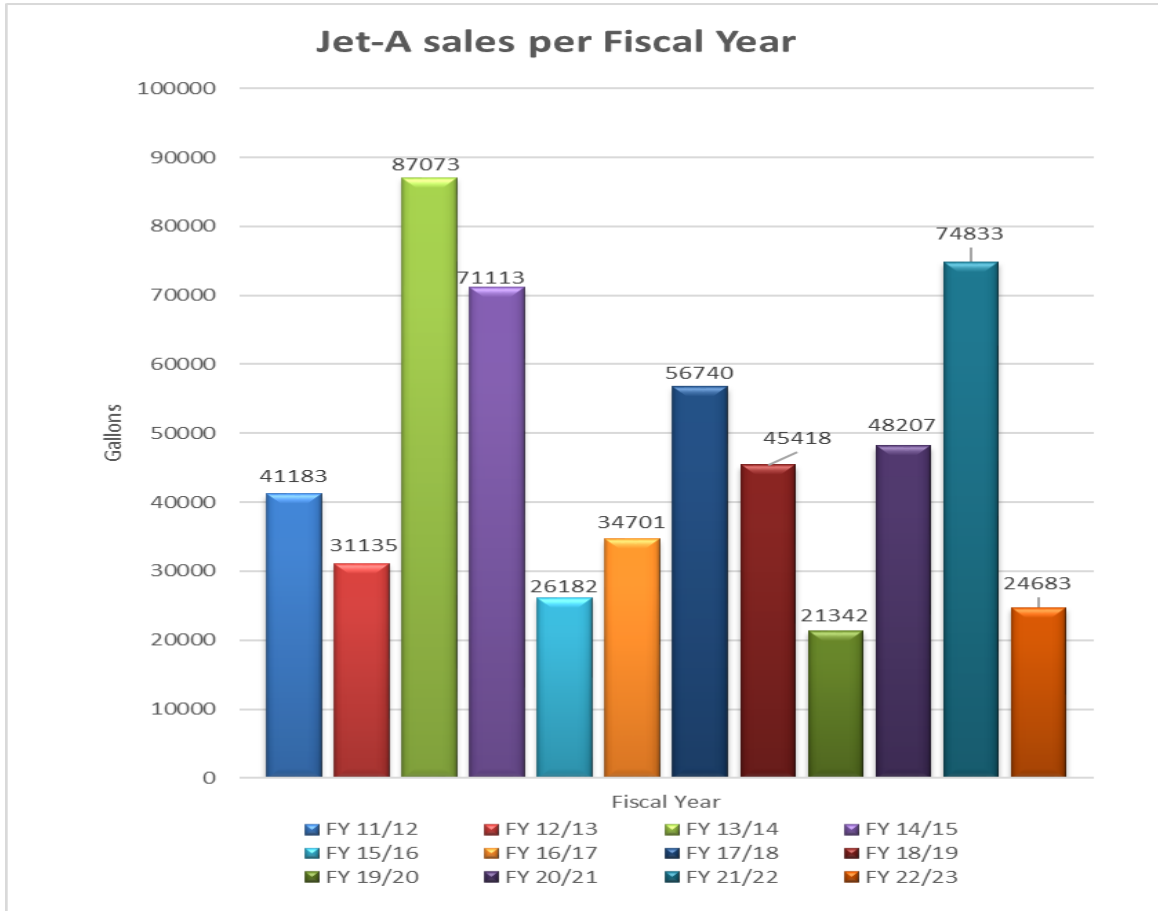
Maintenance of hangar aprons: Working with administration staff to answer tenant questions about responsibility of maintaining aprons form taxilane to private hangars.

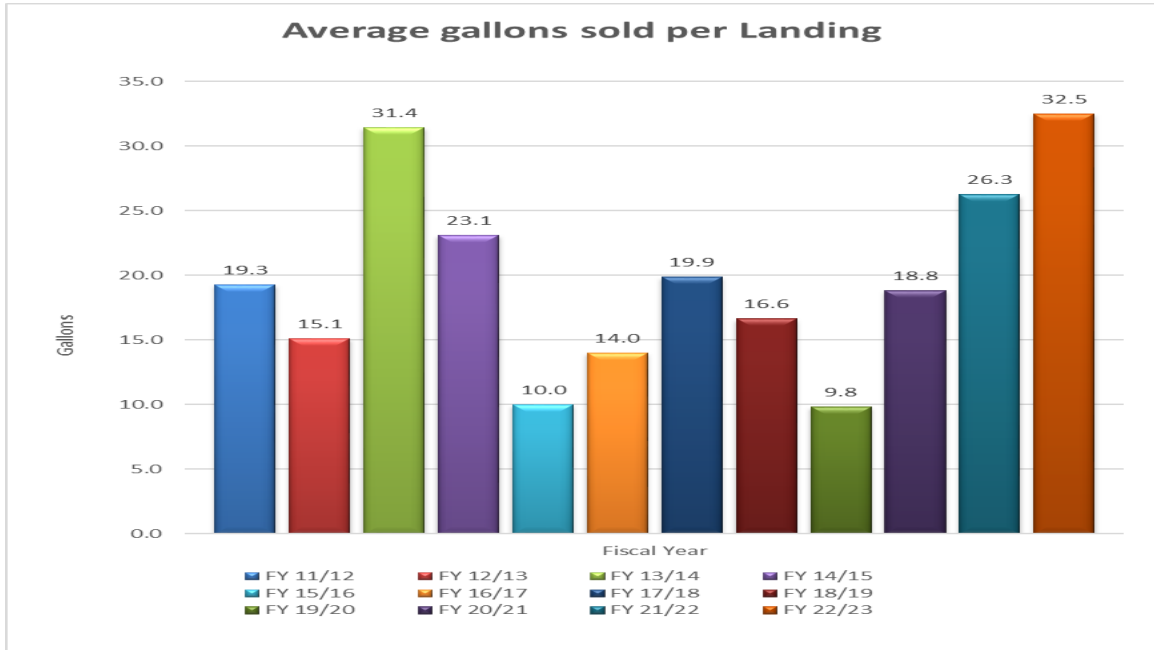
Crack Sealing: City of Newport Public Works department does not do crack sealing. Crack sealing is farmed out to a private contractor. Waiting on response form ODA for PMP program. Any cracking sealing would need to be put in the budget for FY 23-24 and put out for bid. The other option is waiting for the FAA AIP apron rehabilitation project per the master plan Sheet 4 in the next few years.

How we ended for September 2022.

Aircraft Quantity				Fuel Consumption			
Month	IN	OUT	Tot.A.O	Jet A	Av Gas	Self Serve	Total
July	311	315	626	8514	1830		10344
Aug	327	333	660	8358	112	2170	10640
Sept	286	285	571	7811	30	1197	9038
Oct							
Nov							
Dec							
Jan							
Feb							
Mar							
Apr							
May							
Jun							
Cur. FY	924	933	1857	24683	1972	3367	30022
FY 21/22	3417	3485	6902	74925	3258	11611	89794
FY 20/21	3526	3538	7064	48207	457	17691	66356
FY 19/20	3408	3438	6846	21342	4544	7602	33488
FY 18/19	3826	3860	7686	45418	5768	13458	64643
FY 17/18	4008	4033	8041	56740	5579	17363	79682
FY 16/17	3685	3701	7386	34701	5001	11830	51532
FY 15/16	4263	4234	8497	26182	7854	8524	42560
FY 14/15	3686	3572	7258	71113	5985	8103	85201
FY 13/14	3199	2914	6113	87073	4098	9374	100546
FY 12/13	3121	3083	6204	31135	4430	11049	46614
FY 12/11	3219	3181	6400	41183	4275	15823	61281
FY 10/11	3023	3085	6108	73458	4119	12004	89581
FY Total	43305	43057	86362	636160	57339	147799	841299
Average	3544	3510	7054	48835	5165	11513	65513







Rental Cars										
CY	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
JAN	2	2	11	4	2	24	38	25	35	27
FEB	5	4	8	4	23	37	27	41	29	24
MAR	9	5	7	4	14	24	59	38	32	34
APR	4	5	10	7	25	35	49	24	52	44
MAY	14	9	8	4	24	40	62	37	50	44
JUN	9	12	28	8	28	36	68	27	51	55
JUL	22	16	30	16	55	67	93	34	57	68
AUG	24	3	25	10	53	55	93	51	72	75
SEP	14	10	14	16	37	54	63	43	90	43
OCT	8	5	13	9	22	39	42	49	52	
NOV	14	2	11	3	21	40	39	22	41	
DEC	1	1	4	7	25	25	30	29	37	
Total	126	74	169	92	329	476	663	420	598	414

Courtesy Cars Loaned Out											
CY	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
JAN	0	0	33	23	28	21	16	31	22	30	22
FEB	2	0	16	17	23	21	24	14	32	21	26
MAR	2	0	29	41	25	32	32	46	29	38	27
APR	2	0	28	36	42	26	32	40	0	39	28
MAY	9	0	29	20	45	51	39	39	0	35	36
JUN	14	0	19	43	48	37	54	40	1	44	34
JUL	10	28	39	41	52	57	53	52	8	49	39
AUG	0	27	19	38	43	45	35	43	14	47	33
SEP	0	25	25	32	31	45	43	34	24	43	31
OCT	0	35	12	22	14	41	34	47	34	31	
NOV	0	22	19	29	22	11	28	36	24	11	
DEC	0	8	10	16	17	17	11	22	25	15	
Total	39	145	278	358	390	404	401	444	213	403	276

I have attached our local area's fuel prices for Jet-A and 100LL.

Jet-A prices within 65 miles of Newport, OR 97365

Jet A

\$5.49—\$7.51

Average \$6.32

KONP Newport Municipal Airport Newport, OR

Newport Municipal Airport Phillips 66 FS \$6.08 w/Prist \$6.24

KCVO Corvallis Municipal Airport Corvallis, OR

Corvallis Aero Service EPIC FS \$7.10

6S2 Florence Municipal Airport Florence, OR

Florence Airport Volunteer Group SS \$5.85

7S5 Independence State Airport Independence, OR

Nutsch Aviation SS \$6.08

Albany Municipal Airport Albany, OR

Infinite Air Center, LLC FS \$5.49

KEUG Mahlon Sweet Field Airport Eugene, OR

Atlantic Aviation
EPIC FS \$7.51

KSLE McNary Field Airport Salem, OR

Salem Aviation Fueling @ Salem Air Center
EPIC FS \$6.95

KTMK Tillamook Airport Tillamook, OR

Tillamook Airport Phillips 66 PS \$5.87

KMMV McMinnville Municipal Airport McMinnville, OR

Cirrus Aviation
Epic \$6.30

77S Hobby Field Airport Creswell, OR

Creswell Airport Phillips 66 SS \$5.99

100LL Avgas prices within 55 miles of Newport, OR 97365

100LL

\$6.74—\$9.03 FS \$7.75 -- \$8.79 SS \$6.74--\$9.03

Average \$7.62 \$8.21 \$7.45

KONP Newport Municipal Airport Newport, OR

Newport Municipal Airport Phillips 66 SS \$8.17 or with pre-paid fuel card. \$7.35

KCVO Corvallis Municipal Airport Corvallis, OR

Corvallis Aero Service EPIC SS \$7.15 FS \$7.75

6S2 Florence Municipal Airport Florence, OR

Florence Airport Volunteer Group SS \$6.87

7S5 Independence State Airport Independence, OR

Nutsch Aviation Phillips 66 SS \$9.03

S12 Albany Municipal Airport Albany, OR

Infinite Air Center, LLC EPIC SS \$7.29

KEUG Mahlon Sweet Field Airport Eugene, OR

Atlantic Aviation EPIC SS \$7.31 FS \$8.79

S30 Lebanon State Airport Lebanon, OR

LebanAir Aviation independent SS \$6.74

KSLE McNary Field Airport Salem, OR

Salem Aviation Fueling @ Salem Air Center
EPIC SS \$7.60 FS \$8.10

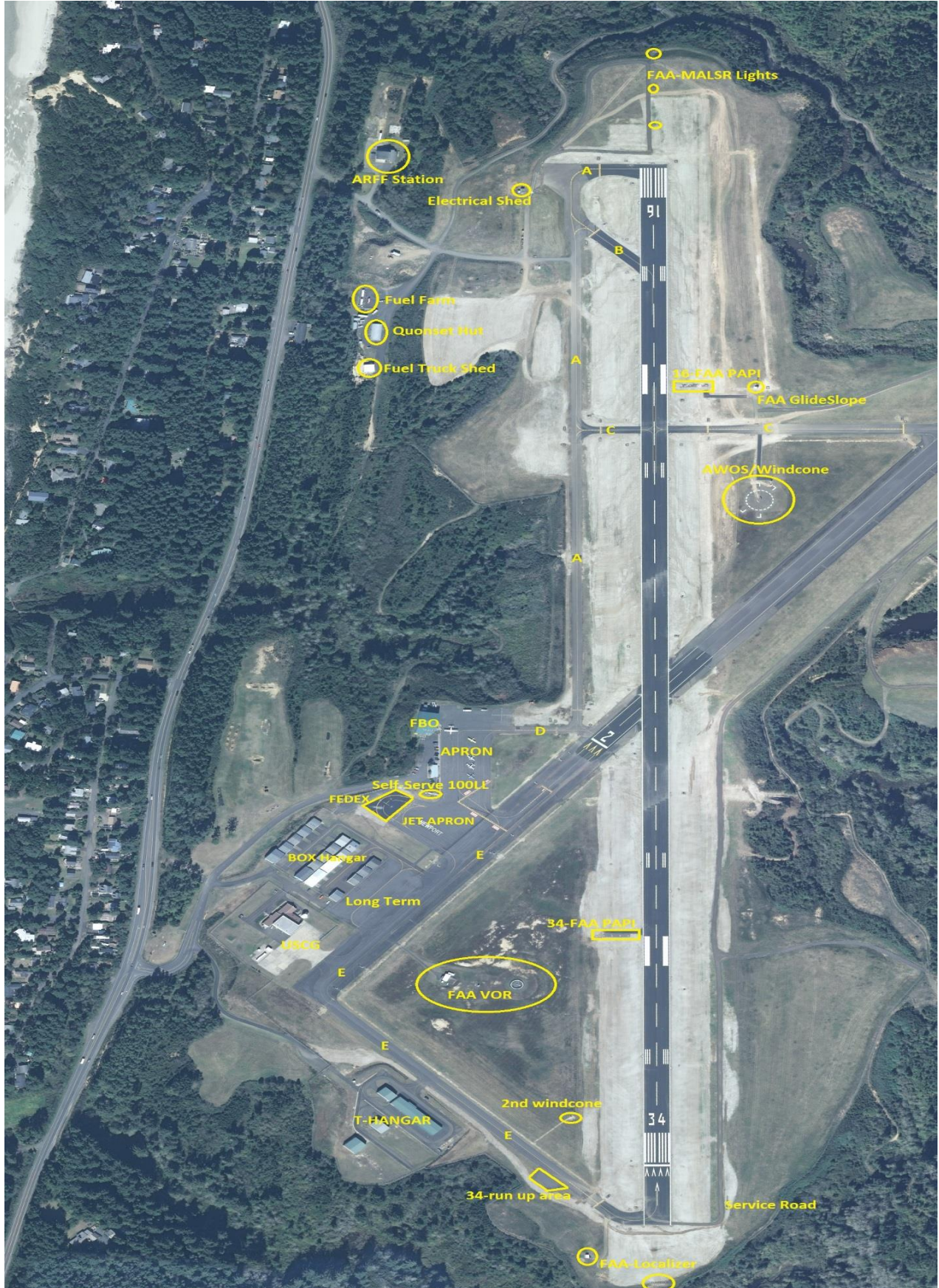
KTMK Tillamook Airport Tillamook, OR

Tillamook Airport Phillips 66 SS \$7.00

KMMV Mc Minnville Municipal Airport

Potcake Aviation LLCavfuel SS \$7.30

I have included some pictures from September 2022.





Falcon 50



Epic E1000



Cirrus SF50



DE Havilland DHC-6-300

in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014-0255, dated November 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-7524.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 20, 2016.

(i) Saab Service Bulletin 2000-38-011, dated October 22, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 9, 2014 (79 FR 45337, August 5, 2014).

(i) Saab Service Bulletin 2000-38-010, dated July 12, 2013.

(ii) Saab Service Newsletter SN 2000-1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(5) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email saab340techsupport@saabgroup.com; Internet <http://www.saabgroup.com>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-13740 Filed 6-14-16; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA 2014-0463]

Policy on the Non-Aeronautical Use of Airport Hangars

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of final policy.

SUMMARY: This action clarifies the FAA's policy regarding storage of non-aeronautical items in airport facilities designated for aeronautical use. Under Federal law, airport operators that have accepted federal grants and/or those that have obligations contained in property deeds for property transferred under various Federal laws such as the Surplus Property Act generally may use airport property only for aviation-related purposes unless otherwise approved by the FAA. In some cases, airports have allowed non-aeronautical storage or uses in some hangars intended for aeronautical use, which the FAA has found to interfere with or entirely displace aeronautical use of the hangar. At the same time, the FAA recognizes that storage of some items in a hangar that is otherwise used for aircraft storage will have no effect on the aeronautical utility of the hangar. This action also amends the definition of aeronautical use to include construction of amateur-built aircraft and provides additional guidance on permissible non-aeronautical use of a hangar."

DATES: The policy described herein is effective July 1, 2017.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Willis, Manager, Airport Compliance Division, ACO-100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3085; facsimile: (202) 267-4629.

ADDRESSES: You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (<http://www.faa.gov/regulations/search>);

(2) Visiting FAA's Regulations and Policies Web page at (http://www.faa.gov/regulations_policies); or

(3) Accessing the Government Printing Office's Web page at (<http://www.gpoaccess.gov/index.html>).

You can also get a copy by sending a request to the Federal Aviation

Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

SUPPLEMENTARY INFORMATION:

Authority for the Policy: This document is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

Background

Airport Sponsor Obligations

In July 2014, the FAA issued a proposed statement of policy on use of airport hangars to clarify compliance requirements for airport sponsors, airport managers, airport tenants, state aviation officials, and FAA compliance staff. (79 **Federal Register** (FR) 42483, July 22, 2014).

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) have agreed to comply with certain Federal policies included in each AIP grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97-248), as amended and recodified at 49 United States Codes (U.S.C.) 47107(a)(1), and the contractual sponsor assurances require that the airport sponsor make the airport available for aviation use. Grant Assurance 22, *Economic Nondiscrimination*, requires the sponsor to make the airport available on reasonable terms without unjust discrimination for aeronautical activities, including aviation services. Grant Assurance 19, *Operation and Maintenance*, prohibits an airport sponsor from causing or permitting any activity that would interfere with use of airport property for airport purposes. In some cases, sponsors who have received property transfers through surplus property and nonsurplus property agreements have similar federal obligations.

The sponsor may designate some areas of the airport for non-aviation use,¹ with FAA approval, but aeronautical facilities of the airport must be dedicated to use for aviation purposes. Limiting use of aeronautical facilities for aeronautical purposes ensures that airport facilities are available to meet aviation demand at the airport. Aviation tenants and aircraft owners should not be displaced by non-

¹ The terms "non-aviation" and "non-aeronautical" are used interchangeably in this Notice.

aviation commercial uses that could be conducted off airport property.

It is the longstanding policy of the FAA that airport property be available for aeronautical use and not be available for non-aeronautical purposes unless that non-aeronautical use is approved by the FAA. Use of a designated aeronautical facility for a non-aeronautical purpose, even on a temporary basis, requires FAA approval. See FAA Order 5190.6B, *Airport Compliance Manual*, paragraph 22.6, September 30, 2009. The identification of non-aeronautical use of aeronautical areas receives special attention in FAA airport land use compliance inspections. See Order 5190.6B, paragraphs 21.6(f)(5).

Areas of the airport designated for non-aeronautical use must be shown on an airport's Airport Layout Plan (ALP). The AAIA, at 49 U.S.C. 47107(a)(16), requires that AIP grant agreements include an assurance by the sponsor to maintain an ALP in a manner prescribed by the FAA. Sponsor assurance 29, *Airport Layout Plan*, implements § 47107(a)(16) and provides that an ALP must designate non-aviation areas of the airport. The sponsor may not allow an alteration of the airport in a manner inconsistent with the ALP unless approved by the FAA. See Order 5190.6B, paragraph 7.18, and Advisory Circular 150/5070-6B, *Airport Master Plans*, Chapter 10.

Clearly identifying non-aeronautical facilities not only keeps aeronautical facilities available for aviation use, but also assures that the airport sponsor receives at least Fair Market Value (FMV) revenue from non-aviation uses of the airport. The AAIA requires that airport revenues be used for airport purposes, and that the airport maintain a fee structure that makes the airport as self-sustaining as possible. 49 U.S.C. 47107(a)(13)(A) and (b)(1). The FAA and the Department of Transportation Office of the Inspector General have interpreted these statutory provisions to require that non-aviation activities on an airport be charged a fair market rate for use of airport facilities rather than the aeronautical rate. See *FAA Policies and Procedures Concerning the Use of Airport Revenue*, (64 FR 7696, 7721, February 16, 1999) (FAA Revenue Use Policy).

If an airport tenant pays an aeronautical rate for a hangar and then uses the hangar for a non-aeronautical purpose, the tenant may be paying a below-market rate in violation of the sponsor's obligation for a self-sustaining rate structure and FAA's Revenue Use Policy. Confining non-aeronautical activity to designated non-aviation areas

of the airport helps to ensure that the non-aeronautical use of airport property is monitored and allows the airport sponsor to clearly identify non-aeronautical fair market value lease rates, in order to meet their federal obligations. Identifying non-aeronautical uses and charging appropriate rates for these uses prevents the sponsor from subsidizing non-aviation activities with aviation revenues.

FAA Oversight

A sponsor's Grant Assurance obligations require that its aeronautical facilities be used or be available for use for aeronautical activities. If the presence of non-aeronautical items in a hangar does not interfere with these obligations, then the FAA will generally not consider the presence of those items to constitute a violation of the sponsor's obligations. When an airport has unused hangars and low aviation demand, a sponsor can request the FAA approval for interim non-aeronautical use of a hangars, until demand exists for those hangars for an aeronautical purpose. Aeronautical use must take priority and be accommodated over non-aeronautical use, even if the rental rate would be higher for the non-aeronautical use. The sponsor is required to charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes. (64 FR 7721).

The FAA conducts land use inspections at 18 selected airports each year, at least two in each of the nine FAA regions. See Order 5190.6B, paragraph 21.1. The inspection includes consideration of whether the airport sponsor is using designated aeronautical areas of the airport exclusively for aeronautical purposes, unless otherwise approved by the FAA. See Order 5190.6B, paragraph 21.6.

The Notice of Proposed Policy

In July 2014, the FAA issued a notice of proposed policy on use of hangars and related facilities at federally obligated airports, to provide a clear and standardized guide for airport sponsors and FAA compliance staff. (79 FR 42483, July 22, 2014). The FAA received more than 2,400 comments on the proposed policy statement, the majority from persons who have built or are in the process of building an amateur-built aircraft. The FAA also received comments from aircraft owners, tenants and owners of hangars, and airport operators. The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) also provided comments on behalf of their membership. Most of the

comments objected to some aspect the proposed policy statement. Comments objecting to the proposal tended to fall into two general categories:

- The FAA should not regulate the use of hangars at all, especially if the hangar is privately owned.
- While the FAA should have a policy limiting use of hangars on federally obligated airports to aviation uses, the proposed policy is too restrictive in defining what activities should be allowed.

Discussion of Comments and Final Policy

The following summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice. The FAA discusses revisions to the policy based on comments received. In addition, the FAA will post frequently asked Questions and Answers regarding the Hangar Use Policy on www.faa.gov/airport-compliance. These Questions and Answers will be periodically updated until FAA Order 5190.6B is revised to reflect the changes in this notice.

1. *Comment: Commenters stated that the FAA should defer to local government and leave all regulation of hangar use to the airport operator.*

Response: The FAA has a contract with the sponsor of an obligated airport, either through AIP grant agreements or a surplus property deed, to limit the use of airport property to certain aviation purposes. Each sponsor of an obligated airport has agreed to these terms. The FAA relies on each airport sponsor to comply with its obligations under this contract. To maintain a standardized national airport system and standardized practices in each of the FAA's nine regional offices, the agency issues guidance on its interpretation of the requirements of the AIP and surplus property agreements. It falls to the local airport sponsor to implement these requirements. The FAA allows airport sponsors some flexibility to adapt compliance to local conditions at each airport.

However, some airport sponsors have adopted hangar use practices that led to airport users to complain to the FAA. Some airport users have complained that sponsors are too restrictive, and fail to allow reasonable aviation-related uses of airport hangars. More commonly, aircraft owners have complained that hangar facilities are not available for aircraft storage because airport sponsors have allowed the use of hangars for purposes that are unrelated to aviation,

such as operating a non-aviation business or storing multiple vehicles. By issuing the July 2014 notice, the FAA intended to resolve both kinds of complaints by providing guidance on appropriate management of hangar use. The agency continues to believe that FAA policy guidance is appropriate and necessary to preserve reasonable access to aeronautical facilities on federally obligated airports. However, the final policy has been revised in response to comments received on the proposal.

2. *Comment: Commenters, including AOPA, stated that the FAA lacks the authority to regulate the use of privately owned hangars.*

Response: The FAA has a statutory obligation to assure that facilities on aeronautically designated land at federally obligated airports are reasonably available for aviation use. Designated aeronautical land on a federally obligated airport is a necessary part of a national system of aviation facilities. Land designated for aeronautical use offers access to the local airfield taxiway and runway system. Land designated for aeronautical use is also subject to certain conditions, including FAA policies concerning rates and charges (including rental rates) which were designed to preserve access for aeronautical users and to support aeronautical uses. A person who leases aeronautical land on the airport to build a hangar accepts conditions that come with that land in return for the special benefits of the location. The fact that the tenant pays the sponsor for use of the hangar or the land does not affect the agreement between the FAA and the sponsor that the land be used for aeronautical purposes. (In fact, most hangar owners do not have fee ownership of the property; typically airport structures revert to ownership of the airport sponsor upon expiration of the lease term). An airport sponsor may choose to apply different rules to hangars owned by the sponsor than it does to privately constructed hangars, but the obligations of the sponsor Grant Assurances and therefore the basic policies on aeronautical use stated in this notice, will apply to both.

3. *Comment: Commenters believe that a policy applying the same rules to all kinds of aeronautical structures, and to privately owned hangars as well as sponsor-owned hangars, is too general. The policy should acknowledge the differences between categories of airport facilities.*

Response: A number of commenters thought that rules for use of privately constructed and owned hangars should be less restrictive than rules for hangars

leased from the airport sponsor. The Leesburg Airport Commission commented that there are different kinds of structures on the airport, with variations in rental and ownership interests, and that the FAA's policy should reflect those differences. The FAA acknowledges that ownership or lease rights and the uses made of various aeronautical facilities at airports will vary. The agency expects that airport sponsors' agreements with tenants would reflect those differences. The form of property interest, be it a leasehold or ownership of a hangar, does not affect the obligations of the airport sponsor under the Grant Assurances. All facilities on designated aeronautical land on an obligated airport are subject to the requirement that the facilities be available for aeronautical use.

4. *Comment: Commenters agree that hangars should be used to store aircraft and not for non-aviation uses, but, they argue the proposed policy is too restrictive on the storage of non-aviation related items in a hangar along with an aircraft. A hangar with an aircraft in it still has a large amount of room for storage and other incidental uses, and that space can be used with no adverse effect on the use and storage of the aircraft.*

Response: In response to the comments, the final policy deletes the criteria of "incidental" or "de minimis" use and simply requires that non-aviation storage in a hangar not interfere with movement of aircraft in or out of the hangar, or impede access to other aeronautical contents of the hangar. The policy lists specific conditions that would be considered to interfere with aeronautical use. Stored non-aeronautical items would be considered to interfere with aviation use if they:

- Impede the movement of the aircraft in and out of the hangar;
- Displace the aeronautical contents of the hangar. (A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft);
- Impede access to aircraft or other aeronautical contents of the hangar;
- Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory); or
- Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

Note: Storage of equipment associated with an aeronautical activity (e.g., skydiving, ballooning, gliding) would be considered an aeronautical use of a hangar.

5. *Comment: Commenters stated the policy should apply different rules to situations where there is no aviation demand for hangars, especially when hangars are vacant and producing no income for the sponsor.*

Response: At some airports, at some times, there will be more hangar capacity than needed to meet aeronautical demand, and as a result there will be vacant hangars. The FAA agrees that in such cases it is preferable to make use of the hangars to generate revenue for the airport, as long as the hangar capacity can be recovered on relatively short notice for aeronautical use when needed. See Order 5190.6B, paragraph 22.6. The final policy adopts a provision modeled on a leasing policy of the Los Angeles County Airport Commission, which allows month-to-month leases of vacant hangars for any purpose until a request for aeronautical use is received. The final policy requires that a sponsor request FAA approval before implementing a similar leasing plan:

- The airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis.
- The plan may be implemented only when there is no current aviation demand for the vacant hangars.
- Leases must require the non-aeronautical tenant to vacate the hangar on 30 days' notice, to allow aeronautical use when a request is received.
- Once the plan is approved, the sponsor may lease vacant hangars on a 30 days' notice without further FAA approval.

The agency believes this will allow airports to obtain some financial benefit from vacant hangars, while allowing the hangars to be quickly returned to aeronautical use when needed. FAA pre-approval of a month-to-month leasing plan will minimize the burden on airport sponsors and FAA staff since it is consistent with existing interim use guidance.

6. *Comment: Commenter indicates that the terms "incidental use" and "insignificant amount of space" are too vague and restrictive.*

Response: The FAA has not used these terms in the final policy. Instead, the policy lists specific prohibited conditions that would be considered to interfere with aeronautical use of a hangar.

7. *Comment: Commenter states Glider operations require storage of items at the airport other than aircraft, such as tow vehicles and towing equipment. This should be an approved use of hangars.*

Response: Tow bars and glider tow equipment have been added to the list of examples of aeronautical equipment. Whether a vehicle is dedicated to use for glider towing is a particular fact that can be determined by the airport sponsor in each case. Otherwise the general rules for parking a vehicle in a hangar would apply.

8. *Comment: Commenter states it should be clear that it is acceptable to park a vehicle in the hangar while the aircraft is out of the hangar being used.*

Response: The final policy states that a vehicle parked in the hangar, while the vehicle owner is using the aircraft will not be considered to displace the aircraft, and therefore is not prohibited.

9. *Comment: Commenters, including Experimental Aircraft Association (EAA), stated that aviation museums and non-profit organizations that promote aviation should not be excluded from hangars.*

Response: Aviation museums and other non-profit aviation-related organizations may have access to airport property at less than fair market rent, under section VII.E of the FAA Policy and Procedures Concerning the Use of Airport Revenue. (64 FR 7710, February 16, 1999). However, there is no special reason for such activities to displace aircraft owners seeking hangar space for storage of operating aircraft, unless the activity itself involves use and storage of aircraft. Accordingly, aviation museums and non-profit organizations will continue to have the same access to vacant hangar space as other activities that do not actually require a hangar for aviation use, that is, when there is no aviation demand (aircraft storage) for those hangars and subject to the discretion of the airport operator.

10. *Comment: Commenters suggest that the policy should allow a 'grace period' for maintaining possession of an empty hangar for a reasonable time from the sale of an aircraft to the purchase or lease of a new aircraft to be stored in the hangar.*

Response: The FAA assumes that airport lease terms would include reasonable accommodation for this purpose and other reasons a hangar might be empty for some period of time, including the aircraft being in use or at another location for maintenance. The reasons for temporary hangar vacancy and appropriate "grace periods" for various events depend on local needs and lease policies, and the FAA has not included any special provision for grace periods in the final policy.

11. *Comment: Commenters believe that the policy should allow some leisure spaces in a hangar, such as a lounge or seating area and kitchen, in*

recognition of the time many aircraft owners spend at the airport, and the benefits of an airport community.

Response: The final policy does not include any special provision for lounge areas or kitchens, either specifically permitting or prohibiting these areas. The policy requires only that any non-aviation related items in a hangar not interfere in any way with the primary use of the hangar for aircraft storage and movement. The airport sponsor is expected to have lease provisions and regulations in place to assure that items located in hangars do not interfere with this primary purpose.

12. *Comment: Commenters, including EAA, stated that all construction of an aircraft should be considered aeronautical for the purpose of hangar use, because building an aircraft is an inherently aeronautical activity. The policy should at least allow for use of a hangar at a much earlier stage of construction than final assembly.*

Response: The FAA has consistently held that the need for an airport hangar in manufacturing or building aircraft arises at the time the components of the aircraft are assembled into a completed aircraft. Prior to that stage, components can be assembled off-airport in smaller spaces. This determination has been applied to both commercial aircraft manufacturing as well as homebuilding of experimental aircraft.

A large majority of the more than 2,400 public comments received on the notice argued that aircraft construction at any stage is an aeronautical activity. The FAA recognizes that the construction of amateur-built aircraft differs from large-scale, commercial aircraft manufacturing. It may be more difficult for those constructing amateur-built or kit-built aircraft to find alternative space for construction or a means to ultimately transport completed large aircraft components to the airport for final assembly, and ultimately for access to taxiways for operation.

Commenters stated that in many cases an airport hangar may be the only viable location for amateur-built or kit-built aircraft construction. Also, as noted in the July 2014 notice, many airports have vacant hangars where a lease for construction of an aircraft, even for several years, would not prevent owners of operating aircraft from having access to hangar storage.

Accordingly, the FAA will consider the construction of amateur-built or kit-built aircraft as an aeronautical activity. Airport sponsors must provide reasonable access to this class of users, subject to local ordinances and building codes. Reasonable access applies to currently available facilities; there is no

requirement for sponsors to construct special facilities or to upgrade existing facilities for aircraft construction use.

Airport sponsors are urged to consider the appropriate safety measures to accommodate aircraft construction. Airport sponsors leasing a vacant hangar for aircraft construction also are urged to incorporate progress benchmarks in the lease to ensure the construction project proceeds to completion in a reasonable time. The FAA's policy with respect to commercial aircraft manufacturing remains unchanged.

13. *Comment: Commenter suggests that the time that an inoperable aircraft can be stored in a hangar should be clarified, because repairs can sometimes involve periods of inactivity.*

Response: The term "operational aircraft" in the final policy does not necessarily mean an aircraft fueled and ready to fly. All operating aircraft experience downtime for maintenance and repair, and for other routine and exceptional reasons. The final policy does not include an arbitrary time period beyond which an aircraft is no longer considered operational. An airport operator should be able to determine whether a particular aircraft is likely to become operational in a reasonable time or not, and incorporate provisions in the hangar lease to provide for either possibility.

14. *Comment: Commenter suggests that the FAA should limit use of hangars on an obligated airport as proposed in the July 2014 notice. Airport sponsors frequently allow non-aeronautical use of hangars now, denying the availability of hangar space to aircraft owners.*

Response: Some commenters supported the relatively strict policies in the July 2014 notice, citing their experience with being denied access to hangars that were being used for non-aviation purposes. The FAA believes that the final policy adopted will allow hangar tenants greater flexibility than the proposed policy in the use of their hangars, but only to the extent that there is no impact on the primary purpose of the hangar. The intent of the final policy is to minimize the regulatory burden on hangar tenants and to simplify enforcement responsibilities for airport sponsors and the FAA, but only as is consistent with the statutory requirements for use of federally obligated airport property.

Final Policy

In accordance with the above, the FAA is adopting the following policy statement on use of hangars at federally obligated airports:

Use of Aeronautical Land and Facilities

Applicability

This policy applies to all aircraft storage areas or facilities on a federally obligated airport unless designated for non-aeronautical use on an approved Airport Layout Plan or otherwise approved for non-aviation use by the FAA. This policy generally refers to the use of hangars since they are the type of aeronautical facility most often involved in issues of non-aviation use, but the policy also applies to other structures on areas of an airport designated for aeronautical use. This policy applies to all users of aircraft hangars, including airport sponsors, municipalities, and other public entities, regardless of whether a user is an owner or lessee of the hangar.

I. General

The intent of this policy is to ensure that the federal investment in federally obligated airports is protected by making aeronautical facilities available to aeronautical users, and by ensuring that airport sponsors receive fair market value for use of airport property for non-aeronautical purposes. The policy implements several Grant Assurances, including Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*.

II. Standards for Aeronautical Use of Hangars

a. Hangars located on airport property must be used for an aeronautical purpose, or be available for use for an aeronautical purpose, unless otherwise approved by the FAA Office of Airports as described in Section III.

b. Aeronautical uses for hangars include:

1. Storage of active aircraft.
2. Final assembly of aircraft under construction.
3. Non-commercial construction of amateur-built or kit-built aircraft.
4. Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
5. Storage of aircraft handling equipment, *e.g.*, towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

c. Provided the hangar is used primarily for aeronautical purposes, an airport sponsor may permit non-aeronautical items to be stored in hangars provided the items do not

interfere with the aeronautical use of the hangar.

d. While sponsors may adopt more restrictive rules for use of hangars, the FAA will generally not consider items to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar.
2. Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft.
3. Impede access to aircraft or other aeronautical contents of the hangar.
4. Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory).
5. Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

e. Hangars may not be used as a residence, with a limited exception for sponsors providing an on-airport residence for a full-time airport manager, watchman, or airport operations staff for remotely located airports. The FAA differentiates between a typical pilot resting facility or aircrew quarters versus a hangar residence or hangar home. The former are designed to be used for overnight and/or resting periods for aircrew, and not as a permanent or even temporary residence. *See* FAA Order 5190.6B paragraph 20.5(b)

f. This policy applies regardless of whether the hangar occupant leases the hangar from the airport sponsor or developer, or the hangar occupant constructed the hangar at the occupant's own expense while holding a ground lease. When land designated for aeronautical use is made available for construction of hangars, the hangars built on the land are subject to the sponsor's obligations to use aeronautical facilities for aeronautical use.

III. Approval for Non-Aeronautical Use of Hangars

A sponsor will be considered to have FAA approval for non-aeronautical use of a hangar in each of the following cases:

a. *FAA advance approval of an interim use:* Where hangars are unoccupied and there is no current aviation demand for hangar space, the airport sponsor may request that FAA Office of Airports approve an interim use of a hangar for non-aeronautical purposes for a period of 3 to 5 years. The FAA will review the request in accordance with Order 5190.6B

paragraph 22.6. Interim leases of unused hangars can generate revenue for the airport and prevent deterioration of facilities. Approved interim or concurrent revenue-production uses must not interfere with safe and efficient airport operations and sponsors should only agree to lease terms that allow the hangars to be recovered on a 30 days' notice for aeronautical purposes. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

b. *FAA approval of a month-to-month leasing plan:* An airport sponsor may obtain advance written approval month-to-month leasing plan for non-aeronautical use of vacant facilities from the local FAA Office of Airports. When there is no current aviation demand for vacant hangars, the airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis. The plan must provide for leases that include an enforceable provision that the tenant will vacate the hangar on a 30-day notice. Once the plan is approved, the sponsor may lease vacant hangars on a 30-day notice basis without further FAA approval. If the airport sponsor receives a request for aeronautical use of the hangar and no other suitable hangar space is available, the sponsor will notify the month-to-month tenant that it must vacate.

A sponsor's request for approval of an interim use or a month-to-month leasing plan should include or provide for (1) an inventory of aeronautical and non-aeronautical land/uses, (2) information on vacancy rates; (3) the sponsor's procedures for accepting new requests for aeronautical use; and (4) assurance that facilities can be returned to aeronautical use when there is renewed aeronautical demand for hangar space. In each of the above cases, the airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (64 FR 7721).

c. *Other cases:* Advance written release by the FAA for all other non-aeronautical uses of designated aeronautical facilities. Any other non-aeronautical use of a designated aeronautical facility or parcel of airport land requires advance written approval from the FAA Office of Airports in accordance with Order 5190.6B chapter 22.

IV. Use of Hangars for Construction of an Aircraft

Non-commercial construction of amateur-built or kit-built aircraft is considered an aeronautical activity. As with any aeronautical activity, an airport sponsor may lease or approve the lease of hangar space for this activity without FAA approval. Airport sponsors are not required to construct special facilities or upgrade existing facilities for construction activities. Airport sponsors are urged to consider the appropriate safety measures to accommodate these users.

Airport sponsors also should consider incorporating construction progress targets in the lease to ensure that the hangar will be used for final assembly and storage of an operational aircraft within a reasonable term after project start.

V. No Right to Non-Aeronautical Use

In the context of enforcement of the Grant Assurances, this policy allows some incidental storage of non-aeronautical items in hangars that do not interfere with aeronautical use. However, the policy neither creates nor constitutes a right to store non-aeronautical items in hangars. Airport sponsors may restrict or prohibit storage of non-aeronautical items. Sponsors should consider factors such as emergency access, fire codes, security, insurance, and the impact of vehicular traffic on their surface areas when enacting rules regarding hangar storage. In some cases, permitting certain incidental non-aeronautical items in hangars could inhibit the sponsor's ability to meet obligations associated with Grant Assurance 19, *Operations and Maintenance*. To avoid claims of discrimination, sponsors should impose consistent rules for incidental storage in all similar facilities at the airport. Sponsors should ensure that taxiways and runways are not used for the vehicular transport of such items to or from the hangars.

VI. Sponsor Compliance Actions

a. It is expected that aeronautical facilities on an airport will be available and used for aeronautical purposes in the normal course of airport business, and that non-aeronautical uses will be the exception.

b. Sponsors should have a program to routinely monitor use of hangars and take measures to eliminate and prevent unapproved non-aeronautical use of hangars.

c. Sponsors should ensure that length of time on a waiting list of those in need of a hangar for aircraft storage is minimized.

d. Sponsors should also consider including a provision in airport leases, including aeronautical leases, to adjust rental rates to FMV for any non-incidentally non-aeronautical use of the leased facilities. In other words, if a tenant uses a hangar for a non-aeronautical purpose in violation of this policy, the rental payments due to the sponsor would automatically increase to a FMV level.

e. FAA personnel conducting a land use or compliance inspection of an airport may request a copy of the sponsor's hangar use program and evidence that the sponsor has limited hangars to aeronautical use.

The FAA may disapprove an AIP grant for hangar construction if there are existing hangars at the airport being used for non-aeronautical purposes.

Issued in Washington, DC, on the 9th of June 2016.

Robin K. Hunt,

Acting Director, Office of Airport Compliance and Management Analysis.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 660, 801, and 809

[Docket No. FDA-2013-N-0125]

RIN 0910-AG74

Use of Symbols in Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing this final rule revising its medical device and certain biological product labeling regulations to explicitly allow for the optional inclusion of graphical representations of information, or symbols, in labeling (including labels) without adjacent explanatory text (referred to in this document as “stand-alone symbols”) if certain requirements are met. The final rule also specifies that the use of symbols, accompanied by adjacent explanatory text continues to be permitted. FDA is also revising its prescription device labeling regulations to allow the use of the symbol statement “Rx only” or “~~R~~ only” in the labeling for prescription devices.

DATES: This rule is effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: *For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health (CDRH):* Antoinette (Tosia) Hazlett, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5424, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-6119, email: Tosia.Hazlett@fda.hhs.gov.

For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The final rule explicitly permits the use of symbols in medical device labeling without adjacent explanatory text if certain requirements are met. The medical device industry has requested the ability to use stand-alone symbols on domestic device labeling, consistent with their current use on devices manufactured for European and other foreign markets. The final rule seeks to harmonize the U.S. device labeling requirements for symbols with international regulatory requirements, such as the Medical Device Directive 93/42/EEC of the European Union (EU) (the European Medical Device Directive) and global adoption of International Electrotechnical Commission (IEC) standard IEC 60417 and International Organization for Standardization (ISO) standard ISO 7000-DB that govern the use of device symbols in numerous foreign markets.

Summary of the Major Provisions of the Regulatory Action in Question

FDA has generally interpreted existing regulations not to allow the use of symbols in medical device labeling, except with adjacent English-language explanatory text and/or on in vitro diagnostic (IVD) devices intended for professional use. Under the final rule, symbols established in a standard developed by a standards development organization (SDO) may be used in medical device labeling without adjacent explanatory text as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d(c)) and the symbol is used according to the specifications for use of the symbol set